

Spanish Diplomatic and Parliamentary Practice in Public International Law, 2004

This Section was prepared by Dr. C. Jiménez Piernas, Professor of Public International Law and International Relations at the University of Alcalá, Dr. M. A. Almeida Nascimento, Dr. V. Carreño Gualde and Dr. J. Ferrer Lloret, Lecturers in Public International Law, and C. Antón Guardiola, Associate Lecturer in Public International Law at the University of Alicante.

Except when otherwise indicated, the texts quoted in this section come from the OID, and more specifically from the OID publication *Pol. Ext.* 2004 (<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).

Index

I. International Law in General

II. Sources of International Law

1. Treaties

III. Relations between International Law and Municipal Law

- a) *Transposition of Community Directives*
- b) *Enforcement of European Court of Justice Judgment of 9 September 2004*

IV. Subjects of International Law

1. Self-determination
 - a) *Palestine*
 - b) *Western Sahara*

V. The Individual in International Law

1. Diplomatic and Consular Protection
 - a) *Diplomatic Protection*
2. Nationality
3. Aliens

VI. State Organs

VII. Territory

1. Territorial Jurisdiction
2. Colonies
 - a) *Gibraltar*

VIII. Seas, Waterways, Ships

1. Baselines
2. Internal Waters
3. Territorial Sea
4. Continental Shelf
5. Exclusive Economic Zone
6. Fisheries
 - a) *Morocco*
 - b) *North-West Atlantic*
7. Ships

IX. International Spaces

X. Environment

1. In General
2. Protection of Biodiversity
3. Maritime Safety
4. Protection of the Marine Environment
5. Climate Change

XI. Legal Aspects of International Cooperation

1. Development Cooperation
 - a) *General Lines*
 - b) *Alliance Against Hunger*
2. Assistance to Developing Countries
 - a) *Latin America*
 - b) *The Mediterranean*
 - c) *Europe*
 - d) *Africa*
 - e) *Asia*
3. Terrorism
 - a) *Alliance of Civilisations*
 - b) *Asia*

XII. International Organisations

1. United Nations
 - a) *Spain's Participation in the Security Council*
 - b) *Reform of the United Nations System*
 - c) *Action Programme for Renewed Multilateralism*
2. North Atlantic Treaty Organisation
 - a) *NATO Response Forces (NRF)*

XIII. European Union

1. Intergovernmental Conference on the European Constitution
2. Ratification of the Treaty Establishing a Constitution for Europe
 - a) *Prior Control of Constitutionality*
 - b) *Call for a Consultative Referendum*
3. Participation of the Autonomous Regions in European Questions
4. Enlargement
 - a) *Bulgaria and Romania*
 - b) *Croatia*
 - c) *Turkey*
5. Common Fisheries Policy
6. Lisbon Process
7. Financial Perspectives
8. Area of Freedom, Security and Justice

- a) *Visas*
- b) *External Borders (Schengen)*
- c) *Terrorism*
- 9. Common Foreign and Security Policy (CFSP). European Security and Defence Policy (ESDP)
- 10. Foreign Relations
 - a) *Iraq*
 - b) *Iran*
 - c) *Middle East*
 - d) *Barcelona Process*
 - e) *Latin America-Caribbean*
- 11. Appointments

XIV. Responsibility

XV. Pacific Settlement of Disputes

XVI. Coercion and Use of Force Short of War

- 1. Iraq
- 2. Afghanistan
- 3. Haiti
- 4. Ivory Coast

XVII. War and Neutrality

- 1. Humanitarian Law
- 2. Disarmament
 - a) *Iraq*

I. INTERNATIONAL LAW IN GENERAL

The XIV Ibero-American Summit of Heads of State and Government, held in San José (Costa Rica), 19–20 November 2004, approved a Final Declaration that included:

4. We reaffirm our commitment to International Law, to the purposes and principles enshrined in the Charter of the United Nations, respect for the sovereignty and legal equality of States, use of force in international relations, respect for territorial integrity, the peaceful settlement of disputes and the protection and promotion of all human rights.

5. We undertake to strengthen multilateralism by way of a comprehensive and integral reform of the United Nations, seeking efficiency, transparency, representation and democracy by updating and improving the United Nations system and its different bodies, its agencies and organisations, giving it the ability to fulfill its role in the prevention of threats, safeguarding international peace and security and to promote cooperation for social and economic development.

(...)

8. We reiterate our vigorous rejection of unilateral, extraterritorial application of laws and measures which contravene international law, such as the Helms-Burton Act and urge the Government of the United States of America to put an end to its application.

10. We confirm that education is a fundamental and inalienable human right which has as its object the full development of the human personality and to the strengthening of respect for human rights and individual liberties, a basic instrument to promote development and equity. Education that is democratic, accessible and of high quality is an essential foundation in order to achieve sustainable development, increase productivity, to profit from scientific and technological advances, to reinforce cultural identities and to consolidate the values of democratic and pacific coexistence, to reduce poverty and the social divide.

(...)

21. We undertake to strengthen Ibero-American cooperation in the sphere of education and to work together to fortify the different means and mechanisms of international cooperation, so that no country committed to achieving Education for All will be thwarted in this achievement by a lack of resources

(...)"

The Final Declaration adopted by the Heads of State and Government of Latin America, the Caribbean and the European Union at the III Summit held in Guadalajara (Mexico), on 28–29 May 2004, stated as follows:

"... We underline our respect for and full compliance with international law and the purposes and principles contained in the Charter of the United Nations, including the principles of nonintervention and self-determination, respect for sovereignty, territorial integrity and equality among States, which together with the respect for human rights, the promotion of democracy and cooperation for

economic and social development are the basis for the relations between our regions. We strive to strengthen the respect for all these principles and to meet the challenges and seize opportunities of an increasingly globalised world, in a spirit of equality, respect, partnership and cooperation.

4. We believe that democracy, the rule of law and social and economic development are essential for peace and security in our regions. We will continue to strengthen democracy and enhance and consolidate democratic institutions in each of our countries.

5. We reiterate our commitment to the promotion and protection of all human rights: civil, political, economic, social and cultural rights, including the right to development and fundamental freedoms. We reaffirm our belief that human rights are universal, interdependent and indivisible. We recognise that the promotion and the protection of these rights, which belong to all human beings, is the responsibility of States.

6. We fully support the strengthening of the international system for the promotion and protection of human rights . . .

7. We are fully committed to provide coherent and effective support to those individuals, organisations or institutions, including human rights defenders, working for the promotion and protection of human rights, in accordance with international law and UN General Assembly Resolution 53/144 on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

8. We reiterate that an effective multilateral system, based on international law, supported by strong international institutions and with the United Nations at its centre, is essential for achieving peace and international security, sustainable development and social progress.

(. . .)

14. We recognise that the strengthening of regional organisations is an essential means of enhancing multilateralism.

15. We reaffirm our commitment to continue efforts to maintain and enhance dialogue and consultation, where appropriate, in order to define common positions and joint actions between the two regions within the various UN bodies and in major UN Conferences.

18. We express our full support for the International Criminal Court as an effective means to combat impunity from the most heinous crimes of concern to the international community. The States Parties call on those countries which have not done so to ratify or accede, as applicable, to the Rome Statute.

(. . .)

51. We underline the importance of projected agreements between the European Union and the sub-regions of Latin America and the Caribbean, which together with existing agreements and those under negotiation, will allow us to continue to build on our bi-regional strategic partnership.

(. . .)

79. We recognise the importance of regional integration and we support projects designed to promote sustainable economic, social, cultural and human development on a regional basis. We shall continue to co-operate bi-regionally in the development and institutionalisation of the integration processes in Latin America and the Caribbean”.

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

Compliance with the Treaty of Peace and Friendship signed in 1870 by the then Spanish Republic and the Oriental Republic of Uruguay was the subject of a parliamentary question tabled in Congress, to which the Government replied on 7 January 2004 as follows:

“Article 8 of the Treaty of Peace and Friendship signed in 1870 by the then Spanish Republic and the Oriental Republic of Uruguay provides that ‘Spanish subjects in the Oriental Republic of Uruguay and citizens of the Republic in Spain may freely carry on their trades and professions, possess, purchase and sell, wholesale or retail, all kinds of goods and properties, moveable and immovable, remove all their assets from the country, dispose of them in life or after death and succeed thereto by will or *ab intestato*, in all cases in accordance with the laws of the country, in the same terms as are or may be used by subjects of the most favoured nation’.

‘Neither may therefore be subjected to any attachment or retained with their vessels, crews, carriages and trading goods of any kind, for any expedition or for any kind of public service unless the interested parties are granted compensation of a previously-agreed amount’.

Notwithstanding the foregoing, it is noted that there is a General Treaty of Cooperation and Friendship between the Kingdom of Spain and the Oriental Republic of Uruguay, signed in Madrid on 23 July 1992, article 14 of which provides that ‘subject to its own laws and in accordance with international law, either party shall grant to nationals of the other party such facilities for the undertaking of lucrative activities, in trades or professions, as self-employers or as employees, in the same conditions as nationals of the State of residence or employment as may be necessary for the conduct of such activities. The issue of work permits for employees and self-employed alike shall be free of charge’.

The criterion that has been followed as a consequence of the foregoing in respect of whether or not the national employment situation is to be taken into account in dealing with work permit applications by Uruguayan nationals is that article 14 of the said General Treaty remits to the terms of the laws in either State, albeit within the same framework facilities are provided for the pursuit of lucrative activities by nationals of both States on equal terms and subject to reciprocity.

Moreover, in response to the Supreme Court judgment (Contentious-Administrative Division, Section 4) delivered on 10 October 2002 in respect of Appeal in Cassation 2806/1998 regarding the applicability of article 8 of the bilateral Treaty on Recognition, Peace and Friendship of 1870, the Interior Ministry's Government Delegation for Aliens and Immigration requested a report from the Solicitor-General's Office-Direction of the State Legal Service of the Ministry of Justice. The latter issued a report on 17 December 2002, in which it opined that the Supreme Court ruling referred to legal situations arising prior to the new General Treaty of Cooperation and Friendship of 23 July 1992.

Therefore, as the report concluded, 'and unless the Jurisprudence takes a different view in a future interpretation, it would appear that the parties undertake to grant nationals of the other party facilities for pursuing lucrative trades or professions, to issue work permits free of charge and to apply the principle of reciprocity in the effective enjoyment of the facilities referred to, but they do not directly establish a right of free exercise of trades and professions as did the former Treaty of 1870'.

Also, on 24 September 2003 the International Legal Service of the Ministry of Foreign Affairs issued its own report on this issue, taking the general view, on the one hand that the most favoured nation clause contained in article 8 of the 1870 Treaty of Peace and Friendship with Uruguay is without effect as regards the specific regime that the State would be obliged to apply to Uruguayan citizens, inasmuch as neither the existing laws on aliens nor the treaties signed by Spain in this connection regulate a preferential regime for nationals of any third State, without prejudice to any benefits which, under article 12 of the current Organic Law 4/2000 of 11 January as reformed by Organic Law 8/2000 of 22 December on rights and freedoms of aliens in Spain and their social integration, are vouchsafed to nationals of countries having historical or cultural ties with Spain, chiefly Ibero-American nationals.

Then again, as the report says, considering the rules of International Law on successive treaties between the same parties on the same matter, particularly the 1969 Vienna Convention on the Law of Treaties, the above-cited article 8 of the 1870 Treaty between Spain and Uruguay would be applicable in that part which does not conflict with the provisions of the two later treaties between the same parties on the same subject, namely sections 3 and 5 of the 1961 Agreement to eliminate visas between Spain and Uruguay and article 14 of the 1992 General Treaty of Cooperation and Friendship between Spain and Uruguay, which legislation guarantees full applicability of the rules governing aliens to Uruguayan nationals as regards entering, staying and working in Spain. In short, in consideration of all the foregoing it takes the view that in work and residence permit applications submitted by Uruguayan nationals seeking access to our labour market, the applicable provision is that of article 70.1.1.1.b) of the Regulation Implementing the above-cited Organic Law on Aliens, approved by Royal Decree 864/2001 of 20 July, which makes it obligatory to manage the specific supply of jobs with the competent Public Employment Services

in order to see that the national employment situation is effectively considered in the processing of work and residence permit applications for employees, as provided in article 38.1 of the current Aliens Act'.

Also, on 1 July 2004 in reply to a parliamentary question regarding maintenance of the current Defence Cooperation Agreement between the Kingdom of Spain and the United States, the Government stated thus:

"The existing Agreement on Defence Cooperation between the Kingdom of Spain and the USA was approved in 1988; it was modified in 2002 by Protocol of Amendment approved by the Spanish parliament with the assenting votes of the vast majority of members, including members of the *Partido Popular* and *PSOE*.

The final provision of the Protocol of Amendment establishes a new eight-year term for the Agreement, starting on 12 February 2003, the date of notice of compliance with the respective constitutional requirements regarding ratification. Therefore, the term of the revised Agreement now expires on 13 February 2011.

The Agreement establishes an equal relationship between allies, which respects Spain's absolute sovereignty over the bases and spaces subject to the Agreement; for, as article 24 states, 'the Parties reaffirm that this Agreement on Defence Cooperation has been concluded subject to recognition of Spain's absolute sovereignty and control over its territory and airspace. The authorisations established in this chapter [relating to authorisations of use] shall therefore be applied in accordance with these principles of sovereignty and control'.

In his investiture speech, the Prime Minister announced that it was his intention to maintain close relations with the United States on a basis of mutual respect between two sovereign and friendly nations. As noted earlier, the terms of the Agreement reflect just such a relationship, and therefore the Government continues to support the continuance of the Agreement in the terms and conditions established.

(...)" (*BOCG-Congreso.D*, VIII Leg., n. 47, pp. 53–54).

Later, on 20 October 2004, the Prime Minister Mr. Rodríguez Zapatero replied to a question in Congress in Full Session regarding renegotiation of the Agreement with the Vatican. In this regard the Prime Minister stated as follows:

"With respect to the 1979 agreements with the Vatican, I believe the positions that the Government has sustained, its legislative initiatives, are perfectly compatible with them, especially as regards the right to a religious education. I think we can concur that these agreements guarantee the right to a religious education and do not constitute an obligation. That is what best sits with the spirit of the Constitution and that is what the Government has promoted. Secondly, agreements of an economic nature. The 1979 agreement established that the Catholic Church would declare its intention to secure for itself sufficient resources to meet its needs, and that in the meantime there would be a transitional period. That is where we are now, and the Government is in no hurry to

alter this transitory situation and to talk and negotiate with the Catholic Church. And finally let me state quite clearly, harking back to the initial idea, that the Government's conception of what a secular State means, and what a democratic society means, is very clear and has three guiding principles: firstly, the extension of citizens' rights, the extension of individual freedoms and respect for all religious beliefs; secondly, an essential principle, that faith is not a matter for legislation, faith is a matter for the conscience of every individual; and thirdly, the Government has no interest in any kind of confrontation; all it asks is that everyone respect the will expressed by this House. That is the law, and that is what counts in a democracy".

(DSC-P, VIII Leg., n. 41, pp. 1808–1809).

Finally, on 3 November 2004 the Prime Minister also replied to a question tabled in the full parliament regarding the possibility of consulting the Constitutional Court before ratifying the Treaty establishing the European Constitution:

"The Government has heard the calls from various political parties demanding that the Constitutional Court be consulted before the referendum is called, and in pursuit of consensus and agreement among all the political parties on a matter of this kind, the Government has listened and has decided make this consultation beforehand. I simply wish to make a point here. The date of the referendum and the referendum itself were agreed by all the political parties. The only entity to call on the Council of State – obviously it is the Government that has the power to do so – for a consultation as to the compatibility of the European Constitution with our own constitutional order and the proper legal means of incorporating the former to the latter has been the Government. No other political party had anything to say on the subject until the Government took this initiative. I simply wanted to make that clear here, since I think it is a point of some importance.

(...)

In any event, I repeat, the Government wants a consensus, the Government has listened and we are going to consult the Constitutional Court before calling the referendum, for which we shall be asking for the authorisation of this House".

(DSC-P, VIII Leg., n. 46, pp. 2035–2036).

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

a) Transposition of Community Directives

On 23 September 2004, in response to a parliamentary question on the transposition of European anti-discrimination regulations, the Government reported:

"On the legal basis of article 13 of the Treaty Establishing the European Union, on 29 June 2000, the Council of Ministers of the European Union approved

Directive 2000/43/EC relating to the application of the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin and, on 27 November of the same year, Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation.

(...)

Directive 2000/43/EC, and Directive 2000/78/EC, have been incorporated into the Spanish legal system, with Law 62/2003, of 30 December, on Tax, Administrative Measures, and Social Order (published in the *BOE* of 31 December). Law 62/2003, in its Title II, 'On Social Order', Chapter III, regulates the measures for application of the principle of equal treatment, and in its Title III concerned with 'personnel in the service of Public Authorities' amends specific revisions of the legislation applicable to civil servants and statutory personnel working in Public Authorities and the State public sector, in order to complete the transposition of the aforementioned Directives in this area".

(*BOCG-Congreso.D*, VIII Leg., n. 72, p. 119).

b) Enforcement of European Court of Justice Judgment of 9 September 2004

On 6 October 2004, the Minister for Home Affairs, Mr. Alonso Suárez, in reply to a parliamentary question on the Government plans in respect of the ECJ decision against Spanish regulations on recognition of the community driving licence, stated:

"Directive 1991/439 establishes an authentic driving licence for the community area which does not need to be changed when its holder moves to one of the European Union countries. Spain and Holland interpreted this directive and transposed it in a manner based on the principle that, although it did not change, registration of the licence was necessary. The European Commission lodged an appeal with the European Court against Spain and the Netherlands, who in this case agrees with us on this question, for obvious reasons, for failure to fulfil the precise transposition of this directive, and this appeal was upheld in a judgment of 9 September 2004 of the Second Chamber of the European Court of Justice.

Firstly, in compliance with the judgments, Spain must make the appropriate amendments to the Royal Decree of 30 May 1997, approving the General Regulations for Drivers, removing all references to obligatory registration of national driving licences of other countries of the European Union, as explained in the judgment. Secondly, and with more immediate consequences, we must proceed to shelve – if necessary – any cases of sanctions initiated as a result of the regulation, which must now be revoked in fulfilment of the Court's judgment. And thirdly, provincial centres issuing driving licences must be notified that the content of paragraph two of transitional provision 7 of the aforementioned regulation is now null and void.

(...)

I shall add a final question: it is practically impossible to require drivers in the European Union who come to live in Spain to provide notification of their change of address, which, as a result, almost immediately produces the practical impossibility of controlling the expiry of their driving licences, and the processing of any Traffic infringements. This concern has been conveyed by Home Affairs to the Ministry of Development in order to address this question, where it needs to be resolved, to the Council of Ministers of Transport of the European Union”.

(*DSS-P*, VIII Leg., n. 15, p. 634)

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-Determination

a) Palestine

In reply to a parliamentary question as to whether the Road Map could be considered a valid instrument for peace in the Middle East at a Full Session of Congress on 2 June 2004, the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, stated as follows:

“In the opinion of the Spanish Government, the Road Map is still the initiative most likely to provide a way out of this impasse. . . . In short, the Road Map is the most appropriate initiative because, in the first place, it enjoys the support of all parties – of Israel, of the Palestinians, of the Quartet, and indeed of all the main international actors: the European Union, the Russian Federation, the United States and United Nations – and above all, because it adopts a gradual approach and its content has a political horizon which for the first time offers Palestinians the hope of achieving coexistence between two States with secure frontiers, the State of Israel and the State of Palestine, by the end of 2005. The two-State solution is therefore the solution backed by the Spanish Government. But the Spanish Government cannot simply confine itself to offering diplomatic support for the Road Map. In recent conversations with the Palestinian Prime Minister and the Israeli Foreign Minister, the Spanish Government and its Prime Minister had the opportunity to call for more active fulfilment of the Road Map, and to make this possible we shall be making all necessary diplomatic representations”.

(*DSC-P*, VIII Leg., n. 14, p. 527).

