

## *Spanish Diplomatic and Parliamentary Practice in Public International Law, 2011–June 2012*

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The following is a list of abbreviations related to the documentation of the Spanish Parliament used in the preparation of this Section (<http://www.congreso.es>, and <http://www.senado.es>).

*BOCG-Cortes Generales* – Boletín Oficial de las Cortes Generales. Cortes Generales. Serie A, Actividades Parlamentarias (Official Journal of the Spanish Parliament. Spanish Parliament. Series A, Parliamentary Activities).

*BOCG-Congreso.D* – Boletín Oficial de las Cortes Generales. Sección Congreso de los Diputados. Serie D, Actos de control (Official Journal of the Spanish Parliament. Congress of Deputies. Series D, Acts of control).

*BOCG-Senado.I* – Boletín Oficial de las Cortes Generales. Sección Senado. Serie I, Boletín General (Official Journal of the Spanish Parliament. Senate. Series I, General Journal).

*DSCG-Comisiones Mixtas* – Diario de Sesiones de las Cortes Generales, Comisiones Mixtas (Official Record of the Spanish Parliament. Joint Committee Meetings).

*DSC-C* – Diario de Sesiones del Congreso. Comisiones (Official Record of the Congress of Deputies. Committee Meetings).

*DSC-P* – Diario de Sesiones del Congreso. Pleno y Diputación Permanente (Official Record of the Congress of Deputies. Plenary Sessions and Standing Committee).

*DSS-C* – Diario de Sesiones del Senado. Comisiones (Official Record of the Senate. Committee Meetings).

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## I. INTERNATIONAL LAW IN GENERAL

## II. SOURCES OF INTERNATIONAL LAW

### 1. Treaties

On 26 January 2011, the Spanish Minister of Defence, Mrs. Chacón Piqueras, referred to the necessity that the Agreement on Defence Cooperation between the United States of America and the Kingdom of Spain be revised:

“(...)

On 12 January this year, we came to terms with the United States as to the enhancement of the aforementioned Agreement on Defence concerning three fundamental aspects: first, the permission for stopovers and overflights by military aircraft; second, the storage of ammunition and explosives in American support facilities; third, the adoption of joint measures for environmental conservation. All these measures shall enter into force on 1 February.

(...)

With regard to the operating procedures related to authorizations for use, (...) there have been completed those improvements introduced in year 2007 (...). Specifically, there have been reinforced the measures for the protection of our airspace through an express prohibition against air-to-air refuelling and visual flights over the national territory. Likewise, a specific procedure has been provided for those flights to which general authorizations shall not apply. In the case of the said flights, an application for a permit to fly shall be submitted in greater advance (seven days) and shall be attached to an explanatory memorandum on the detailed circumstances justifying the flight, its cargo (type and quantity) and its itinerary. These improvements are aimed at a stronger security of our airspace and at a more thorough information and follow-up of the activities carried out by these aircraft while in transit through the Spanish territory.

Secondly, concerning explosives and ammunitions at United States support facilities, there has been provided a procedure adapted to current Spanish regulations on the storage of ammunitions and explosives and on the kind of weapons authorized. (...) Eventually, improvements may be found in the field of environmental control and conservation. Through them, we intend to ensure an environmental management which complies with current Spanish regulations, but especially European Union ones. As a way of example, in the event of a new activity to be developed by American authorities at a joint facility, they shall specify those consequences likely to affect our environment and explicitly state the corresponding corrective measures and contingency plans before the activity can be carried out.

(...)

As to CIA flights (...), the aforementioned Agreement on Defence shall not apply. As you may know, improvements were made in 2007 (...). Henceforth, all flights by American military aircraft making stopovers in Spanish bases and with Guantanamo as origin or destination shall be granted authorization, one by one, in advance. Since

then, the United States is obliged to inform us on the nature of the flights' personnel and cargo, which shall not be controversial to our country, as it is provided for in Article 25.2 of the Agreement. Regarding the incident to which you are referring, the US Government confirmed to the Spanish Government that all military flights (...) operated before that date had complied with the said Article 25.2. Likewise, in 2007, there was entered the agreement on the regulations governing the activities carried out by the US Naval Criminal Investigative Service (NCIS) and US Air Force Office of Special Investigations (AFOSI) within Spanish territory. Under this agreement, prior official approval is necessary for these bodies to operate in Spain and they are forced to give prior notice on any activity carried out within our territory, an authorization which may be denied at any time.

(*DSC-P*, IX Leg., No. 219, pp. 38–41).

On 14 March 2011, the Secretary of State for Constitutional and Parliamentary Affairs referred to the Government's predictions concerning the signature of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 in the following terms:

"The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 was adopted in 1990, under circumstances other than those faced today (...). So far, only 42 States have ratified the said Convention.

None of EU Member States have ratified the Convention of 1990. This Convention was drafted by the countries of origin, without taking into account contributions from those countries which are a destination for migratory flows. This Convention does not make a clear distinction between legal and illegal immigrants.

It must be pointed out, however, that those rights set forth in the Convention of 1990 are also envisaged, although in general terms, in numerous treaties with a universal scope for the protection and promotion of human rights to which Spain is already a party, and in other treaties at the European regional level (...).

Furthermore, Spanish internal law actually provides a broad protection to the rights of immigrants (...). In Spain, many of the so-called economic, social and cultural rights are granted to all persons, irrespective of their legal or illegal situation, namely, emergency medical care or access to education, the rights of migrant workers and their families being thereby fully guaranteed in Spain.

Finally, it must be noted that after the entry into force of the Treaty on the Functioning of the European Union, on 1 December 2009, matters in the Convention are either exclusive competence of the European Union, or joint competence, or competence of EU Member States. Indeed, the Commission has competences in legal migration, although the rights of legal migrant workers are a national competence. As to the rights of illegal migrants, competences here are of national or joint character.

To sum up, for the eventual ratification of the Convention, the European Union Commission should agree on it. On April 2010, both the Commission and the remaining 26 EU Member States declared they were against any study of the eventual ratification of the Convention, given the aforementioned reasons, and stated so through a letter addressed to the President of the Convention Committee (...).

(*BOCG-Congreso.D*, IX Leg., No. 557, p. 399).

On 6 May 2011, the Secretary of State for Constitutional and Parliamentary Affairs put forward those agreements concluded between Spain and the Palestinian Authority:

“The Spanish Government has not signed any agreement with the Palestinian Authority (PA) since the only agreements which may be signed are those concluded with the Palestine Liberation Organization (PLO), which possess *jus contrahendi* under International Law. Anyhow, Spain is working with the PA according to its competences pursuant to the Israel-PLO Agreements and, since year 2004, it has signed the following Memoranda of Understanding:

1. Memorandum of Understanding between the Ministry of Foreign Affairs and Cooperation of the Kingdom of Spain and the Ministry of the Interior of the Palestinian Authority.

2. Memorandum of Understanding for the establishment of political consultations between the Government of the Kingdom of Spain and the Government of the Palestinian Authority.

3. Memorandum of Understanding concerning tourism between the Ministry of Tourism and Antiquities of the Palestinian Authority and the Spanish Secretariat-General for Tourism and Domestic Trade”.

(*BOCG-Congreso.D*, IX Leg., No. 579, p. 105).

In response to a parliamentary question concerning the Spanish conventional investment policy, on 24 February 2012, the Government pointed out that:

“The Government has not considered reviewing Spain’s role in those Bilateral Investment Agreements to which it is a party, except for the role pursuant to the Treaty of Lisbon and EU Investment Rules.

The Treaty of Lisbon establishes EU’s exclusive competence in the field of foreign direct investments, as part of the common commercial policy (Article 207.1.). At present, there is a proposal by the EU Parliament and Council under discussion for the development of a temporary solution for those existing bilateral investment treaties between EU Member States and third countries, and for the establishment of EU Members’ authorization to modify or enter bilateral investment treaties in the future.

In addition, the Government intends to remain a party to the International Convention for the Settlement of Investment Disputes (ICSID Convention), which is key in dispute settlement arbitration in a majority of the Bilateral Investment Treaties (BITs) concluded by Spain and other countries in the Organization for Economic Cooperation and Development (OECD). Likewise, the said Convention underpins these BITs at the worldwide level”.

(*BOCG-Congreso.D*, X Leg., No. 67, pp. 165–166).

On 20 March 2012, the Government stated the following as to the agreements entered into by Spain and the Holy See:

“So far, none of these Agreements have been deemed contrary to the Constitution by the Spanish Constitutional Court, which under the Spanish Constitution has issued a binding interpretation on the matter. The said interpretation has been applied extensively, as in the case concerning Spanish Catholic Religion teachers.

With regard to administrative agreements, our legal system provides sufficient legal channels and guarantees to ensure their legality. Therefore, there is no need for the Government to amend them in order to adapt them to the legal system. Should it be necessary, Courts shall examine their adequacy where the parties involved would consider they contravene the law.

As it could not be otherwise, the Government is committed to the principles of equality, religious freedom, and cooperation and neutrality of public authorities. Likewise, the Government considers that the current legal framework of relations with the Catholic Church is adequate, without prejudice to those improvements which may be introduced in the present model by the enforcement of the aforementioned principles”.

(*BOCG-Congreso.D*, X Leg., No. 94, p. 229).

On 4 May 2012, the Government reported the following as to the ratification process of the European Social Charter (revised):

“The reasons why Spain has not ratified the Charter so far have their origin in year 1999, when a joint study was carried out by certain units of the former Ministry of Labour and other departments. The said study concluded that, although differences between the text of the Revised Charter and the domestic law and practices of the time were far from being insurmountable, there were particular aspects which did pose problems.

As a consequence thereof its ratification remained pending. Subsequently, given the time elapsed since that date and the progress undergone by our social law, in 2007 a new assessment was carried out with a view to analyzing its potential ratification. With that aim, as of 18 October 2007, consultation was made to the various Units and Directorates of the former Ministry of Labour and Social Affairs competent in the matter in order to obtain their opinion on a potential eventual ratification.

In view of the data provided by the various Units and Directorates of the former Ministry of Labour and Social Affairs, there was concluded that there were not significant difficulties at that moment which might hinder Spain’s ratification of the Revised European Social Charter. However, particular difficulties were found concerning specific articles and aspects of the Revised Charter (Article 2.3, Article 2.6, Article 8.2, Article 8.5, Article 19). In addition, there are further difficulties arising out of the interpretation given by the European Committee of Social Rights (ECSR) to the Charter’s articles, since provisions are not interpreted literally but pursuant to the Committee’s particular interpretation (the so-called “Committee case-law”). Thus, the Charter makes use of vague and imprecise expressions to refer to the States’ commitments (such as the establishment of “reasonable” daily and weekly working hours; the workers’ rights to a remuneration “sufficient” for a “decent standard of living” for themselves and their families, etc.). This leads to the Committee’s (sometimes excessive) interpretations on the scope which should be granted to these commitments. At present, some of the difficulties have been overcome as a result of the updating of rules governing this issue; however, other difficulties still remain, which explains the fact that the Revised European Social Charter has not been ratified [by Spain] so far.

As set out above, in principle, the Spanish Government is willing to continue the study and consultations for a potential eventual ratification of the Revised Charter of 1996".

(*BOCG-Congreso.D*, X Leg., No. 104, p. 147).

## 2. Codification and Progressive Development

On the occasion of the [GA 6th Committee meeting concerning the] Report of the International Law Commission on the work of its sixty-third session, on 25 October 2011, Spain's representative, Ms. Escobar Hernández, remarked the following:

"(T)he Commission's sixty-third session, the last of this five-year period, had been remarkable for the completion of work on three long-standing topics: reservations to treaties, responsibility of international organizations, and effects of armed conflicts on treaties. Completion of work on those three topics enabled the Commission to turn its attention to topics already on its agenda and to take up new ones while the Commission had an impressive array of topics on its agenda that were of great interest to States and for international practice, it should focus on a limited number of topics in order to be more effective and efficient and to deliver valuable and useful results for States and the international community as a whole. In that connection, it hoped that the Commission would prioritize its work accordingly and submit its plan to the Sixth Committee for consideration at its sixty-seventh session. In setting its priorities, the Commission should take into account the opinions of States, especially as expressed during the debates in the Sixth Committee.

36. Completion of work on the Guide to Practice on Reservations to Treaties was one of the Commission's main achievements of its last session. Spain welcomed the Commission's recommendation that the General Assembly should take note of the Guide to Practice and ensure its widest possible dissemination. While her delegation reserved the right to make specific comments on some of the guidelines during the fuller debate during the sixty-seventh session, it considered the Guide to Practice – which addressed in a comprehensive manner the various elements related to reservations and objections to reservations that might be of interest to States – to be a useful reference tool for States in the difficult task of deciding whether they could or should formulate reservations to treaties or objections to reservations.

37. The Commission's two recommendations relating to the reservations dialogue drew attention to the reality that reservations and objections created major practical problems that, in many cases, could not be resolved by merely applying the standards of the Vienna Conventions on the Law of Treaties or the guidelines themselves. Indeed, reservations and objections often gave rise to openly conflicting positions. The issue should therefore be addressed in a transparent manner, with the aim of safeguarding the integrity of treaties, but also enhancing their flexibility and securing the widest possible participation of States and international organizations in treaty-based legal regimes. Her delegation therefore welcomed the Commission's recommendation regarding the reservations dialogue. It viewed the mechanism of assistance and settlement of disputes in relation to reservations to treaties as an



element of support for the reservations dialogue and was open to participating in a debate on the establishment of such a mechanism.

38. The topic of the responsibility of international organizations had great practical implications and called for international regulation. The text of the draft articles on the topic maintained the basic balance between the various issues at stake, without overlooking the important dimension of the responsibility of States in connection with the conduct of an international organization. The draft articles were largely similar in overall structure and content to the articles on State responsibility. Nonetheless, each form of responsibility had its own unique set of features, so that it was not always possible to transpose the rules *mutatis mutandis*. The general commentary to the draft articles, in any case, acknowledged the diversity of international organizations and the specificity of the international responsibility that they might incur.

39. Her delegation could support the recommendation that the General Assembly should take note of the draft articles. With regard to the possible elaboration of a convention, while a topic of such importance should be governed by a treaty, the wide variety of positions showed that the matter required further reflection and debate and should therefore be considered at a later stage”.

(A/C.6/66/SR.19, of 22 November 2011, p. 7).

### III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

### IV. SUBJECTS OF INTERNATIONAL LAW

#### 1. Self-Determination

##### *a) Western Sahara*

On 27 January 2011, the Secretary of State for Constitutional and Parliamentary Affairs appeared before the Spanish Congress in relation to the dismantling by Morocco of the Sahrawi camp Gdeim Izik:

“The Government maintains a fluid dialogue with Moroccan authorities regarding human rights issues (...), both at a bilateral level and through those mechanisms under the EU-Morocco Association Agreement. On 11 October, the EU-Morocco Subcommittee on Human Rights met Moroccan authorities to analyse the Moroccan policy on human rights and fundamental freedoms.

The Government, aware of the historical bonds between Spain and the Sahrawi population, is working so that the parties reach an agreement to settle the dispute within the United Nations framework, as provided for in the Security Council’s resolutions, which are fully supported by Spain. Likewise, our country collaborates through its membership in the Group of Friends of the Western Sahara, which annually drafts the resolution extending MINURSO’s mandate. Spain also supports the

task of the UN Secretary-General's Personal Envoy, Ambassador Christopher Ross, both politically and logistically".

(*BOCG-Congreso.D*, IX Leg., No. 544, pp. 375–376).

On 21 March 2011, on the occasion of the expulsion of Spanish journalists from the Western Sahara and of the prohibition on their entrance to El-Aaiun in their exercise of freedom of information, the Government reported the following:

"The Government appraises the task of the Spanish media positively, since it is convinced that freedoms of the press, information and speech are a fundamental guarantee for the rule of law and the democratic system.

The Government regretted those constraints imposed by Moroccan authorities on the work of the Spanish and other media in the Western Sahara, for it deems objective and detailed information on the issue to be necessary.

The Government repeatedly requested Morocco to allow Spanish reporters in the area. As a result, two Spanish correspondents were granted an authorization to enter the territory and exercise their right to inform. Through its representative in El-Aaiun, the Government has provided consular protection, as far as possible, to those journalists undergoing difficulties.

With regard to the Spanish citizen killed in the incidents posterior to the dismantling of the camp, the Government addressed Moroccan authorities through our embassy in Rabat to require information on the event.

(...)

The Government maintains a fluid dialogue with Moroccan authorities regarding issues related to Human Rights and freedom of the press, both at the bilateral level and within the European Union framework. Mechanisms of dialogue with Morocco have been thereby established through the Subcommittee on Human Rights, created by virtue of the Association Agreement between the Maghreb country and the European Union, which studies these issues from a positive and collaborative perspective aimed at the enhancement of the situation of human rights and at the promotion of the freedom of the press in Morocco.

Pursuant to this approach, on the occasion of the latest visit to Madrid of the Moroccan Minister of Foreign Affairs, the Spanish Government, from a friendly and cooperative perspective, advocated for the free flow of information and the entrance of Spanish journalists in Morocco and the Western Sahara, being convinced that a better awareness of the situation and the parties' stances should contribute to the enhancement of the bilateral relation and to the reinforcement of Morocco's international image.

The Moroccan Government has been sensitive to the Spanish request and has lessened some of the constraints on the Spanish professionals, among whom a few have been authorized to travel to the Western Sahara. Likewise, the Spanish Government has provided consular protection to defend those Spanish correspondents who might have faced difficulties to perform their duties".

(*BOCG-Congreso.D*, IX Leg., No. 544, p. 392 y 438).

"The Spanish journalists travelled from Casablanca to El-Aaiun without problems (mainly, thanks to the action taken by the Spanish Ambassador in Rabat) the day after the events mentioned in your question had occurred. In this respect, the Government will not utter any complaints.

The EU Permanent Representative and EU-States Heads of Mission have advised Moroccan authorities to facilitate the task of European media. The latter share this stance and have expressed their wish to guarantee the free exercise of the right to information of all European media with Morocco's authorization.

The Government is against the request for a suspension of the Preferential Agreement with Morocco, the filing of a claim against Royal Air Maroc Airline, and the imposition of sanctions".

(*BOCG-Congreso.D*, IX Leg., No. 547, p. 156).

On 4 April 2012, the Government reported that Spain:

"[S]upports the introduction of mechanisms for the monitoring of human rights in MINURSO's mandate.

The Government's wish is to maintain the best possible relations with the Polisario Front. The latter has always been well treated by both the Spanish Government and society. (...) The Government has made representations to Moroccan authorities so that independent observers and reporters are allowed to visit the Western Sahara territory in order to get close to the present reality of Sahrawi citizens".

(*BOCG-Congreso.D*, X Leg., No. 94, p. 129).

*b) Palestine*

On 27 January 2011, the Secretary of State for Constitutional and Parliamentary Affairs declared the following as to the Government's policy on the Occupied Palestinian Territories:

"The Spanish Ministry of Foreign Affairs and Cooperation, Spain's Embassy and the Consulate General in Jerusalem take pertinent consular support action together with Israel's Ambassador in Spain and Israeli authorities in the field in those cases of detentions of Spanish citizens in the Occupied Territories. These measures express the concern of the Spanish Government in relation to detentions of Spaniards, the respect for their individual rights, the compliance with legality and the need for an urgent solution which should be satisfactory for every case.

Apart from this specific action, the Spanish Government is working so that Spanish volunteers can carry out their work without obstacles, specifically regarding the terms for their entrance, stay and residence, both in Israel and the Occupied Territories.

[T]he Spanish Government understands that dialogue, especially with the Middle East, is the only means for the achievement of a comprehensive, just and lasting peace, which would end the occupation initiated in 1967, through an agreement on the subject matters of the Israeli-Palestinian final status. In this sense, Spain's Government does not deem sanctions on the bilateral or multilateral agreements to be positive".

(*BOCG-Congreso.D*, IX Leg., No. 544, pp. 191–192).

On 27 January 2011, the Secretary of State for Constitutional and Parliamentary Affairs referred in the following terms to the stance of the Spanish Government regarding Israel's blockade of the Gaza Strip:

"The Spanish Government shares the concern on the humanitarian effects of the blockade imposed on the Gaza Strip and has repeatedly urged the lifting of the said blockade. The Spanish Government has put all its efforts in the lifting of the blockade of the Gaza Strip and it is therefore working to support the full implementation of Resolution 1861 of the UN Security Council concerning the reconstruction and economic recovery of the Gaza Strip.

Israeli Government's decision to alleviate the blockade, announced on 20 June, was a positive step towards the right direction. At the moment, the European Union, backed up by a strong commitment on the part of Spain, keeps on working to lift those restrictions imposed on the Gaza Strip.

(...)

With regard to the Gaza Airport, after the crisis in January 2009, the Spanish Government carried out an analysis of damages caused during the conflict, which was completed by a joint study on the damages caused to cooperation projects of EU Member States and the European Commission during the conflict, developed under the coordination of the European Commission. Spain and the European Union do not rule out the possibility to claim damages in the future. Anyhow, the priority is to make progress in the Israel-Palestine peace process and the improvement of humanitarian conditions in the Gaza Strip.

As to the flotilla of activists and members of various NGOs heading to Gaza, the Spanish Government condemned, from the very beginning, the military action taken against it and required the determination of responsibilities. Furthermore, the Spanish Government made sure that Spanish members of the aforesaid flotilla received appropriate consular assistance while successfully requiring Israeli authorities to release them immediately.

(BOCG-Congreso.D, IX Leg., No. 544, pp. 239–240).

