Spanish Diplomatic and Parliamentary Practice in Public International Law, 2005

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Except when otherwise indicated, the texts quoted in this section come from the OID, and more specifically from the OID publication *Pol. Ext.* 2005 (*http://www.mae.es*), and from the International Legal Service of the Ministry of Foreign Affairs, whose collaboration we appreciate.

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).

DSS-P – Diario de Sesiones del Senado. Pleno (Official Record of the Senate. Plenary Sessions).

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I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis and Purpose

In his address to the 2005 session of the Sixth Committee, the Spanish Representative, Mr. González Campos, stated Spain's position regarding the tasks carried out by the ILC on fragmentation of International Law:

"1. The object of this address is the work of the ILC in 2005 on the subject of 'Fragmentation of International Law'. I should like to say first in this connection that my Delegation entirely agrees with a judgement expressed by the Commission at the outset of its examination – namely that this subject was 'different from other subjects that the Commission had considered hitherto' (A/55/10, para. 731). Or if you like, as it was described later on, this work was of 'a very unusual and special nature' (A/59/10, para. 436).

However, if we ask ourselves what makes this different from other subjects, the answer is not hard to find if we consider what the work of the ILC had consisted of until then. It is clear that the Commission's work has consisted largely of the gradual codification and development of International Law, entailing the drafting of articles on subjects relating to a specific area of international law (for example diplomatic relations), or again on a broader field (the law of treaties). The subject of 'Fragmentation of International Law', on the other hand, differs in terms of the analytical viewpoint from which the Commission had to work – i.e., that of the international legal system as a whole – in order to deal with relations between different groups of international rules and in this way examine the problems posed by the specialisation of certain rules as opposed to general rules, hierarchical orders among certain rules, their complementariness or the substitution of some rules for others.

That then is the general setting in which 'Fragmentation of International Law' is framed. And indeed, this analytical framework is a welcome one for international law doctrine in view of its theoretical importance, for the subject has been raised by the doctrine in a number of studies since the 1980s which have given voice to concerns relating both to the proliferation of international authorities that apply the Law and to the expansion of the range of matters regulated by International Law. It must be said, on the other hand, that in deciding to include the subject in its work programme, the Commission was venturing into indubitably complex legal terrain, given the highly general nature of the subject and its strong doctrinal dimension. And that might help to account for the reservations expressed at the inclusion of the subject – by some members of the ILC at the outset, and also by several States during earlier session periods of this Sixth Committee (for 2004 see A/AC.4/549, paras. 118–119).

2. And yet the subject has in fact been addressed by the ILC before, and my Delegation therefore feels bound to express reservations now regarding two closely-

interrelated points, namely the *choice of aspects of the subject* that the Commission has made, and *the results* of its work as envisaged.

On the first of these points – the aspects of the subject that have been chosen – we have no objection in principle to the choice of the relations between general international rules and *lex specialis*; in our view this is, after all, the most salient and topical aspect both of the expansion of the international legal system and of the consequence which it entails, that is the possible 'fragmentation' of that system. However, my Delegation does have reservations as to the other aspects of the subject chosen by the ILC. The first of these is that the 'primordial' nature or 'superior normative rank' of certain international rules has also been included. I refer specifically to rules of *jus cogens*, of *erga omnes* obligations and of art. 103 of the UN Charter over all other rules of the system. The fact is that this group of rules is not homogeneous; *erga omnes* obligations, and the corresponding rights that other States may enforce against those violating them, are special in terms of their function in the international system, as highlighted in the Resolution adopted by the International Law Institute at its Krakow session in 2005. Similarly, art. 103 of the Charter also possesses special features. But aside from that, we would also note that the doctrine largely views International Law as possessing an inadequate or flawed hierarchical structure, and hence there is good reason to doubt whether in this respect the ILC will be capable of achieving satisfactory and generally-accepted results.

3. The work group has also decided to carry on its examination of 'fragmentation' in three other aspects related to the 1969 Vienna Convention on the Law of Treaties, specifically art. 30, art. 31.3.c) and art. 41. And the mere indication is sufficient to prompt the question of why the examination focuses on certain provisions of the 1969 Vienna Convention when there are many other integrative, complementary or substitutive relationships among rules in the international system which are equally deserving of consideration. In the view of my Delegation, then, the choice of aspects of the subject of 'fragmentation' connected with the Vienna Convention is inappropriate, and furthermore it entails certain risks as we shall see in a moment.

4. The *second* of my Delegation's reservations is connected with the *scope of the results of the work* envisaged by the ILC. The work group's stated intention in that respect is 'to achieve a concrete result of practical utility' to certain legal operators which daily apply International Law. To that end it has been announced that the result of the endeavour will take the form of a series of 'studies' and 'conclusions' from the group's work on the various selected aspects of the subject, along with 'a set of practical guidelines' (A/60/10, paras. 447–448).

However, the chief source of my Delegation's reservations on this point is the scope or the effects of the 'practical guidelines' depending on their content, and their future. For we would note firstly that, if these 'guidelines' are to be comprehensive enough to be of 'practical utility' as the ILC intends, my Delegation believes that it will be extremely difficult or practically impossible to achieve that objective in connection with relations between general law and *lex*

specialis, and with the ranking of rules. And if they relegate other problems and hence are only partial 'guidelines', there is a danger that they will be of little practical use. Which brings me to a question regarding their future in the latter case – namely, should the 'guidelines' ideally be couched in a recommendation by the General Assembly, or should the latter simply confine itself to noting the work carried out by the Commission on this subject?

5. Then, regarding those aspects of 'fragmentation' that have a direct connection with the 1969 Vienna Convention, other risks may arise apart from the ones I have just noted. For instance, if the 'practical guidelines' are intended to be, on the one hand, an *interpretation* of the cited Convention provisions by the ILC, then it will undoubtedly be an interpretation of weight given its source. But if we consider the terms of sections 2 and 3 of art. 31 of the same 1969 Vienna Convention, we arrive at a different conclusion; for the 'practical guidelines' would of course come from a source other than the parties to the Vienna Convention. That therefore means that their scope would be hard to define and moreover might not match the interpretation of the States Parties to the Convention.

6. Then again, at the Vienna Conference on the Law of Treaties, the Special Rapporteur for the subject, Sir Humphrey Waldock, stressed the need to distinguish between the interpretation of an international treaty strictly speaking, and the emergence *ex post* of a practice by all the parties in an agreement which diverged too far therefrom and hence in reality constituted a modification thereof (*UN Conference on the Law of Treaties, First Session, Official documents*, p. 209). And this brings us to a second potential risk, in that if the 'practical guidelines' adopted by the ILC are applied by States after their adoption, they may effectively lead to a subsequent practice by States which would constitute either a partial modification of the regulation contained in the Vienna Convention or a supplement tending to modify these provisions (A/57/10, para. 512).

Such a result would not be at all welcome, for if this were so it would mean that although contemplated in art. 38 of the articles proposed by the ILC on the Law of Treaties in 1966, it was nonetheless rejected by a large majority at the Vienna Conference in view of the uncertainty that amendment of the articles by virtue of subsequent practice might generate for conventional relations and the stability of treaties (*Vienna Conference*, cit. p. 215). And I would note in this respect that perhaps the risk was not taken into consideration, since proposals have been made in the work group to complete the Vienna Convention provisions regarding the question of 'timing' as it relates to art. 31.3.c) or regarding events not provided for in art. 30 of the Convention. Which begs the question, if in practice States apply the 'practical guidelines' with such content, will that not constitute modification of the provisions of the 1969 Vienna Convention, if only by complementing them?

7. These, Mr Chairman, are some of my Delegation's reservations regarding the *terra incognita* presented by the drafting of 'practical guidelines' rather than draft articles by the ILC. However, the Commission intends to present the

results of its endeavours next year, and we shall then have the opportunity to examine the content of these 'guidelines' and see if my Delegation's present concerns are allayed or confirmed".

The Final Declaration adopted by the XV Iberoamerican Summit of Heads of State and Government, held at Salamanca (Spain) on 14–15 October 2005, included the following:

"1. We, the Heads of State and Government of the Iberoamerican Community of Nations, assembled at their 15th Summit in Salamanca, Spain on 14 and 15 October 2005, hereby ratify the Iberoamerican *acquis* in its entirety, enshrined in the values, principles and agreements approved by us at previous Summits. These are underpinned by the full force of and commitment to the purposes and principles enshrined in the United Nations Charter, in our adherence to International Law, the deepening of democracy, the development, promotion and universal protection of human rights, the strengthening of multilateralism and of cooperative relations among all peoples and nations, and rejection of the application of unilateral coercive measures contrary to International Law.

2. We welcome Andorra as a new member fully sharing the identity and the criteria for participation in the Summit System. . . .

3. We are resolved to set in motion an Iberoamerican Secretariat-General (Sp. Acronym SEGIB) as a permanent organ to support the institutionalisation of the Iberoamerican Conference.

4. We reaffirm the commitment of the Iberoamerican Community to International Law and to effective multilateralism, to which we desire to make an appreciable contribution. We undertake actively to support a wide-ranging reform of the United Nations system based on principles of efficiency, participation, transparency, representativeness, sovereign equality and democratization which will enhance its role in the prevention of threats, maintenance of international peace and security, and promotion of economic and social development. . . .

(. . .)

6. Democracy is a factor lending itself to the cohesion of the Iberoamerican area. We consider it necessary to draw up an Iberoamerican agenda that will enhance the quality of our democracies and their ability to meet the expectations of their citizens in terms of protection of their rights and satisfaction of their socioeconomic needs . . .

(. . .)

8. The diversity, size and bi-regional nature of the Iberoamerican Community endow it with tremendous potential as an active partner on the international stage. We are seized of the need to reinforce our mechanisms of dialogue and coordination in order to realise that potential. We believe that effective participation by our countries in an active multilateral policy will

contribute to security, peace, development and the defence of International Law.

(. . .)".

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

a) In General

On 22 July 2005, the Government replied to a parliamentary question on the status of the processes of Spanish ratification and accession to Additional Protocols four, seven, twelve, thirteen and fourteen of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms:

"Protocol No. 4 to the Convention . . .

This Protocol, which was opened for signature on 16 September 1963 and came into force on 2 May 1968, was signed by Spain on 23 February 1978.

The International Legal Advisory Office (Sp. Acronym AJI) reported favourably on 3 September 2004 and the Ministry of Justice, the competent department in Treaty matters, remitted its mandatory report, in favour of ratification, on 18 April 2005. The Gibraltar Office at the Ministry of Foreign Affairs and Cooperation also expressed its concurrence in a Note dated 13 September 2004.

Therefore, procedures can now be initiated to seek the Cabinet's authorisation to remit the said Protocol to the Parliament for ratification.

Protocol No. 7 to the Convention . . .

This Protocol was opened for signature on 22 November 1984, and Spain signed on that date. It came into force on 1 November 1988.

The Ministry of Justice report of 18 April 2005 was favourable to ratifying the Protocol. The report of the International Legal Advisory Office of 22 November 2004 notes that 'ratification of Protocol no. 7 entails no risk in the sense of providing a possible formula for contact between the Spanish and Gibraltarian "authorities", as it contains no mechanism of communication between national or local authorities of the States parties'.

It is therefore now possible to initiate the procedures for ratification, to be pursued in accordance with Circular Order no. 3,173 of 14 March 1992.

Protocol No. 12 to the Convention . . .

Protocol No. 12 was opened for signature on 4 November 2000 and came into force on 1 April last.

The International Legal Advisory Office reported on 29 November 2004, and the Ministry of Justice did likewise on 18 April 2005.

The Ministry of Justice report of 18 April 2005 was favourable to ratifying the Protocol. The report of the International Legal Advisory Office of 29

November 2004 notes that 'ratification of Protocol no. 12 entails no risk in the sense of providing a possible formula for contact between the Spanish and Gibraltarian "authorities", as it contains no mechanism of communication between national or local authorities of the States parties'.

It is therefore now possible to initiate the procedures for ratification, to be pursued in accordance with Circular Order no. 3,173 of 14 March 1992.

Protocol No. 13 to the Convention . . .

Protocol No. 13 was opened for signature on 3 May 2002 and came into force on 1 July 2003. Spain signed it *ad referendum* on 3 May 2002.

A favourable report has been received from the Ministry of Justice, and the International Legal Advisory Office likewise reported favourably on 22 November 2004.

Pursuant to art. 5.1 of the Government Act, Law 50/97, and article 14 of Decree 801/72 on organisation of government activity in matters of international treaties, the Cabinet must be asked to approve the signature *ad referendum* and remittal of the text of the Protocol to the Parliament for the purposes of article 94 of the Constitution.

Protocol No. 14 to the Convention . . .

This Protocol was opened for signature on 13 May 2004. It has not yet come into force. The Spanish Cabinet authorised signature on 5 November 2004, and Spain signed it on 10 May 2005 during a visit by the Minister of Justice to the Council of Europe at Strasbourg".

(*BOCG-Congreso.D*, VIII Leg., n. 247, pp. 84–85).

b) Reservations

In her address to the 2005 session of the Sixth Committee, the Spanish Representative, Mrs. Escobar Hernández, stated Spain's position regarding the tasks carried out by the ILC on the institution of reservations:

"This year Prof. Pellet devoted his report to a topic which in my delegation's view is crucial for the institution of reservations, namely the conditions in which these must be formulated in order to be considered valid and the definition and scope of the category 'object and purpose of the treaty'. The approach he adopts there bears closely on art. 19 of the Vienna Convention, with which my delegation agrees. We likewise agree with the use of the term 'validity', which we also favoured last year over other options now ruled out by the Special Rapporteur.

Having regard to the draft guidelines presented in the tenth report, my delegation generally approves their spirit and agrees on the need for specialised treatment of certain categories of treaty or specific clauses contained in treaties. In that connection we believe that guideline 3.1.12 is adequate as drafted in that in our view it will make it possible to safeguard the principle that the essential substance of human rights is indisposable. And the same applies to draft guideline 3.1.13, which achieves an adequate balance between the safeguarding of

the treaty's object and purpose and the principle of freedom of choice of the means of dispute settlement, all the while safeguarding the practice – which my delegation views as inalienable – of including dispute settlement clauses in multilateral international treaties.

Nevertheless, Mr. Chairman, my delegation believes there is a need for a more thorough discussion of the following draft guidelines:

i) My delegation notes that draft guideline 3.1.1, which lists the various categories of prohibited reservation, is totally silent on the subject of tacit prohibition and thus departs from the pattern followed in draft guidelines 3.1.3 and 3.1.4. We therefore feel that it would be appropriate also to include the formulation of tacit prohibition in guideline 3.1.1, at least in respect of those events for which the treaty contemplates a clause 'exclusively' authorising certain reservations, for as we see it this necessarily entails the prohibition of all others without the possibility of referral to the object and purpose of the treaty as a criterion for determination of the validity of the reservation.

ii) We believe that draft guideline 3.1.11 requires further study to bring its present wording into line with the object and purpose of the treaty, and also with art. 27 of the Vienna Convention, on which this guideline would have a strong bearing. This is particularly so considering the practice followed by States with this category of reservations, from which it is clear that the formula relating to national law is habitually used as a means to evade the obligation to respect the treaty's object and purpose. In that respect my delegation considers that it may be useful to link this draft guideline to the one referring to vague and general reservations (3.1.7).

iii) While we naturally agree with the guideline devoted to reservations contrary to provisions implementing a rule of *jus cogens* (3.1.9), my delegation believes that it is so obvious that it does not warrant inclusion. Also, it could be detrimental to the very category of *jus cogens* to include this problematic area in a set of guidelines whose sole purpose is to provide practical guidance on the application of an institution – treaty reservations – that is entirely consensus-based.

My delegation also wishes to offer some critical remarks on the two guidelines provisionally approved by the International Law Commission in this session period.

First of all, as regards guideline 2.6.1 my delegation has a number of reservations in connection with the expression 'by which the first State or the first organisation proposes to exclude or modify the legal effects of the reservation'. While we believe the statement is true in teleological terms, in the light of the Vienna Convention provisions we are not sure that that objective can be achieved in every case. Therefore, since this topic has more to do with the effect of the objection than with the actual concept of objection, it would perhaps be helpful to discuss this topic in the future work of the Commission.

Secondly, with regard to the guideline relating to objections to a late reservation or a late extension of an already-formulated reservation (2.6.2), my

delegation wishes to repeat once again what it said in the previous session period of the Sixth Committee regarding late reservations. To contemplate this possibility, even with all the limitations and precautions devised to date, poses a serious risk of establishing a model of permanently-open treaty, which further raises doubts as to its compatibility with the law currently in force. We therefore believe that this guideline also requires further analysis.

And to close, allow me to say just a few words in response to a question raised this year by the International Law Commission.

Spain is not as a general rule opposed to a treaty's entering into force between itself and a third State to whose reservations Spain has objected on the ground that they are contrary to the treaty's object and purpose. Without seeking here to go in detail into the reasons underlying such a practice, we do wish at least to draw attention to the fact that it is a practice permitted by the Vienna Conventions, and that in our view is because these endeavour to promote the broadest possible participation in multilateral treaties. And that is undoubtedly something to be welcomed.

But the effects this practice is intended to achieve is another matter altogether, and one closely linked to that of the effects of objection itself. In my delegation's view, objections of this kind, although important, are subject to the same rules as other objections formulated by States, regardless of the actual arguments raised in objection to a reservation at any time. The issue thus labours under the same ambiguity as has been noted in the work of the International Law Commission.

True though this is, however, my delegation believes it is extremely important to establish that the work of the ILC ought not to proceed on a strictly theoretical and academic plane but ought to be conceived in such a way as to produce practical consequences. And from that perspective the formulation of objections to a reservation as contrary to the treaty's object and purpose while the treaty remains in force between the State making the reservation and the State objecting to it has at least one positive effect, as other delegations have already pointed out in this session period: namely, the identification and denunciation of reservations that violate the essence of a treaty, making it possible to open what the Special Rapporteur has called 'dialogue on the reservation', and if appropriate the withdrawal of that reservation or a redrafting to bring it within acceptable limits. And the same goes for the consequences that the interplay of reservation and objection may have in future in the event of a dispute over the provision or provisions affected by the reservation and the objection.

If we analyse the practice, we may find meaningful examples of the event I have just referred to, and Spain therefore considers that – at least from this standpoint – it is helpful to retain the option of objecting to a reservation while maintaining the treaty in force between the States Parties concerned".

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

1. Transposition of Community Directives

On 30 June 2005, in reply to a question raised in the Senate as to the Government's expectations regarding the transposition of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, the Government explained:

"The Minister of the Environment has drawn up a draft Bill to regulate rights of access to information, of public participation and of access to justice in environmental matters; this will incorporate into Spanish law not only Directive 2003/35/EC, but also Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

With these Directives, part of the content of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters is incorporated into the Community *acquis*. However, this draft Bill is intended to go further than the Directives and incorporate all the Aarhus Convention provisions into Spanish law.

As to the state of progress of the Draft Bill, on 21 April it was presented to the Sectoral Conference on the Environment and on 14 May to the Environmental Advisory Council. Also, the text was hung on the Ministry's web site for anyone interested to comment on until 20 May, and on 28 April it was forwarded to the Ministerial Departments for their reports on it.

As for the steps still to come, the text has to be submitted to the Autonomous Communities and Local Authorities, and reports must be elicited from the Social and Economic Council and the General Council of the Judiciary.

Finally, the Council of State will be asked for its mandatory Opinion prior to approval by the Cabinet as a Bill and remittal to the Parliament for consideration".

(*BOCG-Senado.I*, VIII Leg., n. 266, pp. 21–22).

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-determination

a) Western Sahara

In reply to a question relating to the Government's position and the steps it proposes to take to arrive at an urgent, fair and definitive solution to the issue of the

Western Sahara, tabled before the Senate in full session on 22 June 2005, the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, stated as follows:

"Since this Government took up office, one of its absolute priorities has been precisely to try and facilitate a fair and urgent solution to the problem of the Western Sahara. We wished to move on from the policy of passive neutrality traditionally pursued by Spanish diplomacy to one of active commitment to seek a definitive solution to this problem, which, as I have said on many occasions, has persisted for too long – almost 30 years since Spain abandoned the territories of the Western Sahara.

For that reason, and in view of the incidents that have occurred – we were already quite aware of the urgency of taking all possible diplomatic action to achieve the application of international legality and hence the enforcement of the last Security Council resolution and put the Baker Plan into practice – we wished from the outset to initiate conversations with all the parties, not only Morocco but also the Frente Polisario and the other countries with a stake in finding a definitive solution to the problem.

Spain will therefore keep pressing, within the framework of the United Nations and the responsibility of the UN Secretary-General and his Secretariat, and of all the parties involved in the conflict, to try and achieve an urgent, fair and definitive solution to the conflict of the Western Sahara.

(. . .)

What has this Government's attitude been towards the Saharan population and the representatives of the Frente Polisario? Which of the Governments of the last thirty years has three times sent Secretaries of State from the Ministry of Foreign Affairs? Tell me.

The answer is none. This is the first time in history, since 1975, that a Spanish government has sent the Secretary of State for Foreign Affairs and Foreign Policy and the Secretary of State for Cooperation to camps at Tinduf on two occasions. Humanitarian aid to the Saharan population has doubled; there has been a work meeting between the general secretary of the Frente Polisario, Mr. Abdelaziz, and the general secretary of the Spanish Socialist Workers' Party, Mr. Rodríguez Zapatero; I have had two work meetings with the person in charge of international relations in the Frente Polisario – and all this without any break at all in the dialogue with Morocco, while seeking the approval of the UN Secretary-General regarding the role that the United Nations ought to adopt.

(. . .)".

(*DSS-P*, VIII Leg., n. 46, pp. 2461–2462).

Subsequently, in reply to a question in Congress on 15 September 2005, the Government explained its position regarding the Baker Plan for the Sahara, in the following terms:

"The Government's approach to the Western Saharan question is founded on the conviction that a peaceful solution to the conflict is of the first importance for the stability and the economic and social development of the Maghrib region, which itself is a primordial strategic objective of Spanish foreign policy. And in that conviction the Government is taking an active diplomatic course in pursuit of a solution whose legal and practical frame of reference is the UN and an indispensable understanding between the parties.

In its efforts to foster a solution to this conflict, the Government is very conscious of the various Resolutions of the United Nations Security Council (UNSC). These stress the importance of the Baker Plan as a frame of reference for a peaceful solution to the conflict, and likewise the importance of dialogue to find a way out of the present impasse.

The last few weeks have seen events that have raised the levels of tension concerning the Western Saharan conflict and that confirm the need to resolve a situation that has now gone on for thirty years and continues to block the process of integration of the Maghrib. This blockage carries an immense political, economic and social cost, not only to the countries of the Maghrib but also to Spain and to Europe as a whole.

To achieve that objective, it is important, urgent and desirable that each party accept its own responsibilities, particularly the countries which are friends to the parties, among them Spain for well-founded historical and geostrategic reasons. The Spanish government therefore remains actively committed and spares no effort to find a fair and definitive solution to the conflict that accords with international legality and is mutually acceptable to the parties. With that end in view, Spain is working closely and maintaining contact with all the parties in order to reduce the tension in the short term and promote a climate of mutual trust and understanding that will facilitate approximation, a willingness to dialogue and resumption of the process of settlement of the conflict within the framework of the UN.

The Minister of Foreign Affairs and Cooperation met his Algerian and Moroccan colleagues during the Euro-Mediterranean Ministerial Conference in Luxembourg on 30 May last. He also entered into contact with the political representatives of the Frente Polisario. To all these he conveyed a message of calm and the need to resume efforts to create a suitable climate in which to arrive at a solution.

The Minister of Foreign Affairs and Cooperation has also sent a letter to the UN Secretary-General stressing the urgency of appointing a new Personal Representative for the Western Sahara, and he has written to his opposite numbers in Morocco, Algeria and Mauritania, and to the head of international affairs of the Frente Polisario, asking their help to achieve progress towards a settlement within the framework of the UN.

On 8 and 9 June last the Secretary of State for Foreign Affairs and Iberoamerica visited Morocco, Algeria, Mauritania and also Tinduf, to meet representatives of all the parties and neighbouring States. This is the first time that

a tour of the Maghrib has been organised to deal exclusively with the subject of the Western Sahara. During the tour, which was judged positive by all those concerned, the Secretary of State conveyed Spain's concern about the situation and stressed the need to maintain the calm, adopt a receptive attitude and revitalise the process of settlement within the UN framework. To that end, urgent measures are required, among them for the Secretary-General to appoint a new Personal Envoy with capacity to mediate politically among the parties, and also to appoint a new Special Representative to head MINURSO. In addition, Spain will be asking the UN Secretary-General to publish a report based on the data supplied by MINURSO with a view to securing transparent and objective information about the recent incidents. Consultations should be held under the auspices of the UN between the Personal Envoy, when he is appointed, and the parties, in order to reactivate the settlement process; these should hopefully produce new initiatives aimed at the application of international legality and the UNSC resolutions currently in force.

The Minister of Foreign Affairs and Cooperation has sent a letter to his Moroccan, Algerian and Mauritanian colleagues and to the Frente Polisario conveying these messages and urging them all to resume the political process and to contribute by taking concrete steps to promote trust in the region".

(*BOCG-Congreso.D*, VIII Leg., n. 257, pp. 369–370).

On 31 October 2005, expressing its opinion regarding the ongoing expulsions of parliamentary and municipal delegations from the Western Sahara, again in reply to a parliamentary question, the Government stated the following:

"In response to the latest outburst of tension arising from the incidents in El Aaiun and other towns in the territory in May 2005, the Spanish government has rapidly undertaken a series of urgent initiatives to deal with the crisis. On several occasions the Government has expressed concern to the supreme Moroccan diplomatic authorities, both bilaterally and through the European Union, over the response to these incidents and over the refusal of entry to delegations from Spain. One of the messages conveyed by Spanish diplomacy in its contacts with Moroccan authorities has been the need to respect the individual rights of those arrested and put on trial, and likewise to assure transparency in the treatment of information.

Apart from several top-level contacts conducted by the Minister of Foreign Affairs and Cooperation, the Secretary of State for Foreign Affairs and Iberoamerica visited Rabat, El Aaiun, Algiers and Tinduf last June for the sole purpose of issuing a call for calm, demanding transparent information about the incidents and proposing a constructive dialogue about the root of the problem. The Spanish government positively welcomes and wishes to help facilitate the invitation issued to the Spanish Congress and Senate by the respective Moroccan chambers, to visit the territory of the Western Sahara. In that respect it is hoped that the wish expressed by various Spanish political parties and other social

organisations will be fulfilled, that is to have improved facility of access to that territory and gain a better understanding on the ground".

(*BOCG-Congreso.D*, VIII Leg., n. 284, pp. 429–430).