Also, to a question tabled at a Full Session of Congress on 24 de November 2004 regarding the repercussions of the death of President Arafat for the Middle East peace process, the Minister replied as follows:

“The death of President Arafat is a great loss to the people of Palestine; nevertheless, as always in politics, such situations have their positive side, and the

positive side here is that it opens up a new phase – a phase for the Palestinian people, for the future Palestinian leadership, for its relations with Israel and for the search for peace in the Middle East. And it is from that perspective that the Spanish Government is working within the framework of the European Union. The essential priority at this moment is to strengthen Palestinian unity and the Palestinian leadership, and that can only happen . . . by means of democratic methods and systems – in short, through elections. This Government will therefore support the presidential elections that have been called for 9 May next, and at these elections there will be European observers, and hence also Spanish observers. In the second place, the Government of Spain, along with the members of the Union, is working on the plan presented by the Secretary-General and High Representative of the European Union, Mr. Solana, to guarantee security and reinforce the Palestinian security apparatus. Spain will also be a contributor in this respect. At the same time, we shall be taking part in reconstruction efforts and economic and financial aid to bring new hope to the Palestinian people. In addition, we wish to express our satisfaction at Prime Minister Sharon's initiative to withdraw from Gaza, and to that end this Minister, accompanied by members of this House, will be travelling to Israel, to the Palestinian territories and to Egypt on 1 to 5 December, specifically to promote the involvement of Spain and the European Union and explain what we can offer by way of solutions to a conflict to which we wish to see a happy conclusion”.

(DSC-P, VIII Leg., n. 51, p. 2421).

b) Western Sahara

Appearing before the Senate Commission on Foreign Affairs and Cooperation on 27 September 2004 to report on Spanish foreign policy regarding the Western Sahara, the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé stated as follows:

“(. . .)

In the last five months new circumstances have arisen, marking what we would describe as a new phase in the long process of ending the conflict in the Western Sahara, and it is vital that these circumstances be taken very much into account at the present moment in planning our future action. Of these I would mention three: first, the difficulties besetting application of the Baker Plan. Second, the resignation of special envoy James Baker in July and the appointment of Alvaro de Soto in his place. And third, the Spanish Government's commitment to increased political involvement in the question of the Sahara.

In our diplomatic action, we must therefore take these new circumstances into account, along with a number of other, more long-standing considerations. The first and essential one is to bear in mind that this is a regional dispute with international implications. Nevertheless, it is clear that despite the important regional and international ramifications, the international community has not always paid the Saharan conflict the attention it deserves, treating it as a minor issue.

This faint interest is and has long been reflected even in the United Nations Security Council. And that is why – at least in the opinion of the Government – it is Spain's responsibility to keep interest in that conflict alive and draw attention to its importance as an ineluctable factor determining the stability of North Africa, a zone that is of increasing and strategic importance for us.

The conflict in the Sahara puts at risk regional stability in North Africa in a broad, global sense, meaning more than the mere absence of armed conflict. At this moment it is – as it has been in the past – the chief obstacle to progress in the process of integration of the Maghrib and hence is a cause of what has been called the 'cost of no Maghrib' in political, economic, social and cultural terms.

North Africa currently faces major challenges and dilemmas, with their positive and negative aspects, regarding which rapprochement with the West in general and Europe in particular is a vital factor of progress. Of the negative aspects I would highlight the threat of terrorism, for which a desperate population that has yet to see any benefits from a slow economic take-off and reforms which are slow to gain momentum and give fruit create a spawning ground. Political, economic and social modernisation of the Maghrib is therefore a priority for the Spanish Government. The future of the Maghrib can no longer remain hostage to a dispute that is compromising the future of more than 60 million North Africans.

In the second place we would refer to the successive failures of the various plans and proposals adopted as solutions within the framework of the United Nations since the early 1990s and all in turn producing resolutions and reports – the Settlement Plan of 1991, the Houston Accords of 1997, the Framework Agreement of 2001, and the Baker Plan of 2003.

The first three never got anywhere owing to a combination of international and regional circumstances and internal policies of the parties and the neighbouring countries, which to a great extent have served as pretexts to mask the absence of a genuine political will to reach a solution.

Baker Plan II, presented in January 2003, has failed to materialise so far due to the impossibility of reaching a political agreement between the parties, and without such an agreement it is not possible to create conditions that will allow progress, for the same underlying reason that has caused all previous plans to founder.

Therefore, any attempt to impose a solution without consensus would simply plant the seeds of new problems for the future, thus setting back even further the ultimate goal of achieving real regional stability. Various internal, regional or international circumstances have supervened to determine that what seemed acceptable to one party at a given juncture is no longer so, and vice versa. For instance, the first Baker Plan, the framework agreement, was rejected by the Polisario Front, while Baker Plan II has not yet been fully accepted by Morocco. It is therefore important to become aware of these shifts whereby positions are developed to suit the current context, for such an exercise in

realism and respect for rights and principles can help to isolate the obstacles and eventually promote a genuine dialogue between the parties.

In short, such a dialogue is the main hope for any progress. It is not a new idea, but quite the contrary. It can be found in points 2 and 3 respectively of the regulatory parts of resolutions 1495 and 1541, all accepted and supported by the parties and by friendly helpers on the Security Council. . . . Clearly, only a political solution agreed by the parties, exclusively and hence essentially within the framework of the United Nations, and with the support of the countries in the region and other friendly nations, will it be possible to arrive at a final and fair settlement to the conflict in the Western Sahara.

The Government therefore considers that the present moment is crucial for the launching of this new phase, which I would wish to be definitive, and in which dialogue should prevail. In October the Security Council will place the question of the Western Sahara on its agenda as the extension of the MINURSO established by resolution 1541 comes to an end. By then the UN Secretary General will have reported on the situation to the Security Council on the basis of the initial contacts made in the region in September by Special Representative Mr. De Soto.

The Security Council must now set the course to be followed in the coming months. It is the Government's wish that the resolution adopted by the Council address two aspects: firstly, it should approve a renewal of the MINURSO's mandate so as to ensure that blue helmets are on the ground to observe the cease-fire and dissuade the parties from initiating any armed incidents; this should be for long enough to enable any diplomatic initiatives in this new phase to produce practical results. As far as the Spanish Government is concerned, six months would be the minimum.

Secondly, it should mandate Special Representative Alvaro de Soto to work with the parties to reach a political solution to the conflict; . . . Spain's position rests on the principle of the pursuit of a just and definitive solution, and above all one that conforms entirely to the principle of free determination for the Saharai people and can be put to a referendum.

At the same time, . . . the Government has sought to constructively and actively assist in fostering dialogue between the parties in conflict in the Sahara, . . .

(. . .)

As I have said on more than one occasion, we do not see any conflict between a UN plan, which Spain supports, respects and seeks to apply, and a bilateral political agreement between the parties. The two actions are complementary.

This has been and continues to be the spirit of the diplomatic efforts made over these last months by the Prime Minister's office and the ministry which I head.

(. . .)

Spanish diplomacy will continue working to encourage a spirit of dialogue in the parties, and as regards the Security Council resolution it will start work

on that as soon as we have seen the Secretary-General's report to which I alluded. Within the Security Council, a small working group known as 'Friends of the Western Sahara', composed of Spain with the United States, France, the United Kingdom and Russia, will conduct the final negotiations and draft the said resolution.

(. . .)". (*DSC-C*, VIII Leg., n. 51, pp. 2–4).

On 5 October 2004, in reply to a question tabled in the Senate regarding its position on the conflict in the Sahara and the repercussions that the rapprochement would have on Morocco's claims, the Government stated:

"The position of the Spanish Government is one of active commitment. It is founded on three principles: there must be a just and definitive solution accepted by the parties; the right of the Saharawi people to free determination must be respected; and the solution must be arrived at within the framework of the United Nations.

The Government considers that the excellent relations of friendship and cooperation that it currently maintains with all the interested parties and countries constitute the best possible basis on which, through active, committed diplomacy, to promote a solution to the conflict in the Western Sahara that respects the principles I have referred to".

(*BOCG-Senado.I*, VIII Leg., n. 85, p. 20).

Finally, in reply to a question tabled in the Senate on 3 November 2004 regarding the Government's reasons for abstaining in the vote on the Resolution on the Western Sahara question approved by the Special Political and Decolonisation Committee (Fourth Committee of the United Nations General Assembly), the Minister of Foreign Affairs and Cooperation, Mr. Moratinos Coyaubé, said:

"(. . .)

All that happened in the vote on the United Nations Fourth Committee was that after ten years of consensus on the various resolutions, one country sought to force through a new draft resolution ignoring essential elements that the United Nations had approved in the last year. In these circumstances, given that we were not opposed to the substance of the draft resolution but to the manner in which that country presented it, the Government and all the European Union countries decided to abstain, and the proposing country subsequently expressed its understanding of that decision".

(*DSS-P*, VIII Leg., n. 19, p. 849).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protection

a) Diplomatic Protection

Spain's representative, Mr. González Campos, made the following observations on the International Law Commission's draft articles on diplomatic protection to the Sixth Committee, during the General Assembly's 59th session:

"... Generally speaking, the overall thrust of the draft articles on diplomatic protection was appropriate, although certain points of the draft articles and the commentaries still needed to be amended. The language of draft article 1 was not satisfactory because it did not define the basic elements of the subject matter; rather, the definition focused on measures that a State could take for the exercise of diplomatic protection, which gave rise to two adverse consequences. First, there was a reference to the procedures for the settlement of international disputes under Article 33 of the Charter of the United Nations and various General Assembly resolutions, as noted in paragraph 5 of the commentary. The reference to 'diplomatic action' covered any procedures employed by a State 'to inform another State of its views and concerns', a phrase which was unfortunate, since international practice showed that diplomatic protection consisted mainly of a State bringing a claim against another State concerning certain injuries to its nationals in order to compel that other State to abide by international law. Therefore, it was irrelevant, for the purposes of the definition, that the claim should be accompanied by a protest – although that was often the case – containing a request for an investigation into the facts or a proposal for other means of peaceful settlement. What was really relevant was that the State bringing such a claim espoused the cause of its nationals and stated as much. Second, as a result of the foregoing, the current language of draft article 1 did not distinguish between 'diplomatic protection' proper and other related concepts, such as diplomatic or consular assistance to nationals experiencing difficulties as a result of their detention or trial in another State, a situation where none of the criteria for diplomatic protection proper, such as the exhaustion of local remedies, could be invoked. That distinction was acknowledged by the Special Rapporteur in his fifth report when, in reference to article 8 C of the Treaty on European Union, he noted that it was not clear whether that provision contemplated diplomatic protection as understood in the current draft articles or only referred to immediate assistance to a national in distress. That distinction was not only a reality in daily practice but had been reflected in all recent decisions of the International Court of Justice, such as the *LaGrand* case and the *Avena and Other Mexican Nationals* case, where the Court had found that a State had obligations incumbent upon it under an international convention to render consular assistance without prejudice to the State of nationality

being able to exercise diplomatic protection later. From the two examples mentioned, it appeared that draft article 1 would require a more precise definition of diplomatic protection. To that end, he suggested the following wording for draft article 1: 'Diplomatic protection consists of formal action through which a State adopts in its own right . . .'; the rest of the paragraph would be the same as in the draft. That wording would underscore the fact that the essence of diplomatic protection was the communication through which the State of nationality made a claim for international law, in the person of its nationals, to be respected, thus distinguishing such protection from 'diplomatic or consular assistance' to nationals abroad.

61. The commentary on draft article 3, which established the basic rule that only the State of nationality was entitled to exercise diplomatic protection, except as provided in paragraph 2 which referred to draft article 8, under which diplomatic protection might be exercised in respect of stateless persons and refugees habitually resident in a State, was very brief. It was not consistent with the importance of the rule that the article established. For that reason, it should be expanded to include specific references to international jurisprudence, which had repeatedly affirmed that principle of customary law. Furthermore, it could be inferred from the language of the draft that the general rule set out in such judicial decisions, namely, that save for special agreements, nationality was obtained through a systematic interpretation of article 3, paragraph 1, of the draft read in conjunction with article 18. Nevertheless, the latter principle went further, since it excluded the application of the draft articles 'where, and to the extent that, they are inconsistent with special treaty provisions'. Therefore, a determination would have to be made as to whether the provisions of a special treaty were consistent with the draft articles, which could give rise to a degree of uncertainty and resulting conflicts of interpretation, a situation that would not be desirable. Conversely, if one were seeking assistance from the commentary on the draft, then it should be noted that it was only there that agreements on the reciprocal protection of investments had been taken into account; while that was certainly appropriate, there were other agreements that should have been included in the commentary.

62. Satisfactory amendments had been made to chapter III of the draft articles, concerning legal persons, since it went from article 9, dealing with the general rule established by the International Court of Justice in the *Barcelona Traction* case, to article 11, which included some exceptions for the protection of shareholders. Some doubts arose when the general rule was made more specific by requiring a connection between the company and the State. First, if with regard to the first condition the term 'formation' was used instead of 'incorporation' because it was a broader term, note should be taken of the confusion that might create in the legal systems of numerous States, since it was applicable to the 'other legal persons' referred to in draft article 13. For that reason, it would be better not to depart from the term used in the Court's deci-

sion. With regard to the second condition established in that influential decision, 'seat of its management' had been added to the condition of 'registered office' in article 9; that might be acceptable if 'management' were qualified as 'effective'. However, the addition of 'some similar connection' had taken things a step further; that should be deleted, since the recourse to similarity made that formulation too open, despite the fact that the commentary indicated the need for a connection similar to that of 'registered office' or 'seat of management'.

63. With regard to draft article 11, on the protection of shareholders, the negative wording which had been adopted was satisfactory, as were the cases envisaged in that exception to the general rule, which, according to the commentary, should be interpreted in a restrictive manner in order to prevent a plethora of international claims by different States. He had reservations with respect to paragraphs 9 and 10 of the commentary since they both cited the opinion, held by three judges of the International Court of Justice in the *Barcelona Traction* case, in favour of broader intervention by the State of nationality of the shareholders. That did not seem appropriate, since the repeated mention of a minority opinion weakened the rule embodied in that decision. Furthermore, it was not at all consistent with the conclusion reached in paragraph 11 of the commentary.

64. Finally, article 19 on ships' crews should be excluded from the draft because, among other things, it introduced a special case governed by the Law of the Sea (specifically, by article 292 of the United Nations Convention on the Law of the Sea) into a set of general rules. Furthermore, the introduction of that case meant a shift in the overall thrust of the draft, which upheld the general rule of diplomatic protection by the State of nationality while permitting an exception for the State of nationality of the ship; that would open up the possibility of double claims being presented. Nor would it be consistent with international practice, which held that such protection was normally exercised by the flag State".

(UN Doc., A/C.6/59/SR.18, pp. 12–13).

On 15 October 2004 in response to a parliamentary question, the Spanish Government explained the initiatives carried out to achieve the reopening and culmination of the 'Caso Soria' court case following the decision handed down by the Inter-American Human Rights Commission of the Organisation of American States (OAS):

"Following a long series of negotiations carried out during the course of 2002, the family members of Mr. Carmelo Soria and the Chilean Government reached a 'Compliance Agreement' concerning the recommendations laid down by the Inter-American Commission on Human Rights (Report 133/99 of 18 October).

The Inter-American Commission on Human Rights received a signed commitment from the Chilean Government dated 21 January 2003, took note of the said commitment and reserved the right to supervise compliance (Report 19/2003 of 6 March).

The Chilean Government has at all times kept the Spanish Government informed through its Minister of Foreign Relations regarding the steps taken in compliance with the different terms of the Agreement.

As for the delay concerning the compulsory validation by the Chilean Parliament of the Agreement between the Chilean Government and the United Nations to make compensation payment to the family of Mr. Soria, the Chilean executive explained that it will choose the moment deemed politically suitable to acquire the said validation.

The Government of Spain fully trusts that Chile will honour its commitments which, extending beyond the sphere of private matters, are international in nature. The Government of Spain shall likewise lend all necessary support to the Soria family in defence of its rights.”

(*BOCG-Congreso.D*, VIII Leg., No 85, p. 99).

2. Nationality

On 5 November 2004, in response to a parliamentary question, the Spanish Government explained the result of the option granted to the survivors and family members of the victims of the 11 March terrorist attack to apply for Spanish nationality.

“1. To date 1,545 petitions have been received corresponding to 124 family members of the deceased and 1,421 injured.

2. In respect of the applications filed by family members of the deceased, a decision has been taken in 99 cases, 64 of which have been granted Spanish nationality while 35 cases have been dismissed for a number of different reasons (renouncement, the petitioner not included within the scope of Royal Decree 453/04 of 18 March on the concession of Spanish nationality to the victims of the 11 March 2004 terrorist attack, duplicate petitions, prior granting of Spanish nationality on the grounds of residence).

As for the request filed by those injured in the attack, the proceeding laid down in the aforementioned Royal Decree is more complex and requires compulsory accreditation from the Ministry of the Interior that the subject in question is indeed a victim of the attack. In this regard, 14 people have been granted nationality and 28 cases have been dismissed for the different motives already described.

3. The cases currently being processed (which cannot yet be resolved by the Ministry of Justice) are due to the following grounds: missing the mandatory report from the Directorate-General of the Police (article 222 of the Civil Registry Regulation), missing the report from the Ministry of the Interior accrediting that the subject was indeed injured in the attack (article 3.1 of Royal Decree 453/04) or pending documentation requested directly from the interested parties (birth certificate of the petitioner, documentation justifying that the petitioner is an immediate family member of the deceased).

4. No ruling denying a petition has been delivered and in those cases in which the petitioner does not meet the criteria to be considered a victim laid

down in article 1 of RD 453/04, the case is dismissed and the interested party is duly informed.”

(*BOCG-Congreso.D*, VIII Leg., No 99, p. 173).

3. Aliens

On 20 September 2004 in response to a parliamentary question, the Spanish Government offered the following data regarding the deportation of foreign nationals from 2002 to 2004:

“In response to the first four questions contained in the initiative referred to, please find attached Annex I with the data on the monthly figures corresponding to foreign nationals arrested, turned back at the border, pending return to their countries of origin and to deportation cases.

Having regard to the fifth question, the number of foreign nationals deported from Spanish territory by means of an administrative proceeding for infringement of Organic Law 4/2000 on the rights and liberties of foreign nationals in Spain and their social integration, and who had a prior police record was as follows: 1,986 in 2002, 2,954 in 2003 and 1,361 in 2004 up to 31 May.

And likewise in respect of the sixth question raised, the number of foreign nationals deported from Spanish territory by reason of substitution of an enforceable prison sentence that otherwise would have been imposed was as follows: 606 in 2002, 978 in 2003 and 608 in 2004 up to 30 April.

And lastly, having regard to the seventh question, the number of foreign nationals, Community and non-Community members, who have been deported after having served a custodial sentence in Spain is found in Annex II.

ANNEX I

1. Foreign nationals arrested, by month, for attempting to illegally enter Spain using small boats in 2002, 2003 and 2004:

In 2002 the main countries of origin of those arrested were Morocco (8,120), Mali (2,197), Ghana (823), Nigeria (727) and Gambia (609).

In 2003 the main countries of origin of those arrested were Morocco (10,505), Mali (3,111), Gambia (932), Liberia (897) and Mauritania (602).

In 2004, up to 18 June, the main countries of origin of those arrested were Morocco (1,791), Mali (955), Gambia (586), Guinea (197) and Mauritania (164).

2. Foreign nationals denied entry at the border in 2002, 2003 and 2004:

In 2002, the main countries of origin were Ecuador (4,675), Morocco (3,011), Bolivia (856), Brazil (279) and Algeria (252).

In 2003, the main countries of origin were Ecuador (4,950), Morocco (4,682), Bolivia (871), Venezuela (590) and Brazil (584).

In 2004 up to 14 June, the main countries of origin were Brazil (1,006), Morocco (895), Bolivia (378), Venezuela (362) and Romania (179).

3. Foreign nationals pending deportation to their countries of origin in 2002, 2003 and 2004:

In 2002, the main countries of origin were Morocco (13,564), Romania (152), Ecuador (92), Russia (39) and Algeria (33).

In 2003, the main countries of origin were Morocco (12,710), Ecuador (178), Romania (109), Bolivia (104) and Russia (80).

In 2004 up to 14 June, the main countries of origin were Morocco (3,378), Romania (62), Bolivia (37), Russia (36) and Brazil (30).

4. Deportation proceedings initiated in 2002, 2003 and 2004:

(*) Data up to 30 April.

In 2002, the main countries of origin were Morocco (10,169), Romania (4,713), Ecuador (4,004), Colombia (3,528) and Algeria (3,465).

In 2003, the main countries of origin were Morocco (11,125), Romania (7,656), Ecuador (6,077), Colombia (3,039) and Algeria (2,077).

In 2004 up to 30 April, the main countries of origin were Morocco (4,013), Romania (3,264), Ecuador (2,201), Colombia (814) and Mali (729).