In response to a question on the new mission of the "Gaza Freedom Flotilla" to assist the Palestinian people, the Spanish Government replied that:

"The corresponding Director-General of the Spanish Government has met the organizers of the 'Heading to Gaza Initiative' (*Iniciativa Rumbo a Gaza*), whose main objective is to send a new flotilla to the Gaza Strip. The Spanish Government has conveyed to the Spanish activists organizing it the risks to security posed by the maritime access to Gaza and in the Gaza Strip proper, as proved by the murder of the Italian activist, Vittorio Arrigoni, in the hands of a violent Salafi group. As a token of the Government's concern about the protection and integrity of Spanish citizens, there have been modified those travel recommendations on the website of the Spanish Ministry of Foreign Affairs and Cooperation, which now advise against any trip to the Gaza Strip. In particular, it is earnestly advised not to board any of the vessels of the 'Heading to Gaza Initiative' given the serious danger to which the flotilla participants are likely to be exposed. Likewise, it is advised that humanitarian aid to Gaza be sent by land through authorized means.

Regarding Government's action in the multilateral field, it must be highlighted that the High Representative of the European Union, Catherine Ashton, has warned that the flotilla is not the adequate response for a lifting of the blockade. The UN Secretary-General, Ban Ki Moon, has addressed Mediterranean countries in writing so that these advise against new flotillas.

As to the Spanish Government's action in relation to the events resulting from the flotilla of May 2010, it must be pointed out that, first of all, the Government immediately condemned the disproportionate use of force on the part of Israel in the military action taken against the flotilla, which caused the death of 9 activists and injured tens of them. In addition, the Spanish Government described the said action as unacceptable in its communiqué. Secondly, as holder of the EU rotating Presidency, the Government took prompt measures so that the EU also condemned both the event and the disproportionate military action. The third point is that the very same day the Government summoned Israel's Ambassador in Madrid to ask him for an explanation. Later that morning our Ambassador in Tel Aviv took action on behalf of the Spanish Government and the European Union in order to facilitate consular assistance to all activists detained and have them immediately released without any condition, as it was finally achieved. At present, the Spanish Government still requests that a thorough investigation of the events be carried out in order to determine responsibility for them.

In conclusion, the Spanish Government will at all times maintain this coherent and firm stance for the defence of international legality. Spain supports the full implementation of UN Security Council Resolution 1860 and it is working for the economic reconstruction and recovery of the Gaza Strip. Thus, for instance, Spain is taking action within the EU framework and under the Agreement on Movement and Access of 2005 in order to achieve that traffic of goods be allowed into the Gaza Strip with the due guarantees for security so as to prevent the destabilization of Gaza, which would not be beneficial at all".

(*BOCG-Congreso.D*, IX Leg., No. 638, p. 97).

On 7 February 2011, the Secretary of State for Constitutional and Parliamentary Affairs appeared in Congress in order to convey the Government's stance concerning the Occupied Palestinian Territories:

"OECD's Conference on Tourism was held in (...) West Jerusalem, a territory within Israel since 1948 and therefore not a part of the Palestinian Territories occupied in 1967. None of the conference-related events took place in East Jerusalem, thus the Spanish participation cannot be regarded as supporting occupation at all.

The Spanish Government is clearly and firmly for a Peace Agreement between Israel and Palestine which would put an end to the occupation started in 1967. In this sense, Spain will not take any step which may imply the recognition of Israel's sovereignty over the said territories, including East Jerusalem. The Spanish participation in the OECD's Conference on Tourism was absolutely coherent with the aforementioned stance".

(*BOCG-Congreso.D*, IX Leg., No. 544, p. 359).

c) *South Sudan*

On 18 January 2011, the Minister of Foreign Affairs and Cooperation, Ms. Jiménez García-Herrera, expressed the Spanish position regarding the recognition of South Sudan as a sovereign State:

“Indeed, the referendum in South Sudan will form new expectations such as the likely creation of a new State. (...) Should the referendum and the declaration of independence take place, these are far from the unilateral declaration of independence by the Province of Kosovo. The independence of Sudan is legal as it is envisaged in a peace agreement promoted by the international community, apart from having been agreed by the parties, which is the most important point.

(...)

Our commitment to South Sudan is firm and will result in the opening of a representation office in Juba, the capital, within the EU's premises where our partners work, to facilitate thereby the task of Spanish cooperation in the country”.

(*DSS-P, IX Leg.*, No. 106, pp. 5710–5712).

## 2. Recognition of Governments

a) *Honduras*

On 2 February 2011, the Secretary of State for Constitutional and Parliamentary Affairs appeared in Congress to inform on the Spanish position concerning the Honduran participation in the Ibero-American Summit in Mar del Plata:

“Spain's stance has been, first of all, one attempting to settle this situation through dialogue with the Honduran Government and the other members of the Ibero-American Community and, secondly, one of non-exclusion. This has been the position maintained by the Spanish Government at all times, which was actually reflected in the EU-Latin American and the Caribbean Summit (EU-LAC Summit) held in Madrid during the semester of Spanish EU Presidency”.

(*BOCG-Congreso.D, IX Leg.*, No. 544, p. 423).

That very same day, the Secretary of State for Constitutional and Parliamentary Affairs answered other parliamentary questions concerning the relations with the Honduran Government in the following terms:

“Spain supports President Lobo's efforts to reach institutional normalization and the reconciliation with the country, and it is in favour of the full reinstatement of Honduras in regional multilateral bodies in order to re-establish normality in its international relations. In fact, after the inauguration of President Porfirio Lobo, Spain decided, together with the other EU Member States, that the Spanish Ambassador should return to Tegucigalpa and dialogue with Honduran authorities should be resumed.

In this sense, the Spanish Government considers that the most favourable option, not only for Honduras but also for the other States in the Ibero-American Community of Nations, would be the full participation of all members in the said organization.

(...)

Spain considers that the isolation of the Honduran Government is absolutely not beneficial, neither for the region's stability nor for the Honduran people. The Government considers it fundamental that Honduras' relations be resumed, not only with States but also with the international bodies to which it is a member, so as to recover institutional normality and democratic stability in the country".

(BOCG-Congreso.D, IX Leg., No. 544, p. 424).

## V. THE INDIVIDUAL IN INTERNATIONAL LAW

### 1. Diplomatic and Consular Protection

On 19 May 2011, the Spanish Government informed on the detentions of two Spanish journalists for their participation in a demonstration for the indigenous peoples in Panama:

"Spain's Embassy in Panama has devoted particular attention to the detentions and subsequent repatriations of the two Spanish journalists, Francisco Gómez Nadal and María Pilar Chato. The Spanish Government has at all times provided Consular Assistance to Mr. Gómez Nadal and Mrs. Chato through its Consul in Panama under the terms set forth in international law and the domestic law applicable.

Spain's Consul in Panama was in contact with both journalists from the moment of their arrests – as a result of their participation in the altercation – to their repatriations due to their illegal statuses in terms of migration and taxes. Furthermore, the Consul contacted the police station to which the journalists had been transferred, the NGO of which they were members and the Panamanian Ombudsman. Later on, he paid the journalists a visit while at the Judicial Investigation Directorate in Ancón, where he could confirm that both Spanish citizens were in good health and that the treatment they had received on the part of the police had been gentle at all times. Likewise, Spain's Ambassador telephoned the detainees and their families in Spain. Subsequently, Spain's Embassy suggested to Panamanian authorities that the detainees be brought to justice as swiftly as possible and contacted a Panamanian lawyer so that she could provide legal assistance to the detainees. After the hearing before the competent judicial authority, the Spanish Consul paid the detainees a second visit. Mr. Gómez Nadal and Mrs. Chato left Panama under the voluntary repatriation legal mechanism set forth in Panamanian migratory law.

The Spanish Government will provide the aforementioned consular protection if the case so requires pursuant to the international law applicable. Likewise, the Government reminds us that they cannot interfere with a foreign State's sovereign legislative activity – which has been passed democratically. Therefore, under international law, a foreign citizen shall comply with the legal order in the country in which they are staying".

(BOCG-Congreso, Serie D, IX Leg., n. 575, p. 158).



## 2. Aliens

On 20 June 2011, the Spanish Secretary of State for Security, Mr. Camacho Vizcaíno, referred to the situation at alien detention centres in Spain as follows:

“(...) the amendments to legislation on aliens by virtue of Organic Law 2/2009 have provided a more thorough regulation – unlike year 2000 – of the admission of foreigners to detention centres and of their rights and duties, including their right to contact an NGO. Therefore, this is actually governed by legislation, it is not a possibility but a right of NGOs to access these centres and contact the inmates.

(...)

As to substantive data, at present there are nine centres, six in the Peninsula – in Madrid, Barcelona, Valencia, Malaga, Algeciras and Murcia – and three in the Canary Islands. All of them are in good condition for the fulfillment of their duties under the law. The average occupation during 2011 has been of 906 inmates so far, that is to say, 28% of their total capacity. It is thereby demonstrated that the system is not overcharged. Furthermore, these facilities undergo frequent refurbishment works so as to have imperfections or damages repaired as swiftly as possible.

(...)

On another matter, we have taken measures concerning the judicial control over inmates at detention centres. A judicial committee was created long ago for the examination of the conditions at the centres. It delivers periodical decisions which we implement in order to make our service more efficient and to ensure what is essential for us: inmates’ rights”.

(*DSS-Comisión de Interior*, IX Leg., n. 541, p. 21).

On 29 June 2011, the Spanish Government assessed the Voluntary Return Scheme, aimed at a wider protection of those migrant workers returning to their countries of origin:

“The Voluntary Return Scheme was set in motion at the turn of 2008. It introduced in our legal order a mechanism which enables the advanced payment of the total unemployment benefits to those non-Community foreign workers returning to their countries of origin voluntarily.

This mechanism presents the following characteristic features: a general character, the implication of mobility, and a voluntary and permanent nature. First of all, the Scheme is general since it shall apply to all foreign workers who meet the requirements set forth in it. Secondly, mobility is determined by the fact that the Scheme enables the return of migrants to their countries of origin and back to ours while protecting the rights accrued. Third, it is permanent for it has been added to the alien policy and regulations with a view to being long lasting and useful. Finally, we must highlight its voluntary character, as this is an instrument at their disposal which helps them decide whether to return to their countries or stay in Spain. Furthermore, we cannot disregard its effectiveness, since it does not only assist the return to their countries, but it also assists their returning to Spain.

Apart from the advanced payment of total unemployment benefits, which is to be acknowledged and paid off by the Spanish National Public Employment Service (SEPE), there are regulations which provide for the grant of complementary aids to



cover the costs of immigrants' transferring to their countries of origin. These aids, framed within the Ministry of Labour and Immigration budget, are managed by the Secretariat of State for Migration through the Directorate-General for the Integration of Immigrants.

Apart from the complementary aids linked to the advanced payment of total contributory unemployment benefits pursuant to the Voluntary Return Scheme, the Directorate-General for the Integration of Immigrants runs two more schemes for voluntary return: one for social assistance and the other for business entrepreneurship.

This mobility option – which is not intended to be massive but to enable the dignified return of immigrants –, together with the schemes for social assistance and business entrepreneurship, should facilitate a successful resettlement in their societies of origin and should ensure the protection of the rights accrued in the event of return to our country.

The Scheme has received a very positive appraisal so far:

1. It increases the rights and opportunities of those foreign workers who wish to return to their countries of origin.
2. It organizes the migratory phenomenon and its flows while promoting migrants' reintegration into employment in their countries of origin, strengthening development in these countries through their better qualification and experience, and reinforcing relations between Spain and the said countries.
3. The immigrants return policy has not only been boosted by the Spanish Government, but also by the European Union. In this sense, the promotion of an integrated return policy at the national level is the major aim of Decision No. 575/2007/EC of the European Parliament and of the Council, of 23 May 2007, establishing the European Return Fund for the period 2008–2013, which is part of the General programme 'Solidarity and Management of Migration Flows'. This management is focused on effective and sustainable returns through various means and it encourages Member States to give preference to voluntary returns as opposed to forced returns, since the former contribute to the dignified return of individuals and meet the interests of host countries' authorities.
4. Applications for the Scheme may be submitted at any time throughout the year, since the Plan is to be in force for an unlimited period of time, and it is expected to be widely implemented once the interested groups have learnt of the positive experiences of former beneficiaries, who have actually been paid off, both in Spain and in their countries of origin.
5. Not all beneficiaries are willing to return voluntarily. It has been noticed that those having worked in sectors such as construction – with a higher unemployment rate – or those less integrated in Spain – such as males whose families remained overseas – are more willing to do so. Likewise, immigrants whose countries of origin undergo much worse socioeconomic situations show greater reluctance.
6. Coordination measures have been required so that the Scheme could be jointly managed by the Spanish Employment Public Service, the Secretariat of State for Migration and other collaborating bodies. At present, management is being carried out in a highly effective manner".

(*BOCG-Congreso*, Serie D, IX Leg., n. 596, p. 210).

### 3. Human Rights

On 14 January 2011, the Government stated their position concerning the Human Rights Plan passed by the Council of Ministers on 12 December 2008:

“Through the Human Rights Plan, passed by the Council of Ministers on 12 December 2008, the Government adopted the proposal of the 1993 Vienna World Conference on Human Rights for the drawing up of a National Action Plan which set forth the necessary measures to promote respect for human rights and to enhance their protection.

In the case of Spain, the Human Rights Plan is an instrument systematizing and organizing the actions taken by public authorities concerning human rights in general. Such a Plan constitutes an instrument to boost, coordinate and jointly assess the actions of very diverse nature taken by the various actors in the Government and the Administration. Likewise, it may serve as a base for upcoming policies and measures.

The Plan envisages 172 measures distributed into two blocks: external action and internal action. Its major aims are to promote equality, non-discrimination and integration and to guarantee human rights.

The Plan is intended to direct governmental action in the human rights field, to teach human rights so as to raise awareness among the society, and to facilitate the control over governmental action in this matter. This is a public document as to its drawing up, follow-up and assessment, since the civil society (NGOs, universities and other social actors) has been present at the diagnosis and formulation of particular measures and at the document's follow-up.

The Plan has been positively appraised regarding its content and methodology, as proved by the recommendations made by the various Committees which have assessed Spain under international law pursuant to Spain's full membership of the United Nations. For instance, such were the cases of Spain's First Universal Periodic Review before the UN Human Rights Council, last 5th May; of the submission of its Sixth Report to the Committee for the Elimination of All Forms of Discrimination against Women, in July 2009; or of the submission of its Fifth Report to the Committee against Torture, in November 2009.

(...)

The 172 measures of the Plan are divided into two blocks, namely, external action and internal action. With regard to measures on external action, action of diverse nature has been taken. There have been signed and ratified various treaties on human rights, and there have been started the procedures to have some more ratified. By way of example, we should like to highlight the following:

The ratification of the Convention on Cluster Munitions, June 2009;

The International Convention for the Protection of All Persons from Enforced Disappearance, September 2009;

The signature and ratification of Protocols 4, 7 and 13 to the European Convention on Human Rights;

The ratification of the Council of Europe Convention on Actions against Trafficking in Human Beings, April 2009;

The ratification of the Agreement on Privileges and Immunities, September 2009.

Spain's participation and presence in international bodies related to the promotion on human rights have been boosted. The Spanish Presidency of the Committee of Ministers of the Council of Europe (from November 2008 to May 2009) aimed to promote human rights, the rule of law and democracy. Likewise, a significant sum has been earmarked for the funding of the Office of the UN High Commissioner for Human Rights.

We must highlight that the Spanish Presidency of the EU Council during the first semester of 2010 proved the Government's interest in the promotion and protection of human rights. Spain has taken part in several rounds of dialogue on human rights with countries being a priority for our external action. Likewise, within the Presidency framework, on 29 June, the EU-China Summit on "Consultations on Human Rights" took place in Madrid. Eventually, we must point out the creation of the European Observatory on Violence against Women, on 8 March.

(...)

On another matter, the development of particular subjects has entailed the passage of Plans and Programmes to direct governmental action concerning the promotion and guarantee of human rights. Among the numerous plans adopted, we should like to highlight the following:

The setting in motion of the Comprehensive Plan of Action against Trafficking in Human Beings, especially women and children, passed in December 2008;

The 2007–2010 Strategic Plan for Citizenship and Integration, still in force;

The Plan for the Attention and Prevention of Violence against Immigrant Women, passed by the Council of Ministers on 9 January 2009;

The creation of the Resource Centre Against Discrimination (CREADI), within the framework of the implementation of the National Comprehensive Strategy to Fight Racism and Xenophobia;

The Strategic Plan for the Modernization of Justice, passed by the Council of Ministers on 18 September 2009, which is the base for the action to be taken by the Ministry of Justice. We should like to highlight the increase of the number of judges by 19%;

The 3rd Action Plan for People with Disabilities, passed on 10 July 2009, establishing Government's global strategy in the field for their present term in office.

Likewise, teaching initiatives have been carried out, such as conferences, seminars, training courses or awareness-raising measures, in order to disseminate human rights culture among society. Furthermore, training activities for civil servants have been held to provide this group with techniques to respond, in the best way possible, to the problems of diverse nature which may contravene citizens' rights. Finally, measures have been implemented for the economic support of those activities by social bodies devised for the promotion of respect for human rights.

Last, but not least, we should like to highlight the following instances of the Human Rights Plan: first of all, the National Mechanism for the Prevention of Torture; secondly, the allowances for victims of terrorism, mainly granted by the Directorate-General for the Support of Victims of Terrorism, which have enabled to provide

institutional, medical and material support to the victims in 2009. Furthermore, new Units for Incarcerated Mothers have been opened at prisons; and the network of aliens detention centres is being changed and enlarged in order to enhance the conditions and quality of life of illegal immigrants pending repatriation.

To conclude, we should like to remind that the Human Rights Plan is to be in force for the entire period 2008–2012, as foreseen”.

(*BOCG-Congreso*, Serie D, IX Leg., n. 508, p. 53).

On 21 March 2011, the Government stated their position concerning the human rights of prisoners of conscience in Cuba. On 26 April 2011, on behalf of the Government, the Minister of Foreign Affairs and Cooperation, Mrs. Trinidad Jiménez, assessed the release of prisoners of conscience, started in July 2010:

“From a humanitarian perspective, the Spanish Government has played a facilitator role concerning the release of prisoners of conscience, with the aim to have them all released in the end. The Government has implemented a mechanism for their reception and integration in the Spanish society, which consists in the validation of academic diplomas.

Therefore, the Spanish Government, through its Embassy in Havana, in response to those applications submitted by the interested persons themselves, made a demarche to Cuban Authorities for the transfer of academic documents of those persons having travelled to Spain under the present release process. By the end of January, 43 files had already been processed, the attendant academic documents having been validated upon reception from the Cuban Ministry of Foreign Affairs.

(...)

Dialogue between the Cuban Church and Government has resulted in the Cuban authorities’ decision that prisoners of conscience in Cuba be released. The purpose of the Spanish Government is to accompany Cuban actors and – should this be requested – to collaborate with them throughout this dialogue in order for it to yield results as swiftly as possible. Therefore, the decision of which persons are to be released corresponds to Cuban authorities, a decision which is based on their previous dialogue with the Cuban church. The Spanish Government’s role is to help and assist this process so that it comes to fruition, their wish being that all prisoners of conscience be released.

Within the release framework, Spain, through the reception mechanisms for humanitarian reasons provided for in Spanish law – including residence and work permits –, is taking charge of those released prisoners who, having decided to travel to Spain together with their relatives, convey their true wish to do so. Those persons admitted to Spain will be able to carry out any sort of working activity. Whether they should be entitled to carry out the same activities in Cuba falls within the competence and sovereignty of Cuban authorities.

Within the mechanism of the bilateral dialogue on human rights, the Spanish Government has reiterated to Cuban authorities that they deem it appropriate that a delegation of the International Committee of the Red Cross (ICRC) and the UN Rapporteur on Human Rights be allowed to visit Cuba. However, Cuban authorities have communicated that this issue falls within their internal competence. Within

this framework of political dialogue with Cuban authorities, these are urged to fully comply with human rights".

(*BOCG-Congreso*, Serie D, IX Leg., n. 544, p. 392).

"(...) [T]he Spanish Government is content with their support to negotiations between Cuban authorities and Cuba's Catholic Church, as well as with their contribution to the release of prisoners of conscience started in June. This process has released a total of 127 prisoners of conscience in the Island, 115 out of which – and I reiterate, my Honourable Members, 115 – have been admitted to our country. In fact, my Honourable Member, I consider it essential to highlight that there have been released 52 prisoners out of the total incarcerated as a result of the so-called "Black Spring" of 2003 – also known as 'the Group of the 75' –. Forty out of these have been admitted to Spain, and the remaining 12, who had conveyed their wish to stay in Cuba, have been released and allowed to stay. Likewise, I should like to point out the release of other prisoners of conscience who were not among the aforesaid 'Group of the 75', but who were on the lists submitted by the Cuban Committee for Human Rights and National Reconciliation, the Ladies in White and other organizations.

Therefore, the Spanish Government's appraisal of the liberation process is positive, not only due to its political significance – which is outstanding –, but also because it entails a great advance in the human rights field and proves the effectiveness of the political dialogue on human rights between our Government and Cuban authorities. This is an open, sincere and demanding dialogue which offers actual and particular results, such as the aforementioned one.

I should like to highlight as well that the Spanish Government's support to the process has been of clear humanitarian nature, consisting in the reception, as I stated before, of a total of 115 political prisoners and their 647 relatives. As you may well know, the Government, with the backup of several NGOs, has implemented a wide reception mechanism which encompasses their transfer to Spain; assistance upon reception; maintenance aid; accommodation; legal, psychological and medical assistance; as well as means of transport; that is to say, a comprehensive and global reception. All this is aimed at the dignified treatment of all former prisoners and their families so as to achieve their progressive integration into the Spanish society".