2. Cyprus

Explaining its official position on the situation of Cyprus as regards the *de facto* partition of the island in reply to a question tabled in Congress on 7 December 2005, the Government stated the following:

"The Government's position is in favour of a solution to the Cyprus question based on the United Nations doctrine, specifically on the various Security Council resolutions since 1964, and on the guiding principles of the EU. Consequently, it has not recognised the self-styled 'Turkish Republic of Northern Cyprus' – the Spanish government only recognises the Republic of Cyprus as a subject of International Law – and it fully supports the efforts of the present UN Secretary-General as it did those of his predecessors, since a settlement of the Cypriot question would contribute to peace, stability and harmonious relations in the region. In any event, the Government respects the decision of the Greek Cypriot part as expressed in the referendum of 24 April.

The Government would like to see the resumption of negotiations soon, in a constructive and forward-looking spirit, between the Republic of Cyprus and the Turkish Cypriot community in the north of the island, leading to unity in satisfactory terms of security and equity for both sides, based on the concept of a united federal bi-zonal and bi-communal Cyprus, and it will do whatever is in its power, in a constructive spirit, to help reach a solution to the Cypriot question".

(*BOCG-Congreso.D*, VIII Leg., n. 320, p. 623).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protection

In reply to a parliamentary question on 21 June 2005, the Spanish government reported on its actions regarding the situation of Spanish nationals under arrest and imprisoned in Morocco.

"The Government is aware of the situation of Spanish arrestees and prisoners in Morocco, and the Ministry of Foreign Affairs and Cooperation is addressing the subject as a matter of priority, both through its central departments and through the various Consulates-General in Morocco and the Spanish Embassy in Rabat.

These Spanish citizens receive permanent attention through the Consulates, including regular fortnightly or weekly visits and contacts with families and friends.

The various actions for the care and protection of these citizens are clearly set out in the relevant rules and include: periodic visits, commencing whenever the arrest becomes known; providing information about the country's judicial and prison system, about free legal defence if available and about lawyers who can undertake their defence; liaising with family and friends of the arrestee and providing a channel for the dispatch of correspondence, medicines or money; granting periodic or extraordinary financial assistance; keeping track of the arrestee's procedural and penal situation in liaison with the defence lawyer, etc.

The Government is seized of some accusations of ill-treatment by police at the time of arrest, made by the arrestees concerned, and it has formally asked the Moroccan authorities to conduct an inquiry into the facts".

(*BOCG-Congreso.D*, VIII Leg., n. 229, pp. 664–665).

2. Human Rights

In reply to a parliamentary question on 26 September 2005, the Spanish government reported on its plans for the introduction of legal changes to adapt the Spanish laws to maximise the protection of fundamental rights of persons accused of terrorism and held incommunicado.

"This Government plans to undertake a general reform to modernise our century-old criminal law, and in this context it will propose a reform not merely of remand and arrest or the rules for incommunicado custody of persons accused of terrorism, but of the entire set of Protective Measures that may be adopted in criminal procedure, in line with the consistent doctrine of the Constitutional Court and the European Court of Human Rights.

The last reform of remand in 2003 was not suited to a system of criminal procedure that assures respect of the accused's rights and in which remand is to be considered as a subsidiary protective measure subject to the principle of proportionality.

Having regard to the rules for holding incommunicado under arrest and on remand, it is important to remember that given the respect due to the accused's rights and the subsidiary and exceptional nature of the measure, there must be limits not only on duration but also on the circumstances and forms thereof as provided in art. 8(1) of the ECHR and by the Constitutional Court.

For its part, holding under incommunicado arrest (art. 520 *bis*) needs to be regulated as an exceptional measure and its duration limited; there is no justification for extending it to the entire duration of provisional custody (72 hours, plus 48 hours if applicable) but only for as long as is necessary for the government authority's inquiries".

(*BOCG-Congreso.D*, VIII Leg., n. 262, p. 246).

Replying to a parliamentary question on 31 October 2005, the Spanish government reported on the steps taken to secure the release of Daw Aung San Suu Kyi and all Burmese political prisoners:

"The Spanish government's position regarding the political situation in Burma is implicit in the action pursued by the European Union in that respect. In effect, with the aim always of promoting the process of reconciliation in Burma/Myanmar and securing the release of Aung San Suu Kyi and the other leaders of the NLD (National League for Democracy), Spain has supported and continues firmly to support the measures adopted by the EU.

These measures include the approval of a common position in April 2004 for renewal of the restrictive measures applied to Burma; the subsequent approval of additional sanctions against the military regime; and a Declaration issued in December condemning the extension of the house arrest of Aung San Suu Kyi for a further year and disapproving the large number of political prisoners still being held in that country. In addition, the common position just mentioned was renewed in April 2005.

It seems that the policy pursued by the EU is beginning to bear fruit, as witness the Burmese authorities' release of 250 political prisoners on 6 July last, a decision that was welcomed by the EU. Indeed, the British Presidency issued a Declaration stressing that this release marked a step in the direction of national reconciliation in Burma. Nevertheless, the EU has made it clear that the process of reconciliation must embrace all political and social forces, and therefore the Burmese authorities should order the immediate and unconditional release of all the political detainees in the country.

The policy pursued by Spain in connection with Burma is therefore an active and a realistic one. It is active in that its primordial objective is to promote a genuine process of national reconciliation using the political instruments of the EU.

And it is realistic in that the programme of sanctions selectively targets the Junta and its members, so that the general population of Burma do not have to suffer the negative consequences of the sanctions programme.

(*BOCG-Congreso.D*, VIII Leg., n. 284, p. 277).

3. Aliens

In her address to the 2005 session of the Sixth Committee, the Spanish Representative, Mrs. Escobar Hernández, stated Spain's position regarding the work of the ILC on the expulsion of aliens:

"My delegation welcomes the inclusion of the topic of expulsion of aliens in its work programme, for two reasons in particular: firstly, because it implies the recognition that the right of a State to determine the rules governing the entry and stay of aliens in its territory has not been challenged as a premise by International Law; and secondly, for the equally evident recognition of the importance that the migratory phenomenon has attained in these times and of the exalted place that International Human Rights Law occupies in contemporary international society. And that surely calls for a new and thoughtful

discussion of some of the components of what we might call the aliens rules as defined by International Law. From this standpoint it is clear that the topic of the rules governing the expulsion of aliens is one that deserves to be addressed by the International Law Commission.

My delegation was therefore interested to receive the preliminary report compiled by the Special Rapporteur Mr. Kamto, whom we wish to thank for his analysis of the subject, his systematic approach to the problems that arise and his methodological proposals for forthcoming work. For our own part, we have a number of comments on the subject.

Firstly, my delegation considers that any work on the expulsion of aliens must make adequate allowance for the fact that the field embraces rules relating both to the personal competences and to the territorial competences of the State. Hence, work on the expulsion of aliens must take into consideration the right of a State to define the legal rules that are applicable to the entry and stay of aliens in its territory, and likewise the consequences attendant on infringement of these rules.

Secondly, we believe it will be necessary to set proper bounds on the scope of application of the work in progress. And that particularly entails defining as specifically as possible the conceptual categories that the work of the Special Rapporteur is required to address, especially as regards the concepts of alien and expulsion. In this respect my delegation feels that it will be necessary to arrive at a clear definition of the various categories of aliens and of the situations in which aliens in these categories may find themselves, with the ultimate aim of determining whether all of them, or only some of these categories, are to be considered in defining the active scope of the International Law Commission's work.

And thirdly, but no less important, my delegation wishes to place on record the importance that it attaches to respect for internationally-accepted human rights, which must therefore indispensably be addressed in the work of the Special Rapporteur. And that applies both to the procedure that is to be followed in deciding on the expulsion of aliens and equally importantly to the form in which expulsion is to be carried out.

In connection with this topic my delegation believes it is still too early for any pronouncement on the form that the final result of the International Law Commission's work is to take. We await the Special Rapporteur's next report with keen interest, and likewise the collection on practice to be compiled by the Secretariat".

In reply to a parliamentary question on 26 September 2005, the Spanish government reported on the instructions issued to the State Security Forces and Corps informing them of the new Aliens Regulation, which provides that immigrant women reporting ill-treatment are not to be repatriated:

"Article 19 of Organic Law 4/2000 contemplates the possibility that a reunited spouse who is a victim of domestic violence may obtain an independent resi-

dence permit as soon as a protection order in her favour is forthcoming.

Also, article 59 of the Organic Law provides that aliens who are in Spain irregularly or are working without a permit, without papers or with irregular papers and have been victims of, prejudiced by or witnesses to, *inter alia*, acts of exploitation for purposes of prostitution with abuse of their state of need, may be exempted and not expelled if they report such exploitation to the competent authorities or cooperate and collaborate with police officers competent in matters of aliens, by furnishing essential information or testifying, as the case may be, in the relevant proceedings.

Also, the Regulation of Organic Law 4/2000 implements the provisions just cited, and article 45.4.a adds – in application of article 31(3) of the Organic Law – the possibility that temporary residence permits may be granted for humanitarian reasons, *inter alia* to aliens who are victims of offences of violence perpetrated in the family circle, in the terms laid down in Law 27/2003 of 31 July which regulates protection orders for victims of domestic violence, provided that a court has delivered a judgment on such offences. In such cases, according to article 46.3 of the Regulation, application may be made for a temporary residence permit for humanitarian reasons in view of exceptional circumstances once there is a court order for the protection of the victim, and the permit may finally be granted once the court has delivered a judgment on the offences concerned.

The procedure to be followed by the Security Forces and Corps when an alien woman in an irregular administrative situation comes to a police office to report ill-treatment is detailed in the Action Protocol for the Security Forces and Corps and for Coordination with the Courts for the Protection of Victims of Domestic and Gender Violence. Under heading I.A, this Protocol lists the steps that must be taken by police officers as a priority in order to protect the life, the physical safety and the legitimate rights and interests of victims and the members of their families, and specifically mentioned among these is to inform victims of their right to regularise their situation for humanitarian reasons, in the terms provided in articles 45.4.a and 46.3 of the Aliens Regulation.

As to fulfilment by police officers of the obligations placed upon them by the aliens rules when they encounter an infringement of these, in order to guarantee the victim's rights as recognised in the Integral Act and the Aliens Regulation and avoid further victimisation as far as possible, it was felt necessary to issue precise instructions as to the procedure to be followed in order to cause suspension of the opening and subsequent pursuit of sanction proceedings pending respectively a judicial decision on a protection order and an administrative decision on a temporary residence permit due to exceptional circumstances.

This Instruction has been seen by the Executive Committee for the Unified Command (Sp. Acronym CEMU) and is presently being circulated to the State Security Forces and Corps for implementation".

(*BOCG-Congreso.D*, VIII Leg., n. 262, pp. 232–233).

In an appearance before the Commission of Home Affairs of the Congress of Deputies, the Spanish government reported on the situation at the frontier in Melilla.

"(. . .)

. . . Surfacing at the gates of Melilla and Ceuta, but only very slightly, is one of the tips of a human iceberg composed of hundreds of thousands of African citizens who are expelled – in inverted commas – from their territories of origin by such factors as hunger, war, misery and persecution. We all know too that Ceuta and Melilla are two autonomous Spanish cities which constitute a peculiar and a special external frontier of Spain and the European Union on territory in the African continent, the management of which presents difficult and atypical problems for obvious reasons. The thousands of African citizens who travel thousands of kilometres at the risk of their lives do not do so in response to any incentive from this side of the Spanish and European Union border; they reach the gates of Ceuta and Melilla or attempt hazardous sea crossings, or they fall into the clutches of unscrupulous mafias, for a very simple and very terrible reason: that is, that the factors of war, misery and hunger constitute an authentic, powerful and irresistible force that drives these men, women and children out of their territories of origin . . .

These difficulties in the management of frontiers do not prevent us from taking border control action – firstly following the same rules that apply to the management of any other border; secondly following the operational rules of the State Security Forces and Corps subject to the authorisation and guidance of our legal system; and lastly with absolute respect for the human rights of citizens who unlawfully attempt to cross one of our external frontiers. In acting in this way we are scrupulously complying with and supporting the strategic underpinnings of our immigration policy exactly as they were defined by the Prime Minister at his investiture. These underpinnings consist of real and effective management of migratory flows; strict control of our frontiers to prevent irregular immigration; integration policies for those entering our country illegally, and finally policies of cooperation and development targeting the countries of origin or transit from which these migratory flows spring . . .

(. . .)

We can gain a notion of the intensity of the pressure on the Melilla border by looking at the numbers of immigrants who have been turned back at the frontier: in 2002, 12,337 immigrants were turned back; in 2003, 26,368 and in 2004 – the first year of the present Government – 55,645. During all these years, the attempts to enter our territory have followed one or other of two patterns. Before, some of these immigrants sought to reach the city from the sea, . . . now we are seeing a palpable increase in the number of attempts at mass, synchronised entry using force. . . . As to the most recent years, during 2004 this method was used on seven occasions at different points on the border perimeter, by groups averaging 100 immigrants. This year has seen a redoubling of this kind of mass entry, with 21 synchronised entry attempts using

force since May 5 last. The last two attempts, which took place yesterday, involved 500 and 400 immigrants respectively.

(. . .)

. . . the problem that we face is not only a political issue, and anyone who thinks it is only a police matter is mistaken. It is an issue that occupies the policies of Spain and of the European Union, and it is one that necessarily demands international, economic and social action. All European governments are aware of this, the Spanish government particularly so, and as such they have made irregular immigration a priority issue of their foreign policy; this is so both in the context of our multilateral relations – especially European relations – and above all in that of our relations with Morocco. In the sphere of the European Union we have been pursuing a variety of political, economic and legislative initiatives for the specific purpose of achieving progress in the control of irregular immigration from Africa. In particular, the Spanish government is participating actively in the Euro-Mediterranean process, known to us as Euromed. Late last July, in conjunction with France and Morocco we presented a three-country proposal for the creation of a common Euro-Mediterranean area of cooperation in matters of justice, security, immigration and social integration. The aim behind this initiative is to create a common area in the Mediterranean characterised by the treatment of immigration and social integrated as an integral whole, promotion of development of the countries of origin, cooperation with these countries in vocational training, and enhanced technical collaboration in the management of migratory movements on an institutional level. The document also contains proposals on matters of judicial and police cooperation within the Euromed ambit in order to combat terrorism, organised crime, drug trafficking and trafficking in human beings . . .

And finally, I should like to say a word about the Meda programme . . . Within the framework of this programme, as regards Morocco and migratory issues, 87 million euros has been allocated to development of the northern provinces; 5 million to institutional support for migratory movements and population shifts; and 40 million that Spain and France will administer jointly for improvement in technical and professional aspects of control of Morocco's borders. These 40 million euros are to be disbursed immediately, chiefly for use in improving border control infrastructures, vocational training and acquisition of border surveillance resources. This fund will make a positive contribution to improved results in the fight against organised crime, immigrant smuggling networks and trafficking in human beings.

(. . .)".

(*DSS-C*, VIII Leg., n. 377, pp. 3–9).

VI. STATE ORGANS

1. Foreign Service

On 27 June 2005, replying in Congress to a question regarding the amount by which the means at the disposal of Spanish Consulates in the countries of origin of immigrants had increased, the Government noted:

"(. . .)

The Spanish consular network in Morocco has Consulates-General at Casablanca, Nador, Rabat, Tangiers, Tetuan, Agadir and Larache. The personnel of the Spanish Consulate-General in Casablanca has been increased by three new permanent clerks and has been further strengthened by the engagement of two temporary employees; the Nador and Rabat consulates have received two additional temporary clerks each; the personnel of the Consulate-General in Tetuan has been increased by one new clerk and another on temporary contract; the personnel at Tangiers has been increased by two new clerks; and lastly the Spanish Consulate-General in Larache has been strengthened by the temporary engagement of an clerk.

In Algeria, the personnel at the Spanish Consulate-General in Oran has been reinforced by the temporary engagement of a clerk.

At the Lagos Consulate-General in Nigeria, the position of Chief Visas Officer has been created. And in addition, two clerks and an ancillary employee have been engaged on a temporary basis.

In Europe, the embassies in Poland and Romania, the countries of origin of the majority of European immigrants to Spain, have also had a substantial increase in manning. Consular affairs there, including visas, are handled by the consular sections of the respective embassies, and therefore the personnel at the Spanish Embassy in Warsaw has been reinforced by the temporary engagement of two clerks and an orderly/chauffeur. For its part, the personnel at the Spanish Embassy in Bucharest has also been strengthened by seven temporary clerks and another orderly/chauffeur. And in the Ukraine too, the third largest source of European immigration to Spain, a clerk and an orderly have been engaged on a temporary basis for our embassy in Kiev.

In Asia, a position of Senior Administrative Officer has been created at the Spanish Embassy in Pakistan, with residence at Kabul. Applications for this position have been invited and it is currently pending award. As to contract personnel, the Spanish Embassy in India has increased its staff by one new clerk. However, the bulk of the growth has been in China in view of the increasing numbers of immigrants coming from there: the Spanish Embassy in China has temporarily engaged nine administrative officers and three clerks, and the personnel of the Spanish Consulate-General in Shanghai has been strengthened by temporary engagement of four clerks and an orderly/chauffeur. In addition, in China Spain will shortly be opening a Consulate-General at Beijing, which will

take over the functions hitherto discharged by the consular section of the embassy.

And turning finally to Latin America, that is where the network of Spanish consulates is largest, and where the engagement of new personnel, both permanent and temporary, has been most abundant in addition to an increase in the number of officials. In Ecuador, a position of staff secretary has been created at the Spanish Consulate-General in Quito and the personnel there has been further reinforced by the temporary engagement of six clerks and an orderly/chauffeur, plus another clerk on a part-time basis. In Colombia, the former consulate is now the Spanish Consulate-General in Bogotá; its personnel has been reinforced by the recent creation of two new staff positions, one secretary and one Chief Visas Officer, and ten clerks and an ancillary employee have been engaged on a temporary basis. The personnel of the Spanish Consulate-General in Santo Domingo has also been increased with the permanent engagement of two clerks plus a further temporary clerk. In Peru, the Spanish Consulate-General in Lima has taken on one new permanent clerk. The consular section at the Spanish Embassy in La Paz has likewise engaged a new clerk, in this case on a temporary basis. And finally in Argentina, where Spain has Consulates-General in Buenos Aires, Bahia Blanca, Cordoba, Mendoza and Rosario, manning levels have been raised by temporary engagements as follows: twenty-seven clerks at the Spanish Consulate-General in Buenos Aires; seven clerks at the Bahia Blanca consulate; seven clerks at Cordoba; six clerks at the Spanish Consulate-General in Mendoza; and eight clerks and an orderly at Rosario.

And to close this report, a proposal is currently being studied by the Interministerial Pay Commission (Sp. acronym CECIR) for the creation of thirty-four new positions of Chief Visas Officer".

(*BOCG-Congreso.D*, VIII Leg., n. 229, pp. 562–563).

In a reply to a question tabled in Congress on 27 June 2005, the Government referred to the steps taken in connection with the consulates in Spain of those countries from which the migratory pressure on Spain is strongest:

"As regards the normalisation process contemplated in the new Aliens Regulation, well in advance the Department of Consular Affairs and Assistance at the Ministry of Foreign Affairs and Cooperation invited the Ambassadors and Consuls-General of the countries mentioned by the Honourable Member to a meeting to inform them of the details of the normalisation process and to seek their fullest cooperation to assure optimum implementation of the process.

During the normalisation process, these diplomatic and consular representatives maintained frequent contact with the responsible Spanish authorities to clarify concrete aspects regarding the papers that their nationals would need in order to be included in the normalisation process.

We would note also that according to the 1961 and 1963 Vienna Conventions, accredited diplomatic and consular representatives in Spain represent sovereign States which apply their own national rules to those of their nationals

who are in Spain. The Spanish authorities refrain from interfering in any way in the internal affairs of these representations".

(*BOCG-Congreso.D*, VIII Leg., n. 229, p. 725).

The accusations made against the military attaché at the Chilean Embassy in Spain prompted a parliamentary question, to which the Government replied on 30 June 2005, in the following terms:

"The Government is cognizant of the accusations that have been made by the family of Da Susana Obando against the present Chilean military attaché, and likewise of the fact that Colonel Ortega Pardo made a statement before the Chilean examining magistrate, Ms. Carmen Garay. The Government has also learned through the Chilean authorities that the said Colonel is not the object of any judicial proceedings in Chile in connection with the events the Honourable Member is referring to.

The Spanish government has been informed by the Chilean authorities that Colonel Ortega Pardo will shortly be relieved of his duties as military attaché at the Chilean Embassy.

The Spanish government issues its agreement to the accreditation of foreign diplomatic representatives in accordance with the Vienna Convention on Diplomatic Relations.

It further expects them to discharge their duties in a manner beneficial to bilateral relations and to respect the principles and values governing relations between two friendly States such as Spain and Chile".

(*BOCG-Congreso.D*, VIII Leg., n. 232, p. 115).

VII. TERRITORY

1. Territorial Division. Control of Frontiers

In reply to a question put by the Popular Party Group in the Senate in plenary session regarding the presence of ground troops in the cities of Ceuta and Melilla to control the frontier, the Defence Minister Mr. Bono Martínez reported as follows:

"... The task of mounting surveillance on the ordinary frontier crossing lies with the State Security Forces and Corps, specifically the Civil Guard, and the Armed Forces are required to assist in that mission when called on to do so. The Army is there because the Prime Minister has ordered it, just as it was on other occasions, in 1996, 1997, 1998 and 1999, but it must be there only for as long as is necessary. That is how long it is going to be there.

(...)

... Vice-President and Commissioner Frattini ... said: The time has come to assist Spain and Morocco. And I believe that these are most reasonable words – I think it is good to assist Spain and Morocco in the problem of those frontiers ...

(. . .)

And as regards illegal immigration, we must try and see that no-one crosses these frontiers illegally, at Ceuta or at Melilla, or enters by boat, by plane . . .".

(*DSS-P*, VIII Leg., n. 57, p. 3087).

In reply to a parliamentary question put in Congress, the Government reported thus on the causes of the increase in the number of *pateras* reaching the coasts of Melilla:

"(. . .)

The rise in the numbers of immigrants attempting to land on the coasts of Melilla from *pateras* has three fundamental causes:

– The increased difficulty that immigrants find in entering Melilla clandestinely through the security system set up around the border perimeter, chiefly thanks to the raising of the fence, whose height has been doubled to 7 (seven) metres over a third of the landward border perimeter.

– Effective collaboration from the Moroccan security authorities and forces in surveillance of the border perimeter, and above all the eradication of perpetual sub-Saharan settlement on Mount Gurugú.

– The collaboration of the Moroccan security authorities and forces is less effective when it comes to acting on the operations of Moroccan organisations engaged in the smuggling of immigrants aboard *pateras*.

Madrid, 26 August 2005. The Secretary of State for Relations with the Cortes".

(*BOCG-Congreso.D*, Leg. VIII, n. 262, p. 327).

2. United States Military Base on Spanish Territory

In reply to a parliamentary question tabled in Congress regarding the intention of the United States Government to alter the status of the Rota military base, the Government stated:

"On 13 July 1994, a Memorandum of Understanding was signed between the Spanish Navy and the US Navy for the establishment of a special US Navy naval operations training unit at the Rota naval base. That unit has remained in Rota since that time.

No official request has been received to date for the basing at Rota of any other special operations unit by the United States Armed Forces.

We have no official knowledge of any interest by the United States Government in modifying the present status of the Rota naval base.

According to article 2 of the Agreement on Defence Cooperation between the Kingdom of Spain and the United States of America, 'Spain concedes to the United States of America the use of support facilities and grants authorisations for their use in Spanish territory, territorial waters and air space for purposes coming within the bilateral or multilateral scope of this Agreement. Any use that goes beyond these objectives shall require the prior authorisation of the Spanish

Government'. At no time has the Government had knowledge of the conduct of activities in violation of human rights.

Madrid, 14 June 2005. – The Secretary of State for Relations with the Cortes".

(*BOCG-Congreso.D*, VIII Leg., n. 237, p. 345).

3. Colonies

a) Gibraltar

In reply to a parliamentary question tabled in Congress as to whether Spain had granted Gibraltar veto rights in the negotiations currently in progress, the Government stated:

"The Government has not granted Gibraltar veto rights in its present strategy on the Gibraltar question, key elements of which are the establishment of a forum for dialogue separate from the Brussels process, and of a Joint Commission on Cooperation and Collaboration.

Another important element of the Government's new strategy has been the participation of the Gibraltarians in the negotiation process. This is something that previous governments have tried and this government has achieved. In this connection it would be appropriate to recall the words of Foreign Minister Abel Matutes, spoken in London on 10 December 1997 at a meeting with his British colleague:

'As a democratic State we cannot conceive of reaching a solution to the problem of sovereignty that is forcibly imposed against the will of the citizens of Gibraltar, who would be affected by a new situation of sovereignty'.

The same line was taken by Minister Josep Piqué, who repeatedly invited the government of Gibraltar to take active part in the negotiation process. In this respect it is worth quoting the following paragraph from the Communiqué issued at the Piqué-Straw ministerial meeting in Barcelona on 20 November 2001:

'We agreed that the Government of Gibraltar had a very important contribution to make to our discussions. Gibraltar's voice should be heard. We reiterated the invitation which we issued to the Chief Minister of Gibraltar when we met in London on 26 July to attend future Brussels Process Ministerial meetings. His role will be fully respected and he will have the opportunity to contribute fully to the discussions. The Process would benefit greatly from the direct views of the Government of Gibraltar, and through the Government of the House of Assembly and public opinion in Gibraltar as a whole'.

On 16 December 2004, the Ministry of Foreign Affairs of Spain, the Foreign & Commonwealth Office of the United Kingdom and the Government of Gibraltar

issued a Joint Communiqué on Gibraltar. This Joint Communiqué was instrumental in opening up a new avenue to deal with the question of Gibraltar. It is worth mentioning the nature of that Joint Communiqué in view of its complexity and the number of caveats that it contains:

– It is a Press Communiqué and not an International Treaty or Agreement.

– It is a political and not a legal document.

– It confirms the establishment of a Forum for Dialogue, not a negotiating Conference.

The introduction to the Joint Communiqué of 16 September 2004 contains an important caveat with regard to the communiqué as a whole. This is that a new Forum is to be established without prejudice to the respective positions of the parties. In our case, the 'Spanish position' includes the preferential right to acquire the Rock, no legal cession of the Isthmus, non-application of the principle of external self-determination, etc. In other words, the institution of this instrument of dialogue entails no renunciation of Spain's historical position, and in particular there is no renunciation of our claim to Gibraltar.

The introduction also contains an important clarificatory point, where it says that the new forum is 'separate from the Brussels Process'. It therefore does not say that the Brussels Process is dead, or that the Forum for Dialogue is the successor to that Process. It simply says that they are two different things.

The agreed conditions for the new Forum for Dialogue as set out in the Joint Communiqué are as follows:

– Open agenda: the basis for dialogue will be an open agenda. This means that at the Forum Spain will be able to raise the point of negotiation of sovereignty over Gibraltar whenever it considers the time is right.