2002

Province/ Island	Month												
	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Almería	13	77	58	106	175	72	133	193	85	89	30	67	1098
Cádiz	12	37	160	270	245	57	159	609	1369	865	376	213	4372
Ceuta	0	0	90	43	14	31	10	0	53	0	0	0	241
Fuerteventura	423	209	471	450	367	598	358	909	1077	980	648	1046	7536
Granada	5	0	36	23	13	127	49	0	205	86	0	216	760
Lanzarote	141	147	189	178	106	132	122	167	341	186	151	115	1975
Las Palmas	28	0	1	0	0	0	0	0	59	18	9	249	364
Málaga	25	0	0	17	0	36	78	0	69	44	30	20	319
Melilla	0	0	0	0	0	0	0	0	0	5	0	0	5
Total	647	470	1005	1087	920	1053	909	1878	3258	2273	1244	1926	16670

2003

Province/ Island	Month												
	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Almería	69	6	101	34	129	167	146	770	357	301	28	35	2143
Cádiz	281	164	87	158	139	458	857	1199	762	758	172	0	5035
Ceuta	0	0	50	0	0	0	0	12	1	0	0	0	63
Fuerteventura	440	301	497	328	557	473	222	895	714	1464	680	656	7227
Granada	60	0	57	105	103	155	281	465	521	311	44	3	2105
Lanzarote	120	98	163	166	6	86	15	237	268	317	82	255	1813
Las Palmas	26	0	0	0	15	0	0	50	24	39	10	16	180
Málaga	26	4	0	19	33	45	56	37	51	82	33	42	428
Melilla	0	0	0	0	0	0	10	0	0	0	0	0	10
Murcia	0	0	0	0	0	4	0	0	0	0	0	0	4
Tenerife	7	28	0	12	11	0	14	1	37	0	48	11	168
Total	1029	601	955	822	993	1388	1601	3665	2735	3272	1097	1018	19176

2004 (until 18 June)

Province/ Island	Month												
	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Almería	117	63	61	133	247	42							663
Cádiz	8	26	6	36	67	12							155
Ceuta	0	0	0	0	5	4							9
Fuerteventura	769	352	246	421	360	391							2539
Granada	20	29	66	242	193	31							581
Ibiza	0	0	4	0	0	0							4
Lanzarote	86	159	0	52	0	30							327
Las Palmas	10	34	4	37	0	0							85
Málaga	73	0	0	0	58	38							169
Melilla	0	0	0	0	8	0							8
Tenerife	114	0	0	0	0	0							114
Total	1197	663	387	921	938	548	0	0	0	0	0	0	4654

	2002	2003	2004 (until 14 June)
January	794	1229	791
February	648	1630	815
March	725	1638	795
April	775	1182	658
May	865	1256	941
June	820	1614	381
July	693	1454	
August	855	1567	
September	1219	823	
October	1266	837	
November	1512	742	
December	1526	778	
Total	11698	14750	4381

	2002	2003	2004 (until 14 June)
January	1144	960	635
February	769	526	548
March	913	878	686
April	1139	790	873
May	891	772	726
June	1034	886	306
July	789	1396	
August	1889	2279	
September	2168	2366	
October	1497	1452	
November	895	773	
December	1147	606	
Total	14275	13684	3774

	2002	2003	2004 (until 14 June)
January	2610	4097	5601
February	2607	4453	4666
March	2658	4090	4967
April	3037	3304	4461
May	3129	3838	
June	3304	3738	
July	3105	3197	
August	3172	3483	
September	3827	4431	
October	5074	6042	
November	4168	5507	
December	3440	4421	
Total	40131	50061	19695

ANNEX II

7. Community and non-Community foreign nationals deported after having served a custodial sentence in Spain:

2003

Parole: 350

Full release: 414

2004 (January/February/March/April)

Parole: 105

Full release: 117”.

(*BOCG-Congreso.D*, VIII Leg., No 69, pp. 271–275).

On 30 July 2004 in response to a parliamentary question, the Spanish Government explained the measures it envisaged to encourage the Kingdom of Morocco to comply with the agreements signed regarding illegal immigration with special reference to the measures concerning family regrouping of Moroccan minors who are under protection in the Autonomous Community of the Canary Islands, specifically on the Island of Fuerteventura (Las Palmas):

“Of course the readmission of illegal immigrants to their country of origin has always been an important chapter in Spanish-Moroccan relations. In this regard it should be pointed out that as normal practice Morocco readmits Moroccan nationals who are illegal in Spain.

This situation can be improved in general terms, however, on the Moroccan side especially with reference to the terms of the Agreement on the movement of persons, transit and readmission of foreign nationals entering illegally signed at Madrid on 13 February 1992 and which refers to nationals of third countries (except nationals from countries of the Arab Maghreb Union). Although greater collaboration has been observed over the last several months from the Moroccan side, both parties should strive to further this improvement in the near future.

The current attitude from the Moroccans is greater involvement. This year (2004) to date they have readmitted some Sub-Saharan Africans arriving to Spain by way of Morocco and contacts should continue with a view to making further progress in this area of cooperation through ongoing and standard compliance with the Agreement.

Having regard to the situation of non-accompanied Moroccan minors, another subject concerning the Government, it should be pointed out that Spanish-Moroccan collaboration on this aspect is based on the Memorandum of Understanding subscribed to in December 2003 and on the commitments announced during the visit made by the President of the Government to Morocco this past 23 April agreeing to pay special attention to the issue of non-accompanied minors keeping the best interests of the said minors in mind in any decisions taken.

The idea of creating care centres for Moroccan minors repatriated from Spain was raised. This would apply to minors whose families cannot be located or that are not in a position to take charge of them.

The aim here is, in addition to economic support, to provide the said centres with qualified personnel to so that the minors can receive suitable vocational training during their stay there. The Moroccan minors from the mainland and from the Canary Islands will benefit from this measure”.

(*BOCG-Senado.I*, VIII Leg., No 60, pp. 3–4).

VI. STATE ORGANS

In reply to a question tabled in Congress on 7 January 2004, the Government explained why it had ordered the withdrawal of civilian personnel from the Spanish embassy in Iraq:

“The Spanish embassy in Baghdad has remained open the whole time, manned by the two diplomats posted there, some of the auxiliary staff, and the security staff. In view of the change in the Chancery headquarters, it was decided provisionally to move some of the non-diplomatic staff posted there. These have since gradually resumed their normal posts. Measures of this kind are adopted in response to developments in the situation on the ground, and it is therefore necessary to constantly review that situation and the steps decided on for the protection of the personnel posted there. The Ministry of Foreign Affairs continuously monitors developments in the situation in Iraq and is in permanent contact with the Spanish Embassy in Baghdad”.

(*BOCG-Congreso.D*, VII Leg., n. 650, pp. 335–336).

Appearing before the Congress Foreign Affairs and Cooperation Commission on 20 October 2004 to report on the plans for foreign service reform, the Under-Secretary of Foreign Affairs and Cooperation, Mr. Calvo Merino, stated as follows:

“... The first step in this direction was taken on 25 June last, when the Cabinet resolved to set up a commission for comprehensive reform of the foreign service within the Ministry of the Presidency. Its specific mission is to pass on to the Government, within a maximum of twelve months, a report containing proposals for improvement of the foreign service and for more efficient accomplishment of its purposes.

(...)

The functions of the Spanish services abroad have been changing rapidly since the nineteen-eighties, when Spain formally joined the ranks of European Community members and NATO and began to take a much more dynamic and prominent part in international affairs than it had hitherto. This formal assimilation has since prompted a laudable qualitative and quantitative increase in our country’s international activity, but that has not been matched by adaptation of our instruments of action abroad. Indeed, a large proportion of these instruments

took shape before the advent of the present constitutional regime and reflect a conception of our foreign policy characterised by a certain lack of transparency and absence of democratic control. In a word, it was a foreign policy conceived as the work of specialists rather than as an expression of the democratic will of the citizens.

The necessary reinforcement of our presence abroad in the form of embassies, consulates, commercial offices and cultural centres, and in international organisations, has required the deployment of resources, but this has not been accompanied by a debate about the instruments of overseas action that we need. . . .

What is most important is that we are in time to seriously address the root of the problem, and that the radical change in Spain's role on the international stage must be accompanied by conscientious planning and appropriate means. Confined to a framework of action that some consider inadequate, the functioning of services overseas is still subject to the general internal administrative regime. Greater flexibility in matters of overseas procurement would therefore be advisable and welcome, subject to the necessary controls, since the complex requirements arising nowadays are sometimes very difficult to satisfy, especially in countries where our diplomatic representatives discharge their duties within highly complicated contexts. (. . .)

But more serious is the problem of coordination that this poses. Such an extraordinary proliferation of international activity is not peculiar to Spain. The sphere of overseas action has become progressively globalised and enriched, and foreign ministries cannot be expected to handle the resulting international relations on their own, in this or in any other country. So, although Decree 632/1987 restated the principle of unity of action abroad, for which heads of missions are expected to watch, in day-to-day practice they are restricted by the various administrative regimes applying to civil service personnel abroad, who may be posted in the same embassy but report to different ministerial departments. This is particularly serious as regards information, assessment and action proposals, and it is essential that we improve fluidity of communication, both from mission heads to sector counsellors from the different ministries and vice versa.

I neither can nor ought to anticipate the findings of a commission on which there are representatives of practically every ministry and which is under the aegis of the Ministry of the Presidency, but I can try to briefly sketch some of the subjects which I believe they will address.

Firstly, there is the particular nature of the foreign service. . . . this particularity really merits regulation with the rank of law which recognizes and provides means of action to deal with an undeniable fact, namely the need to operate effectively and efficiently in over a hundred different legal, political and cultural contexts. Our action abroad is subject to formalities and precautions imposed by rules which in many cases were conceived for domestic situations and which on occasions are difficult to comply with in the variegated legal contexts in which some of our diplomatic representatives work.

Secondly, there is the need for adequate human and material resources for overseas operations which tend to be increasingly ambitious but come up against constraints which prevent them from accomplishing the objectives set for them. . . .

And we cannot ignore the issue of overseas action of the autonomous communities. It hardly seems possible to carry on as if our regionally-structured State were still the old centralised State which has happily ceased to be. Constitutional Court judgment 165/1994 provided a satisfactory interpretation of article 149.1.3 of the Constitution and paved the way for active participation by the autonomous communities in overseas action, an issue that needs to be analysed and debated. . . .

For the rest, the commission will no doubt address such issues as the professional classification of foreign service staff, the need for continuous training, recruitment of personnel and the criteria that are to govern this, some of which could be considered obsolete today in a world characterised by growing democratisation of diplomatic corps. . . .

Finally, it will surely examine the need to reinforce the principle of unity of action abroad, with a view to coordinating the myriad agents operating on the international stage in such a way as to ensure that their various activities are synergic, and to prevent muddle.

It is also essential to establish a closer link between the work carried on by this House and the Senate, especially in specialised commissions like the Foreign Affairs Commission, the Cooperation Commission and the Joint Commission for the European Union, and the definition, follow-up and assessment of our foreign policy. Foreign policy has not only become a central aspect of our political debate, but its first forum must be in Parliament, . . .

Alongside the work of the commission the Ministry of Foreign Affairs and Cooperation will have to initiate a process of operational reorganisation so as to become a provider of special services to the Government, the Congress and Senate, the economic and business world, the trade unions, non-governmental organisations and citizens – in short, civil society as a whole.

Comprehensive reform of the foreign service is a perennially-postponed task of State, an outstanding issue for our democracy, in which the intervention of Parliament will be crucial.

(. . .)”. (*DSC-C*, VIII Leg., n. 117, pp. 2–4).

VII. TERRITORY

1. Territorial Jurisdiction

Note: See VIII. Seas, Waterways, Ships

2. Colonies

a) *Gibraltar*

Appearing before the Congress in Full Session to report on the European Council held in Brussels on 17 and 18 June 2004, and referring to the draft Constitution approved for the European Union, the Prime Minister Mr. Rodríguez Zapatero stressed in connection with Gibraltar that:

“A declaration has been adopted which – after first stressing that the Treaty is to apply to Gibraltar as a European territory whose external relations are the responsibility of a Member State, namely the United Kingdom – clearly states that this does not in any way alter the respective positions of Spain and the United Kingdom in this matter . . .”.

(*DSC-P*, VIII Leg., n. 20, p. 799).

In reply to a parliamentary question tabled in the Senate regarding the Government's position on the claim of sovereignty over Gibraltar, the Second Vice President and Minister of Economy and Finance, Mr. Solbes Mira, reported:

“The process of negotiations over Gibraltar commenced with the Lisbon Declaration of 1980, implemented four years later in a joint communiqué issued at Brussels on 27 November 1984, which specified that issues of sovereignty would be addressed. And it talks about issues plural. This refers on the one hand to the isthmus and on the other hand to the rock, which was ceded by the Treaty of Utrecht.

Through the joint Brussels communiqué the parties agreed, in their mutual interests, to cooperate in various fields, and periodic meetings between the respective Foreign Ministers were institutionalised. The local authorities of Gibraltar joined in the process until Joe Bossano was appointed chief minister. Since Bossano became chief minister of Gibraltar, the local authorities have not taken any further part, and that is undoubtedly a major setback for the Brussels Process set in motion in 1984.

From 1984 to 1997 the Foreign Ministers of Spain and the United Kingdom met every year. There was no meeting in 1998 at the request of the United Kingdom, which adduced a work overload due to its Presidency of the European Union. And no meetings took place in 1999 or 2000.

Only the political parties of Spain have always been unanimous in supporting Spain's claim to Gibraltar and the Government's strategy irrespective of their ideological position, since this is viewed as a question of State.

Let me just note two examples in support of what I have just said. On 24 February 1998 the Congress Foreign Affairs Commission approved a Green Paper urging the Government to reiterate the offers to the United Kingdom of a period in which sovereignty could be exercised jointly by the two countries pending the eventual return of Gibraltar to Spain. On 3 April 2001, also under the previous Government, another Green Paper was approved urging the

Government to pursue a dialogue with the United Kingdom within the framework of the process initiated by the governments of both countries with the joint Brussels communiqué of 1984 for resolution of the issues of sovereignty referred to, and to that end the United Kingdom was urged to call a new bilateral ministerial meeting in the near future.

On 26 July 2001, ministers Josep Piqué and Jack Straw met in London. At that meeting, the Brussels Process was relaunched after having been in abeyance since 1997. These are the advances you referred to. In opposition, the Socialist Party loyally supported that relaunch. Both ministers confirmed that involvement of the Gibraltarians was an important requisite for progress in the Brussels Process and that they would welcome the attendance of the chief minister of Gibraltar at subsequent ministerial meetings. Unfortunately, such Gibraltarian participation failed to materialise with the previous Government, and that undoubtedly influenced the final outcome.

On 20 November 2001 a further ministerial meeting was held in Barcelona, and in the joint press communiqué both ministers evinced great satisfaction at the progress achieved and announced their intention to conclude a global agreement before the summer of 2002. In this joint communiqué they added that the common objective of Spain and the United Kingdom was to attain a future in which Gibraltar would enjoy more internal self-government and the opportunity to benefit fully from the advantages of normal coexistence with the neighbouring region. The guiding principle was the building of a secure, stable and prosperous future for Gibraltar, which should be endowed with a modern, stable status consistent with Spain's and the United Kingdom's common membership of NATO and the European Union.

The communiqué stressed that the voice of Gibraltar must be heard and that the invitation to Gibraltar's chief minister to attend future Brussels Process ministerial meetings had been reiterated. Both ministers, Messrs. Piqué and Straw, gave assurances that the chief minister's voice would be fully respected and that he would have the opportunity to contribute fully to the negotiations.

The last ministerial meeting in the Brussels Process to be held by the previous Government took place on 4 February 2002. Both ministers reaffirmed the wide-ranging set of commitments accepted at the earlier ministerial meetings in London and Barcelona and repeated their invitation to Gibraltar's chief minister to attend future meetings, so that he himself, and through him the people of Gibraltar, could join in the dialogue and make contributions to the benefit of Gibraltar. They added that the chief minister was warmly invited to participate on the basis of the formula 'two flags, three voices', with his own, distinct voice within the British delegation.

We come next to a key point, that is 26 June 2002. At a working dinner in London, ministers Piqué and Straw agreed to convene a formal meeting of the Brussels Process for Friday 12 July, in London. By the end of that working dinner the positions of Spain and United Kingdom had come very close together. Indeed, in the documents under negotiation, only three paragraphs remained

unresolved; these concerned three major issues – the final issues – namely the principle of consent of the people of Gibraltar, the duration of the agreement and command of the naval base. At that point, however, there was a change of minister in the Spanish Foreign Affairs department and the newly appointed minister declined to attend the meeting of 12 July 2002. Nonetheless, on the same day, 12 July, the British Foreign Secretary Mr. Straw made a speech about Gibraltar in the House of Commons, in which he asserted that Spain and the United Kingdom ought to share sovereignty over Gibraltar.

And in fact joint sovereignty was the formula negotiated by ministers Piqué and Straw, although Spain entered into these negotiations on the understanding that nothing is agreed until everything is agreed. In this way we were able to leave the mode of the global solution that would finally end the colonisation of Gibraltar open until the end.

From the summer of 2002 until the formation of the new government in the spring of 2004, the previous Government took part in no further ministerial meetings of the Brussels Process. The question of Gibraltar was not addressed again in any depth at ministerial level until the present Minister of Foreign Affairs, Mr. Moratinos . . . , met Foreign Secretary Straw in Madrid on 27 October 2004.

At the ministerial meeting in Madrid, the dialogue was resumed. A joint communiqué was issued referring to the creation of a new forum of dialogue with an open agenda on Gibraltar, in which Gibraltar would have a voice of its own. The rules for this dialogue will be agreed by all the parties involved. The fact that the new forum has an open agenda implies that whenever it judges the time right, the Spanish Government can place the negotiation of issues of sovereignty over Gibraltar on the agenda.

In the same communiqué the Minister of Foreign Affairs noted the intention of promoting local cooperation between Gibraltar and the surrounding area. Both ministers welcomed the initiative to set up a joint committee of the Government of Gibraltar-Association of Townships of the Gibraltar Area with a view to encouraging the identification and implementation of mutually beneficial projects in the sphere of local cooperation and voiced their support for the initiative in light of its intrinsic interest and the climate of mutual trust that it may help generate.

The Madrid meeting placed some stress on cooperation, which in the view of this Government possesses intrinsic value. In this connection it was agreed to explore the possibilities of reaching an agreement on Gibraltar airport using formulae that are acceptable to both sides. It was further agreed in Madrid to set up a technical working group to examine and exchange information regarding pensions of former Spanish workers in Gibraltar. This group is expected to start work shortly.

The communiqué noted that in the view of the Spanish Government, local cooperation falls within the context of objectives relating to sovereignty over Gibraltar. This is a very important sentence, and I would draw the Honourable

Member's attention to it. It makes explicit reference to the Spanish Government's objectives regarding sovereignty over Gibraltar. Sovereignty is a fundamental element of this Government's strategy concerning Gibraltar, as regards both the rock and the isthmus. On 1 November last, the chief minister of Gibraltar, Mr. Caruana, acknowledged to the territory's Legislative Assembly that issues of sovereignty have a prominent place in the Spanish Government's strategy. Specifically Mr. Caruana stated as follows – and I quote – 'It is our understanding that Spain has not renounced sovereignty, that it professes its resolve not to do so and that it will take care in the forthcoming cooperation process and in any process of dialogue to avoid taking any steps that might prejudice its demand of sovereignty'. And he added: 'It is our understanding that for Spain, even cooperation falls within the context of its objectives concerning sovereignty over Gibraltar. Spain is free to have and to pursue whatever objectives it may choose' – end of quote.

Subsequently, in an interview granted to the newspaper ABC on 8 November last, Mr. Caruana once again repeated – and again I quote – 'In a dialogue with an open agenda, Spain is perfectly free to raise any issue it wishes, including sovereignty, and we and the United Kingdom have the same freedom to raise other issues, and also to reply with regard to the Spanish objective, which is sovereignty.'

Therefore, when Gibraltar, no less, recognises that there is no renouncing our sovereignty . . . In short, I repeat for the Honourable Member that this Government has in no way renounced sovereignty over Gibraltar. What it is doing is to adopt a practical global approach to the question of Gibraltar, seeking to create the requisite atmosphere for satisfactory progress in the negotiation".

(*DSS-P*, VIII Leg., n. 21, pp. 949–950).

VIII. SEAS, WATERWAYS, SHIPS

1. Baselines

In reply to a parliamentary question in Congress regarding the baselines of the Canary Islands, the Government stated as follows:

"The straight baselines established in the Canary archipelago by the RD of 5 August 1977 comply entirely with the provisions both of the 1958 Convention on the Territorial Sea and the 1982 United Nations Convention on the Law of the Sea. They have never been challenged or protested by any other country. As to the perimeter of internal waters provided for in the sole article of the draft organic law of 5 May 2004, be it stressed that from a legal standpoint this provision conflicts with the international law currently in force. The express mention of 'internal' or 'archipelagic' waters has concrete legal implications, addressed in the 1982 Convention on the Law of the Sea, which could be got round by calling the waters lying within the perimeter 'inter.island waters'".