(*DSS-P*, IX Leg., n. 118, p. 6752).

## VI. STATE ORGANS

## VII. TERRITORY

### 1. Territory Division. Frontier

In response to a question raised in Congress concerning the governmental security task force in Ceuta and Melilla at their borders with Morocco, the former Spanish Government replied that:

"In the Autonomous City of Ceuta the only checkpoint at the border with the Kingdom of Morocco is the one at El Tarajal, located in the South Bay, where the *Guardia Civil* (the Spanish Gendarmerie) carries out fiscal-related tasks and conducts random inspections on vehicles and persons.

Likewise, surveillance at the Spanish-Moroccan terrestrial border in the Autonomous City of Ceuta is carried out jointly, through both mobile police units and permanent surveillance points along the entire border, which is 8,200 meters long, approximately (...).

At Melilla's border there are four crossings, namely, Beni-Enzar, Farhana, Gurugú and Mari-Guari. These four checkpoints are devised for the passage of persons; however, only two, Beni-Enzar's and Farhana's, are for the passage of vehicles. At the aforementioned crossings, the *Guardia Civil* carries out fiscal-related tasks and conducts random inspections on vehicles and persons whereas the National Police Corps controls the entry and exit of persons (...).

The inspections carried out at these border checkpoints do not pose serious problems and are aimed at ensuring the security and control of the passage of persons. The illegal entry of immigrants into the city is thereby prevented, as well as the clandestine entry or exit of goods coming from illegal trade or of those which, despite being legal, lack the mandatory customs documentation".

(BOCG-Congreso.D, IX Leg., n. 590, pp. 181–183).

## 2. Colonies

### a) Gibraltar

In response to a question posed in Congress on the enlargement of Gibraltar's maritime domains, the Government explicitly set out Spain's position concerning waters in the Bay of Algeciras in the following terms:

"First of all, Spain's stance as to waters in the Bay of Algeciras is that of non-recognition of UK's sovereignty over maritime spaces other than those expressly ceded by the Treaty of Utrecht of 1713. This means that despite accepting that port waters were ceded by the said Treaty, the airport was, however, not ceded, since it was not even envisaged in the 18th-century Treaty. In addition, there should be pointed out that the Spanish policy on the Gibraltar dispute has always been aimed at the recovery of the Spanish sovereignty over the said territory, an objective which has been shared by all Spanish Governments so far without any exception, including, of course, the present one.

Secondly, neither the British nor the Spanish nautical charts elaborated by the Hydro-graphic Institute of the Spanish Navy actually delimit spaces of sovereignty, their only aim being to provide data which may facilitate navigation. The fact that Spanish and British nautical charts do not overlap is not a fundamental matter, since cartographic services adapt the charts they publish to their own particular needs. Needless to say that the only necessary coincidence is that of physical geographic points, which have to be the same in all nautical charts. Furthermore, the new

edition of British Admiralty Nautical Chart 1448 does not include significant changes in relation to former versions.

In any case, the Spanish position concerning waters in the Bay of Algeciras has been conveyed to the United Kingdom through suitable diplomatic channels on countless occasions. Likewise, there have not been altered neither the passage of ships nor the location of fishing ships operating in these waters as a result of the publication of the new edition of the aforementioned nautical chart by the British Navy.

Moreover, the *Guardia Civil* has not been given any orders not to cross those limits set by Gibraltar on the territorial sea. Likewise, the Spanish Maritime Safety Agency (*Sociedad de Salvamento y Seguridad Marítima*) still operates in the Spanish SAR area officially recognized by the International Maritime Association after Spain's accession, on 29 January 1993, to the International Convention on Maritime Search and Rescue done in Hamburg on 27 April 1979".

(BOCG-Congreso.D, IX Leg., No. 562, p. 267).

In this sense, on 3 May 2011, upon being questioned on the results obtained by the Spanish Government concerning the demarche made to the UK after the last events occurred in the Bay of Algeciras (Cadiz) on Sunday 24 April 2011, the Spanish Minister of Foreign Affairs explained it as follows:

"(...) [A]s you may well know, there is nothing new in the problems arising out of the different interpretations made by Spain and the UK concerning Gibraltar's maritime spaces. These have reappeared at different intensities throughout, virtually, the past 200 years since the Treaty of Utrecht of 1713. In this sense, it must be reiterated that the position of the current Spanish Government, like the ones of former Governments, is that defending Spanish sovereignty over the waters around Gibraltar.

Therefore, the reaction of the Spanish Government towards the last incidents in the Bay of Algeciras has been prompt and strong. As you may well know, we made representations to British authorities clearly stating our support to the action taken by the *Guardia Civil del Mar* (Spanish Maritime Gendarmerie). We also conveyed our concern not only about this particular incident, but also about the repetition of incidents of such a nature which contravene not only the Treaty of Utrecht, but also the policy on the fight against drug trafficking and organized crime to which both Spain and the UK subscribe. Eventually, we reiterated the Spanish position concerning waters around Gibraltar.

(...) [B]ritish authorities are aware of our willingness to address matters of such a nature on a permanent and continuous basis without prejudice to Spain's and UK's respective positions concerning the bilateral dispute on sovereignty.

(...) [A]s the responsible Government we are, we have expressed our firmest rejection to the events occurred and we have supported at all times the work of State Security Forces and Corps.

Therefore, (...) the fact that we have never backed down or resigned is a proof of firmness and responsibility. The position of the Spanish Government is very clear: on the one hand, we defend that Gibraltar is not entitled to more rights concerning the waters around it other than those envisaged in the Treaty of Utrecht; on the other hand, under the former premise and giving full support to Security Forces and



Corps, we aim to increase cooperation between the authorities in charge of crime fight, especially those responsible for the fight against illegal trafficking.  
(*DSS-P, IX Leg.*, No. 120, pp. 6905–6907).

As to the Forum of Dialogue, upon being questioned on the achievement of the objective to collaborate for the start of negotiations in order to conclude an agreement on the exchange of tax information between Spain and Gibraltar (an issue addressed at the Forum of Dialogue on Gibraltar held in October 2009, in London), the Government clearly stated that:

“The Directorate-General for Taxation of the Spanish Ministry of Economy and Finance participates in the Group of Experts on “Financial Services and Taxation” of the Forum of Dialogue on Gibraltar.

One of the aims of the said work group is to carry out negotiations with Gibraltar in order to conclude an Agreement on the Exchange of Tax Information which should be based at least on the OECD’s Model Agreement on Exchange of Information on Tax Matters.

Regarding the major objective, to collaborate for the start of negotiations which would lead to the aforementioned agreement, there must be highlighted the progress of negotiations and the achievement of the said objective within the Framework Document agreed by the Governments of Gibraltar, the United Kingdom and Spain, adopted at the 3rd Ministerial Meeting held on 21 July 2009.

As to customs cooperation between Spain and Gibraltar, as a result of one of the agreements reached at the tripartite meeting held in February 2010, the Spanish Customs had appointed a contact person to write a report containing some new proposals aimed at the enhancement of existing cooperation structures. The proposals were focused on the following aspects:

- The reinforcement of contact between the respective Customs bodies.
- The exchange of information on dates and schedules.
- The communication of the existence of circumstances affecting traffic of vehicles or persons in both directions.

Furthermore, the assigned contact points have been officialized, the corresponding telephone numbers and e-mail addresses having been exchanged.

Likewise, there have been sporadic cases of collaboration with the Customs Surveillance unit of the Gibraltarian Police; however, there have not been any joint interventions yet.

On 21 October 2010, there was signed a joint communiqué by Spain, the UK and Gibraltar, and it was thereby agreed that technical meetings be resumed.

Moreover, it is expected that a meeting of the corresponding Directors-General be held in order to address particular aspects of future cooperation in the police, judicial and customs fields.”

(*BOCG-Congreso.D, IX Leg.*, n. 532, pp. 229–230).

During his appearance before the UN Special Committee on Decolonization concerning Gibraltar (C-24), Spain’s Permanent Representative to the United Nations explained to the Committee’s President that:



"Only a few days ago there was held a new edition of the Regional Seminar on Decolonization in order to discuss on the best way to steer the works by the upcoming Third International Decade for the Eradication of Colonialism. I take the opportunity to thank the Government of Saint Vincent and the Grenadines once more for their hospitality and the excellent organization of the event.

A majority of speakers mentioned the need to make progress in the decolonization process. There were many voices, among which the one of the representative of the Secretary-General, who asked the Committee to increase the level of dialogue with the concerned parties.

It was confirmed that progress may occur relatively rapidly in some of the cases under examination, whereas decolonization is much more complex in those cases where disputes over sovereignty exist. Anyhow, it was conveyed that new proposals for the implementation of the UN Mandate are necessary, as well as a practical approach to the works.

Spain substantially agrees with these statements, which envisage the main elements to be taken into account during the Third Decade:

- This Committee hears cases of diverse nature, a case-by-case review of these being therefore compulsory. In addition, should it be necessary, it would seek pragmatic solutions for each of the cases.
- Although it may seem obvious, the UN's Mandate shall remain the reference to carry out our works.

I will dwell on these two aspects briefly.

1. A case-by-case review.

The Committee shall examine, case by case, whether the degree of autonomy reached by some of the colonized territories proves their capacity to be run by themselves responsibly and independently. Should the answer be in the affirmative, there should be questioned their political submission to the administering power.

Spain agrees, therefore, with the Committee's presidency that where there is no dispute over sovereignty, it is the people's opinion which shall be a key factor in the path to decolonization. The time has come for those territories undergoing decolonization and their administering powers to start dialogue in order to transform their colonial bonds within the shortest period of time possible, pursuant to the United Nations criteria.

The said individualized examinations, however, allow us to confirm that, in some cases, the inhabitants of the territory themselves waive political independence, as long as their economic stability is ensured. These are cases of 'colonialism by consent' which intends to perpetuate in spite of the Committee's criteria.

This case becomes particularly troublesome where there is intent to perpetuate the situation at the expense of the legitimate rights of a third party, such being the case of Gibraltar, which is the one concerning my country the most.

In the case of Gibraltar, this Organization has acknowledged the colonial situation as undermining the unity and territorial integrity of Spain, the administering power itself accepting that the independence of its colony is not possible against Spain's will. These two factors are sufficient reasons to conclude that a realistic solution is necessary. But, certainly, what is not realistic at all is to think that the Spanish

Government may accept the perpetuation of the present situation, where the administering power and the colony intend to disregard Spain's legitimate rights under the auspices of the Treaty of Utrecht and the United Nations doctrine.

2. United Nations Mandate.

Secondly, it is fundamental for my country that all of us who gather here today will develop our work with supreme respect for the task and criteria of this Committee, the Organization's Mandate being our permanent reference point as to our field of concern.

In the case of Gibraltar, for more than three decades, the General Assembly has called for a settlement through dialogue between the United Kingdom and Spain. Every year, the Assembly issues a Decision adopted by consensus, which sets out this mandate on bilateral dialogue, pointing out the means to reach it, that is, the so-called Brussels Process.

Spain claims the bilateral dialogue with the United Kingdom be resumed, since it has not taken place in the last few years, contrary to Spain's will. Spain is certain, as experience has proved, that both countries will be able to find imaginative formula to settle their differences without prejudice to the interests of the present inhabitants of the colony. This sincere offer has been repeatedly conveyed to UK's authorities at the highest levels.

Furthermore, my country's goodwill, in spite of the standstill of the aforementioned Brussels Process, allows the development of regional cooperation with both the United Kingdom and the Gibraltarian Government, within the separate framework of the Forum of Dialogue on Gibraltar, with the aim to create a constructive atmosphere of mutual trust and cooperation for the benefit and prosperity of Gibraltar and the region around it, particularly Campo de Gibraltar.

Nevertheless, potential progress within this cooperation forum is being hindered by the colony's local government, which insists on addressing sovereignty issues falling within the exclusive competence of the United Kingdom and Spain. Those differences between my country and the colony's administering power concerning sovereignty issues and jurisdiction should be settled through bilateral negotiations, as provided for in the mandate reiterated by the UN, inspired by the task of the Special Committee on Decolonization.

Therefore, Spain reiterates how important this Committee's task is, together with the respect for the procedure established by this Organization for decolonization matters. Therefore, Spain urges the Committee not to allow the removal from the UN's list of those territories which have not been decolonized according to this Committee's criteria, in spite of those arguments in favour, which are external to our Organization. In addition, Spain trusts that progress required in the decolonization of Gibraltar will be achieved under the competent direction of this Committee".

(Official Website of the Permanent Mission of Spain to the United Nations. Press Office > <http://www.spainun.org/pages/viewfull.cfm?ElementID=3320&print=1>).

On 7 March 2012, the Spanish Minister of Foreign Affairs, Mr. García-Margallo y Marfil, appeared for the first time before the Foreign Affairs Committee in order to present the broad lines of his department's policy and clearly stated that:

"The Gibraltar question encompasses two issues: sovereignty and cooperation in aspects other than sovereignty. The first thing to be done is to make the distinction between the two. With regard to sovereignty, I received three letters, the last of which was from Mr. Straw. The penultimate paragraph of his letter read that the United Kingdom would never initiate, I repeat, it would never initiate talks with Gibraltar without the consent of the authorities of the Rock. What Brussels and the UN say is that the conflict should be settled through dialogue between the two parties, without the possibility that someone's right to veto may hinder that process of dialogue. That is contrary to Brussels and contrary to the United Nations. I had to intervene and give a prompt reply for otherwise – according to a doctrine in International Law called Estoppel theory – things might have taken shape and it might have been said that I had accepted their thesis and that, therefore, I could not oppose to it anymore. I had to make a sign to tell them that things had changed.

I am deeply interested in cooperation. I am concerned about the welfare of the inhabitants at both sides of the fence – naturally, I am more concerned about those at my side of the fence –, but I will not admit that the United Kingdom, Spain and Gibraltar participate in a cooperation forum with the same legal position, the same status and the same legitimacy. To discuss on cooperation, it is Spain and the United Kingdom that should be present. The authorities of the Rock should appear only where there are minor issues to be addressed, in which case authorities of Campo de Gibraltar should be present too so as to respect equality and prevent errors. That was said by the spokesman. When the Ambassador asked me about the meaning, I answered: either two or four flags, but not three.

I assure you that I have received many phone calls from your party so far, from very important people in your party who have told me that it was time to do this, that they completely disliked a tripartite forum. They did not like the forum's meeting in Cordoba much, but what they truly disliked was that a Spanish Minister of Foreign Affairs had accepted to hold a forum's discussion in. I will never do so. Apart from that, coincidence [between Spanish Governments] remains significant.

(DSS-C, X Leg., n. 31, p. 26).

In this sense, on 27 June 2012, the Government's Secretary of State for Foreign Affairs, Mr. de Benito Secades, appeared before the Committee of Foreign Affairs to inform on the plans and global objectives of the Secretariat for this 10th parliamentary term:

"My Honourable Members, I should like to refer to the Gibraltar issue briefly. The Government, according to its plan since last January, has decided, on the one hand, that the bilateral negotiations on sovereignty interrupted for years be resumed, pursuant to UN General Assembly Resolutions on the matter and under the commitment assumed by the Spanish and British Governments, which is clearly stated in the Brussels Declaration of November 1984. On the other hand, the Government has come up with a new model of regional cooperation, more efficient and focused on matters which directly concern the inhabitants at both sides of the fence. The model does not envisage a tripartite forum anymore, unlike the existing one, but a quadripartite framework for the participation of Spain and the United Kingdom, together with local authorities and Spanish regional authorities (...).

As to Gibraltar, there should be pointed out that tensions have not been provoked. Tensions with Gibraltar arose in middle May, when Gibraltarian authorities prohibited fishing in the waters where Spanish fishermen had traditionally operated – 300 families from Algeciras and La Linea –. They alleged that it was for the conservation of the Bay of Algeciras, in spite of the fact that there are other more usual events which are much more harmful to the environment and the waters in the Bay of Algeciras than these 300 families which operate in full compliance with community fishing regulations.

We have reasonably proposed that negotiations on sovereignty be resumed. However, discussions on sovereignty should only concern Spain and the United Kingdom, and conversations on cooperation should continue – in line with the previous work –, since we must make the greatest effort to facilitate the coexistence and harmony of the inhabitants at both sides of the fence, the Gibraltarian population and the population of Campo de Gibraltar. This prohibition against fishing imposed on the fishermen from Algeciras and La Linea occurred amid the process of talks concerning the need that conversations entail four parties, instead of just three, so that autonomous representatives of Campo de Gibraltar could be present, as it happened with representatives of the colony itself. As the Government, our duty is to work for the protection of these fishermen, so that they can operate as they have done so far. Therefore, in coherence with the proposal above, the Ministry and the Government have called for the negotiation on an amendment of the agreement of 1999, within the cooperation field between the two municipalities; and they have requested that the issue be settled at the local level”.

(DSC-C, X Leg., No. 139, pp. 7 y 27).

## VIII. SEAS, WATERWAYS, SHIPS

*Note:* See VII.2.a) *Gibraltar* and IX. International Spaces

### 1. Delimitation of Maritime Areas

In response to two questions raised in Congress – the first on whether it was foreseen to address together with the Kingdom of Morocco the issue of the establishment of a median line between Spain and the said country; the second on the existence of negotiations with the latter concerning the distribution of grids for future oil prospecting in waters near the Canary Islands –, the Government replied as follows:

“My Honourable Member, concerning the information you have requested, it must be highlighted that Spain has held nine meetings with Morocco so far in relation to this issue, which contributed to a better understanding of the respective positions and of the existing technical problems. In this new period, the Spanish Government is deeply interested in improving its relations with Morocco through the promotion of bilateral cooperation in all fields. But negotiations will not be resumed unless both parties meet the necessary objective conditions (...).

In response to the question of reference, the Government informs that Spain has held nine meetings with Morocco so far in relation to the delimitation of the

maritime spaces in the Atlantic coast, which contributed to a better understanding of the respective positions and of the existing technical problems. In this new period, the Spanish Government is deeply interested in improving its relations with Morocco through the promotion of bilateral cooperation in all fields. But negotiations will not be resumed unless both parties meet the necessary objective conditions”.

(*BOCG-Congreso.D*, X Leg., n. 94, pp. 150–151).

## 2. Fisheries

Upon being questioned before Congress on its stance concerning the proposals and priorities of the new European Maritime and Fisheries Fund (EMFF), the Government clearly stated that:

“The Regulation on the new EMFF proposes a series of elements of key importance which are supported by the Government, as reflected in the Regulation proposal. These elements are:

The promotion of sustainable and competitive fishing and aquaculture.

The boost of development and the implementation of EU's Integrated Maritime Policy, together with the Cohesion Policy and the Common Fisheries Policy (CFP).

An impetus for a balanced and conciliatory territorial development of fisheries areas (both aquaculture and inland fisheries).

The contribution to the implementation of the CFP.

At the moment, the Spanish Ministry of Agriculture, Food and Environment is receiving the opinions of the Autonomous Communities, the fisheries sector and other interested parties. Once all the information requested has been received, the Government will make their final decision. The participation of the various social actors will be ensured mainly through the Committee of the European Fisheries Fund, at which the autonomous communities, the fisheries sector, social actors, environmental NGOs and other interested parties participate. The proposal has also been conveyed in writing to the major associations in the sector so that they communicate their remarks.

Furthermore, it must be highlighted that the Government supports the proposal submitted by the Commission concerning the keys for the distribution of funds among the Member States, as well as the repartition of EMFF's allocations among the different priorities suggested and the Commission's proposal that a fixed amount out of the EMFF total be put aside for control, observance and data compilation measures. Likewise, the Government considers that the management of CFP's structural and support measures – through a single financial instrument – will guarantee a more efficient management of the said funds.

Eventually, as to fish farming, the Government deems that EMFF's proposals for the support of fish farming are mainly based on environmental sustainability. None of the measures proposed show social or environmental disrespect. More in particular, offshore aquaculture entails a better environmental protection, since it enables to transfer fattening cages far from the shore, where the effects on the environment are more significant.

The farming of aquatic animal and plant species for a purpose other than food will enable the development of new projects in those areas which are especially

dependent on fishing, which will contribute to the creation of economic activities and employment in the said areas".

(*BOCG-Congreso.D*, X Leg., n. 98, p. 204).

In response to two questions raised in Congress concerning the Government's provisions as to the renewal of the Fisheries Agreement with Portugal and the joint delimitation of the fishing zone, the new Government replied as follows:

"The Agreement on the conditions for the activities by the Spanish and Portuguese fleets in shared waters, signed in October 2003, has a 10-year duration, thereby expiring on 31 December 2013. The Agreement sets forth the conditions for the access of fleets from both countries to the waters under Spanish and Portuguese sovereignty or jurisdiction in the Atlantic Ocean surrounding the Iberian Peninsula, as well as the conditions for border fishing at the mouths of the Miño and Guadiana rivers.

Contact has already been established with the Portuguese delegation so as to resume the meetings of the Joint Committee under the Agreement, which has not met since 2007. The said Committee will make a joint interpretation of the agreements on reciprocal access to our waters and of those on border fishing concerning the Miño and Guadiana rivers. Likewise, negotiations on the renewal of the Agreement will be initiated on the basis of its actual implementation and the defence of the interests of both countries (...).

In 2003, there was created the Delimitations Subcommittee, within the Inter-Ministerial Committee of International Maritime Policy (*Comisión Interministerial de Política Marítima Internacional*, CIPMI) under the auspices of the former Ministry of Foreign Affairs.