– Each participant to speak separately with its own voice: here Spain introduced another important caveat. It specifically states that the fact that each of the parties has its own separate voice and participates in the Forum on that basis shall be without prejudice to the constitutional status of each one. But not only does it recognise the differences between Gibraltar on the one hand and the United Kingdom and Spain on the other in constitutional terms, but it also explicitly adds that Gibraltar is not an independent sovereign State. And incidentally, Minister Piqué already offered the Chief Minister of Gibraltar such a differentiated voice of its own once before, in the Joint Press Communiqué (Piqué-Straw) of 4 February 2002.

– Three-way agreement: this is the most complex part of the Joint Communiqué. In order to understand this section properly, we must bear the following in mind:

– This is fully covered by the clause in the introductory paragraph reserving the respective positions and the difference in the statutory and constitutional standing of the participants.

– The Joint Communiqué of 16 December 2004 states that 'any decision or agreement reached at the Forum must be agreed by each of the three participants'.

This sentence obviously refers to those matters in which the Government of Gibraltar has domestic powers which have been transferred by the United Kingdom. However, it is possible decisions or agreements will have to be reached on matters regarding which the Government of Gibraltar does not have powers – for instance questions of sovereignty. In that case any relevant decisions or agreements may only be adopted by the competent sovereign States – that is exclusively Spain and the United Kingdom.

– This section recognises that some matters require a formal, exclusively bilateral agreement between Spain and the United Kingdom (as matters in which only States are competent). (If all three parties wish to adopt a decision at the Forum in connection with a matter on which the formal agreement ought to be made in the appropriate form between Spain and the United Kingdom, etc.).

– It is true that the section makes a neutral reference to the principle of consent of the Government of Gibraltar. However, in this case it is a commitment of the United Kingdom that has been stated repeatedly over the years – in the Brussels Declaration of 10 April 1980, in the Brussels Joint Communiqué of 27 November 1984, in several documents of the Brussels Process, in annual Decisions on the Gibraltar Question approved by consensus of the United Nations General Assembly, and ultimately in the documents negotiated by Ministers Piqué and Straw between July 2001 and July 2002. The British commitment I refer to is an internal, unilateral commitment by the United Kingdom and it is nothing new. It does not at all mean that Spain grants veto rights to the Government of Gibraltar. An agreement on sovereignty will always be an agreement between States, but it would be a mistake to ignore the voice and the opinion of the people of Gibraltar.

To recap, then, let me repeat clearly and firmly that the Government has not granted any veto rights to Gibraltar as part of the strategy it is pursuing in connection with that territory.

Madrid, 23 May 2005. – The Secretary of State for Relations with the Cortes".

(*BOCG-Congreso.D*, VIII Leg., n. 229, pp. 705–706).

Again, in reply to a parliamentary question in Congress regarding the negotiations with the United Kingdom on Gibraltar, the Government reported as follows in connection with the Forum for Dialogue:

"On 27 October 2004 the Foreign Ministers of Spain and the United Kingdom announced the establishment of a new three-way Forum for Dialogue on Gibraltar. Subsequently, on 8 and 9 December 2004, agreement was reached on the launching and the conditions of that Forum. The first formal meeting of this Forum took place in Malaga on 11 February last. That meeting addressed issues of great importance for all the parties:

1. Airport: The parties began to explore different formulas to achieve a situation where Gibraltar airport is beneficial both to Gibraltar itself and to the *Campo de Gibraltar.*

2. Submarines: The Spanish government asked the British government to see that nuclear systems of submarines are not repaired at Gibraltar and to issue a written declaration to that effect.

3. Barrier: The Forum analysed the present situation as regards crossing the Barrier and agreed to expedite crossing, subject to legal and security requirements.

4. Telecommunications: It was agreed to promote meetings between experts and the telephony regulators concerned to seek solutions to the existing problem of telephone communications in Gibraltar.

(. . .)

The issue of pensions for former Spanish workers in Gibraltar was addressed by experts at a meeting of a Work Group in London on 28 January. This meeting, in which Spanish, British and Gibraltarian technical experts took part, served as a means to exchange information, documentation and points of view on the situation, which affects between 5000 and 6000 Spanish pensioners.

The Spanish delegation made it quite clear that it acceded to this exchange of information without prejudice to the work being carried on by the European Commission with a view to adopting a position on the compatibility of the present pension system in Gibraltar with current Community Law.

In this connection, at a meeting of the Members of the Commission of the European Union held on 16 March last, it was decided to remit a letter of formal notice to the United Kingdom regarding discrimination on the basis of residence against former Spanish workers in Gibraltar, who do not receive a pension supplement that is received by pensioners resident in Gibraltar (known as the 'Household Cost Allowance'). The authorities of Gibraltar are presumably practising direct discrimination for reasons of nationality, which the Treaty prohibits.

The European Commission has given the United Kingdom two months in which to remedy this situation, which could have serious economic consequences for the British Treasury. If the European Commission's recommendation is not accepted, the United Kingdom will be brought before the Court of Justice of the European Communities.

And again, the agenda of the first Málaga meeting of the Forum for Dialogue included the matter of the airport. At that meeting the participants began to explore the different possible formulas for joint use of Gibraltar Airport, and it was decided to set up a group to deal with the technical aspects.

On 10 March last a tripartite delegation visited Geneva Airport to determine whether any of the procedures permitting joint use of that airport by Switzerland and France could be used in the case of Gibraltar Airport.

The Forum participants have exchanged basic documents with a view to establishing a formal framework for the future agreement. The conversations are progressing normally, and a technical group will shortly be created to clear up all the technical aspects of the future agreement. Given the complexity of the matter and the sensitivity of the territory where the airport is situated (Spain never ceded the isthmus), it will take time until the process is brought to a definitive conclusion.

Madrid, 30 May 2005. – The Secretary of State for Relations with the Cortes". (*BOCG-Congreso.D*, VIII Leg., n. 229, pp. 804–805).

In reply to a parliamentary question in Congress regarding Spain's representations to Great Britain to stop nuclear submarines putting into the naval base on the Rock of Gibraltar for repairs, the Government reported:

"... It cannot prevent nuclear-powered submarines from putting into the port of Gibraltar since the internal waters of the port were ceded by Spain to Great Britain by the treaty of Utrecht of 1713, and Spain does not have jurisdiction over these internal waters.

What the Government has done is to ask the United Kingdom, as a partner and ally, to adopt a constructive, cooperative attitude in this matter, especially with a view to assuring the safety of the population in the zone.

To that end the Spanish government included the subject of repairs to British nuclear submarines in Gibraltar in the agenda of the first meeting of the three-way Forum for Dialogue (Spain, the United Kingdom and the Government of Gibraltar) in Malaga on 11 February 2005. At that meeting the Spanish delegation recalled the commitment made in May 2001 by Foreign Secretary Robin Cook to the then Spanish Minister of Foreign Affairs Josep Piqué, not to allow more nuclear repairs to British submarines in the Port of Gibraltar.

Thus, the information that was passed on to the press after the first meeting of the Forum for Dialogue in Malaga and was agreed among all the participants included the following:

'We have also reviewed the question of repairs to British nuclear submarines in Gibraltar. We have agreed that owing to the sensitivity of this issue, we need to have elements to set the mind of the population in the zone at rest.

The Spanish government has asked the British government not to allow repairs to nuclear systems of submarines in Gibraltar.

The British government has confirmed that the repair of the *Tireless* was exceptional. The Spanish government has asked the British government for written confirmation of the declaration made by Minister Piqué repeating what Minister Cook had said'.

(...)

Madrid, 30 May 2005. – The Secretary of State for Relations with the Cortes". (*BOCG-Congreso.D*, VIII Leg., n. 257, p. 624).

VIII. SEAS, WATERWAYS, SHIPS

1. Baselines and boundaries

Note: See VIII. 3. Fisheries

In reply to a parliamentary question in Congress regarding the provisional delimitation of maritime boundaries between the Canary Islands and Morocco, the Government reported:

"At a meeting of the Spanish-Moroccan work group on delimitation of maritime boundaries on the Atlantic seaboard held at Rabat on 26 October 2004, preliminary agreements were reached on a number of points.

As a result, the parties have accepted the provisional median line as a criterion for provisional delimitation of the maritime areas concerned, which line may be modulated at the time of definitive delimitation in response to any circumstances that may be deemed pertinent for the purpose of reaching an equitable solution.

Because this median line is provisional, it will be used as a baseline in successive negotiations. However, the coordinates of this median line have yet to be plotted. They must be accepted by both parties.

Also, the Spanish and Moroccan delegations have agreed that negotiations are to constitute a package deal, so that none of the agreements reached will be final until all of them have been accepted. We would therefore stress that the delimitation of the median line is likewise provisional.

Madrid, 3 October 2005. The Secretary of State for Relations with the Cortes". (*BOCG-Congreso.D*, VIII Leg., n. 284, p. 218).

In addition, replying to a parliamentary question in the Senate regarding the agreement signed between Morocco and the Australian oil company Pancontinental to explore a territory including the city of Melilla, the Chafarinas archipelago and the island of Alborán, the Government reported:

"As soon as the Government learned of the possible granting of licences to explore in Mediterranean waters at the beginning of August last year, it immediately contacted the Moroccan authorities and received an assurance that no action of their Government would infringe Spanish rights.

Madrid, 29 March 2005. The Secretary of State for Relations with the Cortes". (*BOCG-Senado.I*, Leg. VIII, n. 207, p. 56).

2. Islands

Appearing before the Senate in plenary session to reply to a question from the Coalición Canaria Parliamentary Group of Senators on the Government's disposition regarding the legal status of the maritime and air space of the Autonomous Community of the Canary Islands, the Prime Minister Mr. Rodríguez Zapatero reported:

"... The Government has a receptive attitude as regards the importance for the Canary Islands as an Autonomous Community of their peculiarities as an archipelago, as is fairly obvious, logical and consistent with a basic principle regarding what waters and sovereignty over them mean in the International Law of the Sea. And all that is compatible with the autonomous community's desire to extend its powers for purposes of use of these waters, progress on the land and consequently the benefit of all Canary citizens, and I believe we will find a suitable formula in the statute".

(*DSS-P*, VII Leg., n. 62, p. 3371).

3. Fisheries

a) Portugal

In reply to a parliamentary question in the Senate, the Government reported on the meeting between representatives of Portugal and Spain at Lisbon on 20 July to discuss rights of access to the waters of Madeira and the Canary Islands:

> ". . .The meeting examined the criteria that the fishery authorities of Spain and Portugal will have to lay down for effective implementation and application of article 5 of Regulation (EC) No. 1954/2003 establishing conditions of access to waters within 100 miles of the Canary Islands, the Azores and Madeira, and if appropriate to formalise an agreement signed by the sectors of the Canary Islands and Madeira for fishing by certain tuna line-fishing vessels from both regions.
>
> In this connection, it was agreed that both delegations should move forward in establishing conditions of access for vessels from the islands and vessels traditionally fishing within 100 miles of the other archipelagos; the meeting therefore concentrated on setting out the initial conditions of access and left more concrete details of such access (number of vessels, fishing method, season, etc.) to a future meeting.
>
> It was agreed that the parties would meet the sectors concerned again to present concrete proposals and requests. Once that agreement is reached, it will be formalised by the fishery authorities of the two countries and forwarded to the Commission in compliance with the obligations laid down in article 5 of Regulation (EC) No. 1954/2003.
>
> Madrid, 26 October 2005".
>
> (*BOCG-Senado.I*, VIII Leg., n. 350, p. 60).

b) Morocco

In an appearance before the Congress Agriculture, Fisheries and Food Commission in connection with the Fisheries Agreement and Protocol signed by the European Union and the Kingdom of Morocco for the next four years, commencing on the first of March 2006, the Minister of Agriculture, Fisheries and Food, Mrs. Espinosa Mangana, reported:

> "(. . .)
>
> . . . The resumption of fishing relations, which had been suspended following denunciation of the previous agreement, in force from 1995 to 1999. One of the reasons for the success of the negotiations was the climate of dialogue and trust established between Spain and Morocco, the outcome of a series of fishery cooperation initiatives in the fields of research and training in sea fishing and fish farming, and of the normalisation of political relations between the two countries which, as you will recall, were resumed with the Prime Minister's official visit to Morocco in April 2004. . . .

The spirit of this agreement is moreover . . . cooperation between the European Union and Morocco aimed at promoting responsible fishing so as to assure the long-term conservation and lasting productivity of marine resources. This agreement is part of a new drive to establish partnerships between the European Union and third countries in matters of fisheries. This new approach, based on cooperation as I said, entails active participation to promote development of the fisheries sector in Morocco. For instance, through dialogue and prearranged agreement, a basis has been laid on which to promote rational, sustainable fishing and combat illegal fishing, and to encourage economic, financial, scientific and technical cooperation in the sphere of fisheries, and inter-company cooperation and integration.

. . . Out of 36.1 million euros that the European Union allocates annually to this agreement, 13.5 million per annum is set aside for the development of a lasting sectoral fisheries policy in Morocco. This amount of 13.5 million euros is specifically earmarked for the following purposes: 7.5 million for modernisation of the coastal fleet; 1.5 million euros to the programme for definitive withdrawal of drifting gill nets, an extremely important initiative for Spain's Mediterranean fishing sector in that it removes serious obstacles to their swordfish operations; and 5 million euros for other actions involving research, restructuring of small-scale fishing, marketing, training and so forth. I would therefore like to stress that 37 per cent of the annual counterpart will go to help fisheries development in Morocco. That is a major step forward and will benefit the Spanish joint ventures that have been set up there.

I would now like to highlight the main aspects of the agreement so that you can properly judge its scope. The duration is to be four years starting on the first of March 2006, and the aggregate amount involved over the four years is 144.4 million euros. So, before I was talking about annual figures, whereas now I am giving you the global figures for the first four-year period. But unlike the previous agreement, this one is tacitly renewable for identical periods unless denounced by either of the parties. That might happen, among other causes in the event of depletion of stocks, if it were found that Community vessels were making very little use of the agreed possibilities of fishing, or in the event of failure to fulfil the undertakings made in connection with the fight against undeclared and unregulated illegal fishing.

(. . .)".

(*DSC-C*, VIII Leg., n. 349, pp. 2–4).

c) NAFO

In reply to a parliamentary question in Congress about the closing of the fishing grounds in the NAFO area, the Government reported as follows:

"In 2003 the European Community, supported by Spain, proposed a long-term recovery plan to rebuild stocks of Greenland halibut, for which purpose the biomass of the stock must achieve a certain growth level.

The assessment conducted by the NAFO Scientific Council in June 2005 indicates that the population is growing according to plan and that overfishing could endanger it or cause a deviation.

As regards closing of the fishery, then, it was estimated that Spain had exhausted its quota for 2005, and therefore it was closed on 31 August so as not to endanger recovery of the stock.

Nevertheless, the fleet may continue to operate in NAFO international waters as long as it fishes other species for which there is still quota available, for example rays, red sea bream and forkbeard, and other incidental catches.

In addition, the Spanish fisheries authority has successfully negotiated the assignment of 1000 tonnes of red sea bream by Lithuania to the Spanish fleet operating in NAFO area of capture: 800 mt in area 1F and 200 mt in area 3M. This additional quota from Lithuania is in addition to 1300 tonnes, also of red sea bream, assigned by Germany without strings, which Spain can fish in areas V and VI in Greenland waters.

As to the scientific studies on the various populations in the fishing ground, NAFO conducts annual assessments of the most vulnerable stocks such as Greenland halibut, and three-yearly assessments of other populations.

Also, following the assessment conducted in June of this year, it was agreed at the latest NAFO meeting in Tallin last September to carry on with the schedule of catches envisaged in the 2003 recovery plan.

As to the social and economic consequences, that Plan was devised fifteen years ago to mitigate the economic effects on the fleets concerned. According to the projection model, any increase with respect the TACs proposed in the plan would have caused shrinkage rather than recovery of the stocks, leading to the collapse and closure of the grounds in a matter of years.

And finally, the Government and the fisheries sector are to draw up a management plan for the fleet with a view to tailoring its operations to the fishing available for 2006, which will be forwarded to Brussels.

Madrid, 11 November 2005. – The Secretary of State for Relations with the Cortes".

(*BOCG-Congreso.D*, VIII Leg., n. 305, p. 166).

4. Ships

a) Maritime Safety

Note: See X. 3. Maritime Pollution. Maritime Safety

In reply to a parliamentary question in Congress on initiatives to promote safety and risk prevention programmes on fishing vessels, the Government reported that the Spanish Fisheries Sector Action Plan:

"... will contribute to the design and implementation of measures to improve safety aboard vessels and of crews during fishing operations, and also to the

modernisation, competitiveness and improved profitability of the sector. The Plan is to consist of a number of measures relating to analysis and assessment, along with financial support measures to meet the costs of developing and implementing the Plan.

At the same time, a Cabinet Decision of 29 April 2005 introduced a number of joint initiatives involving the Ministries of Public Works, Agriculture, Fisheries & Food and Labour & Social Affairs for the purpose of improving safety on fishing vessels. One outcome of this decision is the creation of a Working Commission of representatives of the three Departments involved. The results of those assessments of risks and the analyses of the causes most commonly affecting safety conditions in fishing operations that are conducted in implementation of the Action Plan will be remitted to the tripartite Working Commission as contributions to the objectives laid down in the decision to set up the Commission.

Also, at the initiative of the Department of the Merchant Marine, a draft regulation is currently being drawn up to deal with safety in connection with vessels less than 24 metres in length.

Having regard to the Labour and Social Security Inspection System, protocols for inspection for purposes of prevention of industrial risks have been drawn up through working groups coordinated by the Deputy Directorate-general for the Prevention of Industrial Risks and Equal Opportunities Policy, a section of the Labour and Social Security Inspection Department, differentiating between vessels more than 15 metres in length and vessels of smaller length. These protocols come with a guidebook to facilitate inspections, with the ultimate aim always of reducing the accident rate in the sector and promoting improved health and safety conditions.

And finally, we wish to highlight the work of the Marine Social Institute, as a Social Security Management Body, on safety and accident prevention on board ship with no specific distinction between the fisheries sector and the merchant marine.

1. Regulatory framework

The regulatory framework governing safety, risk prevention and improvement of working conditions for seamen, and specifically for workers on fishing vessels, is Directive No. 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels, which for specific purposes of fishing incorporates the terms of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels is also fully applicable in the ambit of sea fishing.

The statutes specifically implementing these rules in Spain are the following:

– Royal Decree 1216/1997 of 18 July establishing minimum safety and health provisions for work on board fishing vessels.

– Royal Decree 258/1999 of 12 February establishing minimum conditions for health protection and medical care of seamen.

– Order PRE/930/2002 of 23 April modifying the required contents of first-aid kits on board vessels.

– Order PRE/646/2004 of 5 March establishing minimum conditions for specific health training programmes and conditions for the issuance and recognition of certificates of health training for seamen.

2. Measures that help to improve and ensure safety and risk prevention on board vessels.

Council Directive 93/103/EC of 23 November 1993 is based on the idea that compliance with the minimum standards that will assure a higher level of health and safety on board fishing vessels is essential to guarantee the safety and health of the workers concerned.

2.1. Training

One necessary, indeed essential measure to improve safety is training of workers themselves. To that end the Marine Social Institute annually implements training action plans through which it seeks to help seamen adapt better to new types of vessels, to become more familiar with safety techniques, new communications systems and so on.

The scheduled courses bearing most closely on safety and risk prevention on board, in broad terms, cover the following subjects:

– Health Training:

– Basic health training (first aid). Since not all vessels have a doctor on board, all persons taking ship are legally required to furnish evidence of health training at the compulsory basic level.

– Elementary specific health training: (first aid, basic life-saving, acting in emergencies, cardio-pulmonary resuscitation) intended for all officers on engine-room watch, and all officers, skippers and masters who have to do navigation watch on vessels that are required to carry a type C first-aid kit (sailing or fishing less than 12 miles or 24 hours from the coast).

– Advanced specific health training: (advanced nursing, first-aid kit management and remote medical consultation) intended for all officers, skippers and masters who have to do navigation watch on vessels that are required to carry a type B or C first-aid kit (more than 12 miles or 24 hours from the coast)

– Advanced specific health training: (advanced nursing, first-aid kit management and remote medical consultation) intended for all officers, skippers and masters who have to do navigation watch on vessels that are required to carry a type B or C first-aid kit (more than 12 miles or 24 hours from the coast)

– Training in prevention of industrial risks.

– Training in safety at sea.

– Training in marine communications.

Specific information on the training activity of the Marine Social Institute in

the fields of safety and risk prevention at sea and health training is supplied in the relevant annex.

2.2. Health and safety on board

– Pre-embarkation medical examinations, intended to ensure that employees board ship in the best possible physical and mental shape, that they are not suffering from any disorder that could be made worse by working at sea or that might pose a danger to the others on board.

– Assistance by the Radio-Doctor Centre, to guarantee urgent medical attention for crew members.

– Prevention campaigns:

– to raise awareness of certain risks.

– Conduct of epidemiological studies, vaccinations, disease prevention campaigns, health promotion campaigns, etc.

– Control and inspection of first-aid kits on merchant vessels.

– The On-board Health Guide.

– Verification of public health conditions on vessels.

– Technical Guide for assessment and prevention of risks relating to working conditions on board fishing vessels, published by the National Institute of Health and Safety, compiled with the help of the Marine Social Institute.

Madrid, 8 June 2005. The Secretary of State for Relations with the Cortes". (*BOCG-Congreso.D*, Leg. VIII, n. 237, pp. 274–275).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

1. In General

In response to a query raised in Congress concerning action taken within the framework of the European Union's Environmental Technology Action Plan in 2005, the Government provided the following explanation at its 8 June appearance:

"The Ministry of the Environment is drawing up a new Ministerial order on the implementation of environmental criteria for government procurement to replace the Order of 14–10–1997 based on information compiled from the different units.

We are working with the Public Procurement Advisory Board on the modification and adaptation of contract conditions for supplies and services.

We are also working on improving the energy efficiency of the *Nuevos Ministerios* complex, headquarters of the Ministries of the Environment, Labour and Public Works, bearing in mind not only the buildings and annexes but also the civil servants employed at that complex as consumers of energy in their daily work,

paying special attention to work-related travel and transportation from their homes to the workplace. Actions include energy certification of buildings with a view to reducing energy consumption and improving efficiency and the study and evaluation of the possibility of incorporating thermal and photovoltaic solar energy.

Bilateral meetings have been held with the United Kingdom to share experiences and points of view regarding drinking water treatment plants (DWTP) and especially concerning 'green purchases'.

We are active participants in the expert working groups on DWTP where they are looking into the possibility of presenting a pilot project on performance targets (draft stage) in coordination with the Ministry of Foreign Affairs and the Permanent Representation of Spain to the European Union (Sp. Acronym REPER).

A DWTP working group has been set up at the Ministry of the Environment to coordinate efforts, especially with the Ministry of Education and Science responsible for the national research programmes, as well as with other ministries for the drafting of a National Environmental Technology Plan to define the strategy for the implementation of these technologies and priority areas of action to be taken up by the rest of the administrations involved and by social and economic agents.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 218, p. 87).

A query was raised concerning the Government's assessment of the United Nations Environment Programme (UNEP) and was answered in the following terms on 27 June 2005:

"In the aftermath of the Stockholm Conference on the Human Environment, Resolution 2997 (XXVII) of the UN General Assembly officially established the United Nations Environment Programme (UNEP) as the central axis of international environmental cooperation and the drafting of international treaties. The said resolution likewise established the UNEP Board of Directors as a forum where the institutional community can address emerging high-level political issues. . . . In 1992 the United Nations conference on environment and development reaffirmed the UNEP mandate as the main body focusing on the environment within the United Nations system and supported the bolstering of UNEP and its Board of Directors.

For the last several years the UNEP has been doing commendable work in the area of environmental policy and the promotion of international cooperation, enforcement of United Nations environmental programmes and the evaluation and exchange of know-how within the scientific community and the ongoing review of national and international environmental impact policies and the measures adopted by developing countries for the enforcement of environmental programmes and projects, guaranteeing the compatibility of the said programmes with the development plans and priorities of these countries.

The latest period of sessions of the Board of Directors – World Environmental Forum at the UNEP ministerial level held recently, concluded with the adoption of a series of decision among which special attention should be drawn to the need to strengthen the UNEP's scientific basis, the universality study conducted by the UNEP's Board of Directors and supported by the Spanish Government, the development of criteria on gender equality and assistance to governments concerning matters of social and economic policy for the eradication of poverty.

The Ministry of the Environment participates on a regular bases at the meetings of Member Countries and high-level meetings are also held between the Minister of the Environment and the UNEP Executive Director, Klaus Töpfer, at international and national forum meetings and at meetings organised at the initiative of the two officials.

In this context, we would stress the participation of the Delegation of the Ministry of the Environment at the 23rd period of sessions of the Board of Directors-World Environmental Forum on 21 to 25 February in Nairobi . . .

(. . .)

Worthy of mention is the Spanish intervention having regard to water and sanitation policy within the framework of Millennium Development Goal No 7 which stresses the need to put sustainability issues at the top of the political agenda to guarantee the supply of quality water and Spain's support for the adoption of a Decision concerning Water and Sanitation was repeated, highlighting a focus on rural areas, adapted technologies, gender issues and governance. The Spanish representation also supported, as co-sponsor, the motion for a Decision on gender which was proposed by the women Ministers present.

At the meeting between the Spanish delegation and the Executive Director of the UNEP, the latter was informed of the Spanish Government's decision to support the creation of a United Nations Environmental Organisation and to study an increase in our contribution in line with the indicative scale . . .

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 229, pp. 368–369).

On 31 October the Government also responded to a query raised in Congress concerning the social and environmental advantages of enforcing the Stockholm Convention ratified by Spain:

"The aim of the Stockholm Convention is to protect human health and the environment from persistent organic pollutants (POPs) by reducing and eliminating these pollutants when possible.

Spain ratified the Stockholm Convention on 28 May 2004 thus becoming party to it. Entry into force in Spain took place on 26 August 2004.

In order to implement the provisions of the Stockholm Convention, the European Union passed Regulation 850/2004 on POPs which entered into force for all Member States on 20 May 2004. This is linked to other legislative instruments which already partly included the Convention's obligations.

(. . .)

Both the Stockholm Convention (Art. 7) and Regulation (EC) No 850/2004 of the European Parliament and of the Council (Art. 8) call for the drawing up of a National Implementation Plan (NIP) to comply with all of the provisions laid down in these two regulatory instruments of persistent organic pollutants.

Art. 7(2) of the Stockholm Convention stipulates the need to consult with the direct stakeholders at national level for the drafting, enforcement and update of the implementation plans. Art. 8 of Regulation (EC) 850/2004 calls on Member States to give the public early and effective ways to participate in the drafting of the National Implementation Plans.