(*BOCG-Congreso.D*, VIII leg., n. 127, p. 250).

2. Internal Waters

Note: See VIII.1. Baselines

3. Territorial Sea

Note: See VIII.4. Continental Shelf; VIII.5. Exclusive Economic Zone

4. Continental Shelf

Note: See VIII.5. Exclusive Economic Zone

In reply to a parliamentary question tabled in the Senate regarding the measures proposed to prevent the oil companies Afresc (United Kingdom) and Pancontinental and Cooper Energy (Australia) from prospecting with the authorisation of the Moroccan authorities in Spanish waters close to Melilla, the Chafarinas archipelago and the isle of Alborán, the Government reported as follows:

“As soon as it learned of the authorisations described as ‘for oil prospecting’ in the question of reference, the Government contacted the Moroccan authorities and received assurances that the Moroccan government proposed no action that would infringe Spanish rights. In General Principle 4 of the current Treaty of Friendship, Good Neighbourliness and Cooperation concluded with the Kingdom of Morocco in 1991, the two States renounce the use of force in their relations. The Common Declaration signed after the Prime Minister’s visit to Casablanca on 24 April last clearly reiterates the currency of the wording and the spirit of the Treaty, as a basis for the clear political will and firm resolve of both countries to usher in a new era of profound understanding and bilateral cooperation based on mutual trust, solidarity and respect”.

(*BOCG-Senado.I*, VIII Leg., n. 128, p. 47).

In reply to a parliamentary question in the Senate regarding oil prospecting in the neighbourhood of the islands of Lanzarote and Fuente Ventura (Las Palmas), the Minister of Industry, Tourism and Trade, Mr. Montilla Aguillera, reported as follows:

“On 21 December 2001 the Government issued a royal decree granting Canaries hydrocarbon prospecting permits 1 to 9 off the coasts of the islands of Fuerteventura and Lanzarote, in violation of various regulatory provisions and assuredly causing some social alarm. As the Honourable Member has pointed out, this prompted the lodging of two appeals, one by the Island Group of the Socialist Party of the Canaries and the other by the Island Council of Lanzarote. The Supreme Court delivered judgment on 24 February of this year, annulling that part of the royal decree that deals with the schedule of work and investment for the third and sixth years. The reason for this judgment is failure to comply with the need for the royal decree expressly to determine the environmental protection measures that the beneficiaries of the permits must take at the time of expiry or renunciation of these permits.

Since the judgment, the Ministry of Industry has been working to see that the company to which these rights were granted complies with its obligations and, obviously, hands over to the ministry the information referred to in the Supreme Court judgment. That is the situation at present, and as I have said, it is not legally mandatory. We intend to talk to the authorities involved, to the Government of the Canaries and to the councils, whom we shall keep informed with due regard for the terms of the law currently in force and for the Supreme Court judgment which guarantees that all aspects of prospecting for hydrocarbon deposits are conducted entirely in accordance with the terms of the laws currently in force and in defence of the general interest”.

(*DSS-Pleno*, VIII Leg., n. 11, p. 459).

5. Exclusive Economic Zone

Note: See VIII.7. Ships

Replying to a parliamentary question in Congress regarding the present delimitation of marine zones between Spain and Morocco, the Government stated that:

“The establishment of maritime limits between Spain and Morocco requires a whole series of negotiations on various sectors of our coasts: delimitation of territorial sea in the Straits of Gibraltar, Ceuta, Melilla and Los Peñones; an exclusive economic zone in the maritime area off the Gulf of Cadiz; the continental shelf between the Spanish peninsular and the Moroccan coasts, and an exclusive economic zone between the coasts of the Canary Islands and continental Africa. So far, Spain has initiated negotiations regarding delimitation of Spanish and Moroccan economic zones in the maritime area of the Canary Islands. I might add that Spain at one time (1976) objected to the straight baselines drawn by Morocco on its Mediterranean coast inasmuch as they touched Spanish territory or sought to separate Spanish waters from the open sea or from maritime areas where freedom of navigation is the rule”.

(*BOCG-Congreso.D*, VIII Leg., n. 127, p. 253).

Having regard to the question addressed to the Government in Congress on the delimitation between Spain and Morocco of the exclusive economic zone in the vicinity of Canary Islands, the Secretary of State for Relations with Congress, Mr. Caamaño Domínguez, replied:

“According to the 1982 United Nations Convention on the Law of the Sea, which is applicable in such matters, the delimitation of exclusive economic zones in cases like the one raised by the Honourable Member must be effected by agreement between the States concerned, as provided in International Law. Such delimitation is not allowable by means of unilateral acts. The negotiations commenced in January 2003, and the 7th meeting of the corresponding working group took place recently in a climate of mutual understanding”.

(*BOCG-Congreso.D*, VIII Leg., n. 127, p. 252).

6. Fisheries

Appearing before the Congress Commission on Agriculture, Fisheries and Food to report on the general lines of Spanish fisheries policy, the Secretary-General of Sea Fisheries, Mr. Martín Fregueiro, stressed:

“In the first place I should like to highlight the tremendous speed at which changes are taking place in the world fishery sector – changes which began with the creation of exclusive economic zones in 1977, continued with substantial modifications following the UN Convention on the Law of the Sea, prompted the creation of a code of conduct for responsible fishing and culminated in the drafting of various action plans by the FAO.

All these actions which have been implemented in the last 25 years have aroused an extraordinary interest in everything to do with fishing, both on the part of international bodies – WTO, FAO, OECD – and on the part of organisations representing civil society – NGOs and environmentalists – and have focused attention primarily on two issues: subsidies and export of capacity. Subsidies have been called into question generally in all forums, and those that constitute social conquests, such as Social Security for fishermen, or those whose purpose is to improve working conditions on board fishing vessels, have even been considered negative subsidies. In the view of these organisations, the export of fleet capacity is likewise negative, regardless of whether it is achieved through joint ventures or on the basis of costly fishery agreements, and such agreements are questioned even although they are concluded with countries having large surpluses of resources in their waters. These two facts are of crucial importance for our country, since they bear strongly on EC fisheries policy and decisively affect both the introduction of new structural actions and maintenance of our fleets’ activities in waters of third countries.

The fleet fishing in grounds of third countries has its own peculiar features, and that brings us to an analysis of the policy that the fisheries administration wishes to pursue in the international sphere, in three distinct areas: fishery agreements, joint ventures and future partnership agreements that the Commission of the European Union seeks to develop. In this connection, the policy that is pursued by the Secretariat-General for Sea Fishing will be to defend the activity of approximately 600 Spanish vessels fishing under 17 international fishery agreements negotiated by the European Union. We shall also defend, support and participate in all agreements drawn up within the framework of regional fishery organisations. However, . . . there is international pressure from various fishery organisations in all forums to restrict access of Spanish fleets to the resources of developing countries, on the ground that these fleets are exhausting them. This utopian scheme, which has no basis in reality since it does not give these countries any means of profitably exploiting their resources and if applied would condemn them to underdevelopment of fisheries, daily receives support from more quarters. Having foreseen this development and the possibility of evolution away from traditional fishery agreements affording access to resources

in exchange for an economic consideration, the Commission of the European Union is designing a new kind of agreement based on fishery cooperation, called association or partnership agreements. This administration is bound to keep a close watch on any possibilities that the new fishery association agreements may offer; these agreements are much broader in their aims than traditional agreements, in that a key component in them is the offer of cooperation and assistance for integral development of the fisheries of the country with which they are concluded . . .

Mixed companies are an asset which no country in the world can afford to scorn, which the Spanish fisheries administration wishes to encourage and whose maintenance and development it seeks to support by creating various instruments which will make it possible to renovate fleets and will also allow entrepreneurs in third countries wishing to enlarge the scope of their operations to set up industries on land. Such enterprises, set up in third countries since 1977, are partly an outcome of the redistribution of capacities that this country was forced to carry out as a result of the creation of exclusive economic zones, and partly of the choice that our government was forced to make as a European Union member in 1992, between scrapping part of the fleet or exporting it. The mixed companies set up with Community funds currently number 174, are domiciled in 24 countries and run an aggregate of 308 vessels making up a total of 107.050 GRT.

In the context of international fisheries, I am bound to highlight those aspects that affect the fishery relations of Spain and the European Union with Canada in the NAFO area and with Morocco. As regards Canada, I would draw attention to the minister's defence, in the Council on 24 May 2004 and later in the Commission on 26 May 2004, of Spain's interests with regard to the intensification of that country's fishery surveillance to a point where it interferes with our vessels' fishing or entails abusive utilisation of the rules in the NAFO-approved inspection manual. Having regard to that defence, I wish to make it clear that it was the Spanish fisheries administration that I direct which, in constant contact with the Commission, managed to have the Commission present a verbal note demanding that Canada strictly observe the NAFO inspection zones, and it also managed to have this note accompanied by another in which the Commission intimated to Canada that if it did not back off, the European Union would be unable to keep up the Greenland halibut recovery plan and the attendant reduction in the TAC of that species, nor would it continue to apply the cross-control system which allows NAFO members States to inspect the vessels of other member States.

. . . this is what actually happened, and also for the first time the Commission's postures had the total support of the European Union's External Relations apparatus, which, as you know, deals with the European Union's external relations at the highest level. It is also a fact that we have been in contact with the autonomous communities at all times, particularly Galicia, and with the fishery sector concerned; they have been kept fully up to date with all

our representations and the outcome of these, and this has made it possible to resolve the problem posed by Canada. The Secretariat-General of Sea Fishing is preparing a recovery plan for the fleet operating in the NAFO ground, in agreement with the sector. . . .

As a clear demonstration of the interest our country has in maintaining excellent relations with Morocco, on 6 June, at our invitation, a meeting was held in Madrid between the secretary-general of Sea Fishing and his Moroccan counterpart. After that meeting, both expressed their common desire and their resolve to collaborate more closely so as to move forward in all aspects of fisheries, and particularly the following: Collaboration on a multilateral level to improve the monitoring of commercialisation in all ambits of commercialisation [sic], and absolute respect for the recommendations made by regional fishery organisations. Spain and Morocco expressed interest in continuing to progress in the fight against undeclared illegal fishing and unregulated fishing.

In the sphere of international cooperation, it has been agreed to work in various different areas, with particular stress on maritime training, by providing support for specialisation of trainers through sojourns and seminars in both countries for work in the spheres of quality control, fishery technology, promotion and prospecting of new markets, development of fish farming and an effort to expand knowledge of those areas that affect shipbuilding and improvement of safety conditions at sea. Also, in order to help expand knowledge of marine resources in their deep waters, the Moroccan secretary-general of Sea Fishing has asked the Ministry of Agriculture, Fisheries and Food to provide assistance via the oceanographic vessel *Vizconde de Eza*, Spain having confirmed its interest in assisting towards this objective by means of an oceanographic prospecting voyage, to take place between 14 November and 13 December 2004. Next week, Moroccan biologists will be travelling to Madrid to attend the first preparatory meeting for the prospecting.

In connection with fishery policy in the Mediterranean, Spain takes the view that, since in geostrategic terms it is a quasi-closed sea with considerable disparity in the dimensions of the jurisdictional waters of coastal States, a Community regulation ought to be laid down with rules which, as in the framework of regional fishery organisations, are also applicable to other riparian countries in the Mediterranean which do not belong to the European Union.

(. . .)".

(DSC-C, VIII Leg., n. 48, pp. 2-7).

a) *Morocco*

Appearing before the Senate in Full Session to reply to a parliamentary question regarding relations with Morocco in matters of fisheries, the Minister of Industry, Tourism and Trade reported thus:

"It is necessary to recover a climate of intercourse and collaboration with Morocco. With the Prime Minister's visit to that country, a framework of

relations has been reopened which, as you know, had deteriorated in the recent past – I imagine you will recall.

On that understanding we have had a number of meetings and conversations on the subject of fisheries. In this connection, I would note that on 4 June last the secretaries-general of fisheries of the two countries held a working meeting where they addressed a variety of issues relating to collaboration and cooperation on both a multilateral and a bilateral level. On the multilateral level, lines of action have been defined for better follow up of and compliance with the recommendations made by regional fishery organisations. Thus, Spain and Morocco have reiterated their commitment to absolute respect for international recommendations and expressed their interest in continuing to make progress in the fight against undeclared illegal fishing and unregulated fishing.

As regards the sphere of bilateral relations, it has been agreed to work together, with special emphasis on maritime training by means of support for specialisation of trainers through sojourns and seminars in both countries for work in the spheres of quality control, fishery technology, promotion and prospecting of new markets, development of fish farming and an effort to expand knowledge of those areas that affect shipbuilding and improvement of safety conditions at sea.

I would note further that we have been asked by Morocco to provide assistance in the form of an exploratory voyage in their waters by the oceanographic vessel *Vizconde de Eza* in order to gain more knowledge of their marine resources, particularly in deep waters, to which request I can say now we shall be acceding. The object of this effort to cooperate is to propitiate a climate of stability and trust in which we can lay aside past suspicions and progress together in business initiatives of a permanent nature which transcend the bounds of the extractive fishing. And to avoid any misunderstandings, let me make it quite clear that the Government of Spain, as is only natural, absolutely respects the competences of the Commission of the European Union in the negotiation of fishery agreements, and I have never referred to such fishery agreements but to the arrangements mentioned earlier, so under no circumstances will Spain overstep or violate that principle”.

(DSS-P, VIII Leg., n. 9, p. 371).

b) North-West Atlantic

In reply to a parliamentary question tabled at a Full Session of the Senate regarding the Government's position on fishery inspections by Canadian patrol boats in waters of the Northwest Atlantic Fisheries Organisation (NAFO), the Minister of Agriculture, Fisheries and Food, Mrs. Espinosa Mangana, reported thus:

“In the first place I must tell you that the Spanish Government considers that Canada has made abusive use of the control and inspection systems agreed in the NAFO and has twisted, among others, the meaning of the principles of non-discrimination and non-interference in fishing activities in the regulated zone.

The Spanish Administration has pressed the European Commission strongly to straighten out this situation as a member of the NAFO. As a result, at the Council of Ministers of fisheries on 24 May and at the Commission meeting on 26 May, this minister defended Spanish interests in connection with the intensification of fishery surveillance by Canada, which has been interfering with our vessels' fishing activity and making abusive use of the rules of the NAFO inspection manual.

In that defence, I wish to make it quite clear to the Honourable Member that it was the Spanish fisheries administration, in coordination with the Autonomous Community of Galicia, the fishing industry and the representatives of the Commission, who succeeded in having the Commission present a note to Canada demanding that it adhere strictly to the NAFO rules of inspection. It also succeeded in having that note accompanied by another in which the Commission intimated to Canada that if it did not back off, the European Union would be unable to keep up the Greenland halibut recovery plan and the attendant reduction in the TAC of that species, nor would it continue to apply the cross-control system which allows NAFO members States to inspect the vessels of other member States.

I have consistently maintained in the Council that the Spanish Administration has been working for years to secure an improvement in bilateral fishery relations with Canada, a fact which the latter acknowledges. We also stressed that no other regional fisheries organisation has so outstanding a control and surveillance system as does the NAFO.

Spain's commitment to responsible, sustainable fishing was made plain by the approval last year of a recovery plan which is necessary for the preservation of Greenland halibut as a resource.

Finally, Spain made it very clear that Canada cannot violate NAFO agreements and rules and international law while claiming to force compliance with NAFO rules.

It is fair to say, then, that normality has returned to those fishing grounds and that at all times throughout this episode we were in contact with the fishery sector concerned, keeping them fully up to date with our representations and the outcome of these. At this moment the situation in the NAFO grounds is one of absolute normality".

(*DSS-P*, VIII Leg., n. 7, p. 259).

Replying to a parliamentary question tabled in Congress, the Minister of Agriculture, Fisheries and Food, Mrs. Espinosa Mangana, expressed the following opinion regarding the defence of the interests of the Spanish fishing fleet in NAFO waters during the annual meeting of the NAFO Scientific Council:

"The NAFO Scientific Council's brief as established in its Statutes is to assess the status of populations of fishery interest in the regulated area. The Council is composed of almost 30 researchers from the 17 Contracting Parties to the NAFO.

On behalf of Spain, the EC delegation included representatives from the Secretariat-General of Sea Fishing (Ministry of Agriculture, Fisheries and Food), the Spanish Institute of Oceanography (*IEO*), the Vigo Institute of Marine Research, a dependency of the *CSIC*, and the *AZTI* (Basque Institute of Fishery Research).

In view of the current status of the resources, the recommendation is to maintain exceptional measures in order to gradually tailor the intensity of fishing activity to the sustainability of these resources. We know from the scientific surveys undertaken by the *IEO* and Canadian scientists that they agree with this judgment.

On that basis, it was sought at all times to arrive at the best possible assessment with the information available.

In this context the scientific recommendations must be strict if the situation is not to deteriorate in future years.

At the same time, the plan for recovery of Greenland halibut populations approved at the 2003 Scientific Congress was validated and confirmed at the annual meeting of the NAFO held at Dartmouth on 13 to 17 September: that is, 19,000 MT for 2005, 18,500 for 2006 and 16,000 for 2007 (NAFO international waters).

As regards species under moratorium (cod, yellowtail flounder, witch flounder and red sea bream LN), we are told that populations have not recovered.

Nonetheless, the result of the annual meeting must be considered highly positive for the Spanish fishery sector. Among the successes achieved we would note the radical change in the share of species to be regulated in order to preserve the resource, for three years starting in 2005 . . .

What we have achieved, then, is recognition of the historic rights of fleets like the Spanish which have pioneered these fisheries, and prevention of the entry of new extra-European fleets thanks to the setting of total admissible captures (TAC)".

(*BOCG-Congreso.D*, VIII Leg., n. 89, pp. 392–393).

7. *Ships*

Replying to a parliamentary question in Congress regarding the arrest of the vessel *D.M. Spiridon* in the Spanish exclusive economic zone in compliance with the rules for prevention of pollution by shipping, the Government reported:

"The decision to make the *D.M. Spiridon* head for the Port of A Coruña was made by an organ competent to do so, namely the Maritime Captain of that province, . . .

I should further stress that, considering that the vessel was inside the exclusive economic zone (it was sailing 50 nautical miles from the Spanish coast), the action taken by the Spanish Administration is expressly provided for in the International Convention for the Prevention of Pollution from Shipping (MARPOL), which allows either the infringement to be reported to the country of the

vessel's flag or the vessel to be required to proceed to a designated port, which was done in the case here in point.

The actions of the Administration, and of the Government of the Nation, may not exceed the bounds imposed on them by law, given that the Spanish Constitution itself obliges them to act entirely within the bounds of the statutes and the law.

... administrative sanctioning proceedings were initiated, and the condition set for the vessel to be allowed to leave port was the payment of surety of 900,000 euros, which amount was reduced to a fine of 180,300 euros in the Decision issued in conclusion of the proceedings.

Finally, we would note that on 1 July 2004 a bank guarantee was deposited with the General Deposit Bank to cover liabilities arising from the sanctioning proceedings in connection with the vessel *D.M. Spiridon*".

(*BOCG-Congreso.D*, VIII Leg., n. 69, pp. 488–489).

In reply to a parliamentary question regarding the maritime traffic separation schemes in the Finisterre zone, the Government reported:

"In order to be considered as such, traffic organisation systems must be approved by the International Maritime Organisation following painstaking analysis. They are proposed, among other reasons, to minimise the risks inherent in maritime navigation. It was against this scenario that the Finisterre traffic separation scheme was designed and approved.

The introduction of a separation scheme simplifies the traffic flow, reduces the risks of collision and protects, facilitates and affords security to fishing by separating fishing grounds from navigation routes. Given the physical impossibility of preventing the intersection of maritime navigation courses, the International Maritime Organisation approved the 1972 International Convention to Prevent Collisions at Sea, whose provisions have been fully implemented and are mandatory.

Intersections of courses in north-south and south-north traffic in the Finisterre separation scheme were specially studied and analysed with Portugal and France within the framework of the procedure established for the design of such schemes by the International Maritime Organisation, under whose aegis the new configuration was approved".

(*BOCG-Congreso.D*, VIII Leg., n. 69, pp. 313–314).

Also, in reply to another parliamentary question put to the Government in Congress regarding maritime traffic separation schemes, the Secretary of State for Relations with the Cortes, Mr. Caamaño Domínguez, added:

"The existing schemes in place in Spain have been approved by the International Maritime Organisation. Spanish schemes regulate maritime traffic in waters of Finisterre, the Straits of Gibraltar, Cape Gata, Cape Palos and Cape La Nao. All were specifically designed and all share the common objective of improving maritime safety and preventing marine pollution from shipping.