At the time of its constitution, the situation was summarized through the study of the recommendations which should be made to the CIPMI concerning relations with neighboring countries as to negotiations and modifications of the agreements in force. They deemed urgent the relations with Portugal, Algeria, Morocco, France, Italy, Ireland and the United Kingdom.

In 1976, there were concluded the 'Guarda Agreements', on the Delimitation of the Territorial Sea and Contiguous Zone, which were ratified by Spain but not by Portugal. At the border in the Gulf of Cadiz, the zone for bottom trawling remains undetermined, having caused several controversial situations so far.

Therefore, it is foreseen to work in close collaboration with the Ministry of Foreign Affairs and Cooperation in order to delimit in a clear manner, if possible, the border between both countries".

(*BOCG-Congreso.D*, X Leg., n 101, pp. 178–179).

### 3. Ships

*Note: See IX. International Spaces*

In response to two questions raised in Congress concerning the collision between oil tanker *Torm Marina* and container vessel *MSC Camille*, occurred on 20 June 2010 at 42 nautical miles off the east coast of Gibraltar, the former Government stated the following:

"The collision between oil tanker *Torm Marina*, IMO No. 9319698, flying the Norwegian flag, and container vessel *MSC Camille*, IMO No. 9404651, flying the Panamanian flag, occurred beyond Spanish jurisdictional waters, at 33 nautical miles off the South of Malaga, at the Mediterranean Sea.

Given the fact that both vessels were flying foreign flags and there were not any Spanish citizens involved or injured in the incident, and since the marine environment was not damaged, the Standing Commission for Maritime Accident and Incident Investigations should not investigate the accident, none of the cases being envisaged under Article 2 of Royal Decree 862/2008, which regulates the investigation of maritime accidents in Spain.

Pursuant to international regulations, flag States are the ones responsible for the investigation of the technical causes of the said accident".

(*BOCG-Congreso.D*, IX Leg., n. 547, p. 102).

#### 4. Underwater Cultural Heritage

In response to a question posed in Congress concerning Government's awareness of the American firm Odyssey Marine Exploration having proposed the creation of a joint enterprise for the conservation of underwater archaeological sites, the former Government claimed the following:

"The Spanish Ministry of Culture is not aware of any proposals on the part of the American firm Odyssey Marine Exploration concerning the creation of a joint enterprise for the protection of underwater archaeological sites. Anyhow, it is neither among the field objectives of the Ministry of Culture nor pursuant to the Spanish National Plan for the Protection of Underwater Cultural Heritage to collaborate with private firms with commercial purposes. Therefore, it is not foreseen to establish any sort of contact with the firm in this respect".

(*BOCG-Congreso.D*, IX Leg., n. 547, p. 108).

### IX. INTERNATIONAL SPACES

#### 1. Indian Ocean

In response to a Congressional query concerning the Government's appraisal of the performance of those private security guards aboard fishing vessels operating in the Indian Ocean, apart from condemning piracy attacks, the Government stated as follows:

"First of all, I should like to highlight that it is ship-owners who hire the private security guards aboard the vessels with Spanish flag operating in the Indian Ocean. Therefore, being aboard private property, guards do not fall within the competence of the Ministry of Defence.

However, pursuant to the operating procedures in force, the Spanish Navy Maritime Operation and Surveillance Centre, located in Cartagena, permanently monitors the movements and activities of national tuna seiners operating in the Indian Ocean. Upon detecting any hazardous situation, the centre reports it to the Spanish



Naval Operations Command and to EU's Naval Operations Command in Northwood. Likewise, warnings are sent to other vessels operating in the area in order to alert that pirates may approach.

On another matter, as reported on 16 December 2010 by the Spanish Minister of Defence before the Committee on Defence of the Congress of Deputies, we should like to remind that, over the past year, the Ministry of Defence maintained a fluent dialogue with Spanish ship-owners' associations to strengthen security measures. The said measures have materialized into amendments to the regulations on private security services and on arms, respectively, so as to allow the presence of private security guards aboard tuna seiners with Spanish flag and to supply these with weapons appropriate for a tough response to pirates' attacks.

In addition, during her appearance, the Minister pointed out that the Ministry of Defence will offer a new series of military training courses to private security guards aboard the tuna fleet in the Indian Ocean".

(*BOCG-Congreso.D*, IX Leg., n. 544, p. 261).

## X. ENVIRONMENT

### 1. Climate Change

On 7 March 2011, with regard to Carbon Funds – in which Spain participates – for the purchase of greenhouse gas emissions allowances – acquired by the Spanish Administration to meet Kyoto Protocol commitments – the Government reported that:

"For the purchase of carbon credits, Spain has entered into agreements with several International Financial Institutions. Hence, Spain is participating in six Carbon Funds at the moment: on the one hand, tranches 1 and 2 of the Spanish Carbon Fund (FEC); tranches 1 and 2 of the BioCarbon Fund (BioCF); and the Community Development Carbon Fund (CDCF), all three belonging to the World Bank; on the other hand, the Multilateral Carbon Credit Fund (MCCF) and its EBRD-EIB Green Carbon Fund; the Ibero-American Carbon Initiative of the Andean Development Corporation (CAF); and the Asia-Pacific Carbon Fund (APCF) of the Asian Development Bank (ADB).

(...)

As to the acquisition of credits, Carbon Funds with Spanish Government's participation are devoted to the development of projects in third countries which reduce or set CO<sub>2</sub>-equivalent (CO<sub>2</sub>e) emissions allowances.

The Spanish Government has signed more than 100 purchase agreements so far for the development of activities under the Kyoto Protocol flexibility mechanisms, which amounts to a total of 28.8 MtCO<sub>2</sub>.

(...)

The Spanish Government is firmly committed to comply with the obligations under the Kyoto Protocol. Therefore, the Government has adopted a strategy with significant policies and measures for the reduction of domestic greenhouse gas emissions, complemented by Protocol's flexibility instruments.



Pursuant to Royal Decree 1370/2006, of 24 November, through which there was passed the 2008–2012 National Plan for the Allocation of Greenhouse Gas Emissions Allowances, Spain shall purchase 289.39 million tonnes (Mt) of emission reductions [measured in tonnes of CO<sub>2</sub>-equivalent (tCO<sub>2</sub>e)] to meet its commitments. Given the fact that the emission percentage corresponding to diffuse sectors was established at 55 percent, the Spanish Administration shall acquire a total of 159.15 million of emission reductions in order to meet the commitments assumed within the Protocol framework”.

(BOCG-Congreso, Serie D, IX Leg., n. 537, p. 149).

On 4 April 2011, the Government informed on the level of compliance with the commitments they had assumed in Copenhagen concerning the financing of developing countries' adaptation to climate change:

“Through the Copenhagen Accord, the Heads of State of developed countries committed to contribute \$30,000 million for period 2010–2012 by means of new and additional resources (the so-called ‘fast start’ finance), to be distributed between adaptation and mitigation in a balanced manner, including the Reduction of Emissions from Deforestation and Forest Degradation (REDD+) policy. In this context, in 2009, the EU had already committed to finance €7,200 million for period 2010–2012. As a EU Member State, Spain is committed to contribute €375 million for period 2010–2012. By December 2010, Spain had mobilised financial resources through contributions to bodies and multilateral funds in the three major areas: adaptation, mitigation and REDD+. The chart below shows Spain's contributions relating the ‘fast start’ finance for climate change.

Fund		2010 (€ million)	Sector
Kyoto Protocol Adaptation Fund		45	Adaptation
Inter-American Development Bank		28	Adaptation and Mitigation
Africa Sustainable Forestry Fund		16.6	(REDD+ and others)
UN REDD		1	REDD+
Climate Investment Funds (CIF) –	Forest Investment Program	10	REDD+
Strategic Climate Fund (SCF)	Pilot Program for Climate Resilience	10	Adaptation
	Scaling Up Renewable Energy Program in Low Income Countries	3	Mitigation
Global Environment Fund (GEF)	Special Climate Change Fund	4	Adaptation
	GEF 5th Replenishment Period	13	Adaptation, Mitigation and REDD+
Total		130.6	

It must be highlighted that at least 45 percent out of 2010's total contributions were earmarked for programmes, projects and activities related to the adaptation of developing countries to climate change, the commitment to distribute funds in a balanced manner between adaptation and mitigation being thus met".

(*BOCG-Congreso*, Serie D, IX Leg., n. 553, p. 132).

## XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

### 1. Development Cooperation

#### a) *General Lines*

On 9 March 2011, at her appearance before the congressional Committee on International Development Cooperation, the Spanish Minister of Foreign Affairs and Cooperation, Mrs. Jiménez García-Herrera, informed on the new policies and lines of action concerning international cooperation for development as follows:

"(...)

As to 2011's Annual Plan for International Cooperation (PACI), passed by the Council of Ministers last Friday, I should like to highlight two of its major aspects, which were included recently pursuant to a Parliament's opinion. First, there is the review of cooperation with the Arab world given the new context. One of the most characteristic features of present times are the budding institutional changes in the Arab world, changes creating expectations which must be supported (...).

Therefore, PACI's proposal is that action be taken in the following areas. First of all, [it is proposed to take action] together with European institutions. In this sense, we will follow up the joint proposals by the Commission and the European External Action Service. This process will start by identifying support actions along with the European agencies on the ground. Spain – in an advantageous position in relation to new-coming countries – could substantially contribute to this process, since our presence in these countries is strong thanks to the Technical Cooperation Offices (...). In particular, we are going to work with the European Investment Bank on a €300-million repayable investment.

Secondly, as to bilateral cooperation, we are going to reorient our programme processes. We were awaiting progress in 2011 concerning the association frameworks with Tunisia, Egypt, the Palestinian Territories, Mauritania, and Jordan; and on the framework agreement for cooperation with Morocco. Given the current situation in Tunisia and Egypt, we have decided to wait for dialogue with the new authorities to be established and then address the priorities on their agendas (...).

(...) [T]he second major aspect envisaged in 2011's PACI, pursuant to a Parliament's opinion, has been the reduction of official development assistance and the new deadlines for the achievement of our objectives. We are all well aware of the twofold challenge posed to the fight against poverty by the serious global economic and financial crisis we are undergoing (...).

In the case of Spain, as you may well know, during the biennial period 2010–2011, the Government has reduced official development assistance by €800 million. This measure has forced us to cut down some estimates, especially in the multilateral assistance field, and to rearrange others, such as the Fund for Water and Sanitation in Latin America (...). We know that the 0.7 percent goal will not be attained in 2012, as it had been initially foreseen and stated on the Master Plan. But we will maintain the goal of achieving it in 2015, an objective shared by the majority of our EU partners. Likewise, our commitment to the Millennium Goals is strong (...).

Eventually, (...) with regard to the major lines of work of 2011's PACI, those presented by the Secretary of State for Cooperation are maintained – firstly, the fight against hunger, with special emphasis on food safety and rural development; secondly, the promotion of human and sustainable development, specifically through the fight against climate change, which will be enhanced through the organization of Rio+20 in 2012. Third, we will focus our efforts on mobilizing other development resources. I am referring to both developing countries' domestic resources and the implementation of a global taxation mechanism on international financial transactions. This mechanism has been adopted by many countries and included in the G-20's agenda, run by France at the moment. Finally, in 2011, we will duplicate our efforts concerning the engagement of the private sector in the fight against poverty (...).

(...) Just in 2011, humanitarian action will be a major line of work within the Government's cooperation policy (...). In fact, as you may well know, a specific chapter on humanitarian assistance has been included in the PACI. The PACI establishes clear priorities as to the provision of humanitarian response – similar to those set by other donors under the Good Humanitarian Donorship initiative such as the European Commission Humanitarian Office (ECHO) and Canada –, this year's global budget allocated to the Spanish Humanitarian Assistance Office [sic] adding up to €117,263,630. On the one hand, it is intended that humanitarian action goes beyond mere emergency aid, that it encompasses other dimensions of assistance, protection of rights, and political impact. On the other hand, it is intended to boost an efficient and transparent humanitarian response, one which is based on the recipients' needs and accountable to them. Especially in the case of Spain, due to the decentralized character of its cooperation system, it is essential to disseminate and promote such principles in an effective manner, so as to attain coherent and coordinated action and to improve the quality of the assistance. Over the last few years we have been concerned with this: quality assistance and transparent management.

(...)

(...) Apart from strengthening our efforts to improve the effectiveness and quality of the assistance, concerning the coherence and transparency of official development assistance, the Government's prevision for 2011 is to pass the regulations for the Spanish Development Promotion Fund (FONPRODE). As you may well know, the recent reform of the former Spanish Fund for Development Assistance (FAD) – which has been the NGOs' claim for decades – has led to the creation of the FONPRODE and the Fund for the Internationalization of Companies (FIEM), the latter being managed by the Ministry of Industry, Tourism and Trade. In this sense, FONPRODE regulations are the last stage of a process of essential reform for Spanish cooperation, since

it entails the complete disappearance of the FAD, leading to a more efficient and transparent fund which is fully devoted to official development assistance.

(...)

(...) Over the past seven years, there has been certainly a dramatic advance as to the achievement of budgetary goals. In 2004, official development assistance amounted to €1,985 million, which increased up to €4,728 million in 2009. Moreover, in spite of the cuts to assistance, the total official development assistance duplicates 2004's. That is, we had to reduce the budget since public expenditure had to be reduced as well. However, the increase of Spain's official development assistance over the last few years is highly noticeable, being the member of the Organization for Economic Cooperation and Development (OECD) whose official development assistance has increased the most since 2004, when compared to any other country. At present, Spain is among the major European and world donors.

(...) First of all, we have attained the consolidation of consultation and consensus-building bodies in the cooperation policy field (...). Secondly, we have promoted the reform process of the Spanish Agency for International Development Cooperation (AECID) (...). Third, we have made significant progress as for the social and institutional recognition of the task performed overseas by the Spanish aid workers, through the approval of the Statute of the Aid Worker and the attendant regulations in April 2006. In addition, at this same stage, we have reformed AECID's regulation governing the allocation of subventions for NGOs by creating the 'qualified NGO' status and by offering the opportunity to enter into multiannual agreements with the Agency. Fourth, we have worked on the strategic aspects of the Spanish Development Cooperation Policy multilateral dimension by signing cooperation framework agreements with key multilateral partners such as the UN Development Programme (UNDP) or the former UNIFEM (now UN Women). Fifth, we have initiated reforms clarifying the role and outcome of the Development Cooperation Policy. I am referring to the advances concerning the coherence and transparency of official development assistance achieved by the FAD reform and the creation of the FONPRODE (...). Sixth, we have enlarged the knowledge and social basis of development cooperation. Finally, I should like to remind that an act governing the external debt management was passed in 2006, with the support of a large majority. This provided Spain with an unprecedented legal framework linking external debt and development, which made us the second European country, behind Italy, with an act of such a kind".

(...)

(DSC-C, IX Leg., no. 724, pp. 3–7).

In response to a parliamentary query before Congress, concerning the approval of the Annual Plan for International Cooperation (PACI), the Government replied as follows:

"2011's PACI is the third operational plan which develops and applies the strategic lines under the 3rd Spanish Cooperation Master Plan (2009–2012), having been elaborated under the consensus of Spanish cooperation main actors. The Government submitted 2011's PACI to the two Chambers of Parliament – the Congress and the Senate – before its passage by the Council of Ministers, the provisions on the

reform of the International Development Cooperation Act set forth in the first of the final provisions of Act 36/2010, of 22nd October, concerning the Development Promotion Fund (FONPRODE), having thus been met.

The PACI was appraised positively after the analysis by the International Development Cooperation Committee, which issued a series of recommendations to reinforce 2011's PACI guidelines. The said recommendations were finally included in 2011's PACI final drafting.

(...)

Budgetary limitations have been translated into the decrease of the total Official Development Assistance with respect to the previous year as well as into an impact on the gross national income (GNI) affecting all levels in the Public Administration (State, Autonomous Communities and municipalities). The prevision for 2011 is that 0.4 percent of the GNI be reached. The 0.7 goal for 2015 is reaffirmed – pursuant to EU's goal –, as so is the message that development and its desired effect – poverty eradication – remain a fundamental political commitment.

The objective set by the State Agreement against Poverty [*Pacto de Estado contra la Pobreza*], to earmark at least 20 percent of bilateral official development assistance to basic social services, was attained for the first time in 2008, when the sum allocated to these added up to 24.67 percent of bilateral official development assistance. In 2009, the sum amounted to 27.85 percent. The unavoidable adjustments on the part of the Government have had an impact on all sectors. The decrease [of investment] in healthcare results from the general cuts to the budget, not from a change in the Government's priorities concerning health".

(BOCG-Congreso.D, IX Leg., no. 618, p. 126).

At his appearance before the International Development Cooperation Committee of 14 June 2012, the Spanish Secretary-General for International Development Cooperation, Mr. Robles Orozco, presented 2012's Annual Plan for International Cooperation (PACI) and made the following remarks:

("...)

This PACI will be the last annual development plan under the Master Plan in force at the moment.

(...)

The PACI (...) is based on three [sic] pillars of major importance. The first one is the report drafted by the parliamentary subcommittee on international cooperation during the last parliamentary term (...). Thus, the present PACI is underpinned by and based on the agreements and decisions of the said subcommittee. All the criteria they used concerning assistance concentration, assistance quality, policies, assessment, instruments, have been poured, literally, into the PACI.

The second key pillar in the drafting of the PACI is the Peer Review Report by OECD's Development Assistance Committee (DAC), that is, the report with DAC's recommendations to Spain. As you may well know, the DAC is the body which controls, governs and sets cooperation policies; thus, it is the body which monitors and directs our cooperation. Spain has undergone several reviews, the last one in 2011 (...). Here, great emphasis is made once more on the quality of assistance; assessment;

transparency; impact; geographical, sector and multilateral concentration; issues on which progress and consensus had already been attained. Therefore, DAC's report is another pillar under the present PACI.

However, as it could not be otherwise, there is a series of reviews – incomplete though – carried out in the past by Spanish cooperation bodies. There is this Secretariat-General's review on the Paris Declaration and its implementation, which has also been reflected in the PACI.

Furthermore, there is a forthcoming document – the review on the current Master Plan. As the Master Plan is still in force, the assessment process – a long one – is not over yet. However, the lessons already learnt throughout the process have been considered and poured into the PACI.

(...)

As my Honorable Members may well know, the EU has just adopted the so-called Agenda for Change, which would be our master plan virtually. The Agenda for Change resulted from a communication made by the Commissioner to the Commission at the turn of last year. Henceforth, the development group has been working on it in order to build European cooperation new foundations (...).

(...) EU's Agenda for Change will provide us with new chances and particular instruments, such as joint programming at field level. We have already started joint programming with the EU in Guatemala, where our technical cooperation offices are strong and delegated cooperation projects are already in motion.

(...)

Likewise, another pillar underpinning the PACI is the outcome from the Busan Forum, at which there were reviewed all those issues which might boost the achievement of the Millennium Goals by 2015 in this final period. At a moment when habitual and major donors are precisely those countries with more financial difficulties – which affects the official development assistance of many countries and agencies –, it is important to readdress issues such as task sharing, complementarity, alternative development funding mechanisms, financial charges, public-private partnerships, official development assistance flows – which do not refer to the actual official development assistance but to private flows – that is, all issues which are important as new instruments to mobilize resources for cooperation, not to replace cooperation but to complement it.

(...)

I should like to linger on another pillar under PACI's identity, key for the new master plan programming cycle, which is the one concerning the monitoring, transparency and assessment policies, respectively. This consensus is reflected in both the Parliament's and DAC's reports. I believe we must enhance our transparency and monitoring mechanisms and draw up an assessment model. Although progress has been made and plans have been set in motion, I consider we lack a global project enabling us to assess procedures and the impact of our cooperation, as well as one enabling accountability. Hence, we are amid a process we expect to be reflected in the master plan (...). I expect that the master plan may envisage Spain's assessment model and our commitment for the next four years, the development of the assessment process being thereby determined in that cycle.

I think that decentralized cooperation deserves attention as well. In fact, Spanish assistance is characterized by an architecture of historical actors at both the local and autonomous communities levels (...). Just like there is a EU agreement on the sharing of tasks and duties and on delegated cooperation, these same international criteria should apply to the Spanish State as well so that we are able to coordinate our actions properly, plan suitably, programme jointly with autonomous communities, prevent duplicity, specialize work; that is, to culminate the process amid which we are at the moment, which I think will be useful for the entire Spanish cooperation system.

NGOs are another pillar of our traditional structure. In spite of budgetary difficulties, both the PACI and the budget framework clearly opt for giving support to the civil society. In this sense, 34 percent of AECID's budget – if chapters 1 and 2 were discarded, 48 percent would be reached – is earmarked for the support of NGOs. Certainly, these are still a major pillar of our development cooperation.

(...)

Pursuant to the report by the parliamentary subcommittee and to Busan's recommendations, an issue on which greater emphasis is to be placed is the search of action options in the business private sector. Now we must seek resources, we must seek public-private alliances, we must seek public-private partnerships, and we must seek aid flows other than official assistance. Therefore, we will do our best in the fields of social responsibility, business ethics and sustainability – that is, cooperation ethical foundations – and on that basis we will examine the aforementioned questions. Likewise, universities and trade unions are foreseen as traditional actors.

I should also like to linger on the effort we intend to make to complete the project Info@OD, which will provide us with a better and more complex platform to manage the flows of official development assistance and of all development cooperation-related data. We have invited all actors comprising the system: universities, the Spanish Federation of Provinces and Municipalities (FEMP), the autonomous communities and the Agency – which has another system – so that these are integrated in a more adequate manner and we can become an instrument for the dissemination of data and gain transparency. Therefore, we will make the effort to raise resources in this field in order to complete the project as foreseen.