The technical implementation of the NIP should also take stock of the "Internal guidelines for the development of a National Implementation Plan of the Stockholm Convention" drawn up by the Chemical Products Department of the United Nations Environmental Programme (UNEP) and the World Bank with a view to encouraging compliance with Convention provisions.

These Guidelines provide that, to assure the participation of all relevant stakeholders, countries must appoint or constitute a National Administrative Body to take responsibility for the development and drafting of the National Implementation Plan. In addition to focusing on Convention obligations, the Guidelines also provide that the Plan must contain chapters on financial and technical assistance for developing countries.

Hence, the Ministry of the Environment . . . formed a National Coordination Group on POPs following a number of meetings with stakeholders.

The National Coordination Group is composed of experts from different sectors of industry, non-governmental environmental organisations, trade unions, consumer associations, universities and the scientific community, Autonomous Communities and the General State Administration. Procedural rules, general priorities and a schedule of actions and meetings have been agreed.

(. . .)

The National Implementation Plan is expected to be ready by May 2006, i.e. within the two-year deadline laid down in the Regulation and the Convention.

For all of the foregoing, the Ministry of the Environment holds that the enforcement of the Stockholm Convention will provide irrefutable social and environmental advantages. It will contribute to the reduction or elimination of pollution produced by these compounds and, by means of the effective operation of the National Coordination Group, will guarantee the participation of the society while raising the latter's awareness and providing ample information regarding this problem.

An additional advantage is the assurance of relevant stakeholders and hence, the consolidation and enforcement of sustainability policies for the chemical industry, an objective being pursued by the Government".

(*BOCG-Congreso.D*, VIII Leg., n. 284, pp. 239–240).

On 14th September 2005 the Minister of the Environment, Ms. Narbona Ruiz, appeared before the Senate Plenum to respond to a query relating to the actions her Ministry has undertaken or plans to undertake this year to combat desertification.

"Spain has adhered to the 1994 United Nations Convention to Combat Desertification. Despite this, Spain has yet to submit a final draft of its national programme to combat desertification which it has been working on all of these years but has not finished. The Ministry has sent an updated draft to the United Nations Secretariat so that we might have a tool which not only involves the Ministry of the Environment and the different competences of the Government, but also the Autonomous Communities which have to respond to the pressures of agriculture, urban development and forestry policy all presenting risks to the quality of our land.

In any case, the Ministry of the Environment is making a significant investment . . .

The Ministry is also conducting the national soil erosion inventory. This inventory must be updated every ten years and we therefore update five provinces annually to make erosion detection an ongoing process and to be able to assess the process followed in each area of Spain.

The Ministry also maintains a network of experimental monitoring and evaluation stations regarding erosion and desertification. We currently have 46 active experimental stations in 13 Autonomous Communities.

And lastly, the Ministry is drawing up a very detailed map of areas affected by desertification to be used as an action tool.

We hold the opinion that the fight against desertification, as well as combating climate change or the prevention and fight on pollution, are among the major environmental challenges which must be more firmly addressed in Spain and that is the reason that President Rodríguez Zapatero announced at the last President's Conference that next year's conference will focus on assessing, in conjunction with the Autonomous Communities, how to make headway with these environmental challenges, bearing in mind the structure of Spain in terms of the powers and responsibilities of each of the administrations".

(*DSS-P*, VIII Leg., n. 51, p. 2744).

2. Protection of Biodiversity

On 7 July 2005 the Government appeared before Congress to reply to a query regarding plans for the implementation of a Biodiversity Data Bank.

"The Biodiversity Data Bank (BDB) is a constantly evolving project as can be deduced by its very nature given that it is the depository of all of the georeferenced information generated by the work undertaken at the Directorate-General for Biodiversity at the Ministry of the Environment. In addition to being the depository, it is also responsible for the collection, analysis and dissemination of the information both within the aforementioned Directorate-General and to the outside. It is, therefore, one of the environmental cartography and information reference centres at national level and this is what makes it particularly relevant.

There are a series of ongoing annual projects such as the National Forest Inventory, the National Soil Erosion Inventory, the Spanish Forestry Map, the National Biodiversity Inventory, etc. which download all of the information they generate to the BDB.

As for the cartography, the BDB uses the products of the National Geographical Institute. The continuous renovation of these products means ongoing development in this connection.

And lastly, in terms of disseminating all of the cartography and information on deposit at the BDB, efforts are now under way to make it available through the Internet. While the BDB already has a cartographic server, it is being made more accessible and is to be integrated into the generic server being developed by the Ministry of the Environment to provide service to all areas of the department".

(*BOCG-Congreso.D*, VIII Leg., n. 237, p. 354).

Subsequently on 2 August, in response to a parliamentary query, the Government explained to Congress the contents of the proposal debated at the COMAR meeting held on 13 May 2005 regarding the conservation of marine biodiversity in international waters:

"(. . .)

The aim pursued by Spain is to forge ahead in the preparation of a Common Position which is consistent with the commitments made at the Johannesburg World Summit on sustainable development and in accordance with the requirements called for under international law (United Nations Convention on the Law of the Sea, the Agreement on Straddling Stocks and Highly Migratory Species and the Biodiversity Convention) and European Community law. Our aim is also to offer an integrated approach able to respond to all of the problems affecting the marine environment and the conservation of marine biodiversity.

At the COMAR meeting held on 13 May, the Member States basically examined the second draft of the Common Position drawn up by the Presidency. A third version was also distributed on an informal basis . . .

. . . Both documents are based on the premise that there is currently no legal framework suited to the conservation and sustainable use of biodiversity in areas situated beyond national jurisdiction. In light of this situation, the Presidency tabled the short-term proposal of fostering cooperation between international bodies and regional programmes, support for certain private initiatives and the implementation of urgent action which, based on the use of the best scientific information and exercise of the precautionary principle, would have a positive effect on certain harmful practices and could result in the implementation of a moratorium, limited in time and space, which would cover certain fishing activities, especially bottom trawling. Over the medium term, the Presidency proposed the adoption of an instrument by which to enforce the United Nations Convention which would be limited exclusively to the protec-

tion of biodiversity in areas outside of national jurisdiction. . . . Moreover, the President's draft would exclude mining, bioprospection and the use of genetic resources from biodiversity protection measures.

The stance taken by Spain . . . was based on an integral approach to the ecosystem which should cover marine areas, i.e. those under national jurisdiction and those beyond the control of governments, and all of the activities liable to cause them damage including fishing, mining, bioprospection and the use of genetic resources. Spain's position was based on the conviction that the existing legal framework should be completed and fully enforced, calling on all States to be responsible and fully comply with their obligations in areas under their jurisdiction and in respect of ships flying their flag. As for short-term measures, the need to bolster the role of regional fishery organisations was stressed . . . As for areas not regulated by these organisations Spain proposed, on a case-by-case basis and using the best available scientific information, to temporarily prohibit (based on the precautionary principle) all activities liable to damage the marine environment and not only certain forms of fishing. Furthermore, . . . it proposed the temporary prohibition of bottom trawling of the Atlantic, Indian and Pacific Ocean ridges. As for a long-term strategy, the Spanish delegation expressed the conviction that it appears premature to adopt an instrument of application for the 1982 Convention limited solely to the protection of biodiversity. If this option is chosen, however, it should cover all aspects of marine environment protection and not exclude any activity.

No consensus was reached at the 13 May COMAR meeting owing to the vast differences in opinion expressed by several of the delegations (Germany, the Netherlands, Belgium, Italy, Greece, United Kingdom, Sweden, France, Portugal, the Commission and Spain) in respect of different aspects of the Common Position draft".

(*BOCG-Congreso.D*, VIII Leg., n. 252, p. 592).

3. Marine Pollution. Maritime Safety

In its 4 July 2005 reply to a query raised in the Senate concerning the measures adopted or envisaged by the Government to minimise illegal dumping by European Union vessels off the coast of the Autonomous Community of Catalonia, the Government stated as follows:

"The Government of Spain, like the governments of other neighbouring States, has been unable to collect verifiable evidence of the amount of oil of any type illegally dumped in the sea by vessels given that quantification is practically impossible for two main reasons:

– These operations are generally undertaken at night or when no means of surveillance is nearby to detect them.

– Once the oil reaches the coast it is difficult to calculate what proportion of the sludge is actually oil and what part is sand, stone, etc.

Hence, the figures appearing in the media or in certain publications are speculative in nature. . . . Immediate action is taken in accordance with national and international legislation in force whenever it is possible to identify a vessel allegedly responsible for marine pollution.

As concerns prevention and combating marine pollution, the Government has begun to develop different action plans whose principal aim is to provide the State with modern and effective means for marine surveillance, the detection of possible infractions, to combat black tides at sea and to persecute possible perpetrators as provided for by national and international rules governing these matters.

The Government has been undertaking different initiatives whose purpose is to prevent and combat possible spills of pollutants in Spanish waters. The following is a summary:

– Improvement of the sea, air and electronic maritime surveillance capacity of the Rescue Service, an operational body of the Directorate-General of the Merchant Marine under the auspices of the Ministry of Public Works. These improvements have been made on a yearly basis and account for large investments in material and human resources.

(. . .)

– Increase of the activities envisaged under the collaboration agreements with the Navy, the Air Force, the Customs Patrol Service and other national and regional bodies and institutions responsible for surveillance at sea and pollution detection.

– Increase in the number of inspections at our ports . . .

– Periodic review of national pollution prevention legislation with a view to increasing efficacy.

– Impetus for parliamentary ratification of new international rules on preventing and combating pollution such as:

– Annex VI of the International MARPOL Convention 73/78 regarding the prevention of air pollution from ships.

– The International Convention on the prohibition of organotin compounds in anti-fouling paint used on ships.

– The new Protocol of the International Convention on Oil Pollution Preparedness, Response and Co-operation of 1990 (OPRC) on combating potentially dangerous toxic substance pollution other than oil (OPRC-HNS).

Moreover, work is under way to amend the National Contingency Plan for Accidental Sea Pollution in light of the accumulated experience in sea pollution since the publication of the Order on 23 February 2001 approving the said Plan. This work is based on the guidelines of the International Maritime Organisation and the Community regulations and directives passed subsequent to the publication of the 23 February 2001 Order having to do with sea pollution from ships. Consensus will be sought from the coastal Autonomous Communities in the approval of the new contingency plan in light of the latter's competences laid down in their respective Statutes of Autonomy.

The Order of 23 February 2001 makes recommendations to the Autonomous Communities in connection with the drafting of their territorial action plans in the event of sea pollution. To date, the only Autonomous Community which has developed its own Territorial Accidental Sea Pollution Contingency Plan with the help of the Directorate-General of the Merchant Marine under the Ministry of Public Works is Catalonia.

And lastly, we would point out that on 12 May 2005 the first meeting was held in the Balearic Islands on the possibility of signing an agreement for the Sub-regional Surveillance of the Western Mediterranean. This proposal was tabled by the Spanish Government and will be discussed with representatives from the governments of Italy, France and Monaco and with observers from different international organisations. The aim of the agreement is to enhance protection of the Western Mediterranean from illegal dumping from ships".

(*BOCG-Senado.I*, VIII Leg., n. 268, pp. 72–3).

Plans for the progressive elimination of single-hull oil tankers was the topic of a parliamentary query which the Government answered in the following terms in an appearance before Congress on 20 July:

"The Spanish Maritime Administration will urge the European Maritime Safety Agency, European Union body specialised, inter alia, in the prevention of sea pollution and which is responsible for the control and the drafting of a list of single-hull oil tankers affected by enforcement of the Regulation concerning the accelerated introduction of rules governing matters of double-hull or similar design for single-hull oil tankers.

It will also file a similar petition with the International Maritime Organisation (IMO) concerning tankers affected by the amendment of the Marpol Convention.

In the international arena we would refer, in addition to the Basil Convention . . . calling for compliance with its scrapping requirements in our country, to the specific regulation applicable to the scrapping or recycling of ships which, according to the IMO denomination, the United Nations organisation specialising in these matters, are the "IMO Guidelines concerning the Recycling of Ships", Resolution 962 of the 23rd General Assembly adopted on 5 December 2003 providing detailed regulations concerning all relevant aspects of ship recycling and which will be the rule of reference for the granting of authorisation for the scrapping of ships.

In this connection, the Spanish Maritime Administration will submit this issue to the European Commission so that the scrapping of Member State flag ships will conform to the aforementioned rule".

(*BOCG-Congreso.D*, VIII Leg., n. 245, p. 168).

On that same date the Government appeared before Congress to answer a question concerning the actions and resources envisaged to combat pollution of the sea, the coasts and the estuaries of Galicia:

"A concerted effort is currently being made to remedy some of the problems stemming from the Prestige accident which have not yet been fully resolved and which continue to have a negative effect on the environmental conditions of the Galician coast.

(. . .)

. . . The Ministry of the Environment, in coordination with the Centre for the Prevention and to Combat Sea and Coastal Pollution (Sp. Acronym CEPRECO), under the auspices of the Ministry of the Presidency, has deployed a surveillance device along the *Costa de la Muerte* for the elimination of waste and is simultaneously monitoring the evolution of the most affected ecosystems, specifically those included in the SIC list (sites of Community importance) along the *Costa da Morte.*

(. . .)

In certain sensitive areas where it was not possible to use hydro-cleaning devices to remove the oil clinging to rock surfaces, bioremediation techniques are being employed. This is the case of the Atlantic Islands National Park and along the rest of the Galician coastline (focusing mainly on the *Costa de Morte*) and in the Cantabrian communities under the supervision of the Institute for Marine Research of Vigo (High Council for Scientific Research, Sp. Acronym CSIC). The process is unavoidably slow but we have remained hard at work at all times. In fact, during the course of 2005, €26 million will be spent on the environmental recuperation of ecosystems.

(. . .)

Together with this recuperation and coastal protection work, other marine environment efforts have been made with a view to pollution prevention.

In this connection, we have stepped up our diplomatic efforts within the different international maritime organisations (the International Maritime Organisation, the European Maritime Safety Agency, etc.) with a view to supporting international regulatory reform in the sense of strengthening navigational requirements concerning vessel safety and maritime traffic.

Inspection measures are being strengthened for national vessels and for those calling at our ports. To this end the number of inspectors has been increased.

Maritime façades have been reinforced and harbourmasters have been provided with pollution coordinators, available means and materials have been strategically distributed and four new anti-pollution tugboats have been added to the fleet. Also, a cleanup ship provided by the European Maritime Safety Agency will be situated off our coast.

According to the information furnished by the Ministry of Public Works regarding anti pollution equipment, two multi-use rescue vessels featuring the following characteristics are currently under construction: 56 metres in length with a tug capacity of 100 tonnes and collection capacity of 300 tonnes. This ship will begin to operate next year.

This year a pollution collection vessel of the European Maritime Safety Agency will also commence operation along the Atlantic façade with a collec-

tion capacity of over 1,000 cubic metres. These vessels will be joined by a further two multi-use rescue ships in 2006: 75 metres in length with a tug capacity of 190 tonnes and collection capacity of over 100 cubic metres.

During 2005 the Merchant Marine Directorate-General of the Ministry of Public Works will engage a total of 25 people including an important number of naval and maritime inspectors with a view to increasing the number of checks and enhancing maritime transport safety. Likewise, in 2005 thirty more people will be added to the SASEMAR staff and Sea Rescue will be endowed with another crew for search and rescue missions.

As for airborne equipment for surveillance and rescue, Helimer helicopter waiting times will be shortened by having them prepared on the bases with their crews 24 hours a day. . . .

This year the aim is also to provide coverage for the south-eastern part of the Peninsula with another helicopter and in 2007–2008 air patrols will be established with fixed wing aircraft. These aircraft will be provided with recognition sensors aiding in the search and detection of pollution. We are thus implementing preventive measures which will put us on a par with other European countries.

In economic terms, the budget for the maritime safety and coast guard programme under the auspices of the Ministry of Public Works for 2005 is €140.3 million. This represents an increase of 13.6%. SASEMAR's net budget has also been increased by 25% vis-à-vis 2004 with a current budget for this public company in 2005 of €100 million".

(*BOCG-Congreso.D*, VIII Leg., n. 245, pp. 278–279).

4. Fresh Water

The measures being taken by the Government to recover the quality and ecology of Spanish rivers were the object of a Senate query. The Government responded on 1 March 2005 stating as follows:

"Ecological status is a concept which is referred to in Law 46/1999 of 13 December amending the Water Act, Law 29/1985 of 2 August concerning water planning and dumping authorisations. However, it was not until the entry into force of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 . . . that guidelines were given regarding how to assess that status. It was therefore as of that time that management took on real importance.

The principles of this Directive have been transposed into Spanish legislation via Law 62/2003 amending the consolidated text of the Water Act, Royal Decree Law 1/2001 and Royal Decree 606/2003 amending the Public Water Domain Regulation, Royal Decree 849/86.

(. . .)

The Framework Directive issues the objective of achieving a proper state for surface water by 2015 and defines this state as:

(. . .) 'the general expression of a surface water mass determined by the lowest value of its ecological state and of its chemical state'.

(. . .)

The Directive envisages five classes of ecological state based on the degree of alteration of the water mass with respect to its reference conditions: very good state, good state, moderate state, deficient state and poor state. The reference conditions (RC) are those representing the values of the ecological quality indicators of that type of water mass in a pristine state as defined in Annex V(1)(2).

(. . .)

Reference conditions cannot be the same for all water masses. Only similar water masses from an ecological standpoint will share the same reference conditions. As a result, the first step in defining the said conditions is to establish water mass types. To that end the Directive lays down two systems (A and B) described in Annex 11.1.1 and 1.2.

(. . .)

Therefore, when speaking strictly of measures to improve the ecological state of rivers, it is first necessary to define a classification system for the ecological state of water masses which includes all of the issues laid down in the Framework Directive. To this end, and as indicated in the Directive, the following series of preliminary works is under development:

– Water masses have been classified.

– The Pressure and Impact exercise laid down in Art. 5 of the Directive is under way.

– Preliminary work has begun for the establishment of Reference Conditions for each type of water mass.

– Control networks to determine ecological status by means of biological indicators are currently being implemented.

Once all of these works have been concluded within the time frame envisaged in the Directive (December 2006), a classification can be made of the ecological state of water masses and a programme can be implemented to guarantee the proper ecological state of water masses which, in accordance with the Directive, must be functional before December 2009.

Strictly speaking, therefore, we still do not know the ecological state of our water masses, meaning that the measures to be implemented within the context of the Framework Directive are still not operational. However, a great many administrative initiatives have been undertaken which can perfectly be considered beneficial to the ecological state of rivers. The following is a summary of those initiatives:

Measures for the control and monitoring of water quality (control networks)

The main instrument used to monitor and for surveillance of the state of inland water masses is the water quality control network.

Today there are networks for the control of surface water and for the control of ground water. These networks are designed to control water use, to evaluate compliance with the law and to monitor the evolution of overall quality.

(. . .)

Measures to control dumping

– New dumping management legislation.

– Implementation of the figure of collaborating entities based on compliance with standard UNE-EN ISO/IEC 17025 (in replacement of Collaborating Enterprises of the basin Organisation) to support dumping control.

– In support of all of the initiatives related to dumping, a "Waste water management handbook" is being compiled.

– Improvement in the quality of urban waste – National Sanitation and Sewage Treatment Scheme.

(. . .)

– Measures to control priority substances.

(. . .)

– Voluntary agreements. Voluntary agreements with industrial sectors have proven to be an effective instrument in the development of pollution reduction programmes.

(. . .)

In summary, strictly speaking the ecological state of Spain's rivers is unknown owing to the fact that the tools needed to make this determination are currently being developed in accordance with the specifications laid down in the Framework Directive on Water. However, the Government has undertaken a great many initiatives whose aim is to enhance the quality of our rivers as I have just outlined".

(*BOCG-Senado.I*, VIII Leg., n. 186 pp. 79–82).

5. Climate Change

On 7 January 2005 the Government stated as follows in an appearance before the Senate to respond to a query concerning measures taken to refocus energy policy and reduce greenhouse gas emissions in compliance with the Kyoto Protocol:

"The Ministry of Industry, Tourism and Trade is reviewing and updating the different energy plans, especially the Plan to Foster Renewable Energies 2000–2010 and the Spanish Energy Savings and Efficiency Scheme 2004–2012 (E4) to better adapt energy use and reduce greenhouse gases in compliance with the Kyoto Protocol.

This revision is based on the following activities:

a) The fostering of renewable energies . . . Development of renewable energy sources is one of the key aspects of our national energy policy due to its efficient contribution in reducing greenhouse gas emissions.

b) Encouragement for energy savings and efficiency mechanisms which comply with the objectives of the revision of the Spanish Energy Savings and Efficiency Scheme (E4) . . .

c) Clear support for development and research into non-conventional forms of energy, fostering better use of factors and improvement in processes and products through entrepreneurial development and innovation.

> Moreover, and included in the plans under way, an important change is taking place in the technological structure of electricity generation with a significant rise in installed power and natural gas production (combined cycle and cogeneration) and renewable energies. This trend also implies a reduction in greenhouse gas emissions".
>
> (*BOCG-Senado.I*, VIII Leg., n. 151, p. 144).

Subsequently, on 14 September in reply to a query at the Congress Plenum, the Minister for the Environment, Ms. Narbona Ruiz, referred to the climate change talks at the Council of Ministers of the Environment of the European Union held on 24 June:

> "We unanimously agreed that [the forthcoming meeting of the UN Climate Change Convention to be held in Montreal] will be the time to commence negotiations with other countries around the world concerning the framework for combating climate change beyond 2012. We are convinced that talks should commence with the large nations which have still not committed to a reduction in greenhouse gases because the problem of climate change is already having a profound effect on the safety and living conditions of our planet. Therefore, swift action must be taken. If business investments decisions are to be taken today concerning a transformation of the energy model on a world scale, we must provide a framework of certainty from a legal and institutional point of view which extends beyond the year 2012. There was unanimous agreement on this point, . . . and I promised to negotiate with the countries of Latin America. Next week in Panama, at the Latin American forum of Ministers of the Environment, I will have the opportunity to make further headway in the task which was begun last year with the creation of a Latin American network of climate change offices with the establishment of memorandums and the task of establishing the conditions under which those countries which currently have made no commitment to freeze or reduce greenhouse gas emissions will reconsider their positions. You will also recall that the European Council has carefully laid down the principles by which to advance beyond 2012 within a sufficiently flexible and balanced framework so that the distribution of responsibilities among the different nations of the world is in tune with their capacity and level of economic development".
>
> (*DSC-P*, VIII Leg., n. 109, p. 5494).

Also on 3 October, the Minister for the Environment appeared before the Senate Environmental Commission to respond to a query concerning the Government's outlook in terms of collaborating with the Town Halls to comply with the Kyoto Protocol. The Minister responded in the following terms:

> ". . . We must be capable of devising environmental polices at all three levels of government, each one within the framework of its competences. Oftentimes the Ministry of the Environment is unable to intervene directly in what is clearly the jurisdiction of another administration. Therefore, in the specific case

of the Town Halls, we have established institutional collaboration with the Spanish Federation of Municipalities and Provinces which forms part of all of the consultation and advisory bodies of the Ministry of the Environment. . . .

Specifically in terms of compliance with the Kyoto Protocol . . ., the first decision taken was to encourage a Spanish network of pro-climate cities in accordance with the Spanish Federation of Municipalities and Provinces with a view to setting up a framework of collaboration and support and to drive the policies developed by the Town Halls within the limits of their jurisdiction such as transport, energy usage in municipal buildings, street lighting, etc. So work is being done in that connection. The Spanish Network of Pro-climate Cities was launched and now has 109 members accounting for approximately 15 million citizens living within those municipalities. . . .

An urban waste management handbook is also being compiled with the focus that you mentioned of recommending technologies and solutions to reduce methane emissions...

. . . All of the Town Halls which have voluntarily joined this network have committed to undertaking a series of tasks which have to be evaluated by means of indicators and results must be controllable by the citizenry through open participation forums.

Moreover, the Government has approved a new renewable energy plan for the distinct purpose of intensely encouraging renewable energies, especially those related to biomass. Here at the Ministry of the Environment, together with the Ministry of Industry and the Ministry of Agriculture, we are working to encourage an increase in the use of bio fuels in Spain, . . .

And of course, in addition to all of the foregoing, the Ministry is trying to encourage the participation of individual Town Halls in the whole series of subsidies focused on promoting research and technological development in the area of the environment.

(. . .)".

(*DSS-C*, VIII Leg., n. 208, pp. 8–9).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

a) General Lines

The Secretary of State for International Cooperation, Mrs. Pajín Iraola, appearing before the Commission for International Development Cooperation of the Congress to inform regarding the general lines of action of the Spanish Cooperation Master Plan for the period 2005–2008, stated as follows:

"(. . .)

The Master Plan is drawn up in accordance with a mandate of the Cooperation Act 23/1998, . . . Approval has been given for a commitment shared by the United Nations organisations, the Organization for Economic Cooperation and Development (OECD) and the Bretton Woods institutions, the World Bank and the International Monetary Fund and also by a growing number of countries from both the North and South. This change is due to the acceptance, by almost all of the beneficiary and donor countries, of the Millennium Declaration, its objectives, goals and indicators and the adaptation of their cooperation systems to this agenda. With this Master Plan the Government seeks to contribute more and more efficiently to this agenda . . . I should also point out that the millennium development goals focus on the entire international community, North and South, and address some of the many dimensions of poverty and its effect on the lives of individuals with its sights set on the year 2015.

What is the ultimate objective of the Master Plan for cooperation? . . . The fight against poverty, defined as the lack of opportunity and options to support a dignified standard of living. . . . In this way Spanish cooperation seeks to contribute to the process of broadening opportunities for which the capacities and freedoms of disadvantaged persons must be enhanced meaning that we must focus attention on the different factors which affect processes of social change. . . . First of all, the Government has committed a sum for Official Development Assistance. The increase envisaged in the 2005 budget will enable Official Development Assistance to reach 0.3% of GDP this year. . . . This also puts us on the path to meeting the commitment made by the Government to double the percentage of Official Development Assistance with respect to GDP during the course of this legislative period until reaching 0.5% of GDP in the 2008 budget as stipulated in this Master Plan . . .

(. . .)

. . . It is the duty of the Secretary of State for International Cooperation and of the Community of Donors, in addition to providing the resources needed for sufficient, high-quality cooperation, to assure that it is useful in combating poverty and the promotion of sustainable human development by using it wisely and improving efficiency and impact.

. . . First of all, strengthening of planning, management and evaluation processes; secondly, the programming of assistance through sector-specific strategies, country strategies and annual cooperation schemes implementing the priorities set out in the Master Plan and defining cooperation interventions; thirdly, participatory and systematic evaluation focusing on the measurement of results and impact and on the incorporation of what we could call lessons learned; and fourthly, the complementary nature of the use of cooperation instruments and the careful incorporation of new instruments related to sector-specific approaches. Together with this, the third major challenge facing Spanish cooperation which this Master Plan seeks to address is the consistency of public policies with the aim of development. . . . The philosophy underlying the Master Plan is one of

co-responsibility and association with the national development strategies designed by the beneficiary countries in constructive dialogue with the donor countries.