Because of the lack of space in the Straits of Gibraltar, it is impossible to keep traffic well clear of the coast or to separate traffic carrying hazardous goods. The design of the Finisterre scheme took into account, among other factors, the specific nature of the Westerly gales which cause ships to drift in towards the coast. In the Mediterranean basin, the criteria applied to Capes Gata, Palos and La Nao are similar in view of the similarity of the particular conditions there”.

(*BOCG-Congreso.D*, VIII Leg., n. 69, p. 313).

IX. INTERNATIONAL SPACES

Note: See VIII.6.b. North-West Atlantic

X. ENVIRONMENT

1. In General

On 16 January 2004, the Government replied to a question in the Senate regarding the steps being taken to ensure a high level of protection of the environment and to conform to the principle of sustainable development:

“Sustainable development first became a key issue with the Rio Declaration, adopted at the United Nations Conference on the Environment and Development at Rio de Janeiro in 1992.

This Declaration is a basic document for global strategy which, for the first time on an international scale, contemplates an integrated environment and development policy which takes account not only of the present inhabitants of the planet but also of generations to come.

In June 2001, the Government commenced implementation of a Spanish Strategy for Sustainable Development (*EEDS*) with a view to maintaining progress in the quality of life of Spanish citizens without endangering the development of future generations or the planet’s natural equilibrium.

To do this, the Government decided to create an Interministerial Commission within the Government’s Delegate Commission for Economic Affairs. This is the Interministerial Commission for Coordination of Sustainable Development Strategy (Sp. *CICEDS*), representing 11 ministries, which started work in July 2001.

The *EEDS* intends to lay the foundations for a new dimension in development on a nation-wide scale for traditional policies. Its primordial purpose is to bring the concept of sustainability into all spheres of public and private decision-making, so that everyone contributes to a more sustainable future. . . .

Briefly, the idea is to apply the three broad principles of sustainability to Spain’s reality: namely, to accept the need to dissociate economic growth from environmental degradation, to pay more attention to the qualitative elements of

development, and to integrate and coordinate sectoral policies that will help improve the quality of life. . . .

The practical application on a local scale of Agenda 21, approved in chapter 28 of the Rio Declaration, is denominated 'Local Agenda 21', based on the principle 'Think globally, act locally' and on integration of the social, economic and environmental elements to achieve sustainable development at a local level.

As regards promoting Local Agenda 21, the Ministry of the Environment has adopted the following measures with a view to progressing towards the achievement of sustainable development:

1. The Ministry of the Environment and the Spanish Federation of Municipalities and Provinces (Sp. *FEMP*) plan to sign a collaboration agreement to encourage, promote and disseminate the implementation of Local Agenda 21s in towns where the process has not yet been initiated, and to devise working tools to enable those who have already embarked on them to progress further and assess their achievements periodically.

The agreement, as one of a number of initiatives, will promote the establishment of a Spanish network of sustainable towns, in which a series of lines of action will be pursued on the basis of a technical organisation coordinated by the Ministry of the Environment and the *FEMP*, including the following:

- Creation of a forum for the exchange of experiences.
- Creation of a Local Agenda 21 web page.

This network will serve not only as a quantitative register of the towns undertaking sustainability processes, but it will also have a qualitative dimension with the potential to become a forum for the exchange of experiences and continuous learning in order to carry on working and move on, as envisaged in the programme of the Rio World Summit (1992), from Agenda 21 to the Johannesburg mandate (2002) on implementation of Local Agenda 21.

2. Also, the Ministry of the Environment participates in training programmes such as the Seminar on Practical Application of Sustainability: Local Agenda 21, organised in conjunction with the Spanish International Cooperation Agency as part of the Azahar programme, which was implemented in Madrid from 9 to 13 June 2003.

3. Also, issue no. 225 of the Official State Gazette, of 19 September 2003, published the Ministry of the Environment's Resolution announcing an invitation to contractors to tender for project ES 302003, consisting in technical assistance for support and encouragement of Local Agenda 21s in Spain".

(*BOCG-Senado.I*, VII Leg., n. 799, pp. 13–14).

A question was tabled in Congress regarding the Government's plans with regard to the drafting of a new Act on the environmental impact of plans, programmes and projects. The Government replied on 24 June 2004, as follows:

"The regulated procedure for assessment of environmental impact as contemplated in the Environmental Impact Act, Law 6/2001 of 8 May, in the

amendment to Legislative Royal Decree 1302/1986, and in the Regulation implementing it, Royal Decree 1131/1988 of 30 September, is an instrument designed to guarantee environmental variables – a legal instrument which integrates assessment of environmental impact in the programming and implementation of projects by the leading economic sectors, with a view to fostering development that is sustainable and complies with EC Law, Council Directive 85/33/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March. A draft Plans and Programmes Bill is being drawn up and will go through the requisite procedures for approval as law. The draft will be submitted for consultation to interested sectors and organisations prior to approval as a bill, as is normal with regulations of this kind. In addition, the Ministry of the Environment is working to amend the transposition of Directive 97/11/EC in light of the European Commission's opening of an infringement procedure citing incorrect transposition of the cited Directive”.

(*BOCG-Congreso.D*, VIII Leg., n. 42, p. 37).

Finally, in reply to a question tabled in Congress on 20 September 2004, the Government referred to the proposals defended at the World Conference on Renewable Energies in Bonn (June 2004):

“The Spanish delegation took a very active part in the conference, combining institutional actions . . . and dissemination and acquisition of bilateral commitments with other Governments for aspects in which policies coincide.

In general, the Spanish Government has opted to increase the role of renewable energies (and efficient energy technologies) in the energy structure of our country, both in view of the environmental advantages that this entails (particularly reduction of greenhouse gases as referred to in the Kyoto Protocol) and in order to help reduce our country's external dependence in the sphere of energy. Furthermore, it is recognised that energy production from renewable sources is a booming activity in which Spanish firms maintain leading positions, and that future growth in this field will be a source of development, wealth and employment.

The Spanish Government expressed its support for the premium payment system as a suitable mechanism for growth and consolidation of the sector, in that it allows environmental costs arising from the use of fossil fuels to be internalised and renewable fuels to be marketed in equal conditions. The development of renewable energies is considered crucial for compliance with the objectives of the Kyoto Protocol and of the European Directive on Emission Allowance Trading (2003/87/EC), which will commence on 1 January 2005. Specifically, the following proposals were defended by the Government:

- Contribution to preparation of the political declaration, undertaken by the Director General of *IDAE*.

(. . .)

In general terms, Spain's contribution followed the same lines as those of the countries that are most active in the field of renewable energies, such as

Germany, Denmark and Austria, and sought to raise the real level of commitment that was being debated.

- Endorsement by the Government of Spain of an international initiative to foster thermoelectric solar energy (Global Market Initiative), led by Germany and also supported by Morocco and Algeria.

(...)

- Endorsement by the Government of Spain of an initiative to support the premium system as the best mechanism for growth of investment in renewable energies.

(...)

- Endorsement of the international initiative REEEP, launched by the United Kingdom during the Johannesburg World Summit, whose aim is to strengthen cooperative links between countries in the sphere of renewables, with special stress on the mobilisation of private-sector funds and the lowering of administrative and legal barriers which hamper growth of the sector in many countries. . . . During the Bonn Summit, the partnership (with headquarters in Vienna) was formally presented and its statutes, Governing Board and budget for the first two years were approved. The *IDAE*, one of the founding partners, has expressed interest in participating especially in the Latin American area, where Spain obviously has the strongest cultural and economic ties”.

(*BOCG-Congreso.D*, VIII Leg., n. 69, pp. 365–366).

2. Protection of Biodiversity

In reply to a question tabled in Congress regarding the ecological impact of NATO military manoeuvres in Canary Islands waters on 22 November 2004, the Government stated:

“‘Majestic Eagle 04’ was a bilateral Morocco/USA air-sea exercise on which all NATO countries were invited and which took place in international waters of the Eastern Atlantic between the Madeira Islands and the Moroccan coast.

When an exercise is conducted in Spanish territory or waters, whether Spain is the organiser or the host country, the precautions adopted are always determined by Spain in exercise of its sovereignty and invariably take environmental protection regulations into account.

In exercises conducted in international waters in which Spain is not the host nation, the Government cannot exert direct control, and restrictions can only be imposed on foreign vessels by agreement among the parties.

Although Spain joined the exercise as a guest, in obedience to the commitments acquired by the Ministry of Defence in an Agreement concluded with the Government of the Canary Islands in March 2004 ‘to act with the utmost precaution to avoid causing harm to the biodiversity’, the US naval authorities were informed by their Spanish counterparts from the outset of the special circumstances existing in Canary Islands waters as the habitat of certain cetacean species.

For that reason the exercises were moved 120 miles to the north of the Canary Islands, a distance that was then considered sufficient to protect the areas identified to date by scientists as a habitat of Cuvier's beaked whale (Fuerteventura and Hierro Banks). In addition, these zones were marked on the maps and charts of the units taking part in the exercise.

In view of the beaching of three Cuvier's beaked whales on the island coasts some days after the manoeuvres, the Permanent Investigative Committee created under the Agreement of March 2004 met, . . . and has not issued a definitive report, but according to the conclusions reached by the University of Las Palmas, the results of the sample analyses were similar to those run on beached Cuvier's beaked whales in 2002. However, it is not yet known what exactly causes these beachings (sonar frequency, transmission intensity . . .) and the Committee has said that it needs to investigate further".

(*BOCG-Congreso.D*, VIII Leg., n. 108, p. 184).

3. Maritime Safety

On 16 June 2004, in reply to a question tabled in Congress as to its plans regarding maintenance of the measure adopted by the previous Government to keep junk ships with hazardous cargoes away from the Finesterre area (A Coruña), the Government stated as follows:

"1. On the occasion of the Hispano-French Summit held in Malaga on 26 November 2002, the Governments of Spain and France agreed on the pressing need to take steps to prevent the future repetition of ecological disasters such as those caused by substandard tankers like the *Erika* on the French coast and the *Prestige* on the Spanish coast.

Both Governments therefore adopted certain measures with regard to single-hull vessels over fifteen years old carrying certain hazardous bulk goods.

In principle the Hispano-French bilateral agreement will remain in force until such time as objective circumstances make it advisable to terminate it (. . .)".

(*BOCG-Congreso.D*, VIII Leg., n. 37, pp. 22–23).

Having regard to the measures envisaged to foster renovation of the tanker fleet within the framework of the European Union, the Government replied in Congress on 22 July 2004:

"At the European Union level, the coming into force of Regulation (EC) No. 1726/2003 tends to speed up the progressive retirement of single-hull tankers and their replacement by vessels with double bottoms.

In addition, at an extraordinary meeting in December 2003 the International Maritime Organisation's Environmental Protection Committee passed a Resolution to speed up the retirement of single-hull tankers world-wide.

Both provisions have been adopted by institutions of which Spain is a

member – the European Union and the International Maritime Organisation – to reduce the risks of marine pollution from oil spills”.

(*BOCG-Congreso.D*, VIII Leg., n. 59, p. 91).

In 2004 a number of questions were addressed to the Government in the Senate in connection with the action taken following the disaster produced by the wreck of the tanker *Prestige* (2002).

Therefore, replying on 29 July to a question regarding the actions taken and envisaged in connection with this disaster, the Government stated:

“The Government is acting in the following areas: payment of compensation, extraction of fuel oil from the wreck, surveillance and cleansing of the coast-line and judicial proceedings.

Payment of Compensation

As regards the flat-rate procedure, to date 15,320 persons have signed transaction agreements and been paid a total of 70,176,671.80 euros. However, payment of part of the compensation due by this procedure to various individuals, associations and guilds is still outstanding.

Also outstanding are payments to natural or legal persons who come under the system of direct or expert appraisal and agreements that are concluded with Autonomous Communities and Local Authorities in due season. . . .

At the same time, the Spanish State has filed three claims with the IOPC (International Oil Pollution Compensation) Funds and a fourth is in preparation.

(. . .)

Also, the Government has proceeded to amend Royal Decree-Law 4/2003 in order to:

- Guarantee payment of outstanding compensation with the Budget, . . .
- Flexibilise conditions of payment of compensation by the ICO.
- Establish a system of compensation for economic losses that may be sustained in fishing, shellfish-gathering and fish-farming activities during the 2004 financial year as a clear and direct consequence of the oil spill caused by the wreck of the *Prestige*. The upper limit on funds available for such compensation has been set at three million euros.

Extraction of fuel oil from the wreck

The Spanish Administration is carrying on with the work of extracting the fuel oil remaining in the sunken wreck, through the firm REPSOL.

(. . .)

If the work goes according to plan, it could be completely finished next October.

Surveillance and cleansing

1. Actions at sea.

The plan of action has been adapted to the new situation, bearing in mind that since the end of 2003 no more fuel oil residue has been gathered from the

sea. If necessary, SASEMAR's units could be used, consisting of twelve vessels (Salvamar) which would be supported by other larger ships.

Also, airborne surveillance continues in the form of a weekly scheduled flight by an Air Force aircraft with the occasional support of helicopters from SASEMAR and the Autonomous Communities if necessary.

(...)

2. Actions on the coast.

(...)

2.1. Hydrocleaning and manual cleaning of pebble beaches.

(...)

2.2. Bioremediation.

(...)

2.3. Environmental restoration actions.

(...)

January saw the commencement of environmental restoration actions to remedy the effects of the spill in certain areas.

We would also note that: The National Parks Foundation engaged Technical Assistance for assessment and follow-up of damage from the *Prestige* spill in the Atlantic Islands National Park and other protected areas of European importance, with a budget of 1.2 million euros.

The object of the study was to analyse the impact of the *Prestige* spill on those affected ecosystems of greatest biological importance and to monitor developments there. The area addressed by the study is the Atlantic coast of Galicia and the Cantabrian coast. The time allowed for completion of this work is three years, and its conclusions will be presented in October 2006.

Judicial proceedings

1. Judicial actions in Corcubión. Preliminary Report number 960/02. Its purpose is to determine any liability that may attach both to the Master and other crew members of the *Prestige* and to any other subjects who may have intervened in the transport.

In addition, the said Preliminary Report maintains the charge against the Director General of the Merchant Marine.

2. Action in the United States against ABS. At the New York District Court on 16 May 2003, the Kingdom of Spain brought a civil action against the American Bureau of Shipping (ABS), the vessel's classification society, on a number of counts of negligence on the occasion of inspections conducted on the said vessel.

The case is currently at the preliminary stage.

(...)"

(*BOCG-Senado.I*, VIII Leg., n. 59, pp. 24–25).

On the same date, the Government also replied to a question regarding the position that would be adopted in the case of the wreck of the *Prestige* in the courts of the United States:

"The Kingdom of Spain brought an action against the American Bureau of Shipping (ABS), the society which classified the vessel *Prestige*, on a number of counts of negligence in inspecting the said vessel. These judicial actions are being pursued in the New York Southern District Court.

At this moment the proceedings are at the 'discovery' stage where the parties furnish information about their actions in connection with the vessel and the wreck. Thus, it would seem best for the defence of the State's interests to continue with this discovery stage, in which the next step is a 'confidentiality agreement' that the parties must sign in connection with the use of the documents submitted.

In bringing the action in the United States, the Kingdom of Spain seeks to secure a conviction against the classification society ABS which, without prejudging any other liabilities in respect of the catastrophic result of the shipwreck of the *Prestige*, will enable the Spanish State to recover the costs incurred in connection with the wreck. It is further hoped to secure abundant elements of proof for use in other suits to support demands for prosecution of liability of other enterprises and subjects implicated in the production of the environmental and economic damage caused by the *Prestige* disaster.

In any event the Solicitor-General's office has the responsibility of directing the judicial actions in defence of the interests of the State".

(*BOCG-Senado.I*, VIII Leg., n. 59, p. 26).

Referring again on 2 August to the appraisal of the damages produced by the *Prestige* disaster and the compensation outstanding, the Government noted the following:

"Following is a summary of the estimated amounts pending payment:

- Flat-rate procedure: Most applications have been dealt with; payment remains outstanding only in respect of 0.4m euros to a group of private individuals and the applications from the guilds of Vizcaya and Guipúzcoa. These amount to approximately 12 million euros, but the final sum will depend on the number of days' stoppage certified by the Autonomous Community of the Basque Country that is eventually accepted.

- Direct appraisal procedure: The applications amount to 170.7 million euros, which amount is necessarily subject to an expert appraisal of damages in comparable situations.

- Agreements with Local Authorities: In various Ministerial Orders the Ministry of the Presidency classified a total of 153 municipalities as affected Local Authorities, 67 of which have applied for compensation under the scheme provided by Royal Decree Law 4/2003, amounting to 37.6 million euros; the final quantification is pending analysis, which is currently in progress, of the documentation submitted.

- Agreements with Autonomous Communities: The Commissioner's Office has received lists of expenses sent in by the Autonomous Communities of the Basque Country, Cantabria, Galicia and Asturias, totalling 147.6 million euros . . .

(. . .)". (*BOCG-Senado.I*, VIII Leg., n. 61, p. 20).

4. Protection of the Marine Environment

On 2 January 2004, in reply to two questions tabled in the Senate regarding the means of control used by the Government in surveillance and prevention of toxic effluents from vessels sailing past the coasts of Almeria and Asturias respectively, the Government replied as follows:

“The Government’s intervention in surveillance, control and combating of marine pollution embraces three kinds of action.

The first deals with the national and international norms regulating the design, construction, seaworthiness, maintenance, inspections, certifications and age of ships and the machinery, equipment and facilities on board. Spain is pressing strongly in the European Union and the International Maritime Organisation (IMO) for tougher international regulations. Spain has been the visible promoter of the EU Directive on the elimination of single-hull vessels for the transport of petroleum-based products and a bar on their entry to European Union ports, and likewise of the Resolution passed by the Marine Environment Protection Committee at its meeting in London on 1–14 December on phasing out of such vessels world-wide.

The second kind is intended to prevent the passage of vessels carrying hazardous goods through waters close to our coasts. Actions of this kind are enshrined in bilateral agreements such as the one concluded with France to restrict the passage of ships carrying hazardous goods within the 200-mile economic exclusion zone, or in multilateral agreements with nearby States under the auspices of the IMO, such as the one concluded with France, Portugal, the United Kingdom and Belgium for the establishment of an Especially Sensitive Zone in Atlantic Waters. Also under the auspices of the IMO, two new traffic separation schemes have been created off Cape Palos and Cape La Nao which, together with the new arrangement of the Finisterre scheme, will improve navigational safety, reducing the risks of collision and hence of loss of human lives and pollution.

The third kind of action deals with the human and material resources deployed in the fight against marine pollution. Since 1996, SASEMAR has increased its personnel by 33%, peripheral Coordination and Rescue Centres have grown from 12 to 20, rescue vessels from 10 to 12 and rapid intervention craft from 18 to 40. This increase in resources has been matched by a 40% increase in the State’s contribution to the Society. Tenders were recently invited for two all-purpose rescue and anti-pollution vessels at a cost of 30 million euros. It is planned to put three more units out for tender in 2004, one specifically designed with capacity to collect and store 2000 cubic metres of hydrocarbons.

It is important to note that the resources controlled by the Maritime Rescue and Safety Society (SASEMAR) have no fixed geographic location. While units do have a regular operational base, they may be moved if circumstances so dictate in an emergency. We cannot therefore say that any given resources are intended specifically to deal with accidents at sea in a particular place.

Obviously the units whose regular base is in the zone nearest the emergency are likely to be the first to be called out if they are suitable for the characteristics of the emergency.

(. . .)". (*BOCG-Senado.I*, VII Leg., n. 795, pp. 68 and 90).

In reply to a question in the Senate on 15 September 2004 regarding the measures envisaged in connection with the agreement on minimums approved by the European Union in the matter of sanctions for marine pollution, the Government stated as follows:

"The classification of infringements with regard to marine pollution as minor, serious and very serious is set forth in chapter III of the State-owned Ports and Merchant Marine Act, Law 27/1992, as amended by Law 62/1997 on the same matter and by the Ports of General Interest (Economic and Service Provision Regime) Act, Law 48/2003.

The sanctions and other measures applicable to the classification of infringements mentioned in the foregoing paragraph are specified in chapter IV of the cited Law 27/1992.

The agreement on minimums that the question referred to will be embodied in a Directive on the matter, which will then have to be transposed to domestic law once it is approved by the European Parliament.

There can be no doubt that in those issues where the future Directive diverges from the provisions of Law 27/1992, the latter will have to be amended to fit in with the European norm, and therefore it will be necessary to wait for the Directive before introducing the requisite amendments.