I should like to address humanitarian action as well, which is also part of our cooperation. The Agency will maintain its Humanitarian Action office and we will make an effort concerning specialization so that our actions are more efficient. As you may well know, there is this important project with the World Food Programme in the port of Las Palmas about to be approved. This will enable us to play an important part in the provision of humanitarian assistance in the Sahel region and in Western Africa. Therefore, our aim is to be actors in the field and to work on the humanitarian crises forecast for the immediate future in Africa and other areas where famines occur.

(...)"

(DSS-C, X Leg., no. 64, pp. 2–9).



*b) Alliance of Civilizations*

In response to a parliamentary question concerning the membership of Morocco, Algeria, Libya, Egypt, Jordan, Syria, Saudi Arabia, Yemen or Bahrain to the Alliance of Civilizations, and on the latter's position towards the claims of freedom, democracy and equality raised lately in the South Mediterranean countries, the Government informed as follows:

"Morocco, Algeria, Bahrain, Tunisia, Egypt, Jordan, Saudi Arabia, Syria and Yemen are members of the UN Alliance of Civilizations (UNAOC). Libya, however, is not.

UN Alliance of Civilizations shares International Community's interest concerning the claims of freedom, democracy and equality raised in the South Mediterranean states. In this context, last November, the Alliance, the EU and its Member States, other Mediterranean countries, and international organizations adopted the UN Alliance of Civilizations Regional Strategy for the Mediterranean. The said strategy identifies the priorities in the region, such as the respect for and promotion of human rights and fundamental freedoms. Likewise, the strategy encourages the development of efforts in the field of intercultural and interreligious dialogues as an instrument for the promotion of tolerance, pluralism and respect for diversity.

Furthermore, the Alliance of Civilizations is an international initiative for dialogue and cooperation whose objectives are to overcome divisions motivated by culture or religion and to counteract forces leading to radicalization and extremism. For this purpose, the Alliance of Civilizations attempts to build a culture of peace through the promotion of respect and understanding and through the fight of intolerance. These actions are divided into four major blocks: Education, Youth, Media and Migrations.

As a result of the recent events occurred in Libya, and concerning the media field to which the parliamentary question refers, the Rapid Response Media Mechanism, a project promoted by the UN Alliance of Civilizations Secretariat, has addressed the cultural situation and dimensions of the conflict. Within the situation framework, various alerts have been issued and the Global Experts finder has been activated.

Through this early warning system, experts react within 24 hours and share their knowledge with the media in order to prevent the use of stereotypes or incorrect or groundless information. The system's website is <http://www.theglobalexperts.org/>.

(BOCG-Congreso.D, IX Leg., no. 568, p. 242).

In response to a parliamentary question concerning those actions foreseen by the Alliance of Civilizations for year 2011, the Government replied as follows:

"The Alliance of Civilizations is an international initiative for dialogue and cooperation whose objectives are to overcome divisions motivated by culture or religion and to counteract forces leading to radicalization and extremism.

In order to attain its goals, the Alliance of Civilizations promotes the development of actions in four major areas: Education, Youth, Media and Migrations. The said actions encompass dialogue projects and initiatives boosted by the Alliance of Civilizations Secretariat, those countries members of its Group of Friends and a wide network of associates.



Among the most outstanding activities in 2011, we must highlight the following:

- The continuation of the promotion of National Plans and Regional Strategies for Intercultural Dialogue between member countries, as well as the development of those Regional Strategies already in force.
- The arrangement and organization of the 4th UNAOC Global Forum, to be held in December 2011, in Doha, Qatar.
- The continuation of the commitments adopted at the fora of Rio de Janeiro, Istanbul and Madrid.
- The setting in motion and development of the UN University International Institute for the Alliance of Civilizations, based in Barcelona.
- The seminar on Christian minorities, to be held at the Florence European University Institute in May/June 2011.
- The meeting between the Alliance of Civilizations and the civil society, to be held in March 2011 in Doha.
- The exchange of experiences between the 26 countries with a National Plan for Intercultural Dialogue, which will take place in March 2011, in Doha.
- The continuation of the development of ongoing projects and initiatives by the Alliance of Civilizations, and the initiation of new ones”.

(BOCG-Congreso.D, IX Leg., no. 532, p. 325).

## 2. Assistance to Developing Countries

### a) *Latin America*

At his appearance before the Senate's Committee on Ibero-American Affairs of 9 June 2011, the Secretary of State for External and Ibero-American Affairs, Mr. Yáñez-Barnuevo García, informed on the state of democracy and security in Ibero-America:

“(…)

I have just arrived from San Salvador, where there has been held the Annual Assembly of the Organization of American States (OAS), which this year has been focused on the topic 'Citizen Security in the Americas'. The title itself conveys the programme and the concern shared by the countries in the continent as for the challenges posed by security, especially, for persons and societies. In the OAS field, this is the so-called multidimensional security, a concept coined in its 2003 declaration on security in America. This concept does not only include traditional threats, but also new ones added by each State according to their particular situations, which will contribute to the consolidation of peace, comprehensive development and social justice in the region.

I should like to highlight that the multidimensional security concept – whose value has been increased and enriched by the participants in the OAS Assembly in San Salvador – is based on democratic values, respect, the promotion and defence of human rights, solidarity, cooperation and respect for national sovereignty. In other words, security should be understood as public security at the service of citizens within the framework of a democratic society.

(…)

I should like to point out as well that this Assembly has determined Honduras' return to the Organization. The two-year distance episode due to 2009's coup d'état in that country came thus to an end.

(...)

The consolidation of the democratic model allows a flow of permanent collaboration and experience exchange between the administrations of our respective countries. The enhancement of bidirectional exchanges lies in our mutual interest, which has boosted the enlargement of the network of commercial and cooperation agreements between the EU and several countries or groups of countries in Latin America.

(...)

Spanish development cooperation flows to the countries most in need in the region – especially in Central America, the Caribbean and the Andean countries – have been maintained pursuant to the philosophy of cooperation with middle-income countries defended by Spain at multilateral fora. Likewise, triangulation schemes and South-South cooperation formulas have been set in motion with Spanish support.

In the case of those countries with a higher level of relative development, cooperation, which is increasingly mutual, cooperation is focused on state-of-the-art sectors, such as science and technology, innovation, universities, environment and so on.

(...)

The last EU-LAC Summit, held in Madrid in May 2010, as the pinnacle of the Spanish Presidency, was certainly a landmark in that relationship. Our aspiration can be divided into three paths: the maintenance of the EU-Latin American dialogue – especially concerning global agenda issues –; the approach and interrelation of both regions; and, more in particular, the approval and implementation of new instruments and policies.

Apart from the summits and the high level fora held on that occasion, there was the signature of the EU-Central America Association Agreement, the first region-to-region agreement in the field, which symbolizes the European efforts to contribute to the peace process and governance in the region. [Other measures] to bring our respective civil societies closer, as well as the centres for debate and analysis in both regions, were the signature of trade agreements with Peru and Colombia – to be completed by an upcoming agreement with Ecuador –; the relaunch of negotiations for association with Mercosur; the approval of an investment facility for the promotion of infrastructure; and the launch of the EUROLAC Foundation encompassing countries and societies in Europe, Latin America and the Caribbean, (...).

As we all may know, neither organized crime nor terrorism respect borders (...). Latin America and the Caribbean are regions where these problems are severe and result in serious consequences. In 1980s–1990s great effort was made on the part of the International Community – where Spain played an important part – to help overcome civil conflicts in Central America and to contribute to the establishment of stable and inclusive democracies in the region (...).

Spain's political support to Latin America's democratization process, based on the so-called influential instance of the Spanish transition to democracy, was also assisted by Spanish cooperation, which was initiated for the first time in Central America in 1980s, with its current format (...).

Henceforth, Spanish cooperation has supported projects in Central America concerning peace building, democratic governance and civil society, thereby enhancing democratic institutions, municipal development, the associative fabric, the civil society presence and engagement in the peace process, the participation of women, and gender equality.

At present, the AECID is working on a sector plan on democratic governance and peace building which will give coherence to Spanish cooperation actions in the field. It is required that conflict prevention and democratic governance be transversal issues within these actions. These issues became a priority for the first time under Spanish Cooperation 2nd Master Plan (2005–2008); and they continue to be so under the 3rd Master Plan, in force from 2009 to 2012.

Central America is located in a region of special concern in this respect. In the region, integration has not been able to advance at the desired pace concerning security matters. Thus, a process of greater integration becomes essential at present to fight crime successfully (...).

Within this framework, the creation of the International Commission against Impunity in Guatemala (CICIG) was an audacious initiative on the part of the International Community for the support of the rule of law in that country. The CICIG's task, under the auspices of the UN and with the co-funding of countries and bodies of their group of friends, such as Spain, has assisted the Guatemalan Prosecution in the fight against organized crime – present even at the country's institutional level –. Likewise, the CICIG conveyed a message of hope to the Central American public opinion: the establishment of an efficient justice system would not be easy; however, far from fatalism, there were means to overcome these problems, with the necessary political determination, technical expertise and resources.

Spanish cooperation has also intervened in Central American security matters at a bilateral level, through AECID's actions in these countries; and at a regional scale as well, through the Spain-SICA Fund and the UNDP. The cross-border dimension of the issue has called for regional formulas, in order to attain the highest efficiency concerning the prevention and control of violence.

The Security Strategy for Central America and Mexico, adopted by the said countries in 2007, led to the drawing up of a Spanish support plan directed by the principle of alignment and the priorities set by the governments in the region. The plan's budget will be \$8 million for a four-year duration (2010–2013) and will support lines of work in key fields to democratic security; that is, minors' prevention and their social reintegration or rehabilitation; the enhancement of local governments' security management capacities; the promotion of democratic security knowledge; the enhancement of the Central American Programme on Small Arms Control (CASAC); the enhancement of judicial cooperation in Central America; the modernization of police bodies; and the contribution to the drawing up, creation and setting in motion of a security unit in Central America. Apart from multilateral support, the AECID provides support at the bilateral level, either directly or through NGOs, having contributed €24 million to security programmes since 2008 in support of human rights activists, the reduction of impunity, women victims of violence, women's access to justice, the strengthening of the police corps, the enhancement of procedural rules,

the fight against juvenile violence, etc. Security has also been strengthened within the framework of the Ibero-American Programme for Specialized Technical Training (PIFTE), with the collaboration of Spanish institutions such as the Ministry of the Interior, the Ministry of Justice and the General Council of the Judiciary.

Regarding general assistance, all instruments considered, between 2008 and 2010, Spanish cooperation earmarked more than €30 million to Central America for the support of security-related actions. It is foreseen that by the end of period 2008–2014 the sum will have amounted to €150 million. Such a significant sum will be allocated to the funding of the estimates of the Central American Integration System (SICA) for the implementation of its security strategy, totalling approximately \$1,000 million in the upcoming years.

(...)

Given the situation, Spain, with the aim of raising funds from the International Community, is actively supporting SICA's organization of the Central American Security Conference, which will be held this year in Guatemala, on 22 and 23 June. To prepare the conference, a meeting of the Group of Friends – comprising various countries and international organizations – was held in Madrid, on 16 May. At it, SICA presented the four-pillared conceptual framework of the Strategy for Security: crime fight; violence prevention; rehabilitation, reintegration and prison security; and institutional strengthening. SICA also presented a more detailed plan of action and a set of regional projects for which international cooperation funding would be necessary.

(...)

The Ibero-American Summit in Asuncion, focused on the transformation of the State and on development, will be the occasion to agree on formulas and guidelines for the enhancement of administrations' effectiveness, the increase of their tax-paying capacity and a more solid professionalization of civil servants in a State which may be trusted by its citizens.

In 2012, we will celebrate the bicentennial of the Constitution of Cadiz, a pioneering text reflecting the desires of the Spanish people, their desires of freedom and democracy. Its creation and drafting are a landmark of Ibero-American liberalism, which promoted the first constitutions in independent States emerging out of the former colonies.

(...)"

(DSS-C, IX Leg., no. 531, pp. 2–7).

#### *b) The Mediterranean*

*Note:* See XI.4.c) *Occupied Palestinian Territory*, and XVI.1.a) *Libya*

At her appearance before the Congressional Committee on International Development Cooperation of 14 June, the Spanish Secretary of State for International Cooperation, Ms. Rodríguez Ramos, informed on the proposals made and the measures taken in the countries of the Mediterranean Basin, the Maghreb and the Near East, respectively:

"(...)

As you may well know, with the exception of Libya, all Arab countries in the Mediterranean are a priority for Spanish cooperation. The current master plan

establishes four countries with broad partnerships in the region, bilateral cooperation with them being thus significant, not only from the Spanish governmental level, but also from its autonomous communities and municipalities. These four countries are Morocco, the Palestinian Territories, and, at a lower scale, Mauritania and Algeria. Over the past three years, both Morocco and the Palestinian Territories have been among the ten major recipients of Spanish official development assistance, which has contributed more than 60 million [sic] of net bilateral official development assistance per year.

The remaining countries are among the so-called categories B and C under the Master Plan. Our presence there is more limited, as so is the corresponding total official bilateral development assistance. However, the AECID boasts offices in the said countries and we have action programmes in Tunisia, Egypt, Sudan, Lebanon, Jordan and Syria. New opportunities arise for collaboration with all these countries. It may be said that we do not only have the opportunity, but also the responsibility, to contribute to the underpinning of democratic processes in some of these countries through development cooperation. This is a responsibility shared by the entire International Community, not only a Spanish one. However, Spain is a country on which the Arab Spring, the Mediterranean revolution, has had a greater impact, since we are present in the region, since we are tightly linked to them and since Spanish cooperation has been working in many of these countries for forty years now.

This is somehow a two-dimensional challenge. On the one hand, we find the humanitarian response to the consecutive crises. I am referring especially to the war in Libya and the situation in Yemen, where the Arab Spring turned into a sad and bloody Arab Winter. On the other hand, we find Spanish development cooperation new approach, which, from now on, will be based on new foundations, on new programmes, and will accompany democratic processes while escaping meddling or paternalistic attitudes (...).

As for the humanitarian crisis in this field, AECID's Humanitarian Assistance Office [sic] took the first measure on 25 February, when an aircraft carrying 30.5 tonnes of emergency equipment for the UNHCR took off from Torrejón, with the aim of assisting 10,000 refugees at the Libyan border with Tunisia. That very same day, the Agency allowed the World Food Programme to make use of the port of Las Palmas, since the Libyan crisis prevented the said World Programme from using its habitual base in the region, that is, the port of Benghazi. The delivery of 25 February made Spain EU's first country to react before Libya's crisis from the humanitarian perspective. Henceforth, we have been shipping emergency equipment every ten days either by air or sea transport.

On 3 March, we carried out the airlift transportation of Egyptian refugees at the Libyan border with Tunisia. The operation, in which other EU States participated as well, consisted in three daily flights between Djerba and Cairo, which enabled the evacuation of 3,000 Egyptian citizens in a week. As evacuation operations by UN agencies and other donors developed, the Spanish operation was extended to other three countries in Sub-Saharan Africa; and to Mali, Ghana, Sudan and Bangladesh as well. A total of 33 flights have transferred refugees: 17 to Egypt, 11 to Sudan, 2 to Ghana, 2 to Bangladesh and 1 to Mali (...).

(...)

On 10 March, at the AECID, there was held the first of a series of coordination meetings with the Spanish NGOs and autonomous communities present in the North of Africa. On 27 March, as the humanitarian emergency had worsened, a new mission of AECID's Humanitarian Action Office (OAH) was deployed in Egypt. The mission's major outcome was the establishment of a humanitarian corridor for the delivery of assistance through the World Food Programme (WFP) in the area controlled by rebels. This is a land corridor; however, it has enabled two shipments of medicine, food and equipment from various UN agencies, namely, the WFP, UNICEF and the WHO. Likewise, the International Red Cross is currently making use of the said corridor (...).

My Honorable Members, so far, Spain has allocated approximately €6 million (€5,817,000) to this emergency situation; we have mobilized more than 27,200 tonnes of food and we have entered into agreements with five international organizations and NGOs, some of which I have already mentioned, particularly, with the WFP, the Red Cross, the UNHCR, the Arab Medical Union (Arabmed) and Action Against Hunger (ACF). My Honorable Members, by way of reference, we are fifth in the rank of humanitarian action and commitment, behind the EU, UK, Sweden and Germany; and ahead Member States such as France or Italy (...).

Finally, I should like to mention our response to Yemen's crisis, since it is an important part of our work and cooperation, the response having been, however, much more limited, given our capacity to act and the emergency dimensions in this case. Already in 2010, we had earmarked €1 million for humanitarian assistance through the International Committee of the Red Cross (ICRC) and the UNHCR. Over the last few weeks, we have contributed €2 more million to these bodies, in response to UN's call for assistance to the situation. This sum, which will adapt to the evolution of the crisis, will be allocated to food and to the assistance of internally displaced persons in Yemen.

(...) Now I will address the second approach to which I have previously referred at the beginning of my speech, that is, the new vision of development cooperation with the countries in this situation. We must take into account that this is not a uniform situation, that the situation of each of the countries in the Southern rim of the Mediterranean differs widely from the others'. There are at least three different scenarios. First of all, we have the peaceful revolutions in Tunisia and Egypt, where peaceful democratic transition processes have been set in motion. Secondly, we find the social claims for institutional reforms in Jordan, Morocco or Algeria. Eventually, we encounter open conflicts in Libya, Yemen and Syria, where violence is being exercised against the civil society in response to the people's claim for greater freedom and openness in the regimes. In any of the three cases, it must be taken into account that these processes are not over – we ignore what their duration and outcome will be, but these will clearly bring about social and political changes in these countries. Therefore, our response will be adapted to each of the situations, which can be classified into the aforesaid three dimensions (...).

As disclosed by this addendum to 2011's PACI, the calendar for association agreements has been modified. My Honorable Members, when the Tunisian revolution exploded, we had already foreseen the negotiation of strategic association frameworks

with Mauritania, Algeria, Tunisia, Egypt, Jordan and the Palestinian Territories, respectively. Likewise, we were amid negotiations for a strategic association framework between the Spanish cooperation and Morocco. Thus, one of the first measures adopted has been the stay of these negotiations for association agreements (...).

In this context, (...) the trip to Tunisia on the part of the Spanish Head of Government, on 2 March, set the guidelines for what will be the Spanish cooperation general response in the future. The Prime Minister announced our prevision to create a €300 million financing facility devised mainly for three sectors: first, works and infrastructure on water and sanitation; second, energy, energy efficiency and climate change; and, third, support to small and medium enterprises in these countries to create employment opportunities. My Honorable Members, the main goal is to revitalize the socioeconomic fabric of these countries, clearly affected, above all, by the revolution's strong impact on a sector such as tourism, which highly contributes to the growth of the GDP. Clearly, tourism remains indirectly damaged by the Libyan war (...). Hence, the Spanish Prime Minister has proposed that the Spanish cooperation create a repayable financing facility, which is being negotiated with the European Investment Bank (EIB).

This Spanish facility, financed by the EIB, is expected to be clearly outlined by 6 July, at which hopefully will be the last working session in Luxembourg (...). We expect that this important Spanish initiative, together with those being studied by the EIB for the funding of new projects in the Mediterranean, may alleviate this economic standstill situation, which is vital for the democratic transition process, so that the objectives set by these countries can be achieved within the foreseen timelines.

(...) Apart from this financing facility, other measures have been set in motion. My Honourable Members, the first one has been the support to the holding of democratic elections (...). In this sense, the support to democratic transition processes has been embodied in the financial support to Tunisia's and Egypt's first democratic elections, contributed by the Spanish fund within the UNDP allocated to election processes (...).

Finally, (...) I should like to highlight that we have set in motion all public diplomacy institutions of the Ministry of Foreign Affairs and Cooperation in order to strengthen this cooperation task we are carrying out. Bodies such as *Instituto Cervantes*, *Casa Árabe*, *Casa Mediterráneo* and *Fundación Carolina*, with links to the civil societies and cultural institutions in the Southern rim of the Mediterranean, have set in motion training and experience exchange programmes by Spanish personalities who may convey similar experiences concerning the recent process of democratic transition undergone by Spain. Likewise, the *Fundación Carolina* runs a programme of visits to these countries to address our work in the field.

(...)"

(DSC-C, IX Leg., n. 787, pp. 2-7).

### c) Africa

In response to a Congressional query concerning the measures taken by the Government to respond to the humanitarian crisis in the Horn of Africa, the Government informed as follows:



"(...) the Government has set in motion several measures to respond to this severe humanitarian crisis. On the one hand, we have responded through the international organizations present in the region, namely, the UNHCR, UNICEF, the WFP or the WHO. On the other hand, we have adopted six emergency agreements with NGOs for the funding of particular projects focused on a serious problem such as malnutrition, healthcare, or water and sanitation works. We have also implemented innovative cooperation mechanisms, such as the so-called triangular cooperation for the joint distribution of approximately 7,500 tonnes of food together with the US, Brazil and the WFP. All this, in permanent coordination with the actors in the area, on the ground, through periodical meetings and the visits of the Spanish Secretary of State for Cooperation to the camps of displaced persons and refugees, and to Mogadishu in August.

(...) [G]iven the dimension of this severe humanitarian crisis, the Government has invested more than €25 million, which exceeds the amount initially foreseen. We have become the fifth European donor for the Horn of Africa crisis, and we are proud of it, my Honorable Member. Therefore, we will support this region as long as it is necessary. As pointed out, this has been the worst drought undergone by the region in the last sixty years. It already affects 13 million people in a region where there was a previous situation of political conflict, displacement and malnutrition.

(...)"