. . . As for geographical priorities, . . . Spain will prioritize the least economically and socially developed countries of Latin America, the Arab nations and the Middle East. It will likewise assist those countries least developed economically and socially and the WFP to which it will earmark at least 20% of its Official Development Assistance. It will also meet the needs of the least economically and socially developed countries which have special ties of an historic or cultural nature.

The plan thus establishes three categories of Spanish cooperation beneficiary countries with different definitions and objectives: first of all, the priority countries. The priority countries are those where the greatest volume of Spanish cooperation resources are concentrated . . . The following are the priority areas and countries. In Latin America: Honduras, Nicaragua, El Salvador, Guatemala, Haiti, the Dominican Republic, Paraguay, Bolivia, Peru and Ecuador; in the Maghreb and Middle and Near East: Algeria, Morocco, Mauritania, Tunisia, the Sahrawi population and the Palestinian Territories; in Sub-Saharan Africa: Mozambique, Angola, Namibia, Senegal and Cape Verde; and in Asia and the Pacific: Philippines and Vietnam. The second classification are what are known as the "special attention" countries. The purpose of this second classification is to group countries or regions with special circumstances either due to the need to prevent conflicts or contribute to peace-building efforts or owing to a lack of respect for human rights and the democratic system or, as is the case in Southeast Asia, due to crises arising from natural disasters which have had a great impact on the most disadvantaged sectors of the population . . . The following are countries receiving special attention. In Latin America and the Caribbean: Cuba; in South America: Colombia; in the Middle East: Iraq, Lebanon and Syria; in Sub-Saharan Africa: Ethiopia, Sudan, Congo, Equatorial Guinea and Guinea Bissau; in Asia and the Pacific: East Timor, Afghanistan, Cambodia and the Southeast Asian countries which suffered the consequences of the 2004 tsunami; in Central and Eastern Europe: Bosnia and Herzegovina and Albania. And lastly we have the preferential countries. This category includes the countries of preferential geographical areas not included among the priorities and countries, large or not, which depend on assistance and where there are sectors of the population with low economic and social development. These countries will be given specific attention focused on the least developed geographical areas and social sectors. In this category in Central America we find: Costa Rica and Mexico; in the rest of Latin America: Brazil, Chile, Venezuela, Panama, Argentina and Uruguay; and finally, we have Egypt and Jordan, South Africa, Sao Tome and Principe, Bangladesh and China; and in Central and Eastern Europe we have those low-middle income countries which are EU candidate countries and may require some specific assistance . . . and in the framework of the stability pact for South-eastern Europe.

I would like to highlight two key issues regarding geographical priorities. First of all, the subsequent annual international cooperation plans could reconsider the countries included in any one of the three classifications based on possible changing circumstances. This Master Plan is and must be a flexible instrument.

. . . As an overarching objective, approximately 20% of Spanish Official Development Assistance is earmarked for basic social sectors such as health and education. . . .

In addition to these sector-specific strategies, I would like to provide further details on the so-called horizontal or transversal priorities . . . In this connection, the fight on poverty will be a horizontal priority of Spanish cooperation followed by the defence of human rights. The horizontal approach to human rights and democratic participation calls for the will to fortify these in each and every one of the initiatives and actions of Spanish cooperation.

This integration refers to civil and political rights as well as economic, social and cultural ones. Spanish cooperation will focus on three aspects in the integration of human rights: First of all, on the analysis of the context and the status of human rights prior to the formulation and identification of the projects; secondly, on the assessment of the potential positive or negative effect of all actions or initiatives on the pre-existing human rights situation; and thirdly, on monitoring and evaluating programmes and projects. The third priority is that of equal opportunity between women and men . . .

The next transversal strategy is defence of the environment. The Master Plan prioritises environmental sustainability and to that end it is necessary to integrate the environment and the management and use of natural resources into all initiatives designed to achieve other objectives. Recognition must also be given to the key role that natural resources play in achieving the millennium development goals. . . .

The 1st horizontal or transversal strategy is respect for cultural diversity. . . . Cultural freedom and the right to diversity are a fundamental part of human development because there is no doubt that to live a full life it is important to be able to choose one's own identity without losing respect for others or being excluded from other alternatives. The Master Plan has also been inspired by the Unesco Declaration where recognition of cultural diversity is an ethical imperative inseparable from respect for personal dignity . . .

Another fundamental aspect of the Master Plan is multilateralism. This chapter bestows fundamental importance on cooperation, both quantitatively and qualitatively speaking. . . .

(. . .)

. . . Spanish cooperation's humanitarian actions are focused on disaster victims of all types with the objective of meeting their basic needs, establishing their rights and guaranteeing their protection. From this basic approach, the plan points out that the objective will be to close the gap with the average donor of the OECD's Development Assistance Committee, reaching the 7% level for official bilateral assistance by the end of this legislative period . . .

(. . .)

And lastly, I would like to refer to a new area which is receiving the special attention of all players, i.e. the chapter on education and awareness heightening. Summing up, I would like to underscore the strategic pillars of this Master Plan in achieving its ultimate objective which is the eradication of poverty. In this Plan it is very important to foster consensus among the players; secondly, to promote consistency in terms of policies; thirdly to coordinate and harmonise with other donors; fourthly, sector and geographical concentration; the fifth pillar is to increase the amount of ODA and lastly to improve the quality of assistance.

(. . .)".

(*DSC-C*, VIII Leg., n. 179, pp. 2–9).

In his appearance before the Foreign Affairs Commission of the Congress to address the results of the XV Ibero-American Summit of Heads of State and Government held on 14–15th October 2005 in the city of Salamanca, the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, stated that:

". . . The Government feels that the outcome was extremely positive and we should all be proud of that. The XV Latin American Summit . . . represented an important step forward in consolidating the Ibero-American area and in fostering the multilateral system which we established three lustrums ago to fortify closeness and cooperation between our countries. I would first of all like to highlight the high degree of attendance. . . . Seventeen heads of State participated. We also had the presence of the Secretary-General of the United Nations, Mr. Kofi Annan and the three major personalities of the European Union, the President of the Parliament, the President of the Commission and the High Representative and Secretary of the Council, as well as the Secretary-General of the OAS. . . .

(. . .)

. . . Some of the major topics discussed were the socioeconomic reality of the community and the challenges it faces, Latin American migration and the international projection of the Latin American Community of Nations.

. . . Firstly, having regard to the challenges deriving from the socioeconomic reality facing our countries and the need to bolster democracy as a fundamental factor promoting cohesion within the Latin American region, the leaders entrusted the Ibero-American General Secretariat, within the framework of the millennium development goals, to monitor a series of agreements set out in the declaration whose purpose is institutional strengthening, social cohesion and sustainable development in economies which are being further punished by today's energy crisis. The second block, the phenomenon of Latin American migration, . . ., has a decisive effect on the political, economic and social makeup of our societies. Rationalisation of this migration and the need to approach it in a positive manner in the interest of the host societies and of the groups of immigrants gave rise to a commitment on the part of the Latin

America leaders to coordinate common policies for the channelling and orderly treatment of migratory flows and to implement other measures which are explicitly laid down in the declaration. To make headway in all of these objectives, the Secretariat-General was entrusted with the preparation and calling of a Latin American meeting focusing on migration in support of the preparation of and subscription to a Latin American agreement on Social Security.

The third main topic, focusing on the international projection of the Latin American community, was based on the realisation of the great potential of our community as an active partner in the international arena which can strengthen an effective sort of multilateralism capable of contributing to peace, development and the defence of international law . . .

. . . One of Spain's objectives at this summit was to promote maximum interest and involvement of the civil society in the Latin American summits . . .

Other issues were discussed at the summit. . . . I would like to mention the impetus given to the creation of a Latin American area of knowledge. In this connection, the Secretariat-General for Latin America was entrusted with presenting the Member States with a Latin American literacy scheme to eradicate illiteracy between 2008 and 2015, this latter date being the deadline. Also of great importance was the decision to draw up a cultural charter for Latin America with a view to contributing to the consolidation of the Latin American area. The decision was taken to create a Latin American cooperation network for health-care which would cover issues ranging from transplants to the fight against tobacco addiction. The Summit also highlighted the importance of the regulation adopted to implement the Latin American judicial cooperation network . . .

Sixteen special communiqués were also passed covering diverse subjects and reflecting leaders' concerns. . . . The special communiqué referring to the economic, commercial and financial blockade of Cuba by the United States is one which was repeated in previous summits of heads of State and Government and contains 13 resolutions approved by the United Nations General Assembly. . . .

Another special communiqué refers to support for the fight against terrorism. . . . The 22 Latin American countries reaffirmed their commitment to combat terrorism and the need to prevent impunity in respect of these crimes. The value of extradition as an instrument to prevent this from taking place was likewise stressed.

(. . .)".

(*DSC-C*, VIII Leg., n. 401, pp. 2–3).

For his part, the Secretary of State for Foreign Affairs and Latin America, Mr. León Gross, in an appearance before the Foreign Affairs Commission of the Congress to report on the Barcelona Process and the Euro-Mediterranean Summit held on 27–28 November 2005 in the city of Barcelona, stated that:

". . . The Euro-Mediterranean Process has, since its advent at the end of the 80's and naturally since its launching in 1995, been one of the priority axes of

Spain's action abroad and of the Common Foreign and Security Policy of the European Union . . .

(. . .)

The impressive turnout on the part of our European partners represents very significant support for the Euro-Mediterranean partnership, making relations with the region a strategic priority for Europe as a whole and not only for the Southern European countries.

. . . It would behove us all to recall that the Barcelona Process continues to be the only forum which brings all of the region's players together, that it is the main framework for political and economic relations, social dialogue and regional cooperation and that the active participation of Israel and the Palestine Authority bears witness to its integrating capacity.

. . . I would now like to assess three documents which are the fruit of the Barcelona Summit: The Chairman's declaration, the action plant for the next five years and the code of conduct against terrorism. All of these documents were passed by consensus. No exceptional difficulties were encountered in negotiating these documents in the Euro-Mediterranean context despite, on this occasion, the extremely complex situation in the Near East. The political declaration, . . . At Barcelona, in addition to renewing the political commitment for Euro-Mediterranean partnership and reaffirming its general objectives, commitments and concrete proposals were made in the three traditional ambits – political, social and economic – and, as mentioned earlier, a new one: joint management of migratory flows.

The five-year action plan contains very broad measures and is more ambitious and to the point and renews the urgency of the Barcelona Process. Not intending to cover all points, . . . The agreement to liberalise trade in the agricultural sectors and services, with the commitment to immediately initiate a first negotiating round with a view to being able to conclude the new agreements before the end of 2006, a fundamental step in achieving the proclaimed objective of creating, by 2010 a Euro-Mediterranean free trade area; the commitment to raise standards in electoral processes, an objective which will be accompanied by technical assistance from the European Union; the objectives concerning matters of education, including the commitment to provide all children with access to at least a minimum standard of education and to cut the current illiteracy rate in half by 2015; the launching by the European Investment Bank of a budget line of €1.5 billion to support private investment in the region; the creation of the governance facility, . . . to support and accompany political reform processes taking place in countries of the region for a total of €1 billion. Spain is especially interested in the new chapter on migrations which, in addition to agreeing to hold a meeting at the ministerial level, sets up a global approach and strengthens the fight against illegal immigration through the signing of readmission agreements and border control.

Specific mention should be made of renewed cooperation in the fight on terrorism through the code of conduct which has the undeniable value of being

the first agreed document in this regard between the European Union, the Arab countries and Muslims of the Mediterranean coast and Israel . . . The code of conduct calls for a message of unity, commitment and firmness in the face of terrorism in each and every one of its manifestations as a threat to the lives of citizens and the open practice of the most fundamental rights and freedoms, directly and arbitrarily infringed by terrorism. It fully condemns terrorism independent of any religion, country or culture. It acknowledges the need to provide support and assistance to the victims of terrorism . . ., and establishes the fundamental lines of work and the benchmarks on which sights for future anti-terrorist cooperation should be set within the framework of the Barcelona Process; . . .

(. . .)".

(*DSS-C*, VIII Leg., n. 458, pp. 3–5).

b) Alliance Against Hunger: Millennium Summit

Note: See XI.1.*a) General Lines*

The Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, in an appearance before the Commission for International Development Cooperation of the Congress to address Spanish policy in the light of the Millennium Summit, stated that:

"(. . .)

. . . Spain has fully accepted that the eradication of poverty must be a permanent and fundamental reference of its development cooperation policy and an essential pillar of its foreign policy . . . . and this is based on two reasons. First of all, ethical and moral reasons. . . . The fight on poverty is also vital if we expect to preserve global well-being, peace and security owing to the intricate interdependence characterising our world. . . . Development is the most important tool of all in achieving peace and preventing conflict. There are global public assets such as peace and security or the preservation of the environment whose protection is the responsibility of all members of the global community, especially the public authorities, i.e. governments and multilateral organisations.

The second pillar of our work is to raise the level of Official Development Assistance. . . . For developed countries such as Spain, objective 8 of the Millennium Declaration is especially significant . . .

The third pillar of our work is the quality of assistance . . . ., and in this connection, the principle criteria are planning and evaluation, coordination, efficiency and the complementary nature of our cooperation policies . . .

The fourth pillar which we have been working on during this last year is policy consistency. . . .

And lastly, we have been trying to give decided impetus to Spain's active participation in the international arena . . .

. . . It is in that spirit that we arrived at the United Nations summit to review the Millennium Declaration and whose results I will now analyse . . . The recent

United Nations summit was called for the purpose of reviewing the year 2000 Millennium Declaration and to analyse the most effective way to move forward in achieving those objectives. The Summit's final declaration addresses the major challenges that we, the international community as a whole, have identified and contains positive aspects consolidating what has already been agreed or introducing new content. The summit has once again put at the centre of the international agenda the major themes which were cast aside in the aftermath of the dramatic events of 11 September 2001 . . . The summit has drawn attention to the fact that reform of the UN multilateral system, peace and security, human rights and development are issues which are intimately and deeply interwoven. The summit's final declaration proclaims that development is the main objective in and of itself and, in this respect, underscores the firm determination to guarantee the full undertaking over time of the millennium development goals and the commitment to eradicate poverty and promote sustainable development, highlighting the need for urgent measures on all fronts, including more ambitious national strategies and initiatives backed by greater international support.

And lastly, I would like to highlight that the final declaration makes special mention of parliamentary and civil society participation in all of these issues . . . (. . .)".

(*DSC-C*, VIII Leg., n. 389, pp. 2–5).

2. Assistance to Developing Countries

Note: See XI.1.*a) General lines* and XI.3 Terrorism

a) Latin America

The Secretary of State for Foreign Affairs and Latin America, Mr. León Gross, in an appearance before the Foreign Affairs Commission of the Congress to report on the current state of relations between Spain and Latin America, stated as follows:

"Latin America today is a mixture of risk and hope. . . . Reasons for optimism include the fact that representative democracy is the most widespread model of Government in the region with very few exceptions. A concerted effort has been made towards the goals of integration and interregional cooperation. Moreover, in a world in which energy resources are becoming increasingly important as a factor of development, Latin America appears to be particularly well situated. To this we must add invaluable human resources, but there are also risks and shadows which currently may be in the forefront. . . .

An initial series of problems has to do with the weakness of democratic institutions. They are institutions which, to begin with, are facing serious difficulties inspiring respect among a long series of *de facto* powers ranging from the Armed Forces, although today these are a diminishing in power . . . In some cases, bilateral conflict is growing in the region due to unresolved past

territorial disputes such as the case of Bolivia and Chile or to conflicts relating to the harnessing of energy involving Argentina and Chile and once again Bolivia and Chile. There are also political factors which fan the fires of conflict such as the distrust surrounding Chavez in Venezuela . . . or the difficult relations between Cuba and Mexico and some countries of Central America or the distrust on the part of Mexico or Buenos Aires concerning Brazil's pretension to assume a degree of regional leadership.

On the economic front, growth over the last several years has not managed to conceal a worsening of the two principal evils affecting the region: poverty and inequality. . . . According to recent World Bank figures, the richest 10% of the Latin American population controls 48% of the wealth while the poorest 10% barely has access to 1.6% of the wealth, i.e. thirty times less. . . .

And Latin America's leadership role in the world has eroded . . . While it is true that some of its members have strengthened their role, it is equally true that as a region and the majority of its components have lost relative influence and are unable to attract the attention of political leaders or investors.

The Latin American policy which the Government has implemented in the first year of its mandate seeks, first and foremost, to defend our economic and business interests in the region and to bolster the international role of Latin Americans which will also have the effect of strengthening our role in the world. . . . We have done this in the domestic crises of Ecuador and Bolivia as well as in the dispute between Colombia and Venezuela and at the quadripartite summit held in the city of Guyana last March. We have also implemented triangular judicial cooperation mechanisms which have contributed to the alleviation of certain tensions. . . . the fight against poverty and inequality is another of our policy priorities. We play a leading role in the so-called initiative to end hunger. We are also working on fostering social responsibility policies on the part of our businesses trying to get Spanish investment in Latin America to contribute to the search for sustainable development models and a reduction in poverty and inequality. . . . We are also making an important effort to overcome the risk of Latin American isolation by contributing to its recovery of a relevant role in the international arena. To this end the Government is working along two lines. First of all by maintaining permanent support for the consolidation of regional integration processes such as Mercosur, the Andean Community, the Central American integration system and the establishment of a solid relationship between the European Union and those different various processes or mechanisms. We are making painstaking headway in re-awakening Europe's interest in the Latin American region and we hope that the forthcoming European Union – Latin America and the Caribbean summit to be held in Vienna en 2006 will bear witness to that effort.

Secondly, the Government is planning to promote the Latin American summit process . . .

Another facet of our Latin American policy is the defence and promotion of our region-wide economic interests, investments and trade. . . . It is our desire

to have a close relationship based on trust with all of the region's nations. Of course, not all of the relations will be the same and we have already identified some countries with which we would like to develop a strategic relation which today are Argentina, Chile, Mexico and Brazil, but this list is not closed . . . We will, in no case, close channels of communication with any Latin American nation and, in this connection, we have re-established communication with countries with which channels had been closed, which is the case of Cuba, or in a poor state as with Venezuela. . . .

With regard to Cuba, we have been instrumental in getting the European Union, and not only Spain, to re-establish broken channels of communication thanks to the calls made by the European Union in July 2003 . . .

As for Venezuela, we have re-established a close relationship which, over the last several years, had deteriorated to the point of hardly any communication whatsoever. . . . We believe that dialogue, rather than isolation and condemnation, is the best way to contribute to the strengthening of democratic Venezuelan institutionality and to encourage the Venezuelan regime to respect international legality and to contribute to stability and cooperation in the region. . . .

(. . .)".

(*DSC-C*, VIII Leg., n. 319, pp. 3–6).

The Government, in response to a parliamentary query raised in Congress with respect to actions being implemented to strengthen bilateral relations between Spain and the Latin American countries, stated as follows:

"The major objectives or guidelines of the Government's Latin American policy are:

1. The creation of a climate of trust, closeness and partnership by multiplying frequent contacts at all levels.

2. The strengthening of democratic institutions and party systems to face the challenge of populism.

3. A firm commitment to the fight on poverty, hunger and inequality throughout the region through, in addition to many other instruments:

– Increase in the resources earmarked by Spain for development cooperation.

– Support for just causes in Latin America at international financial institutions.

– Participation in initiatives such as the quartet against hunger".

– Support for regional or subregional integration processes and bolstering of cooperation mechanisms between these and the EU.

4. Pursuit of dialogue and multilateralism as mechanisms by which to take on different challenges.

Since coming into office, the Government has made numerous efforts in this connection.

1. The President of the Government as well as the Minister of Foreign Affairs and Cooperation have made a concerted effort to intensify contacts. . . .

2. The essence of the message transmitted in these trips, both in public and in private, is Spanish support for democratic institutions and processes and our rejection of populist movements emerging throughout the region. . . .

3. By the end of this legislative period, the Government plans to have doubled the volume of resources earmarked for development cooperation and intends to maintain the percentage allocated to Latin America (in the vicinity of 50%). The 2005 budgets are already a step in that direction.

Moreover, Spain has supported the stance taken by Latin American countries (Argentina, Dominican Republic) in their negotiations with the IMF and the Paris Club and will continue to encourage the conclusion of Association Agreements between the EU and MERCOSUR (in the final stages), the Andean Community and Central America.

The President of the Government has been one of the advocates (along with the Presidents of France, Brazil and Chile) of the "Anti-hunger initiative" with global ambitions but which will have a particularly important impact in Latin America.

4. The Government intends to encourage cooperation throughout Latin America with a view to making the Latin American Community an important player in multilateral dialogue by taking on the role expected of it in the world.

The final push in this effort is the creation of a Secretariat-General for Latin America. The Government is working hard and will continue to work even harder to make the forthcoming Salamanca Summit the beginning of a new stage characterised by specific agreements on economic, cultural, educational, legal, development cooperation and political collaboration issues".

(*BOCG-Congreso.D*, VIII Leg., n. 193, pp. 127–128).

b) Western Mediterranean

Note: See XI.3 Immigration

In response to parliamentary query posed in Congress with respect to action taken to deepen relations with Morocco and plans for the future, the Government reported that:

"Relations with Morocco are a foreign policy priority for Spain and it is the Government's will to put them at the proper level establishing suitable channels of communication allowing for the development of a global relationship based on a spirit of mutual understanding and trust. It is the Government's wish to enrich bilateral dialogue, extending it to all matters of interest for the two neighbouring countries and, to that end, spreading this dialogue to relations at all levels of the Administration, including the promotion of economic relations, stimulating contact between civil societies and the inclusion of cultural and educational domains.

(. . .)

The following examples bear witness to this global policy:

1. In the political arena . . .

(. . .)

2. Spanish initiatives towards Morocco also play a vital role within the framework of the European Union where the Association Agreement is under development. This important instrument will enable Morocco to incorporate and take advantage of all of the Community acquis . . . by means of a forward-looking statute. . . .

3. In the sphere of development and cultural cooperation, a bilateral cooperation effort . . .

In respect of culture, . . . the Averróes Committee has been revitalised with a view to giving new impetus to relations between the two countries' civil societies and the *Universidad de los Dos Reyes* is currently being created under the management of the Spanish-Moroccan Joint Commission.

In this connection, the signing of a new cultural and cooperation partnership agreement between Spain and Morocco is being studied together with a headquarters agreement and a cooperation statute to facilitate the work of our cooperation in Morocco.

4. In the area of economy and trade, Morocco is Spain's main customer and supplier in the Maghreb. Data from the period January-November 2004 indicate exports valued at €1.97 billion which is an increase of . . .

(. . .)

5. As for immigration, direct contacts between responsible officials from the two nations has led to an intensification of already existing collaboration especially concerning control of the departure of illegal immigrants to Spain. Morocco has stepped up surveillance of its coastline and the number of joint sea patrols has increased. This experience has been especially positive in the Atlantic and these results are expected to be repeated in the Mediterranean which has been the focus of attention since September 2004.

(. . .)

6. In the field of Defence, on the occasion of the IV meeting of the Joint Committee, military cooperation with Spain was increased . . .

7. In the area of judicial cooperation regarding domestic issues, . . .

As for cooperation in the fight against and prevention of terrorism, the mechanisms set up in May 2004 have been operating satisfactorily giving rise to joint police operations.

8. Support for candidacies in International Organisations: . . . Morocco has supported candidacies which are very important for Spain such as the city of Zaragoza for the 2008 World's Fair.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 252, pp. 321–323).

Also in response to a Parliamentary query posed in Congress regarding co-development projects undertaken in 2004 and 2005 in Morocco, the Government responded as follows:

"In accordance with the 2005–2008 Master Plan, co-development policy will be consistent with the policies defined by the Ministry of Labour and Social Affairs and specifically by the Secretariat of State for Immigration and Emigration in coordination with other Administrations and cooperation agents. The homologation of a multilateral model based on the study of migratory flows will be addressed as a source of wealth for countries of origin and destination and for co-development as an area of multicultural and transnational action. Therefore, lines of action include fostering development at origin through economic stimulation, support for small enterprise and bolstering of the productive sectors; encouraging participation of immigrants in co-development strategies in coordination with immigrant associations in Spain as a way to foster integration; involvement of immigrants as agents of development and contributors to the social, economic and cultural advancement of their countries of origin; design of a dignified and sustainable return model including vocational and business training measures, economic support (microcredits or other financial instruments) and guidelines regarding the feasibility of the socio-productive initiatives proposed for the development of countries at origin; promotion of the rational use of remittances, channelling of foreign currency and favourable financial products, fostering information and advisory initiatives focusing on immigrants in this area.

Spanish cooperation will initially put a priority on co-development action in two countries which are enormously important owing to the volume of immigration to Spain: . . . To that end, the Moroccan Country Strategy Document will define an intervention strategy so as to be able to initiate projects of this nature".

(*BOCG.Congreso.D*, VIII Leg., n. 276, pp. 288–289).

c) Africa

In response to a parliamentary query posed in Congress on the political basis for cancelling the external debt of Senegal and Equatorial Guinea, the Government responded in the following terms:

"1. Cancellation of €9.33 million in the case of Senegal:

Cancellation of this debt was the result of the debt treatment agreed for Senegal by the Paris Club – with the participation of Spain – at its June 2004 session. This treatment was agreed in compliance with the commitments made by the member countries of the Paris Club within the framework of the HIPC initiative to alleviate the burden of debt on heavily indebted poor countries.

(. . .)

2. Cancellation of 9.8 million US dollars in the case of Equatorial Guinea:

This debt was cancelled in compliance with the commitments acquired through the "Agreement between Spain and Equatorial Guinea on matters of external debt". This agreement was signed on 17.06.03 and served to settle a dispute for default on payment by Equatorial Guinea dating back to the 80's

and which had frozen economic and trade relations between Spain and Equatorial Guinea for close to 20 years. The total volume of default on payment was €69 million including different categories of debt.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 152, pp. 407–408).

With reference to commitments made concerning the reconstruction of Sudan the Government, in response to a Parliamentary query raised in Congress, reported that:

"At the Donor's Conference for Sudan held in April in Oslo for the purpose of procuring the financing needed to reconstruct the country in the aftermath of the peace accord between Jartum and the South, Spain offered support in the amount of €30 million for the triennial 2005–2007.

This commitment is additional to Spanish assistance for the Darfur crisis channelled through the Autonomous Communities and through projects funded by the Spanish International Cooperation Agency and implemented by NGOs and multilateral organisations totalling €7,925,540.

This effort is consistent with Sudan's status as a special attention country according to the Spanish Cooperation Master Plan 2005–2008 which distinguishes countries or regions which find themselves in special circumstances due to crises or conflicts".