For the moment, under Law 27/1992 the sanctions for pollution can vary from 60,100 euros (10,000,000 pesetas) for minor infringements to 3,000,000 euros (500,000,000 pesetas) for very serious infringements, with the possibility in the latter case of accessory measures consisting in arrest of the vessel, barring it from entry into port or barring it from loading or discharging, if the circumstances so dictate".

(*BOCG-Senado.I*, VIII Leg., n. 70, p. 42).

5. Climate Change

Spain's application of the terms of the Kyoto Protocol prompted numerous parliamentary questions in the Senate in the course of 2004.

Specifically, on 20 January the Government replied to a question regarding compliance with the environmental norms approved at the Kyoto summit and the initiation of the Spanish strategy for combating climate change:

" – The increase in emissions with respect to 1990 continues to cause concern and has even further strengthened the Government's resolve to move forward with policies and measures to address the problems of climate change. In the last few years the origin of this problem has lain in Spain's strong economic

growth, as reflected in sustained GDP growth at more than the EU average. . . . This has brought with it growing demand for energy and attendant emissions from both fixed and mobile sources. The challenge that the Spanish State is working to meet is how to maintain this positive economic growth while complying with the objectives of the Kyoto Protocol.

For some years now the Government has been developing various policies and measures to meet this challenge, including:

- Measures to liberalise the electric sector . . . with premiums and incentives to encourage renewable electricity production.
- Plan to Promote Renewable Energies (December/1999) with a target of 12% of primary energy and 29% of electric energy renewable by 2010. . . .
- Promotion of the use of gas and policy in favour of combined-cycle technology and improvement of fuel quality . . .
- Improvement of transport infrastructures. . . .
- National Waste Plan . . .
- Promotion of reforestation activities . . .

In addition to these initiatives we would cite the positive effects to be expected from other measures now in progress, such as:

- Application of the Directive on integrated pollution control . . .
- Application of the Directives on national ceilings for emissions and large combustion facilities. . . .
- Development of a European Climate Change Programme, . . .
- Forthcoming start-up of the European market for greenhouse gas emission allowances.
- The National Forestry Plan . . .

As well as these, there are other measures in progress such as the National Energy Efficiency Plan, currently at the drafting stage, or the Spanish strategy to combat climate change, which is being drawn up by the National Climate Council.

And not to mention the many and various measures being instituted by the Autonomous Communities and local authorities, and by private sector industries.

- The Strategy is being drawn up by the Standing Committee of the National Climate Council, . . . Once a draft is completed, the Committee must submit it to the Plenum of the National Climate Council for approval and recommendation to the Government, as it is the Plenum that is in charge of drawing up the Strategy. The working objective established in this context is that it be possible to draw up the Strategy in a short time”.

(*BOCG-Senado.I*, VII Leg., n. 801, p. 7).

Some months later, on 29 September, the Government referred in the Senate to the measures to be adopted to comply with the Kyoto Protocol in view of the previous Executive's failure to so comply:

“As a legal instrument drawn up to ensure compliance with the objective of the United Nations Framework Convention on Climate Change, the Kyoto Protocol provides in its various articles for commitments regarding the limiting of net

greenhouse gas emissions, the institution of a national mechanism to control such emissions, the preparation of periodic reports on compliance with these commitments, cooperation with and aid for developing countries, etc. Nonetheless, these commitments would not be binding until such time as the Protocol enters into force . . .

In any event, regardless of the eventual date of entry into force of the Kyoto Protocol, in approving the Protocol by Council Decision of 25 April 2002, the European Union has taken on these commitments and is transposing them into Community legislation by means of the appropriate instruments. One of the first examples of this is Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

In the case of Spain, because the basic decisions to implement the National Allocation Plan (NAP) established in Annex III of the Directive and the Commission's guidelines for application of these criteria in preparation of the Allocation Plan were not taken in March 2004, publication and notification of a Plan to the European Commission had to be postponed.

In May 2004 an Inter-ministerial Climate Change Group (Sp. *GICC*) was set up and commissioned to draw up a draft National Allocation Plan. . . . The *GICC* is chaired by the Secretary of State for Economics of the Ministry of Economy and Finance . . . and all the competent ministerial departments are represented in the Group:

- Ministry of Economy and Finance. . . ,
- Economic Office of the Prime Minister . . . ,
- Ministry of Public Works . . . ,
- Ministry of Industry, Tourism and Trade . . . ,
- Ministry of Labour and Social Affairs . . . ,
- Ministry of Agriculture, Fisheries and Food . . . ,
- Ministry of the Environment . . . ,
- Ministry of Housing . . . ,

The *GICC* has conducted an analysis of the working hypotheses devised by the experts on each section of the National Allocation Plan, . . .

Following the analysis of allocation methods by sectors and activities, a basic agreement and criteria were reached for drawing up the NAP, taking into account all the prior work entailed in integrating the data gathered, and the indicators from operators, competent departments and interest groups affected by the proposal.

On 27 August 2004 the Cabinet approved Royal Decree-Law 5/2004 transposing Directive 2003/87/EC, which regulates emission allowance trading. Also, on 6 September it approved a Royal Decree approving the National Allocation Plan for emission allowances 2005–2007 . . .

The Royal Decree-Law creates a Committee for the Coordination of climate change policies, as an organ of coordination and collaboration between the General State Administration and the Autonomous Communities in the sphere

of the emission allowance trading scheme and fulfilment of the international and EC obligations that the scheme includes with regard to reporting.

The decision taken by the Cabinet has made it possible to present the National Allocation Plan to the European Commission and thus meet the deadlines set by the European Union.

Parallel to this process, at the third plenary meeting of the National Climate Council on 20 July last, the Chairperson and Minister of the Environment advised of the Government's intention to implement a Spanish strategy to combat climate change by developing and executing various Sectoral Action Plans 2005–2007, which will deal with concrete measures and instruments to restrict net greenhouse gas emission and draw up targets, resources and quantified investment, and indicators for monitoring them".

(*BOCG-Senado.I*, VIII Leg., n. 80, pp. 23–24).

On 29 September, in reply to a question regarding the Government's assessment of the Memorandum of Understanding on Climate Change recently signed in Uruguay, the Minister of the Environment Ms. Narbona Ruíz stated as follows to the Senate in Full Session:

"... This Memorandum, signed only a few days ago, marks the commencement of a specific avenue of cooperation between the two governments for reciprocal transmission of information and possibly of initiatives, public and private, in Uruguay by public or private Spanish enterprises operating in Uruguay, which will help to reduce greenhouse gases in that country, for example by increasing the use of renewable energies.

We have enterprises interested in this, Spanish companies which already operate in Uruguay, but also Spanish companies which did not do so hitherto. This therefore also signifies an opportunity to augment our presence in Latin America – and not only in Uruguay: at a meeting of all the climate change offices in Latin America, held the other day in Cartagena de Indias, we found that numerous Latin American countries also wish to sign memoranda like the one we have concluded with Uruguay. Moreover, at that meeting the Latin American countries clearly took a highly positive view of Spain's present position in this respect within the context of its European commitments, but also as it relates specifically to our interest in reinforcing economic ties with these Latin American countries and in helping them achieve technological progress in the context of a more sustainable model in every case.

(...)"

(*DSS-P*, VIII Leg., n. 13, pp. 548–549).

Replying to a question on 6 October regarding the repercussions of application of the Kyoto Protocol on industrial costs, the Minister of the Environment Ms. Narbona Ruíz stated:

"The economic memorandum that accompanied the decree-law establishing the scheme for emission allowance trading – which was unanimously approved by the parliament – sets forth the Government's calculation on the basis of current

and foreseeable prices of emission allowances. According to that calculation, the annual cost to the enterprises concerned which take part in the emission allowances market would be 85 million euros. Let me say to the Honourable Member that 85 million euros is equivalent to 0.015 per cent of the total added value declared by these enterprises, and we therefore believe that it is a very reasonable cost for the period 2005–2007 ...

(...)

... The National Allocation Plan for Emission Allowances is only a first stage, if a very important one in that it establishes an economic instrument whose purpose is precisely to ensure that the reduction of emissions is achieved at the smallest possible cost. The European Commission estimated that for the enterprises concerned this would mean that the cost would be approximately 23 per cent less than if there were no emissions market.

... In addition to the National Plan, the Government must work – and is now working – to further promote renewable energies in our country and the existing strategy for energy saving and efficiency. The Government plans to complete the transposition of some extremely important European Directives, for instance the one on co-generating or the one on energy efficiency of buildings. All this will help us along in the direction we have taken.

(...)"

(*DSS-P*, VIII Leg., n. 15, pp. 612–613).

Also, the economic and labour costs of compliance with the Kyoto Protocol prompted a parliamentary question, which Government answered in the following terms:

"The Government's most recent action as regards compliance with the Kyoto Protocol is embodied in Royal Decree Law 5/2004 of 27 August (*BOE* number 208 of 28 August 2004) which regulates the greenhouse gas emission allowance trading scheme, and in Royal Decree 1866/2004 of 6 September (*BOE* number 216 of 7 September 2004) approving the National Allocation Plan for emission allowances.

These documents are essentially the fruit of the work of the Interministerial Climate Change Group (Sp. *GICC*), which was created for this purpose by the Government's Delegate Commission for Economic Affairs. ...

With all the information and proposals gathered in this process, along with any internal analyses that the *GICC* has been able to conduct on the basis of the information furnished by the various organisations represented in that Group, the economic and social repercussions of the norms referred to have been assessed as perfectly acceptable and on the whole not prejudicial to competitiveness or employment

In particular it is estimated that the net cost to enterprises for the period 2005–2007 is unlikely to exceed 85 million euros per annum – that is 0.015 per cent of the added value declared by the sectors affected by the Directive.

In addition, we would note that according to the Royal Decree Law, forums for social dialogue will be constituted to ensure that union and employers' organisations take part in the preparation and follow-up of the National

Allocation Plan as regards its effects on competitiveness, employment stability and social cohesion”.

(*BOCG-Senado.I*, VIII Leg., n. 91, p. 66).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

a) General Lines

The Minister of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, in an appearance before the Congress International Development Cooperation Commission, informed of the general lines of his department regarding matters of development cooperation:

“... The first and foremost reason is solidarity with the world’s poor, excluded and marginalised population. Today’s level of poverty affecting 3 billion people, half of the world’s population and 1.2 billion of which live in extreme poverty, is a cause for shame and desperation at least for any citizen who is minimally sensitive; levels of poverty which are also a source of political, social and economic instability. Poverty reduction is an ethical obligation for the most prosperous of the world’s citizens and it is a political obligation for all governments around the globe. This has been the message at each United Nations summit in the 90’s and very especially at the Millennium Summit held in the year 2000 in New York. There, 187 governments, including the Government of Spain, supported the Millennium Development Goals, i.e. poverty reduction, gender equality and defence of the environment.

(...)

The second reason for taking on the challenge of increasing our Official Development Assistance has to do not only with the interests of the developing world but also with those that we share with all of the citizens of the planet. We need to build a world which is more harmonious, fair and more respectful of the environment in order to make welfare and security available to all. People’s welfare does not depend solely on the domestic cohesion and solidarity of our countries. Globalisation is producing a situation of interdependence such that no government is capable single-handedly of assuring the welfare of its population as was dramatically proven on 11 September 2001 and on 11 March of this year in our country. Global markets are imperfect and discriminatory with the weakest nations...

... Global public interests may be best represented by peace and environmental quality. Together with fair development, security, international justice, respect for human rights, health or economic and financial stability on a global scale, their provision is the responsibility of all members of the international

community but especially of public authorities, i.e. governments and multilateral organisations. Defence and provision of these global public goods is therefore closely linked to the external action of the State. Our seeking of legitimate short and medium-term interests, i.e. our current well-being, must coincide, and this is essential, with the search for global cohesion and solidarity, i.e. with our future well-being, with the interests of humanity and our own over the long-term. These are the ideas addressed in the preamble to the International Development Cooperation Act approved by the *Cortes* in 1998. . . . a policy that this Government desires and is offering with the following principle lines of action.

First of all it must be by consensus, the fruit of dialogue with the different agents of international development and cooperation. In the 21st century the external action of nations is not limited to the central government. The citizens, NGOs, local and regional administrations and enterprises have a legitimate vested interest in the goings on of the external world, interact and intervene in their evolution and have a vision of the problems and their solutions which must be borne in mind . . .

Secondly, we are going to make a concerted effort in the design and planning of cooperation in order to make headway in terms of efficacy and to have the required impact, a process beginning now with the drafting of the upcoming Spanish Cooperation Master Plan which will serve as the framework for action over the next four years; a plan which will be developed in a participatory manner as a joint effort among a team of officials and technicians from the administration, the university and the civil society working side by side.

Third of all, a further three-tiered concerted effort must be made in the coordination of our cooperation system: first within the central state administration, the management of Official Development Assistance instruments in our country and, although legally under the auspices of the Ministry of Foreign Affairs and Cooperation, it is distributed among different departments.

Allow me to now say a few words about cooperation policy within the European Union. Spanish cooperation should also return to the European context. As you know, Spanish policy is making its return but, as the Chinese would say, a step forward needs to be taken assuming a multilateral approach. We must not lose sight of the fact that the European Union is by far the world's number one donor and that Spain's contribution through the Community budget and the European Development Fund accounts for over a quarter of our total national contribution to development cooperation.

(. . .)

I would now like to move on to the Government's geographical and sectoral cooperation priorities having regard to that which is laid down in the law itself. Article 6 . . . establishes Latin America, North Africa and the Middle East and other less developed nations with which Spain has special historical and cultural ties as areas of preferred action. The fact is that the majority of Spanish bilateral ODA has gone to Latin America. In 2003, North Africa and the Middle East will only receive 15 percent of our bilateral Official Development

Assistance, a figure below the ODA earmarked for Asia. This situation needs to be remedied. If the world's great challenge today is the Arab and Mediterranean world, these budget allocations will need to be modified and our relations with the Arab and Islamic world reinforced.

The Government has the firm will to exceed the traditional aid policy and design a veritable international development policy on two levels. On the one hand we have to contribute to the development of a level playing field in terms of the international economy, goal eight of the Millennium programme.

In this context special mention must be made of Spanish economic operators with a very significant economic presence in some developing regions such as Latin America where Spain has become the second largest investor and in some countries such as Argentina, where it is number one. They can play a significant role in boosting development over the middle and long term.

And lastly, if we expect to develop a veritable international development policy, we must support the improvement of public policies in developing countries and provide technical assistance in the area of institutional strengthening. According to data furnished by ECLAC, in 2003 poverty affected 44 percent of the Latin American population, i.e. approximately 225 million people. In seven countries the proportion of the poverty-ridden exceeded 50 percent of the population. These elevated poverty figures, in a region of intermediate development, are linked with the high degree of inequality prevalent in a large proportion of the region's countries. Of the 18 Latin American nations, 16 can be considered as highly unequal. As pointed out by the IADB, if income distribution in Latin America were comparable to that of Southeast Asia, poverty would be only one-fifth of what it is today. The third summit of heads of State and Government of the European Union, Latin America and the Caribbean recently held in Guadalajara took up the priority of reinforcing social cohesion and effective multilateralism. Spain, along with the European Union, will decidedly cooperate to that end in all fields.

In summary, we first seek to take international cooperation policy further not only by doubling Official Development Assistance in this term of office but also by giving our firm support to integral international development policies the purpose of which is to modify the underlying causes perpetuating inequality within and among nations and individuals and to foster the capabilities and opportunities of disadvantaged regions and persons. Secondly, we defend the bolstering of multilateralism in this world of global challenges and renew our commitment to sustainable human development and the United Nations millennium development goals. The master plan should, therefore, also include a significant increase in ODA focusing on multilateral organisations. Thirdly, we shall develop in a coherent fashion and in a single development policy our contribution to multilateral organisations, our contribution and participation in EU cooperation policy and Spanish bilateral policy; a bilateral policy rooted in the democratic and supportive values of our civil society, mobilisation of NGOs and the exem-

plary effort of town halls and regional governments with a view to, together with the government-backed development policy, creating an effective and participatory programme. And to finish, we are not starting from ground zero. Now is a promising time to take a stand against poverty. There is a new wide-ranging global commitment to reduce by half the proportion of people in situations of extreme poverty and hunger by the year 2015. Developing countries are setting up and executing strategies to achieve this objective and the international development community is drawing up and coordinating a response in this connection and is calling on political will and creating the frameworks and mechanisms by which to undertake a more effective attack against poverty and in favour of effective human development.

(. . .)".

(DSC-C, VIII Leg., n. 41, pp. 3–8).

Also, the Secretary of State for Foreign Affairs and Latin America, Mr. León Gross, in an appearance before the Senate Latin American Affairs Commission to report on Government policy in Latin America after the III Summit of Heads of State and Government of the European Union, Latin America and the Caribbean stated that:

"Naturally, Latin America is one the priorities of the new Government's external policy. This is so because Latin America is part of Spain's identity . . .

We are not starting from ground zero, far from it. The previous governments, Socialist and People's Party, have developed all sorts of initiatives bestowing privileged status upon relations between Spain and Latin America. However, it is plain to see that our relations with Latin America need a new boost, they need to be renewed.

The new Government's Latin American policy is an expression of the will to combine the defence of our interests with the needs and aspirations of the region's nations and peoples. These are one in the same given that better defence of Spanish interests in Latin America is clearly tantamount to supporting the consolidation of democratic institutions, reinforcing social cohesion and fostering development and well-being.

Our policy considers, first of all, that although the main ingredients of the relationship are the same as always (common identity and shared history), today it is expressed in new ways. I will focus on the two most notable: first of all, the spectacular development of Spanish investment in the region and, very especially, in the largest and most important countries. Today we are the number two investor in Latin America (according to some criteria we are number one) and we have a decisive presence in strategic sectors such as banking, communications, energy and public services in general.

We welcome this emigration not only because we need it and it contributes to our prosperity but also because it gives us a chance to pay back the welcome received by our emigrants at other times in history. It also provides an essential source of hard currency for the countries of origin.

Both factors indicate that Spain today has the economic capacity needed to make a substantial contribution to the development and prosperity of the peoples of Latin America and this is an important novelty.

Despite the great importance of the increase in economic ties, however, we should not succumb to the temptation of 'economising' all of our relations. Since 1996 and especially since the year 2000, Spain's Latin American policy has undergone a significant mutation which has shifted the conceptual background in place for the last twenty-five years. The change has been from lending political support to democratisation processes, institutional strengthening and integral development to a vision focusing on market openness and privatisations. Formerly support was provided for actions aimed at consolidating the State network and organising a civil society but now the focus is on prioritising relations with elite technocrats and over-emphasising the effects of private investment viewed as accomplishments attributable to the Spanish Government. There has, therefore, been a change in sensitivity and priorities but especially in style: the 'Latin Americanist' discourse, characteristic of a pan-Americanist policy has been replaced by a 'hyper-Atlanticism' instituted by the preceding Government.

(...)

We understand that today Latin America faces new challenges. Twenty years ago the challenge was the return to democratic, civilian and representative regimes and the resolution of armed conflicts in Central America. Spain made a decisive contribution both in terms of the restoration of democracy in the Southern Cone as well as the Central American peace processes.

Today, with the exception of Cuba, the rest of the region has civilian and democratically elected governments and, with the exception of Colombia, armed conflicts are now a phenomenon of the past. But democracy is far from consolidated and this is probably due to failure to integrate ethnic minorities into the system – and sometimes majorities – which have always been marginalised and also because the restoration of democracy has not met the expectations of the people in terms of economic development and well-being and reduction of inequalities. The challenges which still need to be addressed today are social cohesion and fair development.

The first few months of the new Government have also witnessed the deployment of an ambitious policy of presence in all the Latin American countries accompanied by intensification of contacts at all levels and the creation of shared approaches and teamwork.

(...)

Stability also calls for a significant reduction in poverty and inequality which is at its worst in Latin America.

(...)

With regard to contribution with own resources, the development cooperation policy is one of the fundamental instruments of our Latin American policy. In fact, Latin America receives 45 percent of Spain's Official Development

Assistance most of which, in accordance with our diagnosis of the situation throughout the region, is earmarked for programmes addressing institutional strengthening and the fight on poverty and inequality by meeting basic needs. The Government proposes strengthening the cooperation policy by providing more resources.

The Government shall also stress how important it is for Spanish investors to delve further into the concept of social responsibility – one must recognise that almost all are implementing some sort of project in this area – convinced that the best guarantee for their interests is the stability and development of the countries in which they are present. As for the rest, it is the Government's intention to further enhance bilateral mechanisms which not only guarantee better protection of the interests of Spanish companies but also make a more effective contribution to the development of the countries in which they operate.