(DSC-P, IX Leg., no. 272, p. 14).

### 3. Terrorism

At his intervention in the open debate concerning UN's three counter-terrorism committees, held on 16 May before the UN Security Council, the Spanish permanent representative to the UN, Mr. De Laiglesia y González de Peredo, pointed out the following:

"I appreciate the opportunity offered to my delegation to participate in this open debate on the activities carried out by the three Security Council Committees specialized in the fight against terrorism. At the outset, I wish to note that Spain fully aligns itself with the statement to be delivered by the representative of the European Union.

Terrorism, in all its forms and manifestations, constitutes one of the most serious threats to international peace and security. Acts of terrorism are unjustifiable wherever, whenever and by whomsoever committed.

The United Nations system has carried out important work in the fight against terrorism and should continue to play an important role as the guarantor of international law. The implementation of the United Nations Global Counter-Terrorism Strategy, adopted by consensus by the General Assembly in 2006 (resolution 60/288), is a valuable tool against the global threat of terrorism. The Security Council should carry out its work in a way that is complementary to the efforts of the General Assembly, which should in general be the pre-eminent forum for the international community to formulate its responses to the global problems of our time.

I reiterate Spain's firm commitment to fighting all forms of terrorism, regardless of its motivation or manifestation, and my Government's wish to see this objective be a permanent priority on the agenda of the United Nations.

It is essential to work at the national and international levels to prevent and combat this scourge. In doing so, we must not neglect to address the underlying causes of terrorism, such as radicalization. The Alliance of Civilizations initiative, noted in resolution 1963 (2010), which Spain promoted as a tool for enhancing understanding among countries, societies and individuals, can be useful in this regard.

Moral and political reasons compel us to provide assistance and support to the victims of terrorism. The convening by the Secretary-General of a new symposium in support of victims of terrorism, as a continuation of the one convened in 2008, would be much appreciated by Spain. On this matter, we also hope the Security Council will provide the necessary continuity to its intention expressed in resolution 1566 (2004) regarding assistance to victims of terrorism through establishing an assistance fund or a practical assistance mechanism, as set out in the United Nations Global Counter-Terrorism Strategy adopted by the General Assembly (General Assembly Resolution 60/288).

I would like to thank the Chairmen of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, the Counter-Terrorism Committee and the Security Council Committee established pursuant to resolution 1540 (2004) for the information provided and the work they have carried out together with their respective groups of experts.

First, Spain would like to highlight the work of the 1267 Committee. We value the efforts to increase the transparency of the review and updating of the names of persons and entities on the sanction regime's Consolidated List. The adoption of Security Council resolution 1904 (2009) led to an improvement in the application of the sanctions regime in response to concerns expressed by national and regional courts.

(...)

Spain wants to highlight as well the work of the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Committee Executive Directorate (CTED) to monitor compliance with resolutions 1373 (2001), 1624 (2005) and 1963 (2010) and to facilitate technical assistance to countries that request it. We welcome the dialogue, in the context of fighting terrorism, between the CTC and relevant bodies promoting and protecting human rights, such as the Council of Europe.

Similarly, we want to highlight the new strategy devised by the Executive Directorate to enhance its role as facilitator of technical assistance and to undertake a permanent dialogue between donor and recipient States, in the interest of greater efficiency. The adoption of resolution 1963 (2010), which extended the mandate of the Executive Directorate, will enable the Directorate to increase its participation in the work of the Counter-Terrorism Implementation Task Force and make it the pre-eminent facilitator of technical assistance, strengthening States' capacities and thereby reinforcing the desired integral nature of the fight against terrorism.

(...) We express our support for the efforts of the 1540 Committee to design mechanisms for monitoring the implementation of that resolution and its work to extend its universal application. Spain welcomes the unanimous adoption of resolution 1977 (2011), which extends and strengthens the mandate of the Committee in the essential framework of full and strict compliance with the obligations and commitments incumbent upon Member States in matters of arms control, disarmament

and non-proliferation in all its aspects of all weapons of mass destruction and their delivery systems. In this context, Spain wants to highlight the work of the Global Initiative to Combat Nuclear Terrorism and calls for increased cooperation among all stakeholders with expertise in combating nuclear terrorism.

I conclude by expressing Spain's appreciation for the efforts of these three Committees to improve the effectiveness of their work. It is also encouraging to see the growing awareness that all measures taken must respect the rights of individuals. With this essential respect for human rights, the whole international community must demonstrate its firm determination to face down the barbarity of terrorism".

(S/PV.6536, pp. 30–31).

#### 4. Humanitarian Assistance

*Note: See XI.2.b) The Mediterranean, and c) Africa*

##### a) *Haiti*

In response to a parliamentary question concerning the International Donors' Conference towards a New Future for Haiti, aimed at the creation of a special fund for the reconstruction of the said country, the Government made the following remarks:

"At the Donors' Conference for the reconstruction of Haiti, held in New York, on 31 March, Spain, as the third bilateral donor and EU's first one, reiterated its decision to reach an agreement to support the Haitian Government.

The Action Plan for the National Recovery and Development of Haiti, announced in New York, engages the entire society. It is divided into two phases: one in the immediate future (with an 18-month length), and other of "genuine renewal" (with a 4-to-10-year length). Likewise, it comprises three programming cycles of the National Strategy for Growth and Poverty Reduction (emergency, implementation and materialization).

Spain announced a contribution of €346 million for the 2010–2013 period, which would be allocated to the fields of water and sanitation, education and basic habitability (food security and agriculture being also funded).

This is the breakdown of Spain's €346-million contribution: in 2010, Spain will contribute €131.1 million (€90.3 million out of which will be exclusively allocated to water and sanitation; the remaining sum being earmarked to sectors such as basic habitability, education and agriculture).

The remaining of the total amount will be distributed as follows:

- €65.39 million
- €75 million
- €74.5 million

On 17 June, the Interim Haiti Recovery Commission was constituted in Port-au-Prince. Spain participates in the said Commission through a government representative.

The Commission, presided by UN Secretary-General's Special Envoy, Mr. Bill Clinton, and by Haitian Prime Minister, Mr. Jean Max Bellerive, was established for an 18-month period".

(BOCG-Congreso.D, IX Leg., no. 537, p. 97).

*b) Sahel Region*

In response to a parliamentary question concerning the provisions on the amount of humanitarian assistance allocated to emergency assistance programmes in the Sahel region, as well as the recipient countries and the agreements with humanitarian NGOs to be adopted, the Government informed as follows:

“The Government announces that, in order to alleviate the emergency situation in the Sahel region, the AECID has adopted measures at the multilateral level and in the field of humanitarian NGOs, respectively.

At the multilateral level, we must highlight the intervention in Chad and Niger through UNICEF, focused on nutrition (€500,000 per country), and the support to the International Committee of the Red Cross in Mali and Niger (a total of €500,000), focused on protection. These interventions will be shortly completed by the support provided through the UNHCR to Malian refugees in Mauritania, as part of the regional response to the food crisis in the area, through a carryover from 2011 to the WFP and healthcare interventions thanks to the AECID/WHO Fund [sic].

As for the support to humanitarian NGOs, we must point out the reactivation in Mauritania of the emergency agreement with Intermón Oxfam (€550,000 to employment and water). Likewise, we must highlight the support to the Spanish Red Cross in Mali (€206,000 to food assistance) and Burkina Faso (€150,000 to food assistance); to Action Against Hunger in northern Mali (€98,000 to displaced persons) and Mauritania (€400,000 to children’s healthcare); and to Save the Children in Niger (€200,000 to children’s nutrition).

A total of €3.15 million has been contributed so far. AECID’s response will be adapted to the needs”.

(*BOCG-Congreso.D*, X Leg., no. 104, pp. 213–214).

*c) Occupied Palestinian Territory*

In response to a parliamentary query on the difficulties faced by those aid workers of Spanish and other nationalities in the Israeli State, the Government reported that:

“The Spanish Government’s appraisal of the laudable task performed by Spanish aid workers in Palestinian Territories is highly positive. Spain has become one of the major donors to the Palestinian people, EU’s second donor, and tenth in the rank of major donors to Palestinian refugees. Aid workers’ efforts and work on the region play an important part in this cooperation field.

Both the Spanish Minister of Foreign Affairs and Cooperation and the Secretary of State for International Cooperation have met the Spanish aid workers in the Occupied Territories in order to get to know the real and daily difficulties and problems they face at work. The Spanish Government has reiterated its commitment to the Palestinian people and has highlighted that cooperation in the Palestinian Territories ‘remains a priority’, as proved by the fact that assistance has been maintained, in spite of the cuts to the cooperation budget.

Furthermore, we must remark that development NGOs play a significant part in Spanish Cooperation in the Palestinian Territories. At present, the number of development NGOs carrying out development cooperation activities in the region

amounts to 40, approximately. There are 62 ongoing interventions with AECID's funding – e.g. 12 agreements from different calls for proposals and 8 projects totalling €2.3 million, financed in 2011 – the budget for these interventions exceeding the €50 million sum. Apart from these actions, we must mention the significant number of projects funded through decentralized cooperation, which has added up to an average of €12 million in the last years.

Likewise, we must highlight that upon notice that Mr. García Pedraza had been prevented from entering Israel, the Consular unit of the Spanish Embassy in Tel Aviv contacted him and Israeli authorities to ensure that both the treatment given to Mr. García Pedraza and the procedure were under the law. On their part, Israeli authorities gave notice of their decision prohibiting Mr. García Pedraza's entrance to Israeli territory. Mr. García Pedraza thanked the Embassy anyway.

Apart from the Government's action in this case, the Spanish Government has conveyed to Israeli authorities its concern about the conditions of entrance, stay and residence imposed on the Spanish aid workers in Israel and the Occupied Territories. The Government has worked jointly with the other EU partners, since this is a concern shared by other Member States and Community institutions".

(BOCG-Congreso.D, IX Leg., no. 638, p. 104).

## XII. INTERNATIONAL ORGANIZATIONS

### 1. United Nations

#### a) Security Council

On 9 November 2011, Spain's Deputy Permanent Representative to the United Nations, Mr. Oyarzun Marchesi, participated in the debate on the question of equitable representation on and increase in the membership of the Security Council and related matters:

"First of all, we should admit that the third revision of the negotiating text (Rev.3.) has not been fully accepted as the basis on which to continue negotiations. Therefore, please pardon the redundancy, this revision must be revised once more. Without a third revision, we consider that the only alternative would be to adopt the second revision (Rev.2), the only with the full support of groups and countries.

Secondly, we should admit that the rules of the game established in Decision 62/557 cannot be changed unilaterally in the middle of the game.

Mr. President, to that end, you may count on the full support of the Spanish delegation. I believe that we have proved to have a flexible and constructive spirit.

(...)

I should like to remind that the 'Uniting for Consensus' group remains the only one having submitted a model alternative to the original one.

(...)

The said model presents elements from the so-called 'intermediate' model, such as the creation of a new category – or intermediate category between the current ones – for non-permanent members of long duration (longer-term seats).

It must be clarified that this model was submitted under a condition of reciprocity on the part of the remaining groups, which, unfortunately, has not been met. Therefore, the model of the 'Uniting for Consensus' group, that is, Spain's, remains the same as in 2005.

This is a comprehensive model, with realistic proposals for each of the five points in the Council reform: categories and veto; size; regional representation; work methods; and Council-Assembly relations.

As you may well know, one of its major features is that it only envisages the enlargement of Council's non-permanent members. We are firmly convinced that only the enlargement of electable seats may guarantee the protection of the democratic principle, necessary to confer full legitimacy upon the Council reform".

(Official Website of the Permanent Mission of Spain to the United Nations. Press Office > <http://www.spainun.org/pages/viewfull.cfm?ElementID=3368>).

On 27 June 2012, the Secretary of State for Foreign Affairs made the following statements:

"Our support to the UN system as the legitimate core of multilateral policies remains one of our foreign policy guidelines. However, ours is a critical and responsible support. Spain will continue in the front row of UN reform processes to claim effectiveness and budgetary rigour on their part. We will continue our work within the 'Uniting for Consensus' group, to request an ambitious reform of the Security Council entailing the enhancement of its work methods and the enlargement of its non-permanent members.

As my Honorable Members may know, our aspiration is to be part of the Security Council in 2015–2016, for the fourth time in our democratic history. We are competing for one of the two seats reserved for the Western group together with New Zealand and Turkey, two highly respected countries in the UN field. In this competitive context, the Government has come up with a strategy with various stages, which will intensify as the voting date approaches, and has foreseen a campaign based on values and respect for our rivals".

(DSC-C, X Leg., No. 139, p. 3).

*b) Somalia*

On 10 March 2011, Spain's Representative to the United Nations, Mr. De Laiglesia y González de Peredo, participated in the Security Council's open debate on Somalia:

"(...)

In this context, and in view of the end of the transitional period in August, we believe it to be a matter of urgency that the authorities of the Transitional Federal Government make progress in the drafting of a new constitution that obtains broad consensus. They must promote an inclusive political dialogue that makes it possible to address the root causes of conflict. They need to focus on security sector reform with the support of the international community, and they must work actively to improve the living conditions of the population.

Spain shares the international community's concern about the escalation of piracy in the Indian Ocean waters. Spain's commitment to the fight against piracy is unequivocal.

(...)

However, the commendable work of the naval forces in the prevention and prosecution of acts of piracy contrasts with a degree of impunity enjoyed by those arrested for acts of piracy that seriously undermines the effectiveness of the international efforts.

(...)

We agree with the assessment that it is essential to develop and strengthen the institutional capacities of the countries of the region in the legal, jurisdictional and correctional spheres if we wish to reverse the trend that favours the spread and continuation of acts of piracy. Legal initiatives should be aimed against not only the actual perpetrators, but also those who plan, lead and make a profit from those activities. This will require improving the collection and production of evidence, as well as the further involvement of all the countries taking part in this endeavour.

The aforementioned measures – in particular, those of a jurisdictional nature – would be better implemented through the adoption of a new Security Council resolution as soon as possible. Notwithstanding the fact that such a resolution could address a wide range of the many necessary elements of an approach to piracy, in Spain's opinion it should focus on the legal aspects and contain at least the following three main elements:

- An encouragement of the strengthened collection and production of evidence;
- a guarantee of treatment in accordance with international humanitarian law for those detained, prosecuted and found guilty for crimes of piracy;
- and a decision to urgently establish Somali courts to hear piracy cases in Somaliland, Puntland and in any of the neighboring countries. Such courts could be also open to staff from third countries.

With regard to the drafting and adoption of such a resolution, the Security Council can count on the full support and cooperation of Spain, since we are convinced that it would contribute to addressing the current significant legal loopholes. That is an essential element in the international effort coordinated by the Contact Group on Piracy off the Coast of Somalia and requires maximum effectiveness with respect to prevention and deterrence".

(S/PV.6494 (*Resumption 1*), of 10 March 2011, p. 14).

## 2. North Atlantic Treaty Organization

### a) *Military Structure*

On 27 June 2012, the Spanish Secretary of State for Foreign Affairs made the following statements concerning Spain's participation in NATO's European Ballistic Missile Defence System:



“The development of this system significantly contributes to the security of Spanish and European populations. This is also a proof of Spain’s firm commitment to the Atlantic Alliance and the enhancement of its defence capacities. At the moment, we are negotiating the Protocol of Amendment to the Agreement of Defence Cooperation of 1988, pursuant to which the aforementioned deployment will take place. We expect that the final text will be adopted soon, so that this new phase in our defence relation, beneficial for both countries, can be initiated”.

(*DSC-C*, X Leg., No. 139, p. 5).

*b) NATO Operations: Kosovo*

On 9 February, the Spanish Secretary of State for Constitutional and Parliamentary Affairs appeared to reply to a parliamentary question concerning organ trafficking in Kosovo and Albania:

“The Spanish soldiers and civilians working for KFOR and UNMIK, respectively, performed protection and surveillance tasks. Thus, they never had the competence to investigate neither war crimes nor organ trafficking crimes in Kosovo and Albania. (...)

In October 2002, investigators of the Tribunal and the UNMIK travelled to Central Albania, where they found evidence of human organ removal, predictably for trafficking, on Serbian and other prisoners of UCK guerrillas. However, the Prosecution could not continue with this inquiry due to a lack of evidence and witnesses.

After Kosovo’s Unilateral Declaration of Independence, on 17 February 2008, the European Union decided to deploy a CSDP mission in Kosovo, the ‘European Union Rule of Law Mission in Kosovo’ (EULEX), for the strengthening of police forces, justice and customs. At present, EULEX is responsible for the inquiries initiated by Prosecutor Carla del Ponte, as requested in the Council of Europe Parliamentary Assembly Resolution, of 25 January 2011. Spain supports EULEX’s work, as it supports the remaining Missions as for the exercise of their competences”.

(*BOCG-Congreso.D*, IX Leg., No. 544, p. 475).

### **XIII. EUROPEAN UNION**

#### **1. Common Agricultural and Fisheries Policy**

*a) EU-Morocco Agreement*

In response to two congressional questions – posed in April and June 2012, respectively – concerning the provisions on the consequences of the agriculture agreement adopted by EU and Morocco, the Government made the following remarks:

“The ratification of the new EU-Morocco agricultural protocol constitutes the final stage of the agreement adopted between Morocco and the EU for the creation of

a free trade area for agricultural, livestock and fisheries products between the two geographical regions. Liberalization, however, is not complete, since an important group of products will be under protection mechanisms such as tariff quotas and entry prices.

The impact of the agreement ratification on the Spanish agricultural sector will be limited, given the fact that protection mechanisms are kept and that the liberalization process has occurred between 1996 and 2012.

Thus, as for certain sensitive products (...), there is an increase, subjected to the community market demand, of those quotas exempt from ad valorem tariffs. Likewise, some of these products are subjected to an entry price, which guarantees their minimum price in the community market.

As for the removal of the tariff quotas on some products, this is not expected to have any impact on the said products, since these do not even cover current tariff quotas, or Morocco's production and exports of these are minimal; or even because some of them are protected by entry prices.

Other products become fully liberalized (...). There were already no quantitative restrictions on these at particular periods, which mainly overlapped Spain's production and exports schedules. Therefore, the relative conditions on the markets of products from the two regions do not undergo important changes.

(...)

Eventually, (...) [other] products had been liberalized before the ratification of the agreement on the part of the European Parliament".

(*BOCG-Congreso.D*, X Leg., n. 98, p. 164).

"The revision of the Agricultural Protocol to the EU-Morocco Association Agreement is framed within the decisions of 1995 Barcelona Process, which established the creation of a free trade area between the EU and Mediterranean Non-Member Countries.

This Agreement culminates the creation of the said free trade area, although there are some limitations on free trade in the case of EU's and Morocco's most sensitive products.

Spain's most sensitive products are fruit and vegetables (...). The liberalization of these sensitive products is limited, since their entry price – if existent – is maintained, as so are their tariff quotas, although some of these products receive a duty-free treatment.

With regard to Morocco's opening to EU exports, all customs duties on vegetables and citrus fruit are abolished from the first year. Other fruit products shall be liberalized in five years' time. Likewise, tariffs on processed agricultural produce with high added value are reduced.

As a consequence thereof, the terms of the agreement actually protect Spanish most sensitive products (...), as well as the opening of Moroccan markets, which may become a clear recipient of Spanish agricultural products in the future".

(*BOCG-Congreso.D*, X Leg., n. 109, p. 215).

## 2. Common Fisheries Policy

### *a) Fisheries Agreement with Morocco*

On 8 March, in response to a question posed by a MP on the Government's provisions concerning the renewal of the EU-Morocco Fisheries Agreement, they replied as follows:

"On 3 February, the Permanent Representatives Committee (COREPER) passed by qualified majority the Council's Decision authorizing the start of negotiations for a new Protocol to the Fisheries Association Agreement between the EU and the Kingdom of Morocco.

According to a compromise proposal of the Presidency of the Council, the draft mandate was submitted for approval before the COREPER on 9 February, as point 1/A [on the agenda]. This would be subsequently approved, as point A, at the meeting of the Council of Transport, Telecommunications and Energy of 14 February.

This Decision authorizes the start of negotiations for a new Protocol, the renewal of the former protocol, suspended on 14 February 2011 through a Resolution of the European Parliament, being thereby dismissed.

In this context, it must be mentioned that, on 22 February, Commissioner Damanaki addressed a letter to the Moroccan Minister of Agriculture and Fisheries, on which she proposed that a meeting 'at the appropriate level' be arranged as swiftly as possible, in order to agree on the date of the start of the process and to determine its modalities.

Since the suspension of the Protocol on the part of the European Parliament, the Spanish Administration has taken measures at all levels so that the approval of the negotiation mandate be attained as swiftly as possible.

All opportunities have been taken to insist before Community authorities on the importance of reaching a good Agreement in order to fill the current vacuum.

The mandate guidelines, that is, the criteria defining the negotiation, are as follows:

- That the best scientific data available be studied, in order to guarantee the sustainable exploitation of resources.
- That a good balance between EU's payments to Morocco and the economic benefits be achieved.
- That dialogue on sector policy be enhanced.
- That a clause on the consequences of the violation of human rights and democratic principles be included.
- That conflicts with international law be prevented, especially those related to the Western Sahara territory.

With the European Commission's consent, the Ministry of Agriculture, Food and Environment has set in motion a mechanism of allowances to alleviate the situation of fishermen and shipowners until the new Agreement enters into force. The beneficiaries will be 661 crewmembers from 69 different vessels, and the allowance amounts to 45 euro/day for each crewmember and to a minimum sum of 100 euro/day, depending on the vessel's size, for each shipowner. The mechanism shall apply

since last 14 December, when the European Parliament Resolution forced the withdrawal of vessels from Moroccan waters, and for the next six months, the period the Government considers necessary for the adoption of a new Agreement.