(*BOCG-Congreso.D*, VIII Leg., n. 232, pp. 243–244).

d) Asia

In response to a parliamentary query raised in Congress on the conditions and characteristics of the announced cancellation of Iraq's external debt, the Government reported that:

"The recently announced cancellation of the debt owed to Spain by Iraq forms part of the debt treatment agreed for Iraq by the Paris Club – with participation of Spain – at its November 2004 session.

(. . .)

According to technical debt sustainability analyses conducted by the International Monetary Fund (IMF), Iraq's debt was clearly unsustainable (nearly 600 times Iraqi GDP). As of the very first studies it was clear that the country's economic recovery called for the cancellation of a substantial part of that debt. In light of this reality, the Paris Club agreed to a moratorium on Iraqi payment until the end of 2005 until a final treatment was passed.

This final treatment was agreed between the Paris Club and Iraq on 21 November and entails the cancellation of 80% of the Iraqi debt in current net value terms. . . .

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 152, p. 405).

3. Immigration

Note: See XI.1.*a) General Lines*; XI.2.*a) Latin America*; XI.2.*b) Western Mediterranean*

In response to a Parliamentary query raised in Congress concerning the degree of improvement in Spanish-Moroccan relations concerning clandestine immigration from the North of Africa, the Government reported that:

"On 13.02.92 the Kingdom of Spain and the Kingdom of Morocco signed an Agreement on the movement of persons, transit and readmission of foreign nationals entering the country illegally, currently in force and applicable to nationals of third countries (except for nationals from countries of the Arab Maghreb Union) when the latter enter illegally into Spanish territory using Morocco as a transit territory.

Morocco will also readmit its own nationals who are illegally residing in our country.

(. . .)

This effort has contributed to rounding out the initiatives undertaken by the Spanish Government in the domestic arena, the result being a decline in the number of persons detained and boats intercepted upon their arrival to the Spanish coast. Data for 2005 as of 30 April showed 121 boats intercepted (as opposed to 148 at the same date in 2004) and 2,726 occupants detained (as opposed to 3,168 at the same date in 2004).

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 245, pp. 119–20).

Also in response to a Parliamentary query posed in Congress on whether Morocco is expected to be able to control the mafias operating in El Aaiun, the Government reported that:

"With a view to improving and enhancing the exchange of information and police efficiency in the fight against illegal immigration, the Moroccan authorities have transferred to Spain and have accredited liaison officers at the Police Headquarters for Alien Affairs and Documentation, the Las Palmas Police Headquarters and the Algeciras Police Station, the principal destination of illegal immigrants arriving by sea, in order to obtain information on routes, boarding sites, and those responsible for trafficking in persons. For its part, Spain has an Interior Attaché and two liaison officers at the Spanish Embassy in Rabat and another liaison officer in Tangiers.

This important liaison network in our two countries has proven to be one of the most important Spanish-Moroccan cooperation tools facilitating the exchange of operational information and the arrangement of many bilateral details.

As a result of this information sharing, the Moroccan authorities have been successful in dismantling important illegal immigration networks in their territory and in locating and intercepting a significant number of immigrants intending to illegally enter Spanish territory.

(. . .)

There are scheduled meetings, at political level, of the Spanish-Moroccan permanent working group on immigration at which technicians and experts in border control and immigration also take part. . . .

At EU level, the Funding Agreement for the Cooperation Project on "Border management and control" has been approved with a view to improving border surveillance and control and will soon be implemented . . . Spain and France have been designated to lead that project.

(. . .)".

(*BOCG.Congreso.D*, VIII Leg., n. 284, p. 412).

4. Terrorism

The Minister of Home Affairs, Mr. Alonso Suárez, in an appearance before the Congressional Commission of Home Affairs to report on the recommendations made by the Commission investigating the 11 March terrorist attack (Investigation Commission 11-M), with reference to the efforts envisaged by the Government to foster international cooperation in the international fight against terrorism, stated that:

"(. . .)

Collective moral obligation compels me to begin by remembering and once again paying tribute to the 192 Spanish citizens and foreign nationals who were brutally murdered on the morning of 11 March 2004 . . .

The work and the opinion of the investigation Commission clearly stressed that a new, global and shared anti-terrorist strategy is needed to deal with the characteristics of this new scenario of terrorists threats. The investigation Commission first of all called for prevention and protection against new terrorist attacks, regardless of their origin or motivation and likewise recommended an effective attack on terrorists, their organisations, structures and economic and material support systems using all of the means and resources available under Rule of Law and international cooperation. Thirdly, it called for the implementation, in line with the principles of unity, effort, collaboration and mutual assistance, operational methods, intelligence units and national and international anti-terrorist police officers, mostly at EU level, able to respond adequately to this new era, this new reality and this new threat. Fourthly, it recommended a strategy requiring the establishment of effective political, economic, social and cultural alliances with Islamic culture and the leaders of Islam to prevent the spread of Jihad radicalism. The fifth recommendation calls for a strategy based on wide-ranging political and social consensus and an effective and non-controversial Parliamentary agreement against international terrorism.

The fifth basic action entails the strengthening of international cooperation. This is a priority issue for the Ministry of the Interior and, in general the National Government. Our position has been to enhance and foster mechanisms, bodies and units of international cooperation within our most natural geopolitical

area, i.e. the European Union, and with third States. . . . The Parliamentary Commission of 11-M recommended that the Government develop enhanced international cooperation in respect of combating terrorism, particularly Islamic terrorism. . . . Within the framework of The Hague Programme, approved by the European Council at its November 2004 meeting, envisaging very specific and far-reaching objectives regarding anti-terrorism, defining the latter as a common threat against the domestic security of each and every Member State, Spain, through my department, is one of the countries most intensely contributing to the implementation of the European Union's anti-terrorism Action Plan. . . . In order to assure Spain's adherence to and compliance with The Hague Programme, the Government decided to form an Interministerial group which, coordinated by the Ministry of the Interior, is supported by the Ministries of Foreign Affairs, Justice, Economy and Finance, by the Public Prosecutor's Office and by other Administrative bodies involved in one way or another in the fight on terrorism. . . . Nothing less would be expected in light of the global nature of this sort of criminal activity. The network of international terrorism affects over 60 nations of the international community and the response extends much further than the individual capacity of a community or a nation; it involves the international community of States.

(. . .)".

(*DSC-C*, VIII Leg., n. 407, pp. 2–9).

5. Humanitarian Assistance

In an appearance before the Commission for International Development Cooperation the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, reported on assistance provided by Spain to the Asian countries affected by the 26.12.04 tsunami:

". . . In light of the number of victims and countries affected, I feel that the tsunami catastrophe is of a much larger scale than any other recent natural disaster. . . .

(. . .)

. . . Spain was among the first to express its solidarity. The response of the Spanish society as a whole and of international cooperation organisations and institutions was immediate and far-reaching. . . .

Having regard to the immediacy of the assistance, I would first of all stress that we should all feel proud of the fact that Spanish assistance was among the very first to show its solidarity once news of the catastrophe had spread. . . .

(. . .)

. . . The assistance was widespread, pervasive and generous both in terms of the monetary sum, the number of individuals participating and the commitment made to the reconstruction of infrastructures and of devastated societies. . . .

The sum total of Spanish assistance earmarked to palliate the humanitarian crisis in Southeast Asia caused by the tsunami was €69,550,000. Of those, €50

million are in the form of a line of credit granted from the Development Assistance Fund with a view to contributing to the reconstruction of economic and social infrastructures devastated by the tsunami. . . .

In addition to the amounts earmarked, a moratorium has been agreed regarding the debt owed by the affected countries to Spain. The negotiations held at the Paris Club in respect of debt cancellation indicate that the affected countries have a debt of €524 million with our country, 90% of which corresponds to Indonesia. . . .

This solidarity that I have referred to must be sustained over time in order to make economic, social and environmental recovery a reality throughout the devastated areas. . . .

Part of Spain's action plan will be to pay closer political attention to the area. . . .

Within the scope of inter sectoral cooperation, the action plan envisages proactive support in the area of environmental protection, anti-terrorist cooperation, cultural cooperation . . .

(. . .)".

(*DSC-C*, VIII Leg., n. 177, pp. 2–6).

Having regard to the humanitarian assistance functions of the Spanish army undertaken in 2004, the Government responded to Parliamentary queries posed in Congress in the following terms:

The complementary and sometimes vital action taken by the Armed Forces in humanitarian assistance and emergency operations in 2004 only took place in those regions or crisis areas where the Spanish International Cooperation Agency (AECI) was already working.

(. . .)

1. Humanitarian assistance support (mainly by providing the means and facilities for other State institutions or non-governmental organisations to carry out action).

In this regard in 2004, upon request by the Spanish International Cooperation Agency (AECI), air support was provided by the Air Force for the transport of personnel and material in the aftermath of the following situations:

- Earthquake in Iran
- Earthquake in Morocco
- Tsunami in Southeast Asia
- Torrential rains in the Caribbean (Dominican Republic, Haiti, Nicaragua and Granada)
- Locust plague in the Côte d'Ivoire.

Moreover, in the first three actions referred to above, the Spanish Red Cross was granted use of the Torrejón Air Base for the loading and parking of civil aircraft chartered by that organisation, and support was provided for the "Recoletos Group" in the form of transport and use of facilities (see the publication "Gaceta Universitaria") for the dispatch of diverse medical material to the Paediatric Hospital in Kabul.

2. . . . Action undertaken either directly with the affected populations in the areas of deployment of our military contingents or through governmental or non-governmental organisations operating in these same areas.

Within this group, in 2004 the Spanish Armed Forces have undertaken a number of humanitarian assistance projects in their areas of deployment in Bosnia, Kosovo, Afghanistan and Haiti and have lent support to the work being done by humanitarian organisations in these territories, special mention of which should be made of the following:

– Transportation of diverse humanitarian assistance to the different areas of operations.

– Provision of medical assistance to the civilian population within its range of possibilities.

– Distribution of humanitarian assistance in coordination with NGOs and civil authorities.

– Support for the construction of infrastructures, within its range of possibilities, specifically:

– Wells.

– Digging of canals.

– Installation of overhead power lines.

– *Facilitation of civilian population mobility by*:

– Repairing roads and highways.

– Rubble removal.

– Collaboration in bridge-building efforts.

– Refurbishing of different public buildings (schools, colleges, hospitals).

3. Military humanitarian assistance missions. Consisting of the sending of military contingents with specific capacities to deal with crisis or catastrophe situations not caused by war. In 2004 no mission of these characteristics was undertaken. However, during the first months of 2005 a military contingent was sent to Indonesia to palliate the effects of the tsunami which devastated Southeast Asia."

(*BOCG-Congreso.D*, VIII Leg., n. 305, pp. 133–134).

The Minister of Defence, Mr. Bono Martínez, in a 26.12.04 appearance before the Defence Commission of the Congress to report on the humanitarian mission "Solidarity Response" with the Southeast Asian countries affected by the tsunami, stated as follows:

"This catastrophe has produced over 160,000 victims, has devastated an enormous expanse of territory and, in addition to the incalculable economic burden, is threatening the life of those who were not killed when it first struck. . . .

(. . .)

I will now outline the operation known as Solidarity Response, . . . I will first of all mention where our military are deployed. It was deemed advisable to concentrate our forces in Indonesia, the country most damaged so as to make the most efficient use of our presence, in the north of the island of Sumatra in

the enclaves of Medan (close to where our aircraft landed) and Meulabo, where the Ship Galicia, which as you know left the port of Alicante last Saturday, will anchor.

Contribution in terms of personnel. 594 military personnel from the three armed forces will take part in the operation. . . .

I would stress that for the first time voluntary reserve personnel will be sent on a mission abroad. . . .

Material contribution to the area is comprised of the following elements: a hospital on board the vessel Galicia; three water treatment plants, one of which was air-lifted in and is already set up in the affected zone and two more on board the Galicia; sufficient machinery for use by the engineering unit comprised of shovels, backhoes and a bridge; heavy machinery completely loading down the Galicia; 6 tons of medical supplies, 60 tons of foodstuffs. I should tell you that the Galicia is transporting 100 vehicles and approximately 200 tons of humanitarian assistance including water donated by Town Halls and different entities rounding out the total figures . . . Transport and logistics are as follows: Five transport aircraft including two Hercules which have already returned and three CASA-235 aircraft which will remain in the area . . .

(. . .)

As for the duration of the mission, we are planning for a maximum of two months although the Indonesian Government has informed us through the Ministry of Foreign Affairs that it would like to keep a limited foreign military presence until around 26 March and given that that date coincides with our plans we would like to comply with the wishes of the Indonesian Government.

(. . .)".

(*DSC-C*, VIII Leg., n. 174, pp. 2–5).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

a) Reform of the United Nations System

On 10 December 2004, in response to a parliamentary question regarding the Report of the High Level Group (HLG) on United Nations reform, the Government made the following statement:

"(. . .)

. . . The Secretary General is planning to submit to the General Assembly in March 2005 a Report based on the Report to be received from the HLG and containing concrete proposals for United Nations reform. These proposals will form the basis of what UN Member States, including Spain, will take into consideration in the discussions and negotiations to take place on this very important issue.

. . . The Government will continue to respond and inform the Parliament on this process as it evolves".

(*BOCG-Congreso.D*, VIII Leg., n. 137, p. 188).

b) United Nations High Commissioner for Refugees

On 26 August 2005, the Government responded to a parliamentary question on Spain's cooperation with the UNHCR by explaining:

"The Government of Spain has had and now has a policy of active cooperation with the UNHCR and its delegation in Spain. This policy includes not only effective coordination of asylum and refugee policy, but the fact that Spain is the only country in the world in which the UNHCR delegate plays an institutional role recognised by the Spanish legal system in the policy-making agencies on asylum and refugees.

In 2004, Spain signed and ratified a Framework Cooperation Agreement with UNHCR, which sets forth the basic parameters of cooperation.

Spain also cooperates in UNHCR budgets, not only through its annual voluntary contribution to the UNHCR budget, but also through special contributions. Spain also funds the office and operating expenses of the UNHCR delegation in Madrid, in addition to covering the cost of a number of expert legal staff. Furthermore, regional and local governments also contribute substantially to UNHCR operating funds. To further such cooperation, a Spain-UNHCR association exists, with which the Government cooperates fully.

In the context of Spain's general policy of increasing its contributions to Multilateral Organisation, there is provision for a substantial increase in both Spain's voluntary and special program contributions over the next few years.

While the number of applications for refugee status and refugee admissions in Spain and in Europe, in general, has dropped sharply in recent years, our work in a number of refugee protection processes is well known, particularly in Colombia and the Western Sahara, where cooperation between the UNHCR and Spain is essential for the success of the projects. Our cooperation in refugee protection and resettlement programs is expected to increase in the near future.

The recent election of High Commissioner Guterres was welcomed by Spain, and the Government has pledged to increase its human and economic cooperation within parameters to be determined by the UNHCR. A first visit by the High Commissioner to Spain is planned for late 2005.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 257, p. 679).

c) United Nations Commission for Social Development

On 11 May 2005, in response to a parliamentary question, the Government explained the reasons it renounced the Vice Chair of the United Nations Commission for Social Development as follows:

"(. . .)

The Vice Chair of a functional commission essentially involves the planning of work and sessions, assisting the Chair in leading discussions, speaking order, and preparing working documents, etc.

The Vice Chair of the Commission for Social Development is an appointment made by the body itself, after deliberations by the different regional groups, from among the delegates of the Member States of the Commission, mainly on the basis of the personal qualifications and the professional experience of potential candidates in the work of the CDS and the United Nations General Assembly's Third Commission. Therefore, these are positions in which '*ad personam*' designation is a relevant feature.

During the 42nd Session of the CSD in 2004, the Commission named Ms. Paloma Durán Lalaguna, Counsellor for Social Affairs of Spain's Permanent Mission to the United Nations, to one of the four Vice Chair positions for the 43rd Session to be held in New York on 9–18 February 2005. However, Ms. Durán left her post on 31 October 2004, making it impossible for her to fulfil her duties as Vice Chair of the 43rd Session of the CSD.

In view of these circumstances, the Western and Others Group (WEOG), the Regional Group to which Spain belongs, decided to propose to the Commission that the vacant Vice Chairmanship be exercised by the delegate of Austria, Ms. Gerda Vogl, who possessed the necessary experience to be able to undertake the position during the Commission for Social Development's 43rd Session".

(*BOCG-Congreso.D*, VIII Leg., n. 215, p. 180).

2. North Atlantic Treaty Organisation

On 15 April 2005, in response to a parliamentary question, the Government stated its position on Albania's application to join NATO as a full-fledged member to the Congress as follows:

"As a member of the Atlantic Alliance, Spain is fully open to accepting new members in NATO who are in a position to promote the principles of the North Atlantic Treaty and contribute to peace and security in the Euro-Atlantic area.

All countries seeking to join the Atlantic Alliance must implement the Membership Action Plan designed to aid them in their preparations for membership, and to provide them with practical advice, assistance and support in all facets of NATO membership (political, economic, military and defence, resources, security and legal). At this time, this Plan is being implemented by Albania, Croatia and the Former Yugoslav Republic of Macedonia.

While embodying NATO's commitment to an open door policy, the Membership Action Plan does not guarantee future membership, nor does it consist merely of a series of parameters to be complied with by candidate countries. The decision to invite candidates to become members will be taken within NATO by consensus on a case-by-case basis".

(*BOCG-Congreso.D*, VIII Leg., n. 197, p. 225).

3. World Trade Organisation

On 3 February 2005, in response to a parliamentary question regarding the impact of WTO agreements on the Spanish and EU agro-food sector, the Government stated:

"(. . .)

The position on agriculture that the Government of Spain has been advocating, successfully to date, together with its other community partners and under the negotiating leadership of the European Commission, is that any commitments assumed under the WTO must not go beyond the Common Agricultural Policy (CAP) reforms.

In the WTO, there are fundamentally three areas of negotiation on agriculture:

– Internal aid: From the WTO point of view, the main element contained in the CAP reform is the de-linkage of aid in different sectors; namely, that aid to farmers will be independent of production or prices. . . . In this situation, it will be easier for the European Union to assume the commitments to reduce internal aid established under the Doha Round.

– Market access: Included in the negotiating framework is the possibility for each Member to designate a limited number of «sensitive products» for inclusion in the WTO negotiating framework, making such products subject to lower tariff reductions than the rest. This issue was very important to the European Union, which still maintains high agricultural tariffs in many sectors.

– Export subsidies: In the negotiating framework for August, agreement was reached to drop export subsidies (restitutions) from date to be negotiated, but this was dependent upon equivalent disciplines being established for the remaining forms of export supports (export credits, State companies, food aid).

We were also successful in getting the August decision to include the subject of denominations of origin in the negotiating agenda, an important issue for Spain and the European Union as a whole.

The prospective effect of WTO agricultural negotiations on the Spanish agro-food sector is virtually neutral, and therefore the aim is for commitments assumed not to go beyond the internal reforms carried out; in other words, to have changes in this sector determined fundamentally by international European Policy, the main objective of which is to improve the competitiveness of the community agro-food sector".

(*BOCG-Senado.I*, VIII Leg., n. 172, pp. 169–170).

4. International Organisation for Migration

On 22 June 2005, in response to a parliamentary question on the possibility of requesting full-fledged member status in the International Organisation for Migration (IOM) for Spain, the Government stated:

". . . At present Spain has observer status in the International Organisation for Migration. This Organisation already has an office in Madrid and a Memo-

randum of Understanding exists setting forth the goal of designing and implementing measures to foster orderly migration, voluntary return, the integration of immigrants and combat trafficking in human beings. Furthermore, the competent authorities in the area of immigration maintain a close, fluid relationship with the representatives of the International Office on Migration. Proof of this, your Honour, is the letter I received from them. I will read the first paragraph: 'I am honoured to send this letter to your Excellency to state, on behalf of the IOM and on my own behalf, our most sincere congratulations for the implementation and successful completion of the emigrant regularisation process in Spain.'

(. . .)

Therefore, I believe that we have taken measures that the International Organisation for Migration itself considers an example to follow.

. . . Spain was a Member State of this Organisation until the mid-seventies, when it decided to leave the organisation and take on observer country status. In recent years, the International Organisation for Migration has requested Spain to become a Member State once more, and at this time I want to indicate that the Government is making contact and taking the necessary steps to join this office as a full-fledged Member State.

. . . We are working so that in a reasonable time Spain will become a full-fledged member of the International Organisation for Migration".

(*DSS-P*, VIII Leg., n. 46, pp. 2458–2459).

XIII. EUROPEAN UNION

1. Enlargement

On 29 December 2004, in response to a parliamentary question on the entry of Turkey into the European Union, the Government stated:

"The Government is aware of the importance of Turkey's ultimately becoming a member of the European Union . . .

Furthermore, the Government is also aware of the importance of having popular support for Turkey's potential membership in the European Union. Such support would need to be reflected not only in polls, but also in the necessary backing by the Parliament of any future Membership Treaty, through the ratification process, and by the vote obtained in the European Parliament, a clear reflection of the sovereign will of the citizens of the European Union.

. . . The polls the Government has available correspond to different points in time, some more recent and some longer ago, albeit none goes back before 2002 (Eurobarometre, Fall 2002). This is because the Government considers it important to be aware of how public opinion is evolving on this subject over a two-year time period.

In any case, despite some logical disparity in results, from all the polls analyzed to date (with all the limitations inherent in any polling system), it can be

concluded that in Spain the percentage of people in favour of Turkey's membership, slightly under 40 percent, is higher than the percentage of people opposed to its membership. The opinion of the majority, therefore, favours membership.

This is further corroborated by the results of the macro-poll carried out by the Council for Sociological Research in collaboration with the Royal Elcano Institute on 10 December 2005. It revealed that approximately 44 percent of the Spanish population was in favour of Turkey's future membership in the European Union".

(*BOCG-Congreso. D*, VIII Leg., n. 141, p. 259).

2. Area of Freedom, Security and Justice

a) Asylum

On 15 December 2004, in response to a parliamentary question on the European Union's intention to set up emigrant retention and transit centres in the North of Africa for asylum seekers from African countries, the Government stated:

"Government of Spain representatives have, in principle, opposed establishing centres to attend to emigrants and asylum seekers outside European Union territory, while at the same time, in the Community context, underlining the need to first establish a long list of issues to resolve.

It would involve determining long-term strategies for EU cooperation with the countries of North Africa that are affected by the migratory phenomenon, to be considered as development aid. In the short term, it would involve defining aspects relating to the centres, their legal status, administration, conditions of management, funding, security, possible draw effects and others".

(*BOCG-Congreso.D*, VIII Leg., n. 137, p. 123).

Two months later, on 15 February 2005, in response to a parliamentary question on the same subject, the Government added:

"When this subject was discussed in the European Union in a more formal manner, the Spanish Interior Minister and the Secretary of State for Immigration reiterated what they had already stated in The Hague, that we approach this proposal with great scepticism and, in any event, before being able to decide whether we find it good or bad, we would like to have a clearer idea of what exactly is being proposed; namely, what would these centres be, under what authority they would exist, what would be their legal status, how would they be managed, how would they be funded, what security arrangements would be made, and what would be the potential draw effect of such centres in the countries of North Africa.

. . . We have not yet taken a position because we do not know specifically or clearly what is being proposed.

However, from what we have heard to date it does not seem to us to be a good idea in principle. We have responded fairly sceptically, but when the questions

posed by the Spanish Government are answered, we will see what our final position is. However, I repeat, at this time we view this with great scepticism. (. . .)".

(*DSS-C*, VIII Leg., n. 105, p. 22).

b) Immigration

On 7 July 2005, in response to a parliamentary question on Spain's position in the European Union regarding certain EU migratory policies, the Government stated:

"In the framework of the EU Financial Perspectives 2007–2013, under Heading 3 (Citizenship, Freedom, Security and Justice), the Commission presented the 'Framework Programme on Solidarity and the Management of Migratory Flows', made up by four funds:

- The External Border Fund
- The Fund for the Integration of Third-Country Nationals
- The Refugee Fund (already existing).
- The Return Fund

Spain supports the Commission's proposal, because it thinks that the European Union's immigration policy should have an all-inclusive focus, covering all aspects of the immigration phenomenon, such as integration, border controls, readmission and refugees, and use a wide variety of instruments for implementation, including those that are financial in nature.

As a Member State located on the external sea border of the EU, Spain feels that the Framework Programme's funds should be governed by the principle of solidarity, as stated and reflected on many occasions by the European Council.

The principle of solidarity as defined by the Commission, is based on the recognition that, in developing common asylum, migration and border control policies, some Member States are bearing a disproportionate part of the responsibility and effort, that benefit the Union and other Member States to a large extent, and have major financial repercussions.

Spain is advocating in assessing the efforts made by the different Member States, the efforts being made to control and monitor external sea borders, together with return operations and the institution of integration policies, be especially taken into account.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 252, pp. 409–410).

On 19 October 2005, the Government answered a parliamentary question before a Senate plenary session regarding the measures the European Union was planning to take to address the massive immigration along its southern border, specifically that taking place into the cities of Ceuta and Melilla:

". . . The problem that recently affected Ceuta and Melilla was not an exclusively Spanish or Moroccan problem: it was a problem that affected all of us; principally the European Union. That was why I immediately contacted Commissioner Frattini – the European Union Commissioner for Justice,

Security and Freedom –, to transmit our concern to him and, above all, to get him to intervene on behalf of the European Union. As we have said on a number of occasions, Ceuta and Melilla are common external borders of the European Union, and need the support, concern and involvement of the European Union.

Commissioner Frattini's response was quick. . . . A new attitude is beginning to take shape, to be felt, among almost all the Ministers of Justice, Interior and Labour of the European Union, as I was told by the Spanish Minister of Justice who attended the JAI meeting on 12 October: seeking to make immigration policy a common European policy, something it unfortunately has not been up to now.

. . . For this reason, Commissioner Frattini made all necessary arrangements to speed the disbursement of the 40 million euros earmarked for Morocco under the MEDA programme. He headed a delegation to visit Ceuta, Melilla and Morocco, to generate concern over the situation and the future of sub-Saharan peoples. In this same spirit, Minister Benaissa of Morocco and I have proposed holding a ministerial-level conference on immigration, to deal with the problems of the countries of origin, transit and destination. Also, at their last meeting, the Prime Ministers of Spain and France decided to put a joint initiative before the next European Council.

Nonetheless, security and border protection are not sufficient; the roots of the problem must also be attacked and these are hunger, poverty and social injustice. In this regard, we have asked the European Union's Commissioner for Development, Louis Michel, to draft a European Union cooperation plan to deal with the major challenges on the continent that are at the root of the problem".

(*DSS-P*, VIII Leg., n. 57, p. 3083).

c) External borders

On 7 July 2005, the Government responded to a parliamentary question on the agreements reached at the G-5 Interior Ministers meeting in Paris on immigration, underlining the pros and cons for Spain:

"At the recent meeting on immigration of the G-5 Interior Ministers in Paris, the following agreements were reached:

– To harmonise the minimum amounts of economic resources foreigners are required to have in order to enter Schengen territory and promote the adoption of such agreement by the European Union.