It is no secret that the Government believes that the best response to globalisation is multilateralism and integration. This, of course, is also applicable to the reality today in Latin America and to our relationship with the region. We have supported in the past and will continue to support the different economic and commercial processes on the subregional level: Mercosur, the Andean Community and the Central American integration process. We have also fostered (the last time was in Guadalajara) the conclusion of association agreements between the European Union and the different Latin American integration mechanisms. In Guadalajara we contributed to what we hope is the last push needed to conclude the agreement between the European Union and Mercosur and also promoted the opening of negotiations with a view to concluding similar agreements with the Andean Community and Central America.

Following the results of the Guadalajara summit which were not very encouraging, we initiated a reflection process to update and improve the mechanism. We cannot forget that Europe and Latin America, especially the Southern Cone, share the same values and characteristics and this common background should serve to intensify our relations and reinforce the conclusion of agreements at all levels, including ones taken at the international policy level.

And lastly, we believe that Latin America has a role to play in a world that we hope will become multipolar and in which multilateralism takes the place of unilateral action. . . . To date, not a lot of agreement has taken place at the summit processes. A cooperation mechanism has been created, the Secretariat for Cooperation with Latin America with headquarters in Madrid . . .

We need to make a consistent effort to reinforce the concept of the Latin American summit as an instrument by which to achieve a greater degree of political agreement in all of these countries.

(. . .)

. . . I would like to conclude with a reference to some specific special interest issues.

First of all, an effort must be made to establish – and we are already involved in this process – strategic associations with the larger countries with

greater regional leadership capacity – Brazil and Mexico –, also Argentina – and it suffices to recall that the Foreign Affairs Minister just paid a visit to that country last Friday and Saturday – and with Chile because they are key to success throughout the region and are probably the countries with which we share the greatest similarities.

Special attention needs to be paid to the countries in greatest risk of destabilisation, the Andean nations mostly, or armed conflict and we must lend a hand to help overcome these difficulties, as is the case with Colombia, and likewise political conflicts that could give rise to armed violence as in Venezuela, for instance. In the case of Cuba we must remain firm on human rights issues but must also re-establish normal channels of communication and the instruments by which to contribute to the improvement of the situation facing the Cuban people, development cooperation and paving the way to peaceful transition.

And finally, the energy issue should be given special attention. Not only is this a sector in which our investors are very active but it is also a factor which could lead to destabilisation and domestic and regional conflicts while at the same time representing – as it should – hope of progress and prosperity”.

(DSC-C, VIII Leg., n. 44, pp. 2–5).

b) Alliance Against Hunger

The Secretary of State for International Cooperation, Mrs. Pajín Iraola, appearing before the Congress International Development Cooperation Commission to inform regarding Spain's participation in the so called Alliance Against Hunger stated that:

“... The fight against poverty is contingent upon political will, the democratisation of a number of different institutions and, of course, at least a minimum degree of solidarity on the part of the most developed countries. The developed world holds the key to hope for millions of human beings of being able to improve their lot and live with dignity. . . .

On the 20th of September the President of the Government announced, at the New York summit meeting against hunger and poverty held in New York before more than 50 heads of State and Government and 117 nations, that our country has decided to increase its Official Development Assistance over the upcoming years until doubling its current amount and reaching 0.5 percent of GDP by the end of his term thus moving as quickly as possible towards 0.7 percent of GDP. In this political context one may ask what the fight against hunger and poverty actually means. This initiative emerged from the Geneva Declaration of January of this year on the initiative of the presidents of Brazil, France and Chile together with the Secretary-General of the United Nations Kofi Annan forming a group which our country joined three months later. The essential message coming out of Geneva was to put the fight against hunger and poverty as a priority on the international agenda. . . .

This declaration led to the creation of a technical group with the mandate of exploring innovative financial mechanisms. Its objective is to drum up political support with a view to trying to put into action the general consensus concerning the urgent need to eradicate poverty and foster development through concrete, feasible and focused actions. I wanted to point out that this initiative contributes to an open and dynamic process seeking new ways to fight hunger and poverty. The clearest example of this is that at the outset we were a fledgling group of four countries and the Secretary-General of the United Nations and today we have the solid political support of over 50 heads of State and Government and 117 nations which subscribed to the declaration on 20 September. In conjunction with this there is an urgent need to develop a new approach to Official Development Assistance . . .

Assistance commitments are contingent upon domestic budgetary decisions which, in turn, are conditioned by changing political circumstances. Rapid change in the flow of resources has a very negative consequence on the effectiveness of the assistance. Just what are these new mechanisms and the results of these technical groups? The group has analysed a series of mechanisms designed to increase the flow of assistance ranging from relatively simple application instruments such as voluntary donation schemes to other tools that would need persistent and concerted political action. Many of the proposed mechanisms call for solid political agreements. The mechanisms also differ substantially from one another in terms of their operation ranging from simple donation agreements using credit cards to complex financial or tax instruments, some being compulsory while others are voluntary. The characteristic common to all, however, is the economic rationality principle. . . . The general characteristics of the proposal are as follows: first of all, all of the mechanisms were conceived as ways to increase current assistance flows and not to replace them with others. This is based on the premise that the resources obtained will actually be new and in addition to those already committed to at the Monterrey Conference. Secondly, the instruments are designed to provide stable and predictable assistance to developing countries because interruptions in the flow of assistance greatly reduce effectiveness. The fight against poverty and the fostering of economic development should be viewed as long-term processes that require continuous and systematic flows of assistance. Third, the essential idea is to use the bilateral and multilateral channels already in operation for the disbursement of resources thus avoiding the creation of further layers of bureaucracy. Fourth, financing should be made available, preferably in the form of donations given that many developing nations have subscribed to austere fiscal adjustment programmes in order to deal with public debt in an effort to create the basic economic conditions for growth. Fifth, resources obtained should be handled in a transparent manner allowing for the proper rendering of accounts in respect of the use made of such funds given that many mechanisms take decided and coordinated political action for granted and transparency and rendering of accounts are essential in maintaining the support of public opinion.

Let us now turn to the concrete proposals . . . The first is a tax on financial transactions . . . The proposal to tax financial transactions at a very low rate would contribute to the stable and predictable collection of a considerable volume of funds for development without interfering with the normal operation of the market. The second proposal is related to a tax on the arms trade. This proposal was tabled at the G-8 meeting held in 2003 where the President of Brazil, Lula da Silva, proposed a tax on arms sales as a way to collect funds for the eradication of hunger and poverty. The benefits of this tax would be economic as well as ethical. The third proposal is the International Financing Facility. The IFF is a development financing mechanism proposed by the Government of the United Kingdom which envisages prefinancing the disbursement of the assistance thanks to a guaranteed indebtedness plan by the participating nations . . .

The fourth proposal concerns special drawing rights to finance development. Special drawing rights are international reserve assets issued by the International Monetary Fund to supplement the existing official reserves of the member countries; they are assigned in proportion to the quotas of each Fund member . . . The fifth proposal is tax evasion and tax havens. The volume of taxable income evaded each year throughout the world is considerably higher than the sum needed to finance the Millennium Development Goals. . . . Reduction of tax evasion and an increase in the transparency of financial operations are an international public service and there is international consensus to fight against tax evasion and the lack of transparency in financial activities . . .

Another characteristic of globalisation that should be highlighted in this sense is the existence of important flows of workers. According to a number of different sources, the sum total of funds remitted by emigrants from developing countries is approximately \$80 billion per year, a figure which far surpasses Official Development Assistance flows . . .

And why are these remitted funds important in the fight against poverty and hunger? First of all because they tend to be much more stable than other funds and therefore represent a source of funding which is more stable and predictable. . . . Secondly, income from remittances sent from abroad is usually spent on basic needs such as food, housing and basic services and is therefore an alternative safety net for developing countries. And thirdly, the costs incurred in the transfer of funds or intermediation are quite considerable. Therefore, any significant reduction in the transfer cost of monies sent from abroad from emigrant workers will have a direct effect on the fight against poverty.

The seventh proposal concerns voluntary donations via credit cards. Voluntary donations also account for a significant portion of the funds collected to fight poverty and hunger, specifically donations from credit card debits given that this method is employed in many countries around the world. The eighth proposal is socially responsible investment or the so-called ethical funds. The private sector plays a fundamental role in the world economy. Socially responsible investment encompasses decision-taking processes in respect of investments basically referring to the approach taken by investors in selecting, as the

object of investment, those companies which bear factors such as social and business responsibility in mind in their operations.

By way of final observations I should mention that the list of innovative mechanisms is not exhaustive nor is it regulatory. The aim of this initiative is to present a panoramic view of the principal aspects of each one of the mechanisms analysed. The group has not, for example, analysed the possibility of establishing a tax on CO₂ emissions to finance development, an issue left for future debate. . . .

(. . .)

As for modes of participation, it should be borne in mind that some mechanisms are compatible with other modalities which are already being implemented . . .

And lastly, as I said a couple of weeks ago when I was explaining the General State Budget, our country reiterates its commitment to reach the 0.30 percent of GDP level by next year. Along with this bit of good news, which I am told all parliamentary groups – within the framework of the initiative that I presented to you today – are going to support, I would like to present three practical results. The International Monetary Fund and the World Bank have expressed their support for this initiative and called on the four countries to submit a progress report at the joint meeting of these two organisations which is to be held in April 2005. The four countries have agreed to meet before that time and before the G-8 meetings to study the specific proposals for each case. And, as the President of the Government has already announced, our country will implement initiatives focusing on a debt for basic social services swap, especially regarding education”.

(DSC-C, VIII Leg., n. 128, pp. 5–8).

2. Assistance to Developing Countries

Note: See XI.1.General lines and XI.3.Terrorism

a) Latin America

The Secretary-General of the Spanish International Cooperation Agency, Mr. De Laiglesia y González de Peredo, appearing before the Congress International Development Cooperation Commission in response to a question regarding cooperation projects with Cuba informed that:

“The legal framework governing bilateral cooperation with Cuba is the basic scientific-technical collaboration agreement of September 1978, the cooperation agreement on culture and sport of May 1982 and the final act of the VII meeting of the Spanish-Cuban joint cooperation committee held in Havana on 25 January 2002 in force for a period of three years. This is the legal and conventional framework governing the development of our collaboration.

However, on 27 August 2003 the Cuban authorities sent a communiqué to our Embassy in Havana announcing the interruption of all negotiations on

Official Development Assistance either in progress or at the planning stage with Spanish Government representatives, their official agencies or the embassy itself with regard to new projects or other collaboration actions financed by our Government and managed by the aforementioned entities or their representatives. . . . Cooperation with the autonomous communities was not included in this measure. This is decentralised cooperation channelled through NGOs or bodies of the United Nations. Therefore, as of that date, cooperation from the Spanish International Cooperation Agency to Cuba is channelled exclusively through multilateral bodies and non-governmental organisations”.

(DSC-C, VIII Leg., n. 158, p. 22).

The Secretary-General of the Spanish International Cooperation Agency, Mr. De Laiglesia y González de Peredo, appearing before the Congress International Development Cooperation Commission in response to a question regarding Spanish cooperation with Haiti informed that:

“The Secretary of State for International Cooperation did indeed travel to Haiti on 11–12 July when that country sent out a desperate call to the international community to help it out of a catastrophic situation caused as much by the political conflict of the previous months as by the devastating effects of the torrential rains that destroyed much of the country’s south-eastern region. The fundamental aim of Spanish cooperation is the fight against poverty and it is within this context that we are seeking to intensify cooperation with the poorest nation of the entire western hemisphere, one of the world’s 25 poorest countries according to the UNDP and, to date, unfairly abandoned by Spanish cooperation. Moreover, from a geographical standpoint, Haiti is located in a Spanish cooperation priority region (Latin America) but until now it had not been considered a priority and the circumstances call for our putting an end to this anomaly. Reacting to emergency situations is among the priorities of our development cooperation and Haiti, as you well know, has unfortunately been undergoing recurring catastrophes and its baseline situation is extraordinarily precarious.

And finally, all of the reports, that of the OAS, the United Nations and our own evaluation, coincide in indicating that the origin of today’s terrible humanitarian situation that the Haitian people are suffering is the precariousness of the democratic system and it is therefore essential to reconstruct the Haitian democracy from an institutional, political and social standpoint, this also being one of the priorities of our cooperation. All of these reasons called for greater attention to be paid by Spanish Cooperation and, bearing in mind the upcoming International Donors Conference for Haiti that was scheduled for 20–21 July, led to the visit made by the Secretary of State a few weeks prior with a view to establishing contact with the Haitian authorities in order to identify the content of a cooperation programme with Haiti and prepare the Spanish position in view of the said Donors Conference.

(. . .)”. (DSC-C, VIII Leg., n. 96, pp. 18–19).

b) The Mediterranean

In response to the parliamentary question regarding measures to foster trade relations with the countries forming the Mediterranean Arc, the Government informed as follows:

“The Ministry of the Economy prioritises bilateral economic and commercial relations with the Mediterranean Arc countries.

The principal North African and Middle Eastern Mediterranean Arc countries (Morocco, Algeria, Libya, Tunisia, Egypt, Israel and Lebanon) account for approximately 5% of our foreign trade, practically double the average participation of these countries in EU trade relations.

In these countries special mention should be made of the wide use of ICEX promotion instruments.

Spain has a deficit coverage vis-à-vis these countries with a coverage rate in the vicinity of 75%.

The latest foreign trade data available (up to August 2003) show that during the first eight months of 2003 our exports to these countries grew by 4.2% in contrast with average growth of 5.4% of total Spanish exports.

During these same eight months of 2003, imports from this area grew by 10.9%, above the average 8.0% growth of Spanish imports as a whole.

For historical reasons and geographical proximity, Spain is traditionally one of the main supporters within the EU of trade relations with the Mediterranean Arc countries.

As of 1995, the Community’s Mediterranean policy guidelines have been developed within the framework of the so-called Euro-Mediterranean Process or the Barcelona Process within which Spain has been one of the especially active Member States and the objective of which is the creation of a free trade area in the region by 2010.

Within the scope of economic and trade matters, at the II Euro-Mediterranean Meeting of Trade Ministers which was held in Toledo on 19 March 2002, concrete measures and specific actions were adopted contributing to the finalisation of a Euro-Mediterranean free trade area which have subsequently been developed. The subsequent presidencies (Danish, Greek and Italian) have backed these agreed actions. These measures are:

Integration of the Mediterranean partners in the Pan-Euro-Mediterranean cumulation of origin; drafting of a new protocol which incorporates the association agreements with these Mediterranean partner countries regarding rules of origin allowing for the spread of the Pan-Euro-Mediterranean system of origin to the Mediterranean countries.

Drafting of a services liberalisation protocol or model to be accompanied by different specific commitments with each country.

Adoption of a set of recommendations with a view to simplifying customs procedures; approval to carry out studies and work with the aim of harmonising laws as regards regulations and technical rules.

Outside of the framework of the Euro-Mediterranean Process or the Barcelona Process, at the initiative of the United Kingdom and Sweden, in the first quarter of 2002 a new neighbour policy emerged: the Wider Europe – Neighbourhood Initiative. Although in principle this initiative exclusively addressed the Eastern countries of the enlarged Union, Spain has played a very relevant role in the following aspects which in the end were highlighted in the Thessaloniki Council Declaration:

1. Maintaining a global perspective in the Wider Europe – Neighbourhood initiative also incorporating neighbours from the South.

2. The principle of differentiation by countries and regions so that each country is provided with an individualised programme which can be evaluated separately according to advances made in compliance with the different objectives. A total of approximately 16 million in goods each year is affected by the measure”.

(*BOCG-Congreso.D*, VII Leg., n. 650, pp. 298–299).

The Secretary-General of the International Cooperation Agency, Mr. De Laiglesia y González de Peredo, appearing before the Congress International Development Cooperation Commission in response to a question regarding Spanish cooperation with Morocco informed that:

“The key to the future for Morocco and for cooperation relations with Morocco, not only for the year 2005 but also for years to come and even beyond the period during which the current joint committee covering up to 2005 is in force, lies in the imminent conclusion of the strategic association agreement. Negotiations in this regard have been boosted by the support shown during the latest visits to Morocco by the President of the Government, the Minister of Foreign Affairs and Cooperation and the Secretary of State for International Cooperation. Within the framework of this qualitative leap, the achievement of this new agreement which will override those currently in force as part of our commitment to improve our cooperation not only in terms of volume but also quality, is the re-launching and revitalisation of the Averroes Committee, virtually void of any recent activity.

In terms of specific projects there are a series of elements which are going to change. First of all, the work methodology which we are going to apply from this point forward will consist of delving deeper into the concept of partnership, of association, so that the projects carried out are not an imposition by one of the parties but rather are implemented subsequent to an exercise of joint identification, prioritising the sectoral concentration approach to prevent the current dispersion of efforts and emphasising the viewpoint of the receiving party, i.e. the Moroccan side, with the initiation of possible new cooperation instruments such as budgetary support or the sectoral approach in addition to the recently initiated microcredits as complements to cooperation which are being implemented in fulfilment of the commitments of the joint committee ...

(...)

These new actions and the continuation of negotiations to finalise and sign a strategic association agreement is currently the focus of the Cooperation Agency's efforts as concerns Morocco to give new impetus within the framework of this new methodology that I explained at the beginning of my presentation".

(DSC-C, VIII Leg., n. 158, pp. 5–6).

c) Europe

The Secretary-General of the Spanish International Cooperation Agency, Mr. De Laiglesia y González de Peredo, appearing before the Congress Development Cooperation Commission in response to a question regarding Spanish cooperation in Mostar informed that:

"The war in Bosnia and Herzegovina between 1992 and 1995 produced approximately two million refugees and internally displaced persons. In addition to its grave humanitarian consequences, the war caused material damage which, if left unattended, make it impossible to normalise living conditions for the inhabitants of Mostar. From the very beginning and as of the end of the aforementioned conflict, Spanish cooperation has concentrated on palliating human casualties and subsequently on promoting the creation of necessary infrastructures for the normalisation of living conditions in the country in general and in the city of Mostar in specific reference to the question posed. As an historical example of projects with a distinct humanitarian character, you should be reminded of the rehabilitation project of the primary health-care centre carried out in 1996 in collaboration with the non-governmental development organisation Architects without Borders; the offer of psycho-social care for children affected by armed conflicts, a project approved in 1999 and implemented by the Spanish Red Cross; or the series of micro-projects supporting the return of refugees who were identified in collaboration with the SFOR.

Since 2003 projects have been carried out focusing on the creation of infrastructures to help normalise the situation in the city. It is within this sphere of events that we have, first of all, the project supporting the return and integration.

(. . .)

We can thus conclude that Spanish cooperation, in accordance with the positions taken by international organisations with jurisdiction in the area, has effectively met the population's basic needs. In terms of results of our cooperation, mention may be made of the important number of displaced persons who have been able to return home and the degree to which this has contributed to social and economic reactivation of the Mostar city centre. For all of the above, our assessment of the action carried out in Mostar is positive and we feel that it has effectively contributed to the fulfilment of the objectives established by the international donor community".

(DSC-C, VIII Leg., n. 158, pp. 3–4).

d) Africa

The Secretary-General of the Spanish International Cooperation Agency, Mr. De Laiglesia y González Peredo, in response to a question posed to the Government in the International Development Cooperation Commission regarding the crisis in Sudan, informed that:

“The commencement of Spanish cooperation in Sudan in the context of the humanitarian crisis in the Darfur region in the western part of the country which, as has already been mentioned, has caused over 1,500,000 internally displaced persons and over 200,000 Sudanese refugees in Chad, actually goes back to May of this year. It was at that time that Spain, sharing the concern of the international community over the seriousness of the situation, decided to take part in the collective effort of the international community and respond in solidarity to contribute to the alleviation of this humanitarian crisis and the Spanish Government began to take decisions to channel contributions through the Spanish International Cooperation Agency. The first of such contributions was made in May in the amount of 500,000 to the World Food Programme and a subsequent contribution was made to the same programme in July for 400,000. These funds are used by the WFP to lend direct support to the purchase of vegetable oil and leguminous vegetables with a view to meeting the nutritional needs of the refugees.

At the same time it was also decided to support the efforts being made by Spanish non-governmental organisations working in the area. First of all, that of the Spanish Red Cross which received a total contribution of 780,386 broken down into various actions one of which was to support the overall logistical organisation, together with the Sudanese Red Crescent, of the two displaced persons camps in the vicinity of the city of Al Fashir. The *AECI* contributed to this logistical organisation with financing on the order of 338,000. In addition to the Spanish Red Cross, the Spanish Doctors without Borders is working in the Zam Zam and Abu Shouk camps mostly in support of nutritional needs with a 300,000 subsidy from the *AECI*. And finally Intermon Oxfam, which works on a food security project with the refugees at the Tulum, Forchanay and Cunungu camps, also has *AECI* funding in the amount of 200,000. . . . I should point out, as you may already know, that Sudan has never been considered a priority country for Spanish cooperation and this means that no provision whatsoever has been made for that country in our 2004 budget.