The Government has met both, the representatives of the affected persons, the majority from Andalusia and the Canary Islands, and local and autonomous authorities from the said regions.

The Spanish Head of Government chose Morocco as the destination for his first official visit overseas, on 18 January 2012, in order to boost bilateral relations and support the last political reforms in Morocco, where he took his agenda with the suspension of the fisheries Protocol.

Morocco's stance was known to be for the achievement of an Agreement which reflected Morocco's unity, ensured the protection of its underwater resources, and responded to common interest, that is, Spain's and Morocco's.

Action is being taken at all levels in order to adopt, as swiftly as possible, a good Association Agreement between the EU and the Kingdom of Morocco".

(*BOCG-Congreso.D*, X Leg., n. 78, pp. 294–295).

#### *b) EU-Gabon Fisheries Agreement*

At his appearance of 21 June 2012 before the Congressional Committee on Agriculture, Food and Environment, the Secretary-General for Fisheries made the following statements concerning the negotiations on the EU-Gabon Fisheries Agreement:

"The Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community, provided for in Council Regulation (EC) 450/2007, has not been able to be renewed so far. The Agreement allowed the European fleet to operate in the waters of the African country from 3 March 2006 to its expiry date, on 2 December 2011, fishing activities within the Gabonese fishing zone having been suspended as of the said date. All the attempts to adopt a new protocol which might avoid the period of mandatory inactivity imposed from last December on the Community fleet operating in this fishing zone have failed, since Gabon has been reluctant to include a human rights clause under the European Parliament's mandate.

The first round of negotiations for protocol renewal was held in Brussels, on 14 and 15 July 2011, before the agreement expiry date. However, in spite of the revision of and progress on certain technical aspects, negotiations had to be suspended due to the Gabonese delegation's reluctance to accept the said clause. In the event of failure to comply with the clause, EU's allocation should be cancelled, a relation which Gabonese authorities deemed inadmissible.

The second round was held in Libreville, from 12 to 14 October. As the first one, this one was hindered by the Gabonese party's objection that the commercial character of the agreement did not justify the inclusion of a suspensive clause such as the one invoked by the EU. Eventually, an informal meeting was recently held in the Gabonese capital, on 25 and 26 April, at which European Commission representatives made once more the attempt to overcome that obstacle through the flexibilization of the requirement of human rights protection (...). Gabon's rejection was maintained. Therefore, the European Commission has requested the Gabonese Republic

to convey their own proposal on the issue. The vessels operating in these waters at seasonal intervals (15 tuna seiners and 13 longliners), which were operative in 2011, have been forced to stop their activities in such an important fishing zone for our fleet (...). The Government took every opportunity at hand in the past months to point out before the European Commission the importance of the said Agreement, having even requested a protocol renewal while negotiations for a new agreement took place. This would have allowed exploitation during the 2012 fishing season; but, unfortunately, the season will be over soon.

Our only expectation at this point of year 2012, as conveyed at the talks with the sector in the last few months, is that the Commission's discretion facilitates the return of vessels to the fishing zone for the 2013 fishing season. Over the next months, we will keep urging the Commission to provide a solution as swiftly as possible, or, should this not be possible, to provide our fleet with alternatives in other fishing zones of coastal States in Africa's Atlantic rim. We will keep doing our best, and will take every opportunity, as we have done so far, to urge the Commission to do this. In the meantime, we will carry out consultations with the interested sector and the most affected autonomous communities, whose opinions have determined our position.

(...).

(DSC-C, X Leg., n. 133, pp. 2–3).

### 3. Area of Freedom, Security and Justice

On 28 June 2012, at his appearance before the Congressional Committee on Home Affairs to inform on the agreements reached at the meeting of the EU Justice and Home Affairs Council (JHA) concerning progress in political governance and the strengthening of cooperation in the Schengen Area, the Secretary of State for Security made the following statements:

“(...)

(...) The following measures were agreed at the European Council, on 23 and 24 June 2011: (...) the enhancement of Schengen's assessment system and (...) the establishment of a mechanism which, under extraordinary circumstances, should allow the re-establishment of checkpoints at internal borders. Pursuant to this mandate, the Commission submitted both legislative initiatives in September 2011. The last chapter of this legislative procedure occurred at the JHA Council of 7 June 2012 (...).

As for the initiative concerning the enhancement of the assessment mechanism, the Danish Presidency's proposal was supported. As defended by Spain in the European Council's conclusions of 7 June 2011, not only did this proposal enhance or strengthen the assessment mechanism, but it also strengthened its European character with the role it assigned to the Commission. With regard to the legal basis, in line with its position throughout negotiations, Spain supported the proposal (...) that the legal basis chosen by the Commission – Article 77 of the Treaty on the Functioning of the EU – be replaced by Article 70 of the said Treaty. Finally, Spain also endorsed the Presidency's proposal that the European Parliament be involved in the assessment

mechanism reform. Therefore, this body will be consulted, although its opinion will not be binding.

Regarding the initiative on the re-establishment of checkpoints at internal borders under extraordinary circumstances, Spain supported once more the Presidency's proposal, since it considers that the said proposal strengthens the Schengen Area without altering it substantially. In line with the position we have maintained throughout negotiations, the temporary re-establishment is restrained to those cases of extreme seriousness which may put the functioning of the Schengen Area at risk. In addition, this re-establishment shall only be considered as a last resort, after failure to apply gradual and coordinated measures to assist the Member State in a predicament. Eventually, the Presidency's commitment does not envisage the Commission's initial claim concerning the unilateral re-establishment of borders, but it establishes a mechanism consisting in a collegial recommendation on the re-establishment of the borders of a particular Member State.

(...)

(...) Previous agreements on the assessment of migration policies and the re-establishment of borders had been adopted in October 2011. We attended the JHA Council meeting of 7 June to vote – fully aware and supportive of the criteria of the Danish Presidency, run by the Danish Minister of Justice – that this issue falls within the competence of States, neither within the Commission nor within the Parliament, which does not imply that the Commission takes over to the detriment of the Parliament.

As for the assessment mechanism, we requested that procedure in Article 70 – establishing that the election of the said mechanism falls within the competence of States – be maintained. However, [we also claimed that] we should listen to the Commission, as it could not be otherwise; and that we should engage the Parliament as far as possible, since they are the representatives of the European peoples, and they should be kept informed through a consultation process.

With regard to the mechanism for the re-establishment of borders, given its extraordinary character, the only alternative was to maintain the criterion applied so far in the Schengen Area, that is, in the event of occurrence of an extraordinary situation. Migratory crises have been included into this group of extraordinary situations. This is not as related to our neighboring countries as we may think – e.g. Spain's or France's relations with Latin American countries –, but it responds to the significant migratory crisis experienced in the Eastern Mediterranean, about which the EU is highly concerned.

What I did at the JHA Council was to highlight that neither the Eastern Mediterranean nor the Western Mediterranean regions should be disregarded, and that we could not disregard either the fact that some countries have complied with their duties. In fact, Spain has reduced its migratory flows due to the good migratory policy implemented in the last term, the good agreements reached with particular countries and the strong control deployed at the Strait through a comprehensive surveillance system co-financed by EU funds.

However, an attempt has been made to enhance some old problems in the migration field. The agreements with some countries were unsustainable, especially due

to the increase of the assistance sums. This increase, which had been foreseen, was not a minimal percentage, since it grew exponentially (...). Therefore, we had to tell our partners, which are the ones experiencing the migratory flows, that Spain's situation prevented us from increasing the said sums exponentially (...), that we could only afford limited sums, and that we should come up with smart formulas to limit such an increase. Thus, in some cases we have realized that the assistance should be focused on a particular region of a country, not on the entire country. In this sense, we have reached several agreements which have enabled us to save, to reach a certain stability (...).

(DSC-C, X Leg., n. 143, pp. 9–10 y 24–25).

#### 4. EU Economic Strategy

On 14 March 2012, at his appearance before the Congress in order to inform on the European Council of 1 and 2 March, the Spanish Prime Minister made the following remarks:

“(...)

Council's priorities for 2012 refer to five areas: the drawing up of a fiscal consolidation strategy, adapted to and compatible with growth; the re-establishment of the credit channel towards economic activity; the boost of growth and competitiveness; the creation of jobs; and the modernization of public administrations. These five areas have shaped Spanish Government's action.

With regard to the tax policy, EU's Heads of State and Government agree that fiscal consolidation is a requirement – not the only one though – for economic recovery. The significant fiscal imbalances accumulated over the last years are a major risk factor to be overcome. The reduction of the said fiscal imbalances will entail that those resources now earmarked to deficit financing will be allocated to the financing of productive investments, and therefore, it will entail the creation of wealth and employment. Likewise, this will dispel the doubt about the sustainability of public finances (...).

As for this field, I must refer to the new Treaty on Stability, Coordination and Governance, or the so-called Fiscal Compact, whose elements are essential, according to Spain, in order to strengthen our economy's foundations and guarantee its healthy growth (...). Spain's sense of responsibility and its European spirit put us ahead, since we had already included a fiscal rule in Article 135 of the Spanish Constitution before the signature of the present agreement. This has been positively regarded by the European Commission.

Likewise, we will soon have an Organic Law on Budgetary Stability. The attendant Bill (...) complies with the commitments assumed by Europe in the fiscal field and scrupulously respects the constitutional pact with the Socialist Party. In particular, concerning budgetary stability, we decided to abide by EU's decision – pursuant to Article 135.2 of the Spanish Constitution –, as it has been the case; or, failing that, to establish through an organic law this criterion: there is a balanced budget provided that structural deficit is below 0.4 percent of GDP. The Fiscal Compact forces States to attain and maintain the so-called medium-term objective – a 0-percent balance,



according to European law –, unless a Member State implements a structural reform entailing an increase of deficit in the short-term, but its reduction in the medium-term. This precisely has been reflected in Article 11.2 of the Draft Bill on Budgetary Stability, which in the event of an extraordinary measure should impose on deficit a limit of 0.4 percent of GDP, the constitutional pact being thereby scrupulously respected (...).

(...)

(...) Our obligations under the Stability and Growth Pact materialized into the European Council recommendation to the Kingdom of Spain, of November 2009, concerning excessive deficit procedures (...). [The said recommendation] established that deficit should be at 3 percent in 2013, and that a fiscal adjustment of more than an average 1.5 percent of annual GDP should be carried out in period 2010–2013, economic cycles having been taken into account. Spain will follow the recommendation scrupulously, in spite of the unexpected recession experienced by Spain and Europe, as recently recognized by the Commission (...). At the end of year 2011, public deficit was at 8.5, way beyond the 6-percent figure set in the said stability programme. This means that in 2011 they failed to meet the recommendation concerning excessive deficit procedures. From the very beginning, the current Government deemed it indispensable to get back on the track of meeting recommendations. Therefore, on 30 December 2011, we adopted immediate corrective measures valued at €15,000 million.

(...) The Council of Ministers of 2 [March] made a step forward towards this policy of commitment through the establishment of the budgetary stability objective and the spending limit for 2012 (...). [T]he Government's stability objective for 2012 was initially at [a deficit of] 5.8 percent of GDP; and maintained administrations' deficit at 3 percent at the turn of 2013. At the last Eurogroup meeting, our partners requested us to rebalance deficit reduction throughout the present year and the next one in such a way as to have it reduced by 3.2 percentage points (from 8.5 to 5.3) of GDP in 2012, and by 2.3 percentage points (from 5.3 to 3) next year. The commitment to the 3-percent deficit set forth in the Stability and Growth Pact would thereby be met. The most important point (...) is that the 4.4 figure established in 2009 and ratified in 2011 could be replaced by a more sensible and affordable figure: 5.3 percent (...). However, we have been required to make a stronger effort this year and a smaller one the next. As we are aware that we should always keep the highest level of coordination and consensus with our European partners, we have decided to meet this recommendation (...). Given the current recession period, the stability objective will force us to make an effort for joint structural adjustment in 2011 and 2012, which will exceed 4 percent of GDP. Apart from meeting the fiscal adjustment commitment to an average 1.5 percent of annual GDP set in the recommendation, this would also compensate what we failed to meet in 2011. The entire administration shall make an effort in this direction; however, it has been decided that the additional adjustment of 0.5 percentage points for 2012 will be fully assumed by the Central Administration. Consequently, a greater effort shall be made by territorial administrations in 2013.

(...)

(...) European Council's final declaration also refers to the restoration of credit, and, consequently, to the completion of the financial sector regulatory reform (...). We must do our best to boost credit flows towards productive activities. In the present context, it is essential to implement measures dispelling any doubts about the solvency and liquidity of our financial institutions. The Spanish Government is actually working on this. With regard to this point, I should like to refer, above all, to the necessary restructuring of the financial system. Through the Royal Decree-Law on the Reorganization of the Financial Sector, this Government is promoting a reform whose objective is to achieve a sounder and better structured financial system. The reforms carried out are aimed at dispelling doubts about the valuation of the real estate assets on the balance sheets of our financial institutions. Likewise, the sale of real estate at lower prices is thereby promoted. Uncertainty on the valuation of real estate assets is one of the factors which hinders the financial institutions' recourse to the capital market and the attendant drawdown for the funding of the private sector.

This is why the Government is intending to attack the root of the problem by bringing the valuation of real estate assets closer to the markets. Financial institutions will need further reorganization, valued at approximately €50,000 million. After the reform, the specific allowances plus the capital cushion will cover 80 percent of the land value, 65 percent of the real estate under construction, and 35 percent of the real estate already built. In the same direction, the Government is promoting the sector's consolidation. The said process must be carried out in an agile, rapid and organized manner, in order to avoid old hesitations. Therefore, time limits to solve concentration problems are deliberately brief. Financial institutions shall submit their merger projects before 30 May, and the attendant decision shall be issued within a month. These integration projects should ensure more solid and efficient financial institutions, able to assume expansion commitments concerning their credit investments. This process will result in a sounder banking sector, a capitalized one, with fewer financial institutions undoubtedly, but more efficient ones, and able to access financing in international markets.

All this must enable the restoration of the financial sector's main duty: to grant families and enterprises loans so that economic growth and the creation of jobs are set in motion.

(...) The necessity to fight unemployment is, in the case of Spain, (...) particularly urgent (...). [Therefore], our labour reform is in line with the Council's commitments.

(...)"

(DSC-P, X Leg., n. 19, pp. 4–7).

On 13 June 2012, in response to a MP's question before Congress on the role of European and International authorities in the supervision of Spain's bailout, the Minister of Economy and Competitiveness replied as follows:

"(...) The Government will request European funding for the recapitalization of the financial sector exclusively. The Spanish Fund for Orderly Bank Restructuring (FROB) will be the recipient of the funding, as well as the one channeling it

to those financial institutions in need. Given the fact that the funding has been requested in order to meet the financial sector's needs, the conditions imposed on the sector will be specific. That is, there will be conditions, whose observance will be supervised; however, the assistance will not be attached to any macroeconomic adjustment programme (...). There will not be any additional fiscal policy conditions or structural reform ones.

(...) Economic surveillance and coordination procedures within the framework of European economic governance will run their course. There will not be further recommendations apart from the one conveyed by the Commission through the excessive deficit procedure of 30 May, to be assessed by the ECOFIN Council and the European Council soon. However, there will be conditions to facilitate the restructuring of the banking sector, conditions to be met by those financial institutions receiving funds. These specific conditions for the financial sector will be agreed when appropriate, once the assistance has been requested, and will be reflected in a memorandum of understanding adopted by the Government and European authorities. We will do it (...) with the clearest transparency. Furthermore, this will be long-term financial assistance, with advantageous conditions, much more favorable than those periods and interest rates recently offered to the FROB in the market.

The International Monetary Fund (IMF) will not participate in the funding (...). However, the IMF will assist its implementation technically and will follow up the financial assistance (...), since it has just carried out a deep assessment of our financial sector and already takes part in the Advisory Committee concerning the evolution of the banking sector".

(DSC-P, X Leg., n. 39, p. 11).

## 5. External Relations

### a) *Common Foreign Policy*

On 27 June 2012, at his appearance before the Congressional Committee on Foreign Affairs in order to present the general lines concerning matters of his competence, the Secretary of State for Foreign Affairs made the following statements:

"(...)

I should like to start my presentation (...) by highlighting, first of all, Spain's commitment to EU's Common Foreign and Security Policy (CFSP). The growing importance of European diplomacy makes it essential to defend Spanish interests in regions such as the Mediterranean, the Middle East or Latin America, not only through the Ministry and our embassies, but also from Brussels. Therefore, our purpose is that the support of political forces makes us have a proactive attitude in the European Union which is reflected in its decision-making and which contributes solutions and leadership so that Spain's interests are present on the European agenda.

(...)

(...) Human rights will inspire and guide the Government's policy on each of the areas, which will be previously agreed with our EU partners.

Security is other of the major pillars of the Government's foreign policy. Limits between domestic and foreign security are blurry and challenges and threats are more and more complex, hence the necessity to address this from a comprehensive approach, both at the European and International levels. Next year we will celebrate the 10th anniversary of EU's first civil mission and military operation. Since then, 22 more EU operations have been carried out, both military and civil, in three different continents. Spain has significantly contributed to many of these and so expects in the future. Eunavfor-Atalanta operations or the training mission in Somalia are examples of our country's leadership in the CFSP field.

(...)

Spain is one of the greater supporters of locating the transatlantic bond in the European Union. This is why the EU is promoting the agenda of a strategic partnership between the US and the EU and is actively negotiating the Special Partnership Agreement with Canada (...)

(...)

As for Iran (...), we share the concerns of the EU, the International Atomic Energy Agency and the UN Security Council about the potential military dimensions of the Iranian nuclear programme. As we understand the deep concern of its neighbouring countries, we are committed to the non-proliferation of nuclear weapons in the region. Spain has made an important sacrifice upon endorsing the tightening of sanctions on the part of the EU, especially the ones concerning the oil embargo. This pressure has proved to be fruitful, conversations between the EU and Iran having been resumed. We defend (and will continue to do so) that pressure must be maintained until Iran makes a move which allow us to trust the peaceful character of its nuclear programme.

Likewise, I should like to refer to the countries in the Gulf Cooperation Council. The Government intends to enhance relations with these countries. As for the priority that the Government gives to economic diplomacy (...), I should like to point out that great opportunities open up for Spanish enterprises in the region. Many of them have already entered into important contracts, among which there must be highlighted the emblematic project of the construction, exploitation and maintenance of the high-speed train between Mecca and Medina, together with other less visible but very transcendent for our economy, such as those in the sectors of infrastructure and renewable energy. The priority given to the Gulf region is translated into two tracks: on the one hand, dialogue between the EU and the Gulf Cooperation Council (...); and, on the other hand, a bilateral effort to enhance political dialogue and to improve economic, commercial and cultural relations through the enlargement of political contacts and the signature of agreements on the aforementioned questions (...).

(...) As for Cuba, the Ministry's position is widely known (...). We endorse the common stance, but the Government makes a flexible interpretation of this stance, in such a way that, should advance be made concerning the respect for human rights in Cuba, we would be willing to study the possibility to enter into a partnership agreement with Cuba within the EU framework, which may enhance the relation between the said country and the EU (...). Given the current situation in Cuba,

we subscribe to the common position, but (...) we will continue our follow-up of the evolution of events in Cuba. Because, in the end, (...) we want for Cuba what we have always wanted for Spain; that is, the rule of law, respect for human rights, tolerance, freedom and all which this entails (...). Should this channel open, we will be willing to revise our position and foster the enhancement of Cuba's relation with the EU.

(...)

(...) Within the EU framework, we also promote the interests of Latin American countries. (...) At the Council of Foreign Affairs, where EU's development cooperation policy was examined, the Minister energetically proposed, in line with our cooperation policy in Latin America, that Peru and Colombia remained recipients of EU development cooperation funds. In order to make clear the position of the Spanish Government, a declaration by the Minister of Foreign Affairs was attached to the conclusions of the Council of Foreign Affairs, where it was explained the reason why we deemed it necessary that the EU keeps allocating development cooperation funds to Peru and Colombia, as we will do with Spanish development cooperation funds.

(...)

What measures do we take? Are we adapting our strategies and work methods to the CFSP when it comes to decision-making on conflicts and situations we are facing, such as Syria, Egypt, Iran, and so on? Let me tell you that, in this respect, decisions mainly rely on the EU. The sanctions regime falls within EU's competence. In the case of Iran, we have been on the front row of EU countries imposing sanctions, in a case where we have given preference to principles over interests. Sanctions on Iran have damaged us, since these entailed the prohibition on the imports of Iranian oil, which amounted to 14 percent of our imports. Over the last months, we had to look for alternative resources. Our SMEs (many of which are located in the Basque Country) cannot work with Tejarat Bank, whose activity with enterprises in the EU countries has been prohibited. Here, once more, principles have been given preference over economic interests: the reach of an agreement within the EU framework and the imposition of sanctions, where necessary, on those countries whose behavior fails to comply with International community rules.

(...)"

## 6. Foreign Investment Protection

On 24 April 2012, the Minister of Foreign Affairs, at a Senate's plenary session, replied to a question concerning the measures the Government had requested to the European Commission as a result of the decision made by the Argentinean Government in relation to YPF. He made the following statements:

"(...) Article 207 establishes that the protection of European investments falls within the competence of European institutions; however, (...) the Article's development being pending, the legal instruments applicable are the bilateral investment treaty (BIT) in force (...) and the Cooperation Agreement between Argentina and the EU, signed in 1990.