– To study the conditions under which medical travel insurance can be required of foreigners entering Schengen territory.

– To promote a European Union project to exploit data from the Passenger Name Record (PNR) in the fight against terrorism.

– To study the possible creation of a «European border police intervention force» to mobilise national specialised assets to external border points where needed, in the event of a crisis situation.

– To carry out joint operations within Schengen territory as a means of strengthening the fight against illegal immigration.

– To reinforce cooperation with Maghreb countries in their fight against illegal immigration.

In respect of contributions, the Spanish Government participated actively, through the Ministry of the Interior, on all the issues dealt with at the meeting, making specific contributions in the area of utilisation of passenger data, an area in which Spain has some experience owing to its leading role in the initiatives that led to the adoption of European Directive 2004/82/CE on the obligation of carriers to report the data of passengers carried and the rules of this type that exist in Spanish legislation on foreign nationals.

As regards the specific impact on Spain of the agreements reached, the measures agreed will decisively contribute to improving control of the external border and to increasing effectiveness in the fight against illegal immigration and other forms of organised crime, including terrorism. The agreed measures are aimed at achieving these objectives, particularly the joint operations within Schengen territory and the exchange of passenger data".

(*BOCG-Congreso D*, VIII Leg., n. 252, pp. 614–615).

On 15 September 2005, in response to a parliamentary question on actions carried out by Spain together with other European Union countries to control the entry over our borders of foreigners from Romania and Bulgaria who remain in Spain in irregular status, the Government stated:

"The fight against irregular immigration and trafficking in human beings is one of the major objectives of the migratory policy not only of the Spanish Government but of the European Union as a whole . . .

In this regard, the Spanish State Security Forces participate alongside their counterparts in other European Union Member States in joint border control operations, which constitute a basic instrument of the policy to fight irregular immigration and trafficking in human beings.

The Directorate General of the Police has participated since early June 2004 in the following operations aimed at investigating migratory flows seeking to enter irregularly in the territory of the European Union Member States:

– Operation "Semper Vigilia 13".

– 18th joint operation at European Union land borders

– 19th joint operation at European Union land borders

– Heightening of border controls along the Spanish-French border

– Screening on the Milan-Barcelona TALGO train

– Collaboration with the Austrian police at the Nickelsdorf (Austria) "focal point"

In the second phase of this operation, two members of the National Police were sent to said location from 4 to 18 April 2005.

– Collaboration with the Romanian police at the Oradea (Romania) Coordination Centre.

– Inspection of borders between Hungary and Romania.

In addition to the operations set forth above, meetings with the participation of Spanish officials were held for the purpose of analysing the phenomenon of irregular immigration, with a particular focus on irregular immigration from Bulgaria and Romania, as follows:

– Spanish-French meeting on illegal immigration (held on 26 October 2004 in Paris).

– Spanish-Hungarian meeting on illegal immigration (held on 17 and 18 November 2004 in Budapest).

– OCRIEST working meeting between France and Spain (held on 9 December 2004 in Madrid): with participation on the Spanish side of members of the Central Unit on Illegal Immigration Networks and False Documentation (UCRIF, Spanish acronym).

– EUROPOL annual operational and strategic meeting on illegal immigration (held on 14 and 15 March 2005 in The Hague).

– Meeting on bilateral cooperation with Bulgaria (held on 12 April 2005 in Sofia).

– Meeting on illegal immigration from Romania and Bulgaria (held on 28 April 2005 in Rome)".

(*BOCG-Congreso.D*, VIII Leg., n. 257, pp. 375–376).

3. Economic and Social Development

a) Lisbon Strategy

On 26 August 2005, in response to a parliamentary question on the review of the Lisbon Strategy, the Government stated:

"... One of the fundamental issues dealt with at the European Council of 22 and 23 March 2005 was the review of the Lisbon Strategy. The basic purpose of this review is to give renewed impetus to Member State policies aimed at growth and employment in order to increase the European Union's potential for growth potential and narrow the gap vis-à-vis other advanced economies.

The focal points for achieving these objectives are investment in knowledge, innovation and human capital, and the creation of a more attractive European space for business development and employment.

One of the commitments assumed by the Member States in the framework of the Lisbon Strategy review is the drafting of a "national reform programme" adapted to each country's specific needs and circumstances.

The Lisbon Strategy review puts no additional demands on Spain, but acts rather in support of the economic policy the Government is already implementing.

In particular, in February 2005 the Government approved its Plan to Energise the Spanish Economy, containing a broad package of economic measures aimed at increasing productivity, employment and business competitiveness.

The package of economic reforms set forth by the plan focuses on the following areas: defence of competition, reforms in the goods and services markets and in the factors markets, promotion of R+D+I, quality and efficiency in public finance, and regulatory framework and transparency.

With this key plan in its economic strategy, the Spanish Government had a head start on the commitment by the Member States to present their respective action plans to re-launch the Lisbon Strategy.

Additionally, the 2006 Budget continues to give priority to R+D+I and infrastructure investment, which are key areas of activity for continued improvements in productivity and competitiveness by the Spanish economy.

(. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 262, p. 596).

On 3 October 2005, in response to a parliamentary question on this same subject, the Government added:

"Drafting the Spanish National Reform Plan is a concrete objective for the second half of 2005. To do this, the Government has set up an inter-agency group which is working on the plan. Furthermore, the national Lisbon coordinator met on 1 June with the European Commissioners directly involved in the Lisbon Agenda (Competitiveness, Economic and Financial Affairs and Employment and Social Policy) and with the Secretary-General of Commission in order to prepare the Spanish document. On 5 July European Commission officials travelled to Madrid to continue such contacts".

(*BOCG-Congreso.D*, VIII Leg., n. 284, p. 230).

b) Services Sector Liberalisation

On 10 June 2005, in response to a parliamentary question on its position with regard to the amendment of the Bolkenstein Directive liberalising the services sector, the Government stated:

"The proposed 'Directive of the European Parliament and Council regarding services in the internal market' (also known as the Bolkenstein Directive), adopted by the Commission in January 2004, is part of the economic reform process initiated by the European Council in Lisbon to make the European Union the world's most competitive and dynamic knowledge-based economy in the world by 2010. To achieve this goal it is indispensable to establish a true internal services market . . .

The objective of the proposed Directive is to create a legal framework eliminating all obstacles to freedom of establishment for service providers and free circulation of services among Member States.

The proposal embraces a broad variety of economic activities in services, with some exceptions, such as financial and transport services.

The proposal is in the discussion phase in both the European Parliament and the Council of Ministers.

The Spanish position considers that the issue must be analyzed in depth before going forward with this Directive.

(. . .)

That said, our position is to precisely analyze the impact of the Directive on certain services, more specifically, public services. There are issues on which Spain has established clear reservations such as taxation and gaming services, but there are others, such as audiovisual, health, sales distribution, consumer protection services and elements such as private security, the energy sector, etc. where there is no question that careful attention will have to be given to how they are dealt with in the Directive, and this work is being done with the involvement of practically all ministerial departments in a formally constituted Working Group.

It is important for us to be able to go forward with the liberalisation of services. But it is also important to establish adequate protection for public services, legal and consumer security, and detailed evaluation of the impact of the application of the country of origin rule is necessary.

In this regard I would point out that the last Spring European Council held on 22/23 March 2005 concluded the following:

– The Commission's proposal does not fully meet the demands of the Member States.

– In the framework of the legislative process underway (co-decision with the European Parliament), a broad consensus must be reached in response to two essential objectives:

– opening of the services market,

– respect for the European social model and for services of general interest.

In view of this situation, we need to await the findings after first reading by the European Parliament which are expected to be published in September or October. These findings will, in all probability, give rise to a revision of the proposal by the Commission".

(*BOCG-Congreso.D*, VIII Leg., n. 237, p. 221).

c) Ultraperipheral Regions

On 11 May 2005, in response to a parliamentary question on the concession of public aid for regional purposes as an instrument of development aid for the Canary Islands owing to its consideration as an ultraperipheral region by the European Union, the Government stated:

"The granting of public aid, particularly of aid for regional purposes, as an instrument to aid in the development of the Canary Islands as an ultraperipheral region is of fundamental importance and, therefore, given special recognition under community law.

In this regard, we must not overlook the provisions of the Treaty in force which states in Article 227.2 that taking into account the structured social and economic situation of the UPR, the Council shall adopt specific measures

aimed, in particular, at laying down the conditions of application of the Treaty and when doing so, shall take into account areas such as (*inter alia*) State aid.

The express recognition of ultraperipheral regions is also reflected, for example, in the draft of the future Guidelines on regional aid, which are currently under negotiation, and which provide for both functional aid, and greater intensity in investment aid. This evidences a clear desire on the part of the European Commission to take into account the special features of these regions.

However, first and foremost, mention must be made of the Constitutional Treaty signed in Rome last 29 October, which finally includes the ultraperipheral regions under Art. III-56.3.a) [equiv. Art. 87.3.a) of the current Treaty], thus reinforcing the arguments stated to date.

This Article states that aid aimed at promoting the economic development of ultraperipheral regions can be considered compatible with the internal market, taking account of their structured social and economic situation".

(*BOCG-Congreso.D*, VIII Leg., n. 215, p. 130).

d) European Commission Guidelines on Regional Aid

On 26 August 2005, in response to a parliamentary question, the Government expressed its position on the revision of Commission Guidelines on regional aid, stating:

"In its response to the first consultative document of the European Commission on the revision of the directives on regional aid, the Spanish Government proposes the establishment of preferential treatment recognising special difficulties for the regional development of regions with natural or structural difficulties, such as rural areas, industrial restructuring areas, as well as those suffering from serious permanent natural or demographic handicaps, such as northern regions with low population density or island, border or mountainous regions. This specific treatment could result in bonus payments of up to the maximum proposed aid ceilings, determined in accordance with the existence of a greater or lesser number of factors hampering general economic development".

(*BOCG-Senado.I*, VIII Leg., n. 298, p. 16).

4. Financial Perspective 2007–2013

In his appearance before the Plenary Session of the Congress on 22 June 2005 to report on the European Council held in Brussels on 16 and 17 June, the President of Government stated:

"... This is, certainly, a matter of great importance, as it is going to shape the financial framework of the Union for the seven year period beginning in 2007.... Budget negotiations within the Union have never been easy in the past, but this time there are circumstances making them particularly complex. These are the first financial perspectives aimed at accommodating a Europe of 25 and later of 27 Member States. This fact alone makes it necessary to

reassess the well-grounded financial equilibria established under other circumstances. . . . Thus, the complexity of the negotiation, with very narrow margins for the desires of the major net contributors, signatories of the so-called Charter of the Six, to limit the budget to 1 percent of community gross domestic product (GDP) and, similarly, the logical aspiration of the new Member States to benefit from the cohesion policy together with the desire of current receivers of funds not to lose them altogether.

(. . .)

. . . Throughout the negotiations, the Presidency and most of the States recognised one of the basic principles defended by Spain, that our country should not be drastically or abruptly deprived of cohesion funds owing to a mere statistical effect derived from enlargement. Recognition of this fact has given rise to gradual improvements in the successive proposals put on the table. Nonetheless, the negotiations are not focussed on Spain at all; the principal difficulty revolves around the so-called British cheque.

As you know, the United Kingdom was only willing to negotiate a reduction if in parallel a substantial reform in the EU cost structure at all to cut back on common agricultural policy items. As you know, in its last proposal the Presidency offered our country a four-year transitional Cohesion Fund mechanism. This recognition is very positive for future negotiations, but the benefits of this recognition were simultaneously offset by an increase in our contribution owing to the increase in our country's contribution to the British cheque and to different compensation offered to some of the major net contributors that continually held a position not favouring agreement. This balanced out to a final net amount that was not satisfactory to the Government, although it could have been a good basis for discussion if negotiation had continued. Nonetheless, knowing that its offer was going to be rejected by the United Kingdom, the Netherlands, and other Member States, in addition to Spain, the Presidency halted negotiation and forced a general pronouncement on the last proposal that, as predicted, was rejected by a number of Member States, including, as you know, Spain. . . .

I want to explain to the Members of Congress the principles that the Government upholds and will defend in these new times in order to reach an agreement on financial perspectives. First, the principle of sufficiency. Spain has for many months backed an expenditure ceiling of 1.24 percent of gross domestic product of the European Union 25 as proposed by the Commission in February 2004. In fact, this was the only thing Spain supported in a proposal that in all other regards was very harmful to Spanish interests. We have been flexible on this ceiling, seeking to reach an agreement with the countries in favour of a ceiling of 1 percent of the EU gross domestic product (GDP).

Second, the principle of graduality. . . . The Government is in favour of creating a safety net for the most affected Spanish regions. Furthermore, the Government defended extending the principle of gradual withdrawal of regions

to countries affected by the statistical effect of enlargement. Thus, the Government defended and was able to obtain recognition for Spain's gradual withdrawal from the Cohesion Fund, something which had not been contemplated previously.

Third, the principle of equity. The Government has upheld that the costs of enlargement should be shared equitably. . . . This would be seen in the magnitude of the drop in Spain's net balance.

Fourth, the principle of quality. The Government has defended the importance of certain funds for Spain and Europe from a standpoint of the added value they contribute in the modernisation and promotion of our economies. This is the case of the funds for the European Education Space, for trans-European infrastructures, for biodiversity funds in the framework of the Natura Network programme and, above all, for the research, development and innovation funds in the competitiveness category, or Category 1A. With respect to common agricultural policy, we seek a CAP that guarantees the continuance of farming activities, prioritising rural development that promotes greater territorial structuring and cohesion. Regarding competitiveness funds, the so-called Category 1A as referred to above, Spain has favoured funds having a national dimension consistent with the renewed Lisbon strategy, giving a greater national dimension to policies devoted to extending the knowledge-based and innovation society.

With regard to income, . . . we defend a system of income based fundamentally on recourse to gross domestic product. This principle is not compatible with maintaining the British cheque, and we have maintained that it should at least be frozen and did not support the generalised compensation mechanism owing to its arbitrariness.

(. . .)".

(*DSC-P*, VIII Leg., n. 99, pp. 4967–4968).

Later, on 31 October 2005, in response to a parliamentary question, the Government stated:

"As regards budgetary balance forecasts, it is true that the net balance with the Union has been decreasing in recent years. From a balance of some 9 thousand million euros in 2002, amounting to 1.2% of our GDP, in 2005 we show figures in the area of 0.7%. Nonetheless, the model proposed by the Commission, on both the expenditure and the income sides, would amount to receiving less community transfers for Spain in terms of commitments, albeit in terms of expenditures a relatively large amount of funds would continue to be received.

This reduction in the volume of community funds is explained in part by the following:

– The population of the Spanish regions with per capita incomes of less than 75% of the GDP of the EU15-Objective 1 regions- has dropped from 23.7 million to 15 million inhabitants. This figure is fundamental in determining the

volume of funds to be received because of the high relative weight given the population criteria in the distribution of the convergence objective, an aspect which inevitably affects Galicia.

– Spanish per capita GDP has gone from around 75% of the EU15 average in 1987, to 87.6% of the average in 2004.

These indicators show Spain to be a clear example of the success of the cohesion policy, in terms of our convergence with average EU levels, and inevitably point to less eligibility, both nationally and regionally, to receive community funds.

Furthermore, a more disfavourable economic growth situation in some of the major net EU contributors is determining the current negotiation of the Financial Perspectives 2007–2013 in a context of strict budgetary limitations, as refers to both domestic and community budgets.

All these circumstances will undoubtedly, therefore, affect the agreement that is ultimately reached and therefore, Spain's financial position vis-à-vis the EU".

(*BOCG-Congreso.D*, VIII Leg., n. 284, p. 225).

5. External Relations

a) China

On 15 June 2005 the Government answered a parliamentary question on lifting the arms embargo against China, stating:

"In the conclusions of the December 2004 European Council, the EU reaffirmed its political will to continue working to lift the arms embargo against China, invited the Luxembourg presidency to finalise work towards adopting a decision, and stressed that such decision should not result in an increase of arms exports by the Member States to China, in quantitative or qualitative terms. For this purpose, work is underway to strengthen a Code of Conduct to govern exports.

Furthermore, the European Council specifically states that human rights, stability and security in the region and the national security of friends and allies are criteria to be taken into account in arms exportation.

In the months following the December European Council, a series of different circumstances have gotten in the way of rapid adoption of a decision on this matter. At the informal meeting of EU Ministers of Foreign Affairs on 16 April, it was concluded that it was politically not the best time to lift the embargo.

This does not mean, however, that the matter does not continue to be under discussion. In this context, Spain, one of the Member States consistently in favour of lifting the arms embargo, continues to work to achieve the conditions for this to take place".

(*BOCG-Congreso.D*, VIII Leg., n. 237, p. 210).

Furthermore, on 26 August 2005, in response to a parliamentary question on China's refusal to support the measures requested by the European Union to curb their textile exports, the Government stated:

"In view of the growth of exports from the People's Republic of China to the European Union of certain textile and clothing products since the liberalisation of such products on 1 January 2005, in response to requests by both the industry and the Administrations of the Member States, the European Commission decided to set in motion the mechanism established in China's Protocol of Accession to the World Trade Organisation. This mechanism provides for seeking consultations with China when there is damage or the threat of damage to the sector of production as a result of an alteration in the development of trade. China's position, initially was to reject initiating all such consultations . . .:

(. . .)

The European Union did not accept China's arguments and set the formal consultation process in motion for two categories of products (t-shirts and linen yarn) and informal consultations and close monitoring of statistics for another series of categories that are especially sensitive for European industry.

Furthermore, Spain cannot take autonomous measures in foreign trade, since this corresponds to the European Union as a whole. In appropriate European Union fora in which foreign trade measures are discussed and ultimately approved, Spain's position, in continual coordination with the textile sector was to:

a) Try to reach a self-regulation agreement with China, a more practical and less contentious solution than applying unilateral measures.

b) Include in the self-regulation agreement a broad number of categories, since Chinese exports cover a large number of products that are sensitive for Spanish industry.

c) Not to delay the application of containment measures, but rather to operate on an urgent basis.

d) Coordinate a joint position with other countries (France, Italy, Portugal, Belgium, etc.) vis-à-vis the European Commission and China. It must be recalled that some European countries (Sweden, Denmark, Finland, Germany, United Kingdom, etc.) were against imposing any restrictive measures on China.

Because of the firm stance of Spain and other countries, the Commission finally negotiated an acceptable commitment to self-regulate exports with China.

On 10 June, the European Commission for Trade and the Chinese Minister of Trade signed a Memorandum of Understanding, the main characteristics of which are as follows:

a) China commits to limiting its exports in ten product categories . . .

These ten products account for approximately 60% of exports of products liberalised on 1 January 2005 to the European Union.

b) The agreement runs from 11 June of this year to the end of 2007.

c) Total liberalisation to exist, in principle, as of January 2008.

d) The European Union commits to exercising its rights under paragraph 242 of China's Protocol of Accession to the WTO (World Trade Organisation) to impose limitations on Chinese textile and clothing exports in 2008 and on products not included in the ten categories mentioned in 2005, 2006 and 2007 "with restraint".

On the whole, Spain gives a positive rating to the agreement reached with the People's Republic of China, for the following reasons:

a) It provides stability and predictability to textile trade between the EU and China for the next two and a half years, something which is positive for both sides.

b) It covers most of the products requested by the Spanish textile sector.

c) It avoids undesired confrontation with China, whose potential both from the point of view of imports and as a receiver of profitable investment is undeniable.

d) It gives additional time to the textile industries of developed and developing countries to undertake appropriate structural adjustments.

e) It received the support of the countries most hesitant to impose measures to regulate Chinese exports".

(*BOCG-Congreso.D*, VIII Leg., n. 262, pp. 502–503).

b) Iran

On 28 September 2005, in response to a parliamentary question, the Government stated:

"The Government values and supports the negotiating process being carried out by the European Union with the Government of Iran. . . . in October 2003 the European Union started a negotiating process with the Iranian authorities. Those were complex and difficult times; the Government of Iran was being threatened with sanctions and even the use of force was being discussed. In that situation, the European Union decided to mandate three countries, United Kingdom, France and Germany and, upon proposal by Spain, High Representative Mr. Solana, to initiate a process of negotiation and dialogue with Iran precisely to prevent it from acquiring military nuclear capabilities. I think the European Union's efforts were very fruitful. There was an agreement signed in Teheran in October 2003 and an agreement signed in Paris in November 2004.

What is happening now is that Iran's position has changed after a change of political leadership: it has unilaterally broken the agreements signed and the commitments made in Paris in November 2004, and have decided to once again embark upon enriching uranium at the Isfahan plant. Under these circumstances, the European Union must express its firm stance and its condemnation of the unilateral breach of the agreements duly reached between the European Union and the authorities of Iran.

This is why the European Union stands firm and united in calling for Iran to definitively suspend its uranium enrichment activities and return to the negotiating table. These are the clear, unanimous, unified messages sent by the EU ministers of Foreign Affairs, the European Presidency and the countries responsible for negotiating with Iran.

In a meeting with my counterpart, the Minister of Foreign Affairs of Iran, I had the opportunity to express this concern to him.

We are now still in the phase of dialogue and diplomacy. It is true that there is a recent resolution by the International Atomic Energy Agency calling upon the Director of the Agency, Mr. ElBaradei, to continue using all his diplomatic skill in order to be able to return to the negotiating table in two months' time, which is what the European Union seeks. It is true that the possibility of informing the Security Council is not ruled out, but at this time what is important is dialogue, diplomatic measures, and maintaining the European Union's firm and unified stance in favour of continuing to hold a dialogue with the Iranian authorities".

(*DSS-P*, VIII Leg., n. 53, pp. 2856–2857).

c) Morocco

Before the Senate Plenary on 14 September 2005, the Government, responded to a parliamentary question on the Agreement on Fishing signed between the European Union and Morocco:

". . . This agreement is the result of the efforts of the Spanish Government, which has accompanied the successful negotiating process by the European Commission; an effort that we must, of course, also attribute to the Kingdom of Morocco and the Spanish fishing sector.

The Government considers that the agreement is territorially balanced, as it permits access by the fishing boats that fished traditionally, such as those from the Autonomous Communities of the Canaries, Andalusia and Galicia, despite the fact – as you stated –, that some of these have already been mothballed and others relocated. However, sufficient boats remain for us to be able to place them under this agreement. Furthermore, it opens new possibilities for boats based in the Basque Country, Asturias and Cantabria.

I would also like to tell all of you that the agreement corresponds to a new mode of partnership between the European Union and third countries on fishing, involving active participation aimed at developing Morocco's fishing sector. I feel that the new cooperation component in which these partnership agreements are included – of which this is the first –, is going to contribute very positively to the value of the Moroccan fishing sector, enhancing employment expectations and generating more stable employment that will aid in combating illegal immigration.

(. . .)".

(*DSS-P*, VIII Leg., n. 51, p. 2729).

d) Code of Conduct on Arms Exports

On 10 October 2005, in response to a parliamentary question on the Spanish position in relation to the European Union Code of Conduct on arms exports, the Government stated:

> "Spain participated actively in the entire process of revision and enhancement of the Code of Conduct. This process started in 2003 and concluded during the first half of 2005, and is only awaiting transformation into a common position.
>
> Spain has been especially combative on this last aspect, owing to the importance of uniform application of the Code if we want to achieve greater harmonisation of policies on arms exports among European Union countries. The transformation process referred to is expected to be concluded during the second half of 2005".
>
> (*BOCG-Congreso.D*, VIII Leg., n. 284, p. 530).

XIV. RESPONSIBILITY

1. Responsibility of International Organisations

In his remarks to the Sixth Committee during its 2005 session, the Spain's Representative, Ms. Escobar Hernández, explained Spain's position regarding the work of the International Law Commission:

> "In relation to the subject of the responsibility of international organisations, my Delegation first wants to state its recognition of the Special Rapporteur, Professor Gaja, for his third report, as well as of the International Law Commission for its commentary. In both cases there is a clear desire to move forward in the complex and delicate sector of international responsibility arising from the special nature of the obligor involved: international organisations.
>
> As in past years, the work of the Special Rapporteur and the International Law Commission was carried out in strict parallel to the Draft articles on Responsibility of States for Internationally Wrongful Acts, introducing modifications *mutatis mutandis* made necessary owing to the presence of an international organisation. In this case, the parallelism is more evident, since – as stated expressly – in a large number of proposed articles that have been provisionally approved by the Commission, the modifications introduced consist merely of replacing the word 'State' with 'international organisations'. My delegation, in agreement in principle with the parallel treatment of international liability of the State and of international organisations for illicit acts, asks whether it might not be necessary to look more closely at the adaptation technique, especially in view of the great diversity of existing organisations. And all this, of course, is to the extent that the use of the generic term " international organisations" infers that an absolutely uniform system is being chosen.

In regard to the content of the articles approved by the International Law Commission during its 57th session, my Delegation would like to make two specific comments.

The first refers to Art 8, paragraph 2, something absolutely new as regards the Draft on Responsibility of States. I am sure there is an explanation for this new element, but I think we need to devote more thought to it, for the simple reason that by including this paragraph, the Special Rapporteur and the International Law Commission do not provide an answer to the classic debate over whether acts of International Organisations fall under International Law or not. Conversely, this seems to limit any potential existence of an illicit international act to the acts in question being able to be considered in this category.

This is a possible option that, however, under the current Article 8, paragraph 2, meets some difficulty in interpretation which could lead to some inconsistency. The paragraph refers to 'an obligation under international law established by a rule of the organisation' to which, in case of violation, the first paragraph of the abovementioned article defining the concept of violation 'also applies.' Does the use of the adverb 'also' and the expression 'rule of the organisation' mean that only under the express provision in Article 8, paragraph 2 would an International Organisation be internationally liable for violating its constitutional treaties or other equivalent internal rules? I do not believe this is the intention of the article in question, and for this reason – together with others to which I am unable to refer at this time – my Delegation considers, that this paragraph should be reviewed once more in order to offer a clearer text that is free from ambiguous interpretation. This is especially important because this article is central to defining any potential relationship of liability that may arise from violation of an international obligation on the part of an Organisation.

The second comment refers to the Article 15 included in the Report of the International Law Commission. In this regard, my Delegation considers it is appropriate to use the term 'elude', because it allows for a broader range of premises than that if the 'violate' is used. Moreover, we feel it necessary to take a closer look at the premise contemplated in paragraph 2; that is, the situations in an international organisation, that through mere recommendation or authorisation, might involve one of the premises I referred to in the first part of my remarks, in which there is a clear difference between the areas of jurisdiction and the acts undertaken by the different international organisations. It can be considered, therefore, whether it might be necessary, in relation to this article, to include a new element that would enable us to take into account the diversity of the legal systems in force in the international organisations, along with the different meanings of the terms 'authorisation' and 'recommendation' in each.