In spite of this constraint (...), the Spanish Government has been fully supported by European institutions, undoubtedly, and I should like to take the opportunity to thank them. A resolution has been passed by a large Parliament's majority condemning the expropriation suffered by Repsol, as owner of YPF shares. Both the Commission and the Council have fully supported the Spanish Government's stance. The former did it through the statements of which you are aware, those made by Commissioner Tajani, President Barroso, and the High Representative of the Union for Foreign Affairs, Ashton, who reiterated it at the Commission; the latter did it yesterday.

The Commission's work groups are studying measures concerning the following options: the bringing forward of action against Argentina under the auspices of the WTO (therefore, through commercial means); the bringing forward of the Scheme of Preferences, which is applicable until 2014 and beneficial for Argentina; and even the changing of the approach of a region-to-region preferential agreement (EU-Latin America), in order to provide a bilateral instrument for those countries abiding by the commercial rules respected by civilized nations".

(DSS-P, X Leg., n. 14, p. 754).

## **XIV. RESPONSIBILITY**

### **1. In general**

On 23 February 2011, the Minister of Foreign Affairs and Cooperation, Ms. Jiménez García-Herrera, informed on the measures to be adopted by the Spanish Government concerning the detention of the Spanish Consul in Teheran:

"(...) Indeed, the detention of the Spanish Consul in Teheran is an unacceptable event, extremely serious, as my Honorable Member has pointed out, and which seriously violates the Vienna Convention. Therefore, from the very beginning, we required a clear and immediate response on the part of Iranian authorities. The first decision taken by the Government was to contact Iran's Ambassador in Madrid in order to protest energetically against this event, and to require an explanation and the immediate release of our diplomatic counselor. Meanwhile, our Ambassador in Teheran sent, at my request, a note verbal of protest to the Iranian Ministry of Foreign Affairs. Furthermore, we informed the EU, which made many of its members (France, UK or Holland) summon the Iranian Ambassador in their countries in order to convey their firm rejection against the detention of the Spanish diplomat.

My Honorable Member, the Government's attitude, as you have pointed out, has been firm, and the measures we adopted in that moment received an official response duly and timely.

As you may well know, last Thursday I received a call from the Iranian Minister of Foreign Affairs through which he solemnly apologized and assured that events of that nature would not occur again. It was a long talk, through which he explained to me how the events had took place and informed me that his Ministry had ordered a thorough inquiry in order to get to know all details on the event and to ensure that events of such a nature would not happen again. Therefore, the Government will

remain watchful and we have established an internal cooperation formula within the EU to do so".

(*DS-Congreso, Pleno y Diputación Permanente*, IX Leg., n. 225, p. 14).

## XV. PACIFIC SETTLEMENT OF DISPUTES

Spain and EU's mediation in the dispute between the United Kingdom and Argentina on the sovereignty over the Falkland Islands, the Government provided the following information:

"The Government deems that, given the existence of a dispute on sovereignty over the Falkland Islands, South Georgia Island and South Sandwich Island, unless the decisions taken contribute to the improvement of relations between the United Kingdom and Argentina, there will not be seen any positive outcome.

As declared by the UN through resolutions issued by its various bodies, there is a recognized dispute between the United Kingdom and the Republic of Argentina concerning sovereignty over the Falkland Islands, South Georgia Island and South Sandwich Island. In this sense, Spain endorses UN doctrine and states that Argentina claims to hold them, whereas the United Kingdom holds them in practice. Spain states this at every international fora where its opinion is requested.

Spain has supported all calls by the International Community aimed at the negotiation of the parties. Spain endorses and will endorse those measures contributing to the settlement of the dispute within the UN.

The High Representative of the Union for Foreign Affairs and Security Policy has declared she has been paying special attention to the issue and has requested the Heads of EU delegations to inform on the evolution of the dispute without interfering in it. Anyhow, she respects the fact the United Kingdom wants to settle the issue through bilaterally. By now, both the EU and Spain understand that this is a bilateral dispute which shall be settled bilaterally".

(*BOCG-Congreso.D*, X Leg., no. 104, p. 171).

At his appearance of 17 April before the Senate's Committee on Ibero-American Affairs, the Minister of Foreign Affairs and Cooperation, Mr. García-Margallo y Marfil, made the following remarks concerning the general lines of his Department's policy:

"(...)

The Government, both yesterday and at a conference I attended today, has summarized in a very simple manner its stance concerning the events occurred in the Argentinean YPF. First of all, they have expressed their condemnation of Argentina's decision to expropriate the YPF shares owned by the Spanish Firm Repsol, which, apart from being arbitrary, is also discretionary, since it does not affect all shareholders of the company.

Secondly, I should like to highlight, to my great sorrow, that Argentina's decision has put an end to the fraternity that has always governed relations between the Republic of Argentina and Spain. I should like to remind that in 2001–2002, when Argentina was facing trouble, it was the Spanish Government that rescued it through



a \$1,000 million loan (through the Paris Club), of which there are some outstanding installments.

Third, I should like to point out that President Kirchner's decision means the breach of the oral agreement reached on 28 February by Minister Soria and Ministers Lorenzini and De Vido, respectively, on behalf of the Spanish and Argentinean Governments. This agreement mainly established that all potential disputes between YPF-Repsol and the Argentinean Government should be settled through dialogue. There was agreed the constitution of two working groups, a Government-to-Government one, and another between the Argentinean Government and YPF. The said agreements never materialized and we never received a response to our repeated claims on the application of the aforementioned agreements.

Fourth, I should like to emphasize that I will not take any action, since this falls within the competence of the Council of Ministers, which will do so when appropriate (...). Therefore, the Government will take all measures deemed necessary to defend the lawful interests of Spanish companies overseas, as well as to ensure that the rights of the millions of shareholders (Spaniards, above all) having invested in a company confiscated or expropriated through an arbitrary decision are respected.

Fifth, I should like to highlight that the Government has been carrying out a diplomatic task since it learnt of the events, on 10 December of the previous year, to be precise. It sought solidarity and collaboration from its partners at those international fora directed and managed by the Government. Right today there has been cancelled the EU-Argentina meeting which was to be held on Thursday, since it has been decided to alter the agenda of the European Parliament Plenary Session, in Strasbourg, in order to discuss a decision and adopt a resolution on this matter through voting. At the moment, the Spanish Prime Minister is in Mexico, which holds the Presidency of the G-20 Summit which will take place in Los Cabos. Likewise, at the meeting held with the Ministers of Foreign Affairs of the G-20 I already reported the events; and I will do it again in this case, undoubtedly, as I will address the matter at the Council of Foreign Affairs to be held on Monday.

Therefore, I should ask my Honorable Members not to worry: We consider that the measure adopted by the Argentinean Government is arbitrary and discriminatory. We consider that it alters the solidarity and friendship traditionally characteristic of the relations between the two Governments. We deem that it violates the oral agreements reached, through which it was intended to settle potential conflicts by means of dialogue and negotiation (as friendly countries do). I reiterate that the Government will adopt as many measures as deemed necessary to ensure respect for the lawful interests of companies, especially, of shareholders. Likewise, we are seeking dialogue and consensus together with our partners and allies in the matter.

(...)

As for the BIT, I have already mentioned the situation of the claims brought pursuant to it. Therefore, I will not insist on the issue any further. As you said, it is EU's competence to defend us; and, if I remember right, it is Article 207 of the Treaty on the Functioning of the EU that sets forth that the EU shall protect the investments of its Member States. However, as the development of the Article is

pending, the capacity to bring action in a jurisdictional dispute still falls within the competence of Member States.

(...)"

(DSS-C, X Leg., no. 43, pp. 4–5, 24).

## XVI. COERCION AND THE USE OF FORCE SHORT OF WAR

### 1. Collective measures

#### a) *Libya*

*Note:* See XI.2.b) *The Mediterranean*

At his appearance of 22 March before Congress in order to inform on the Spanish participation in the Libyan crisis and to seek ratification of the said participation under Article 17.3 of the Organic Law on National Defence, the Spanish Prime Minister, Mr. Rodríguez Zapatero made the following remarks:

"(...)

As you may all know, last Thursday, the UN Security Council passed Resolution 1973 authorizing Member States to take those measures necessary to protect civilians and the areas inhabited by civilians in Libya. To that end, a no-fly zone was established. Through this Resolution, the Security Council has exercised one of its competences under the UN Charter concerning international peacekeeping and security. Through it, the UN applies the principle of the responsibility to protect, supported by the UN General Assembly in the final document of 2005 World Summit, which had already been applied by the Security Council to some extent in its Resolution 1706 of 2006, authorizing the UN Mission in Sudan to make use of force to protect civilians in Darfur.

Through Resolution 1973, which is complementary to Resolution 1970 of last 26 February, the International Community, by means of its major body, has measured up to its responsibilities of fighting such a serious situation as the use of force against the civil population on the part of Libyan authorities through generalized and systematic attacks (...). The International Community has been strengthened by its position, since it was fully supported as for the two Security Council Resolutions: Resolution 1970; and Resolution 1973, which has allowed the use of force and has been expressly supported by the major regional organizations, such as the Arab League, the Organization of the Islamic Conference, the African Union, and the Security Council itself. It has also been strengthened by the decision's factual basis: the principle of responsibility to protect, the protection of civilians. Resolution 1970 of the Security Council established this. The responsibility to protect means that in the event a State fails to protect its citizenship, the International Community shall intervene in order to assume this responsibility. The reason why we have intervened in Libya meets a humanitarian principle: to protect Libyan civilians from Libyan forces.

(...)

In Libya, the violent reaction of authorities to the democratization claims of its people was immediate, and an exception to these processes. The EU Council of Foreign Affairs already stated, on 21 February, its stance as to the first riots reported: its condemnation of repression and its strong rejection against violence and the killing of Libyan civilians.

As the utmost seriousness of the situation increased, there was summoned an Extraordinary European Council for 11 March. At the said meeting, the EU conveyed its firm solidarity with the Libyan people and the victims of repression, and agreed to condemn the violent repression the regime was exercising against its citizens, as well as the serious and systematic violation of human rights. It also required that the violation ceased and that there was guaranteed the population's security through all necessary means. Furthermore, the European Council endorsed UN Security Council Resolution 1970 and the action brought before the International Criminal Court concerning the present situation in Libya.

The clear aim was that Libya made a rapid and orderly transition towards democracy through plural dialogue (...). The EU set in motion a mechanism for the evacuation of its citizens and citizens from neighboring countries fleeing from the attacks and the dangers posed by the regime's military retaliation. Spain contributed to this task through the provision of aerial means for the evacuation of nationals from third countries stranded at the borders between Libya and Tunisia or Egypt, as well as through the supply of equipment for humanitarian support by means of the AECID in a manner defined as exemplary by our partners and affected countries due to its effectiveness.

(...)

The passage of Resolution 1973 last Thursday provided the legal basis necessary to intervene, pursuant to the conditions set by the Council of Europe on 11 March, endorsed by the Spanish Government.

Given the situation, the International Community should decide how to apply the Resolution, and so did it at the meeting of 26 March in Paris, summoned by French Prime Minister Nicolas Sarkozy. There was approved a declaration regretting that the claims of the International Community through the UN Security Council Resolution 1970, the Arab League, the Islamic Conference and the EU had been disregarded by the Libyan regime, which maintained the arms build up against its own population.

Given the circumstances, we the countries gathered in Paris conveyed our satisfaction concerning the adoption of UN Security Council Resolution 1973, and we decided to abide by it. My Honorable Members, we decided to adopt under Resolution 1973 all necessary measures, including military ones, to guarantee its observance (...) The setting in motion of several coordinated operations was the start of the so-called *Odyssey Dawn* Operation, which shall not entail the occupation of Libyan territories under no circumstances, pursuant to Resolution 1973 (...).

(...) UN Security Council Resolutions, together with the complementary decisions of 12 March adopted by the Organization of the Islamic Conference and the African Union's Security and Peace Council, made the Spanish Government consider, within

the framework of the decisions adopted by our European partners at the Extraordinary Council of 11 March, that the necessary legal and political conditions are met so that Spain assumes its duties as a member of the International Community and the UN.

Indeed, before taking the step, I put forward, on behalf of the Government, four conditions to be imposed on our participation:

- First, a UN Security Council Resolution authorizing the use of force, because international law so requires. Likewise, this is required pursuant to the newly passed NATO's strategic concept, since it reaffirms Security Council's primary responsibility as to the prevention of peace and international security.

- Second, a European agreement.

- Third, regional cooperation through the Arab League and the African Union.

- And, of course, the authorization of this Parliament (...).

Pursuant to all this, the Government has adopted, under the provisions of the Organic Law on National Defence, certain urgent decisions in order to determine the degree of participation of our country in the international coalition constituted to face the situation, His Majesty the King having been duly informed on the issue. The Spanish participation aims at ensuring the respect of the no-fly zone. Five aircraft have been supplied to that end: four fighter aircraft F-18, heading to the Italian military base Decimomannu, and one Boeing 707 for air-to-air refueling (...). Likewise, it has been decided to deploy aerial and maritime forces to apply the embargo. While we await the North Atlantic Council's decision on the start of the mission, instructions have been given and arrangements have been made for the preparation of frigate *Méndez Núñez*, located in Ferrol; of submarine *Tramontana*, whose base is in Cartagena; and of a C-235 aircraft for maritime surveillance (...).

I should like to highlight that we are facing an important deployment of military forces, both aerial and maritime. Its importance lies in the assistance they provide and the number of deployed forces and of military personnel engaged: approximately 500 members of the Armed Forces (...).

(...) Under the Law we adopted in order to govern situations of this nature, I request the authorization of this Chamber concerning the participation of our country in this operation, which consists in what I have already described, ensuring the observance of UN Security Council resolutions.

(...)

Therefore, today the Government's request is a cautious one. Indeed, the Government has agreed to establish an initial period for our participation which corresponds to the nature of the missions we have assumed: a month to monitor and ensure the guarantee of the no-fly zone, and three months for the operation to ensure the embargo. If the international operation will so require, the Government will request the Chamber's authorization for renewal (...).

(DSC-P, IX Leg., no. 232, pp. 2–5).

At their appearances of 20 June before the Congressional Committee on Foreign Affairs and Defence, both the Minister of Foreign Affairs and Cooperation, Ms. Jiménez García-Herrera; and the Minister for Defence, Ms. Chacón Piqueras, informed on the consensus

reached by the Council of Ministers concerning the request for authorization to renew the participation of Spanish Military Units within the Libyan crisis framework:

“(…)

(…) As I have already stated, diplomatic, economic and military pressure is rendering Gaddafi's regime weak and isolated (...). On the one hand, we should maintain our support of the mediation task carried out by UN Secretary-General's Special Envoy (...). On the other hand, we should start to prepare the country's governance so that it is ready at Gaddafi's departure from power. As I have already pointed out, at the meeting in Rome, the National Libyan Council provided the Contact Group with a plan for political change including the drawing up of a constitution and the call for elections. Therefore, Spain proposed in Abu Dhabi that the necessary support and implication of the International Community be reflected in a pact between the National Transitional Council and the Contact Group.

(…)

(…) I will now address the core point of this appearance, that is, to request your authorization, especially the authorization of the Committee of Defence, in order to renew our presence in NATO's operation in Libya until the objectives set are attained (...). As you may well know, it was under UN Security Council Resolutions 1970 and 1973 that two different operations were set in motion: on the one hand, one to protect civilians and inhabited areas under the threat of attacks, through the adoption of all necessary measures and a no-fly zone; on the other hand, another to guarantee the observance of the maritime arms embargo and the measures against mercenaries imposed on Libya. On 31 March, NATO took over these operations, also known as *Operation Unified Protector*. At the moment, a total of 19 countries are participating in it: 14 NATO Members, together with Sweden, Ukraine and 3 Arab countries (Jordan, Qatar and United Arab Emirates). Spanish Armed Forces have contributed to both missions since last 19 March, only two days after the Security Council had issued the resolution authorizing their deployment. In order to attain the first objective, there has been established a no-fly zone, which ensures that Libyan military aircraft will not attack the population anymore. My Honorable Members, 195 aircraft from 15 different countries participate in this effort. Our military personnel provide an equipment made up of 4 fighter aircraft F-18, 2 tankers for air-to-air refueling, 1 Boeing 707 and 1 aircraft TK-10 Hercules. The Spanish military personnel deployed at the Italian Base Decimomannu, in Sardinia, amounts to a total of 108. As to the maritime embargo, the Libyan coast is under maritime and aerial surveillance in order to block all aircraft and ships under suspicion of having violated the prohibition. For this task, NATO boasts 18 surface ships, 2 submarines and 5 aircraft for maritime surveillance from 12 different countries. Spain contributes frigate *Méndez Núñez*, submarine *Mistral* and 1 aircraft N-235 for maritime surveillance, whose military personnel amounts to 305. It is important to reiterate that Spanish military forces are participating exclusively in the tasks assigned to them; that is, the control of the maritime embargo and the establishment of the no-fly zone (...).

As to the establishment and protection of the no-fly zone, over the three first months, the group of aircraft under NATO's command have made 11,600 sorties,

184 out of which correspond to the 4 Spanish F-18, which, since 19 March, have accumulated a total of 805 hours of air patrolling. So far, they have not been given any orders to block any non-authorized aircraft (...).

Likewise, tankers are in charge of the air-to-air refueling of all aircraft of the Alliance. Since the operation started, the Boeing 707 has carried out 68 missions, which amount to a total of 384 flight hours, and it has supplied 1.5 million litres of fuel. As I announced at my previous appearance, Spain has contributed a new aircraft for air-to-air refueling, which was essential to correct the shortage of this sort of equipment in the operation. Thus, on 20 April, TK-10 Hercules was added, without exceeding the number of military personnel authorized for the mission by the Defence Committee. From that moment, this aircraft has carried out 39 missions. Having flown a total of 200 hours, it has supplied approximately 275,000 litres of fuel.

On another matter, as to the maritime embargo, the Alliance has so far questioned the crew of more than 1,400 vessels, 102 out of which have been inspected. As a consequence, 8 vessels were not authorized to continue their journey to or from Libyan ports. Throughout its three first months in the mission, Frigate *Méndez Núñez* has questioned the crew of 117 vessels under suspicion and has inspected 19 (...). Aircraft CN-235 for maritime surveillance joined the operation on 23 March and, as you may well know, its mission is to identify and monitor any vessel under suspicion. The aircraft has carried out 36 missions so far and has accumulated 216 flight hours which have allowed it to identify 525 ships. Submarine *Mistral* joined the operation on 1 May, when it replaced the *Tramontana*, which had operated there since 26 March. Both submarines have carried out patrols undercover on the Libyan coast, across the areas they had been respectively assigned for the identification and follow-up of ships under suspicion. So far, they have identified more than 800 ships. Therefore, (...) Spanish participation is being significant as for the advance of operations, both for the protection of the no-fly zone (and its previous establishment) and the imposition of the maritime embargo. NATO's Secretary-General confirmed this on Thursday, during his visit to Spain.

(...)

We allies agree that the operation should continue as long as necessary, until the three objectives set by Ministers of Foreign Affairs at the meeting in Berlin are fully attained (...). Therefore, at the North Atlantic Council of 1 June, NATO decided to extend *Operation Unified Protector* by 90 days from 27 June. A week later, the decision was ratified in Brussels at the meeting of NATO's Ministers of Defence (...).

As a consequence, (...) the Spanish Government has decided to renew its participation in the *Operation Unified Protector* until its end. Therefore, my Honorable Members, under UN Security Council Resolutions 1970 and 1973, I request you, as members of the Defence Committee, the authorization of the Congress of Deputies for the renewal of the participation of the Spanish aerial and maritime forces in the operations until the objectives set are attained: a permanent ceasefire, the withdrawal of military forces from the occupied and besieged towns and the guarantee of human assistance for the entire Libyan territory. This will not entail neither action on the ground nor the enlargement of our troops. A military personnel of 500 is still sufficient to perform the tasks we have assigned (...). Over these three

months of operation, the costs foreseen have been met, as I already informed at my previous appearance. It has cost a total of €43 million. Should the renewal of our participation be approved, the extension of the mission will have a monthly cost of approximately €14.4 million”.

(*DSC-C*, IX Leg., no. 800, pp. 3–7).

## **XVII. WAR AND NEUTRALITY**

### **1. Arms Exports**

On 9 March 2011, the Spanish Head of Government, Mr. Rodríguez Zapatero, informed on the Government's criteria for the authorization or refusal to sell arms in North of Africa:

“(...) The Government's criteria are the ones set forth in Act 53/2007, to which we gave impetus, and which, as you may know, was devised for the establishment of the guarantees of control and transparency in the foreign trade field, especially concerning defence and dual-use items. Pursuant to this Act, the Government carries out a case-by-case review of those exports operations heading to sensitive countries, irrespective of the region to which these belong. This applies to the many cases to which you referred, under the internationally recognized criteria set forth in the aforesaid act, among which you may find EU criteria for the exports of military technologies and equipment.

In the event of changes, (...) appropriate measures are taken, as it occurred in the case of Libya. Precisely yesterday, the two licenses for the export of defence equipment to the said country were revoked, having been previously suspended on 22 February for precautionary reasons, four days before the UN Council passed measures concerning Libya, and six days before the EU did so. Furthermore, Ms. Buenaventura, arms trade with Libya did not even amount to 0.5 percent of the total authorized for 2010's first term, and trade with countries in the Middle East and North Africa only totals 1.2 percent of this trade. Please, do not convey the idea, since it is untrue, that our relations with countries in North Africa, the Maghreb and Arab countries are based on arms trade. Our bonds are much deeper, and Spain's outstanding task in these countries is one of development cooperation”.

(*DS-Congreso, Pleno y Diputación Permanente*, IX Leg., n. 228, p. 6).