Lastly, in reference to the questions asked by the International Law Commission regarding its work in the future, my Delegation questions the advisability of including in Draft articles on Responsibility of International Organisations

specific provisions directly determining the international responsibility of the State. Conversely, it might be sufficient to include a remission clause, that would ensure the application, *mutatis mutandis*, of the rules already established in the Draft on International Responsibility of State.

With regard to the second issue posed, my Delegation does not consider it appropriate to include general wording acknowledging Member State subsidiary liability for violations directly attributable to an Organisation. Conversely, any work in that direction would require very nuanced consideration taking into account different factors, particularly the separate international legal entity of the Member State and the Organisation".

2. Reparation

On 2 August 2005, in response to a parliamentary question, the Spanish Government informed on measures to defend Spanish citizens demanding the reparation of the damages caused by the seizure of their property in Equatorial Guinea when it was a Spanish colony:

"In relation to the damages and personal harm caused to the Spanish residents of Equatorial Guinea as a result of said territory's independence in 1968, a distinction must be made between two types of compensation:

Compensation of a social nature for the loss of employment by employees and self-employed persons with small businesses and industries, as well as for the loss of household furnishings and effects. The compensation was approved by the Council of Ministers on 17 January 1980. Later, the Supreme Court decision of 15 February 1993 entitled the former residents of Equatorial Guinea to be compensated for the cost of travel, aid for their return and travel expenses, like the persons repatriated from the Western Sahara. Lastly, on 3 October 1996, the Council of State issued a recommendation in favour of increasing the number of people receiving compensation of a social nature.

Payment of this type of compensation was carried out from 1995 to 1999, through the Ministry of the Presidency in implementation of a Agreement by Council of Ministers. It was charged to the budget of the Ministry of the Presidency.

There is further compensation to offset the loss of goods and business activity as a result of the forced abandonment of the country. In this regard, on 24 November 2004 the Congress of Deputies approved a Motion urging the Government to provide consular assistance to former Spanish residents in Equatorial Guinea suffering the loss of goods and property owing to the discriminatory acts in that country, and to go before Equatorial Guinean courts to defend such interests.

Under the terms of this Motion, the Embassy of Spain in Malabo and the Consulate General of Spain in Bata are available to provide appropriate consular assistance to Spaniards who appeal or may appeal to Equatorial Guinean courts to defend their interests, in conformance with the rules of International

Law and common practice, and under the same terms as with any other Spanish expatriate who finds him/herself in similar circumstances".

(*BOCG-Congreso.D*, VIII Leg., n. 252, pp. 333–334).

XV. PACIFIC SETTLEMENT OF DISPUTES

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Measures

In response to a parliamentary question on 15 November 2005, the Spanish Government informed on Spain's position regarding international sanctions against Syria:

"The Spanish Government considers that a policy of dialogue and cooperation must be maintained with the Syrian authorities, while at the same time remaining steadfast in demanding compliance with international law. For this reason, Spain welcomed the withdrawal of Syrian troops and intelligence service personnel from Lebanon, in compliance with UN Security Council Resolution 1559.

In the European context, the Government has defended cooperation with Syria and its full participation in the Barcelona Process, as an ideal mechanism to promote and consolidate political, economic and social reforms in Syria and other Member countries in the southern and eastern Mediterranean. In this context, negotiations between the EU and Syria on an Association Agreement have concluded and are pending signature.

Currently, only the Government of the United States of America maintains unilateral sanctions against Syria, since May 2004, in application of the 'Syria Accountability Act.'

In the current context, the Government is not in favour of imposing international sanctions against Syria that have not been proposed for any other reason. However, the Spanish government, together with its other EU partners, has expressed the need for Syria to comply with United Nations Security Council resolutions, particularly Resolution 1559, and Resolution 1595, on the formation of an international commission to investigate the assassination of Rafiq Hariri".

(*BOCG-Congreso.D*, VIII Leg., n. 292, p. 277).

2. Collective Measures. Regime of the United Nations

a) Afghanistan

On 7 December 2005, in response to a parliamentary question, the Spanish Government informed on the deployment of Spanish troops in Afghanistan:

"The Spanish presence in Afghanistan began with its participation in Operation 'Enduring Freedom' as authorised by the Council of Ministers on 14 December 2001.

On 20 December 2001, the United Nations Security Council, in Resolution 1386, approved the creation of the ISAF (International Security Assistance Force in Afghanistan) and on 27 December 2001 the Council of Ministers authorised Spain's participation in ISAF. Its objective is to act in support of the Afghan Provisional Authority to maintain security in Kabul and its surrounding areas.

United Nations Security Council Resolution 1510, of October 2003, authorised the ISAF mandate in areas outside Kabul and its surrounding areas, as well as extending security to include United Nations personnel and international civilian personnel engaged in humanitarian operations and reconstruction.

The Council of Ministers of 2 July 2004 decided to put an end to Spain's participation in 'Enduring Freedom' and, at the request of the United Nations, authorised the deployment of a battalion in support of the electoral process in Afghanistan. This resolution was approved by the Plenary Session of the Congress of Deputies on 6 July 2004.

Later on, in February 2005, Spain took charge of a provincial reconstruction team at the request of the Secretary-General of the United Nations and President Karzai of Afghanistan. Under the continued auspices of the United Nations and at the request of the Afghan Government itself, the objective of the Spanish presence is to contribute to building a free, democratic and stable Afghanistan, to help in giving an opportunity to a population that, through contacts with same, shows its receptivity for and appreciation of such presence.

This overview of our participation in Afghanistan to date is complete with our support of the parliamentary elections held last 18 September.

In this process seeking the development and consolidation of State institutions, economic and social development of the people, reform of the system of justice, etc., the United Nations plays the essential role as the source of the legitimacy of the international presence.

The mission of the International Security Assistance Force in Afghanistan, bears no resemblance to situations experienced in the past in that country".

(*BOCG-Congreso.D*, VIII Leg., n. 302, p. 407).

b) Haiti

On 13 May 2005, in remarks before the Security Council, the Representative of Spain, Mr. Yáñez-Barnuevo, set forth Spain's position regarding the crisis in Haiti:

"(. . .)

Spain's active commitment to stability, democratisation and development in Haiti is expressed through our participation in the United Nations Stabilisation Mission in Haiti (MINUSTAH) with a military contingent working in close cooperation with one from Morocco and with a civilian police contingent, as

well as through our activities in the Ad Hoc Advisory Group on Haiti of the Economic and Social Council, in whose recent mission to the country we participated. The two missions – the Security Council's and the Economic and Social Council's – highlighted the complementarity of those organs when they address complex crises such as the one in Haiti. We agree with the recommendations resulting from the mission, which are set out in the report before the Council (S/2005/302).

The elections planned for the end of the year are undoubtedly one of the most important short-term challenges for the people of Haiti and for the international community. However, they cannot, in and of themselves, solve the country's problems, which also require long-term social, economic and institutional development efforts.

All political parties that renounce violence must be able to participate in free, transparent and inclusive elections in which there is the greatest possible participation by the people. We believe that, during the electoral process, the presence of international observers and the strengthening of security – the absence of which would pose higher risks for the success of the process – would be highly appropriate.

With a view to those objectives, the national dialogue begun on 7 April by Interim President Boniface Alexandre – which dialogue should be supported – should immediately serve to create an inclusive political scenario that will ultimately permit the governability of the country. The Haitian political forces have a special responsibility to ensure that the dialogue moves forward before the electoral process begins and that it continues after the installation of the new Government. The national dialogue should make it possible to define the political framework needed for the implementation of long-term development objectives.

The solution to Haiti's fragile situation is not purely military in nature. However, we all know that there can be no development without security. The two are interlinked and require progress in parallel. We agree with the recommendation that the Department of Peacekeeping Operations review the security situation in Haiti.

In that context, we believe that a new concept of operations should be adopted for MINUSTAH through a revised model of its civilian police component, with appropriate support for its military personnel – all of this to take place before the electoral process gets under way. We should also improve the coordination of MINUSTAH's civilian police component and strengthen its cooperation with a reformed Haitian National Police. The Mission should also be endowed with the required resources to improve its intelligence gathering capabilities and enhance its internal coordination with respect to the civilian police.

It is clear that MINUSTAH is playing a very important role in terms of stability and deterrence, which continues to be pivotal, even in areas where calm currently prevails, many of which have an insufficient State presence. We note with concern that there has been very little progress in terms of disarmament

and that distrust continues to prevail. One short-term goal is to enhance the people's perception of the level of security, because very often people hesitate to take a step forward in terms of disarmament for fear of losing their capacity for self-defence.

The disarmament, demobilisation and reintegration programme initiated in February by MINUSTAH should be carried out without delay. That requires a clear-sighted and resolute attitude on the part of the Transitional Government as well as the disbursement of the required financial assistance by the donor community.

Furthermore, as stated in the interim report Ad Hoc Advisory Group of the Economic and Social Council, to which the representative of Canada has just referred, in order to put an end to the violence, we have to tackle the underlying socio-economic conditions. The members of the Security Council and of the Ad Hoc Group noted in the field the weakness of Haiti's institutions. Their fragility is very clear in the areas of law enforcement and administration.

In that respect, reform of the judicial and penal system, as well as training in the area of human rights for administrative bodies and security forces, is indispensable. Any development activity in Haiti has to be based on rebuilding the State and making it more answerable to the people, with particular attention paid to the inland areas.

Regrettably, today the people's frustration is palpable at the scant international assistance that has been provided. We must therefore all work together to remedy that situation, including through the implementation of quick-impact projects in priority areas.

Environmental sustainability and capacity-building in the area of human resources, along with institutional development throughout the country, are the areas that most urgently require the use of shock tactics. What is required is a continued effort by the international community. The peacebuilding Mission undertaken by the United Nations last year, by its very nature and scope, has to be a long-term operation. We therefore believe that it would be logical to extend MINUSTAH's mandate for a 12-month period.

Spain, in keeping with its position within the European Union and its participation in the Ad Hoc Advisory Group of the Economic and Social Council Group and in MINUSTAH, will continue its efforts to promote peace and development in Haiti. In order to achieve those goals, it is indispensable, we believe, that the Core Group referred to in resolution 1542 (2004) fully carry out its mandate and receive support from all institutions concerned with Haiti's progress.

We are convinced that, with the Council's support, decisive actions can be taken in the coming weeks. Spain will contribute to this undertaking to the fullest extent of its capabilities.

(. . .)".

(UN Doc, S/PV.5178, pp. 20–21).

c) Iraq

The Spanish Government informed the Senate Foreign Affairs and Cooperation Committee, on the position of Spain in relation to the conflict in Iraq:

"(. . .)

If a special circumstance exists with regard to Iraq it is because, first, a very large percentage of Spanish public opinion called for it, and because the Government is seeking to be consistent with a position it adopted in early 2003 when it was in the opposition. It went into the elections with that position, and some time before they were held, in February 2004, the current Prime Minister expressed the terms under which Spanish troops could continue in Iraq. He did not exclude such presence, but did set forth conditions and went into the elections with such conditions on the table. As the conditions were not met, the Government did what any democratic government should do: be consistent with the commitments it made to the public.

In Tunis the Prime Minister did not call for the countries now in Iraq or there at that time to leave that country, but rather made very careful statements, something I know very well because I was with him at that time and he did not call for anyone to leave Iraq. The words spoken by the Prime Minister were, however, interpreted that way on the front page of certain newspapers, but I can assure the Members of Congress that that was not his intent and if there was any doubt regarding his words in Tunis, reading the text of his statement in full completely clarifies the issue.

Therefore, as I am unable to acknowledge that the Prime Minister spoke in those terms, I am also unable to comment on any potential change in position in that regard.

It is also not fair to say that the Prime Minister stated a specific position at the NATO summit in Istanbul. The present Government's commitment in regard to Iraq was expressed on 22 April, when the announcement was made that the troops would be withdrawn, and in that same announcement I would remind you that the Prime Minister expressed the Spanish Government's commitment to reconstruction, along with democratisation and territorial integrity, of Iraq. It was then, therefore, when the commitment was expressed, and what the Government did later was to abide by that commitment. That did not prevent the Government, when the NATO summit was held in Istanbul, from not having adopted a concrete measure, which is what the Prime Minister was referring to, but now measures have been taken.

The Government considers not only its own commitment but also that of the International Community to a sovereign, secure, united, prosperous, democratic Iraq at peace with its neighbours as fundamental, and it is in this framework that Spain is participating together with the United Nations and the European Union in initiatives seeking the democratisation, stability, and development to which the Prime Government committed himself on 22 April 2004. Proof of this interest is the current tour by the Minister of Foreign Affairs, whose

implication in the political and economic reconstruction process is fundamental and to which I have already referred, in which he is making use of his capability as an interlocutor with Iraq's neighbours.

The Government considers it a priority to contribute to the development of the Iraqi political process as set forth in United Nations Security Council Resolution 1546, a resolution in which the Government participated quite actively and regarding which it made a number of initiatives that are embodied in the text and were recognised by different international players. In December 2004 the Office of the Government Commissioner for the Reconstruction of Iraq approved a $20 million contribution to the International Reconstruction Trust Fund for Iraq. These funds were earmarked to be sent to the UNDP and used specifically for electoral processes, and thus Spain showed very clearly that its commitment to democratisation was to be through this contribution, which was part of a much larger one, to which I will refer later on.

As regards stability in Iraq, Spain is participating in various international multilateral fora, the principle objective of which is to train the Iraqi Security Forces to be able to gradually take over stability assurance functions in Iraq. Spain became involved in the NATO training mission in Iraq, approved in June 2004, pursuant to the abovementioned Resolution 1546. The independent mission of the multinational forces will provide perform training activities outside Iraq – as established in the resolution – and the Spanish Government has offered to fund and host specific courses in our country and announced a financial contribution for the training mission. The Atlantic Alliance will also carry out training missions inside Iraq, but, as the Members of Congress know, the Government will not be participating in those.

Furthermore, in the context of the European Union, the Spanish Government and other European governments responded to the request made by the United Nations Secretary-General to fund the force protecting the United Nations contingent, which is being funded by a 4 million euro budget line item in the PESC budget.

As the Members of Congress know, stability also has a civilian component, particularly the Administration of Justice, and for this reason, the Spanish Government has decided to participate in the joint mission on civilian crisis management and rule of law approved by the European Union. We will be participating in the funding and the organisation of integrated training courses for judges, prosecutors, police officers, defence lawyers, and prison staff in our country.

In addition to the above, political stability and reconstruction have another facet, the economy, that is fundamental for the new Iraqi Government, to which the people are going to look for improvements in their living conditions. For this reason, Spain has made major economic efforts along two tracks. First, regarding economic cooperation it has stated it will maintain the pledge made at the Madrid Conference, at which it announced $300 million in aid to the Iraqi people. Of these funds, $160 million – of which the Members of Congress

are surely well aware – were earmarked for the 2003/2004 period and today have already been allocated, leaving $140 million, which have been earmarked for the 2005/2006 period.

Furthermore, 80 percent of Iraq's debt with Spain has been condoned, as decided at the Paris Club and consistent with a very large number of Spain's partners in the international community. In practical terms, this amounts to cancellation of $482 million of Iraq's overall $602 million debt with Spain".

(*DSS-C*, VIII Leg., n. 105, pp. 18–19).

XVII. WAR AND NEUTRALITY

1. Humanitarian Law

In his speech to the Security Council on 9 December 2005, Spain's Permanent Representative, Mr. Yáñez – Barnuevo, set forth Spain's position on the SG's report on the protection of civilian population in situations of armed conflict:

"Let us recall that the main responsibility for the protection of civilian populations, including internally displaced persons, lies with national authorities. But where the State in question is unable to protect civilian populations on its territory it is incumbent on the international community to shoulder the responsibility, making use of appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, or when appropriate making use of enforcement measures pursuant to Chapter VII, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The outcome document of September's General Assembly summit (General Assembly resolution 60/1) set this concept out as a major advance in the action of the international community, and we cannot fail to welcome this.

Of particular concern is the need to ensure access to affected populations by humanitarian personnel and humanitarian assistance in situations in which the State or party to the conflict responsible for providing such access is unable or unwilling to do so. As the Secretary-General notes in his report (S/2005/740), and as the United Nations Emergency Relief Coordinator has indicated, in 2004 United Nations agencies were denied access to an estimated 10 million people in need of assistance. Grave security conditions not only hamper access for such assistance; often, they also make it necessary to remove humanitarian personnel temporarily, leaving affected populations without support or assistance of any kind. The case of Darfur provides a clear example of this.

At the same time, it is vital that those responsible for committing atrocities against civilian populations not go unpunished. Once again, it is the State in whose jurisdiction the crimes are committed that bears primary responsibility for ensuring that. Should such a State be unable or unwilling to do so, the international community must use all means at its disposal to combat impunity for

especially serious violations. Such means include transitional justice, truth commissions, special or joint tribunals and, in a broader framework, the International Criminal Court, which should play – and in certain cases already is playing – a key role in investigating and bringing to trial the perpetrators of genocide, crimes against humanity and war crimes.

Let me turn now to the leading role that can be played by the International Fact-Finding Commission created under article 90 of Additional Protocol I to the Geneva Conventions, relating to the protection of victims of armed conflicts – in this context, civilian populations in particular. The Commission, whose jurisdiction has already been accepted by 68 States, can help ensure compliance with the rules of international humanitarian law, in particular those relating to the protection of the victims of armed conflict, not only through investigation and fact-finding with respect to alleged violations of the relevant rules, but also by using its good offices to facilitate a return to respect for the Geneva Conventions and the Additional Protocol. This fully justifies the reference to the Commission's functions in resolution 1265 (1999), the first of the Council's resolutions on this matter.

In that regard, we welcome the visit to New York by a delegation from the International Fact-Finding Commission, led by its President, Sir Kenneth Keith. We are confident that this visit will enable us all to become familiar with the activities the Commission can undertake, with a view to increasing the number of States accepting the Commission's jurisdiction and encouraging the parties concerned that they should have recourse to it. The Commission is a unique instrument for ensuring the proper implementation of international humanitarian law and for helping prevent recurrent violations of the rules governing armed conflict.

For that reason, we believe that consideration should be given to the establishment of formal channels by which cooperation between the United Nations and the International Fact-Finding Commission can be strengthened, with a view to realising the potential of the Commission's activities in terms of the work of the Organisation, particularly in the sphere of the protection of civilian populations in armed conflict".

(UN Doc., S/PV.5319 [Resumption 1], pp. 17–18).

2. Disarmament

a) Anti-Personnel Mines

On 2 August 2005, in response to a parliamentary question, the Spanish Government reported on the measures it has taken to identify the sources of supply of anti-personnel mines to non-state agents:

"It is a proven fact that certain non-state entities (irregular military or paramilitary organisations, terrorist groups) in certain countries (Colombia, Afghanistan, for example) are laying anti-personnel mines or similar devices. These are often

improvised, handmade explosive devices (IEDs, in the English acronym, or 'minas hechizas', as they are called in Colombia) and not industrially produced mines from a foreign supplier. In many cases, the non-state agents themselves are the ones making this type of device, by using leftover explosives and metal or plastic shrapnel, or recycling explosives from other devices (hand grenades, artillery shells, etc.). It is therefore, a problem that is not easily solved by monitoring foreign supply or procurement.

In any case, it is important to note that Spain does not produce or trade in anti-personnel mines, thereby guaranteeing that any such supply is not from a Spanish source acting legally (under Law 33/1998, of 5 October, on the total prohibition of anti-personnel mines and weapons of similar effect, including manufacture, storage, use and transfer). Also, Spain has provided training in this field (to train specialists in area of improvised explosive devices, owing to the experience of our security forces in this field through the fight against terrorism) at the International De-Mining Centre pertaining to the Ministry of Defence.

Also, Spain has maintained a unilateral moratorium on the export of all types of anti-personnel mines to any destination since February 1994. This moratorium was agreed by the Interministerial Regulatory Board on Foreign Trade in Defence and Dual Use Materiel. Therefore, and also in application of the abovementioned Law, the Spanish authorities in charge of regulating foreign arms trade have not granted any export licence for anti-personnel mines since the moratorium went into effect in February 1994. Furthermore, the sole Spanish producer of such devices stopped production in the 1988–89 time frame".

(*BOCG-Congreso.D*, VIII Leg., n. 252, pp. 633–634).

b) Nuclear Weapons

On 7 July 2005, in response to a parliamentary question, the Spanish Government reported on Spain's position in connection with the Nuclear Non Proliferation Treaty review process:

"The Nuclear Non-Proliferation Treaty (NPT) review process consists of a very complex series of activities set in motion with the NPT's entry into force in 1970. This Treaty was extended indefinitely from 1995, with a Review Conference being organised every 5 years to assess the progress achieved in implementing its provisions (which are very ambitious and entail very long-term commitments). In May 2005 a Nuclear Non-Proliferation Treaty (NPT) was held in New York under the auspices of the United Nations. In view of the above, it is understood that the NPT review is first and foremost a monitoring or enforcement process, rather than a reopening of the text of the Treaty. Spain certainly participates in this process, both in the 2005 Conference and in earlier conferences. The following sets forth some aspects of our country's position.

Spain's position is closely aligned to that of the European Union (EU).

As regards the position of the European Union, it must be pointed out that its members include two nuclear-weapons-possessing-states (France and Great Britain), some countries that are members of the Atlantic Alliance (such as Spain), and other countries that have in the past held neutral status (such as Sweden or Austria). Therefore, there are different sensitivities and some major differences in the EU regarding the NPT system (for example, relating to "unequivocal commitment" to achieving progress in nuclear disarmament, under Art. VI of the NPT). On many issues consensus and the desire to work in close collaboration prevail. European Union members share certain points of view on NPT review: after a long consultation process, a Common Position (a formal, binding position) containing relevant ideas, especially on issues of non-proliferation and regional crises was able to be adopted in the General Affairs Council (CGAER) of 4–26–05. This text expressed some basic positions:

a) the importance of maintaining the NPT in its integrity and the need to adopt measures in the event of non-compliance, in respect of international law and effective multilateralism.

b) firm support for monitoring certain United Nations processes (such as Resolution 1540) or instruments such as the Total Nuclear Test Ban Treaty (opened for signature in 1997, and not yet in force).

c) more technical aspects, such as the proposal to commence negotiations on limiting the production of fissile material for nuclear weapons.

A number of common EU statements on the implementation of this lengthy Common Position (7 pages) have already been issued (and are available on the Internet).

Regarding other NPT issues, such as, for example, Disarmament and Peaceful Uses of Nuclear Energy (Art. IV of the Treaty), while some points of contact exist, national positions have more visibility. Some aspects of Spain's national position may can be specified. Without detriment to EU documents and statements, the Spanish delegation participated in the general discussion at the Review Conference, and presented at least two documents (one on a national basis and the other in collaboration with Holland and Belgium) expressing certain national positions. In these reports, Spain voices particular support for monitoring the so-called 'Thirteen Measures for Disarmament' in accordance with the Final Document of the 2000 Review Conference. Other countries in our political environment have the same sensitivities (Netherlands, Belgium, Canada, Japan, Australia . . .) and are also going to present documents along these lines.

Other aspects of Spain's position involve defending certain priorities: the problematic of proliferation through non-state agents (terrorism and illicit trafficking in sensitive technologies), and the urgency of promoting multilateral solutions on transparency and verification in weapons control and technical cooperation (for example, on the controversial issue of nuclear fuel). Spain applauds the adoption last 1 April (and the upcoming opening for signature) of a text of a

Convention on Nuclear Terrorism, and the Government is in favour of more processes of this type.

(. . .)

Otherwise, notwithstanding our basic commitments, it is important to underline that the essential thing is to maintain an open, constructive position. On the subject of proliferation, a global crisis that transcends our political environment and sphere of influence is currently in the process of taking shape. Think, for example, of the different situations that are arising in the so-called arc of proliferation that extends from North Korea, a country that has withdrawn from the NPT, through India and Pakistan (two nuclear- weapons-states that are not parties to the Treaty) to the Middle East, the region where Israel (also not a party to the NPT) is located. Throughout this geographic arc, we find a long list of countries (including China, Iran y Egypt) with conflictive positions, that have not signed/ratified the Total Nuclear Test Ban Treaty (among other instruments). Very broad questions arise: How can we advance towards making the multilateral non-proliferation system universal? How can we improve treaty implementation in this area so essential for peace and security?

Neither Spain nor the European Union have the answers to all these questions. Work is being done to formulate a consistent position that would enable a constructive contribution to be made at this new Review Conference. It can be said that the central core of this position both in Europe and in Spain, is the consolidation and development of the existing multilateral system. We will make all necessary efforts to defend this position".

(*BOCG-Congreso.D*, VIII Leg., n. 237, pp. 366–367).

c) Morocco

On 2 August 2005, in response to a parliamentary question, the Spanish Government reported on arms sales to Morocco:

"Spain has sold no M-60 tanks to the Kingdom of Morocco, nor does it have any intention of doing so in the future. Within the past five years, the Government of Spain has only sold, on 24 October 2003, two WM-22 fire controllers and two Otto-Melara 76/62 mm cannons to the Kingdom of Morocco. This materiel was sold for a symbolic price of one euro per unit.

Nonetheless, during the 1999–2004 period, the Government authorised export to Morocco of a range of defence materiel, and the exports actually made boil down to military vehicles (100 Nissan Patrol vehicles in 1999; 300 Nissan Patrol, 50 Nissan lorries and 50 Uro troop transport lorries in 2000; 200 Nissan Patrol in 2001; 250 Nissan Patrol, 30 Nissan lorries and 30 Nissan Terrano ambulances in 2002; 54 Uro vehicles, 20 Nissan lorries y 30 Nissan Terrano ambulances in 2004), 1 revolver (2002), 23,200 rounds of practice ammunition (2003) and 2 rifles (2004)".

(*BOCG-Congreso.D*, VIII Leg., n. 252, p. 452).

d) Venezuela

On 29 September 2005, in response to a parliamentary question, the Spanish Government stated its views regarding the effect of the recent arms sale to Venezuela on Spain's relations with the United States:

> "From 2000 to 2003 the Popular Party Government authorised export licences for arms sales by Spanish companies to Venezuela, with no negative impact on relations with the United States.
>
> Also, according to European Union reports, and under operative provision no. 8 of the Code of Conduct relating to arms exports, from 2000 to 2003 a number of European countries authorised the sale of defence materiel to Venezuela, with no impact on their relations with the United States.
>
> Spain has explained that this materiel (cargo aircraft and patrol boats) is not offensive in nature, nor can it therefore be used against other countries in the region. The missions in which this materiel will be used will focus on the surveillance of Venezuelan territorial waters and border areas in order to fight drug trafficking.
>
> The Ministry of Defence considers that the Memoranda of Understanding signed between Spain and the Bolivarian Republic of Venezuela entail a large amount of work for the Navantia shipyards and our aeronautical sector, and are therefore very positive in terms of economic development and job creation.
>
> Currently, relations between Spain and the United States in the area of defence are good".
>
> (*BOCG-Congreso.D*, VIII Leg., n. 265, pp. 98–99).