In addition to these direct actions, the regional governments, coordinated under the Secretary of State for International Cooperation, have made a concerted effort to contribute to the financing of the projects that other NGOs and multilateral organisations are implementing in Darfur . . .

As concerns the political aspect of the crisis, . . . Spain supports a political solution to the crisis. The Naivasha negotiations regarding the conflict in the South and the Abuya negotiations concerning the Darfu conflict must be reinitiated. Spain hopes that all parties come to the negotiating table with a con-

structive mindset giving rise to the signing of global peace agreements. Secondly, those responsible for war crimes and human rights violations must be brought to justice and with that aim in mind Spain lent its support to the creation of the international investigation commission called for in Resolution 1564 designed to identify the guilty parties and determine whether genocide has been committed or not. And the third element in respect of the crisis from our point of view is that the African Union should take a leadership role in its resolution. The international community in general and the European Union in particular are willing to lend the financial and logistical support that the aforementioned organisation requires to properly carry out its functions.

These are the policy lines along which we will continue to work, especially in the Security Council and other forums focusing on this crisis”.

(DSC-C, VIII Leg., n. 96, pp. 4–5).

e) Asia

In response to the parliamentary question posed in Congress regarding the aid channelled through the Spanish International Cooperation Agency (AECI) and non-governmental organisations (NGOs) in Iraq, the Government informed that:

“The amount of funds provided for non-governmental organisations to carry out humanitarian aid and development actions in Iraq has surpassed the 5 million initially earmarked for this year and is close to 7 million. . . . Practically all of the NGOs requesting aid from the Spanish International Cooperation Agency (AECI) . . . have been funded. . . .

(. . .)”. (BOCG-Congreso.D, VII Leg., n. 650, p. 322).

3. Terrorism

The Secretary of State for Foreign Affairs and Latin America, Mr. León Gross, in an appearance before the Congress International Development Cooperation Commission, informed of the efforts which the Government is planning to carry out in the international fight against terrorism:

“There is no doubt that the September 11th 2001 attack marked the beginning of a new era in the way collective security and international order must be approached. Terrorism, which has been with us throughout the last century, showed us just how lethal and indiscriminate it can be. The old strategy of terror made a quantum leap in terms of blind violence showing utter disregard for all moral taboos regarding respect for life and human dignity. However, despite this qualitative change, unfortunately terrorism is nothing new to us. In Spain we understand only too well the meaning of terrorism having suffered this curse for 30 years and we have learned some valuable lessons. In this context, 11 March made us think long and hard about the nature of this new terrorism and evaluate all the measures and actions developed over the last several years in order to decide which are sufficient and which need to be improved and based

on these reflections we must build a new consensus and response from a joint perspective and political vision in Spain and along with our European partners, with our Arab and Muslim neighbours and within the framework of the United Nations. This is the priority political objective which this Government has set.

These years spent fighting ETA terrorists have taught us some valuable lessons. They have taught us that the unity and consensus of all political and social forces and the active participation of citizens are our best weapon in combating and delegitimising the perpetrators of violence.

They have taught us that the terrorists' greatest victory is when democracy, under the guise of security, sacrifices the irrenounceable freedom, rights and liberties of its citizens. They have taught us that terrorism can only be vanquished with the self-sacrificing and constant action of the state police and security forces and intelligence services; only with more and higher quality information and intelligence will we be able to take effective action in detecting, pursuing and putting an end to terrorist action. They have taught us that terrorism can only be vanquished by means of close and loyal international cooperation and collaboration with our partners both on the bilateral level and as participants in all of the international forums and organisations. Terrorism poses a threat to our security and to the security of all people. No country can single-handedly face this threat and therefore a concerted effort needs to be made by the international community which means more cooperation and more dialogue.

(. . .)

Within the multilateral framework, by way of example, a binding international legal framework with regard to terrorism has been developed and strengthened with the adoption of resolution 1373 of the Security Council urging the ratification and enforcement of all international conventions on matters of terrorism; frameworks concerning criminals have been strengthened on the national level; the legal framework by which to control and make the financial transactions of our banking systems more transparent with a view to preventing abuse by terrorist networks has likewise been bolstered; mechanisms and instruments designed to foster the better flow of information and international cooperation have been created, especially through the Security Council's Anti-Terrorism Committee and the G-8 Counter-Terrorism Action Group with the mandate to promote and coordinate the provision of technical assistance to countries which are most vulnerable in the fight against terrorism; the legal and operational framework by which to prevent terrorists' gaining access to weapons of mass destruction is under development at the disarmament and non-proliferation forums with the recent adoption of resolution 1540 by the Security Council; initiatives to improve the security of different modes of transport, travel documents border control and civil protection are being developed.

Within the framework of the European Union, the definition of new instruments to fight terrorism, as of the approval in December 2001 of the first action plan of the Union to combat terrorism, has progressed in tandem with the cre-

ation and consolidation of the area of freedom, security and justice. Special mention should first of all be made of the framework decision regarding the fight against terrorism setting the stage for the harmonisation of our criminal systems with the definition and description of crimes of terrorism; the drafting of the European terrorist list; the framework decision regarding the European Arrest Warrant which replaces the traditional extradition procedure in the case of crimes of terror based on the principle of mutual trust and cooperation between judicial authorities; the creation of instruments of reinforced cooperation to improve the flow of information and cooperation between the judicial authorities of the Member States with the advent of Eurojust and between the state police and security forces and with the creation of Europol and the reactivation of its anti-terrorist operational unit; greater coordination and information between our intelligence services for a better shared analysis of terrorist threats; a conceptual framework has been developed for the comprehension and formulation of responses to new threats to our security with a priority on terrorist threats with the adoption of the European security strategy . . .

Spain has been and always will be in the vanguard of the fight against terrorism. . . . Just a few short weeks following the terrorist attack of 11 September, the international community mobilised, with the backing of the Security Council which unanimously passed Resolution 1368, to issue a military blow to the terrorists of Al Qaeda and the Taliban political regime that protected them, provided them with training bases and logistical support from which to prepare and carry out their terrorist attacks. Spain wholeheartedly supported this operation to fight terrorism in which we participated and continue to be committed with the presence of military personnel in Afghanistan under the United Nations mandate and NATO administration. However, we strongly feel that the terrorist threat is not a military threat which can be conquered militarily with the use of force or conventional armies. We rejected and it is with conviction that we continue to reject preventive war. Our rejection of the war in Iraq was and is founded on this conviction that not only was it not useful but it was actually counterproductive in combating terrorism . . .

. . . Defensive measures aimed at improving our operational capacity or reducing our vulnerability, while of fundamental importance, are not enough. It is necessary to go further, to address the structural factors, the conflicts and inequalities which breed terrorism, which foster and encourage it. . . . terrorist are not born, they are made, they become killing machines within a given context. Although in essence terrorism always comes down to the same injustice, terrorist groups, terrorisms in general, emerge and develop their messianic visions and their alleged legitimising discourse in different cultural, religious, social and political contexts. These contexts provide the categories within which projects are defined and are powerful in manipulating and exerting their influence on the reasons for which some of these groups receive the social support they need to recruit their members and obtain all sorts of logistical support. It is our obligation and interest to gain insight into the contexts in which

terrorists emerge, which they feed on, how they operate, how they construct and disseminate their messages, and it is our obligation to act with energy and determination in respect of these contexts.

Terrorism has launched attacks on New York, Madrid, Bali, Casablanca and Moscow. It has been effective in posing a global threat, a strategic problem which has radically transformed the traditional notions which served as the basis for our concept of security. . . . what we are dealing with is a group of terrorists whose declared aim is to act under the guise of Islam and perpetrate their criminal violence as the ultimate expression of an unavoidable cultural conflict; terrorist who pass themselves off as spokespersons of the faith of hundreds of millions of citizens from a host of nations while at the same time seeking to promote the distorted image of the West as the unjust aggressor. All of this gives rise to a new phenomenon, a strategic threat given its magnitude, ferociousness and its urgency. These specific characteristics of the new terrorism, this evil known as Islamic terrorism given the terrorists' determination to claim as their own the identity of that religion, require new approaches and new ambitions on our part. As a strategic threat, it requires a collective strategic response using all means at its disposal and approaching all the problems which underlie and contribute to facilitating terrorist actions. As a global threat it requires a global response delving deeper into truly effective multilateralism calling for concerted international efforts. Together with the indispensable action in the field of security, the fight on terrorism should also incorporate and approach the myriad of political, economic, social or cultural dimensions from the definition of a global strategy.

. . . Over the last few months, since 11 March, new measures and new devices have been implemented and need to be reinforced. Ranging from the strengthening of the Security Council's Anti-Terrorism Committee, a reform which Spain enthusiastically encouraged with Ambassador Ruperez at the helm as executive director, to the adoption of a regulatory framework for the fight against the proliferation of weapons of mass destruction and their eventual use by terrorists with the very recent passing of Security Council Resolution 1540.

Spain will put its full weight behind the work being carried out by these bodies. The Government of Spain will do everything in its power to preserve and reinforce the central role of the United Nations as the driving force behind the fight against terrorism. The United Nations, a body endowed with international legality and legitimacy, should be capable of defining the framework and achieving consensus in the fight against terrorism, guaranteeing maximum respect for human rights and advocating the sort of multilateralism based on the efficacy and credibility of international institutions. Within the scope of the European Union we have recently witnessed the creation of the first joint investigation team between France and Spain in the fight against ETA terrorism, mechanisms which we will likewise use against other forms of terrorism, and the creation of the post of anti-terrorist coordinator held by Mr. Gijs de Vries from the Netherlands with whom this Government has already had a number of meetings . . .

Collectively we must strip terrorists of any ideological or religious alibi. Terrorism is a strategic problem and a political problem as well but it is not a cultural problem or some alleged war between religions. We must learn more about the Islamic world with the creation of a common area of mutual understanding within the Muslim Arab world, a new strategic alliance with the nations comprising it which feel as threatened as we do or even more and which are determined to fight against this threat.

We must take a decided stand in the settlement of extremely serious regional disputes which prevent or hinder the normalisation of peaceful coexistence on the regional level and generate tension and instability and this must be done by way of multilateral efforts based on respect of legality and international legitimacy, without exception, in the consistent application of the Security Council resolutions and support for the political will of the parties, from the conflict in the Middle East which should be given renewed impetus, to the emergence of a stable, sovereign and democratic Iraq and the pacification and democratisation of Afghanistan and others . . .

We must foster the creation of a culture of human rights and strict respect for the law and international legality in the fight against terrorism. Rather than a limit, human rights should be the basis of all action taken against terrorism. These are the convictions behind the initiative launched by the President of the Government in his speech on a strategic alliance among civilisations. This initiative seeks to spark international awareness, from the central role played by the United Nations and with the active participation of the governments and civil society, in respect of the risks we are facing if we begin to put up a new wall of incomprehension and misunderstanding between the West and the Muslim Arab world. The aim is to reject the inevitability of an alleged clash of civilisations by highlighting the numerous positive aspects of our mutual relations and not permitting the current drifting apart of the Western and Islamic Arab worlds to continue affecting world peace and stability. The aim is to formulate responses from the perspective of multilateralism, abandoning unilateral solutions, for the resolution of the grave conflicts which are devastating us and to foster cooperation among all actors by means of actions that have an effect in the contexts which serve as the breeding grounds for radicalism and violence. The aim is for governments and civil societies to adopt models of peaceful coexistence based on diversity, respect for cultural identity, immigration policies for immigrants and the adoption of new models in the fields of education and communication. With this vision in mind the President of the Government suggested to the Secretary-General of the United Nations the possibility of putting together a high-level group comprised of eminent personalities from government and civil society whose task it would be to develop their work in two fundamental areas: in the field of politics or security and in the cultural sphere. Over the last several days this Government has taken the first steps with the Secretary-General of the United Nations, Mr. Kofi Annan, who has received the initiative with great interest, with several Muslim Arab states and

the international community and has met with a positive response. Based on this same conviction regarding the need to develop an all-encompassing strategic political response, it is the will of the Minister of Foreign Affairs and Cooperation to promote a profound reflection and debate process in the context of the European Union addressing the causes of terrorism and fostering cooperation policies and dispute settlement.

The Mediterranean dimension is essential to our external policy. The construction of an area of shared prosperity and stability in the Mediterranean means paying greater attention to the fight against terrorism in this area . . .

. . . Spain is making headway on new initiatives with our neighbours from the South within the framework of the Mediterranean dialogue forums focusing, first of all, on improving the flow of information and intelligence among security forces . . . Spain was the pioneer in the launching of the Barcelona Process in 1995 as a common area uniting the European Union nations and the Mediterranean basin countries and it is from this forum that we must jointly foster an area of shared prosperity, stability and security. Ten years following its creation, the Spanish Government is tabling a proposal to revitalise and strengthen the Barcelona Process which will celebrate its tenth anniversary in November of 2005 and from the perspective of which we should also address the phenomenon of terrorism to jointly construct new responses.

And lastly, I would also like to emphasise the importance that this Government places on relations with the United States in the fight against terrorism. We are fighting the same fight, we have developed an intense relationship of collaboration with them and we will remain on this course in the future. As stated earlier, the threat of terrorism shatters the traditional concepts of domestic and external security. Domestic security must go hand-in-hand with external action and, together with the efforts of the security forces, further action is needed in the diplomatic, economic, political and cultural arenas if we are to articulate a structured and global response capable of meeting this threat head on. All of these elements that I have just glossed over with no intention of analysing in great depth at this time, constitute the main lines of action that should be included in the global vision of the State's external action in this matter and are the focus of reflection in the Ministry of Foreign Affairs and Cooperation for the drafting of a framework or action plan for action abroad.

In short, we seek to put external policy as a whole at the service of the fight against terrorism from the new perspective imposed on us by 11 March and which should contribute to our resolve to protect our land and our citizens from any further terrorist attack. We are convinced that from the perspective of this approach, based on multilateralism, cooperation and respect for international legality, we will be more effective. This effort can only be undertaken if there is unity and consensus among all political groups; this has been the case to present and we trust that we can count on the support and help of all parliamentary groups in the future".

(DSC-C, VIII Leg., n. 85, pp. 15–20).

a) Alliance of Civilisations

Note: See XI.3.Terrorism

In response to a parliamentary question posed at the Senate plenum regarding the proposal made by the President of the Government to the United Nations General Assembly on 21 September 2004 regarding an alliance between the Western world and the Arab world as a response to international terrorism and to prevent a clash of civilisations and war, Mr. Moratinos Cuyaubé, Minister of Foreign Affairs, stated that:

“The aim of the Government, and therefore of the President of the Government, was to respond to an enormous challenge . . . affirming that in contrast to the temptation of building a wall of hatred and incomprehension, the Spanish Government considered it both urgent and necessary to tear down that wall and in its place build a political and diplomatic strategy designed to bring us closer, increase understanding, encourage dialogue and foster comprehension.

Thus, not only was the proposal received with enormous enthusiasm and satisfaction by the Secretary-General of the United Nations himself and therefore a formal agreed proposal is pending with the main international actors to formulate a request to the Secretary-General for the creation of a high-level group, but it has also been well received by the Arab and Muslim world in general as would be expected and was our intention.

The reaction from all of the capitals of the Muslim world, of the 22 Arab States in which Spain has an embassy, was immediate and affirmative expressing unequivocal support to such a degree that not only was a favourable response received from the capitals, but also the Secretary-General of the Arab League wrote me a letter to invite me to submit the proposal and initiative at a formal session of the Arab League. This was also the response received from other nations very close to that Muslim world such as Iran where President Jatami himself, in an interview with the Spanish Ambassador, expressed his acceptance and interest in participating in this dialogue among civilisations.

The positive reaction was not limited to the Arab and Muslim world, however. In Europe, Asia and Africa we also met with unanimous support to jointly go about building a better world and that better world is built on alliances against hunger and misery and alliances between civilisations”.

(*DSS-P*, VIII Leg., n. 17, pp. 734–735).

b) Asia

In an appearance before the Congressional Plenum and in response to the question regarding the tragedy in Beslan, North Ossetia, the Minister of Foreign Affairs and Cooperation informed that:

“The Spanish Government firmly and unconditionally condemned the occurrences that took place in Beslan in North Ossetia and expressed its maximum

condemnation of these criminal and unjustifiable acts. We also expressed this view within the European Union and from the Security Council which Spain is currently presiding. On behalf of the United Nations Council, and therefore of the international community, our permanent representative expressed his contempt and condemnation of these acts. The Spanish Government also expressed its solidarity with family members, the victims, the town of North Ossetia, the Russian authorities and the Russian Government and as a proof of that solidarity it offered specialised medical treatment through the network of public Spanish hospitals to those injured in that tragedy. We also offered, and to that end are in contact with the different autonomous communities, to transfer students and children who suffered that tragedy to come to Spain to receive needed human warmth and psychological treatment. But as you correctly stated in your question, the issue that the events in North Ossetia pose is how we should respond to terrorism. There is nothing that can justify terrorism and this must be made perfectly clear and be firmly stated here in this chamber. There are, however, elements that need to be combated to prevent the sort of environment that could breed future terrorist actions. No cause can justify terrorism but there are political, economic and social factors which require global strategic reflection on the part of the international community and that logically includes Spain, Europe and the United Nations. Therefore our Government is going to be very active on the European level within the European Council in initiating a strategic reflection process of how we should combat and defeat terrorism and also within the Mediterranean framework where we must initiate a strategic alliance with the moderate Muslim Arab countries. And lastly, we must work within the United Nations so that the international community remains unanimous and united in combating and defeating this plague”.

(*DSC-P*, VIII Leg., n. 29, pp. 1229–1230).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

a) Spain's Participation in the Security Council

On 15 October 2004, in response to a parliamentary question, the Government explained the objectives Spain has set as a non-permanent member of the Security Council, in particular during its presidency:

“In his role as President in the system of rotation, the Permanent Resident Ambassador of Spain is authorized to direct and organize the work of the Security Council. One of his main duties is to convene and preside over open public and closed sessions of the Council, as well as holding informal consultations with members.

In addition, in collaboration with the Secretary, he prepares the Council Agenda, conveying to the Secretary General on behalf of the Council the appropriate written communications, distributing to members the documentation received from the Secretary General and from other Member States addressed to the Council, and issuing Press Statements agreed on by the Council for this purpose, and, apart from the official Council Sessions, the Permanent Spanish Representative holds regular consultations with all members, both permanent and elected, so as to achieve greater consensus on the various questions on the agenda, with a view to their prompt consideration and, if appropriate, the adoption of any decisions agreed.

However, in addition to these management tasks, which are essential for efficient organisation of the work of this forum, the Government is also aware of the significance of being an elected member of the Security Council, the main body of the UN, which has the fundamental task of maintaining international peace and security. Since becoming a member of the Council, our participation has been constantly guided by three basic principles:

- Consensus, which is a permanent objective for reinforcing unity of opinion and action among Council members, which can only have benefits for its authority, the implementation of its recommendations and the obligatory fulfilment of its decisions.

- Transparency, encouraging as far as possible public and, when appropriate, open sessions to enable the attendance and, if appropriate, active participation in Council tasks of other Member States, and if possible other participants from international society, thus reinforcing the representativeness of this body.

- Efficiency, in an effort to give speedy and effective consideration to the various questions addressed to the Council, in order to guarantee that it fulfils its special responsibilities of maintaining international peace and security.

The Security Council's Agenda is a mirror image of the 'hottest' conflicts on the planet. Unfortunately, many of them exceed the monthly scope of the Council Presidencies and in this respect our Presidency is no exception. In addition to the crisis that the previous Presidency was obliged to include on the Agenda, there are other matters which the Council has decided to look at during this period, as well as any questions arising during this term, which require urgent consideration, or which the Council members decide should have priority. Spain will spare no efforts to seek commitments from Member States to facilitate possible channels for resolving complex and burning issues, in particular those of the Sudan . . . , Democratic Republic of the Congo . . . , Iraq . . . , the Middle East . . . , Haiti . . .

In addition to the countries mentioned, the Council is currently adopting resolutions for the renewal or consideration of Peacekeeping Operations mandates in countries scourged by conflict such as Liberia, Sierra Leone, Bougainville, Guinea-Bissau, Ethiopia and Eritrea. During the Spanish Presidency it was also decided to hold meetings to assess the situation in Cyprus and Kosovo, and to discuss anti-terrorist organisations such as the Al-Qaeda Committee (res. 1267).

Afghanistan needs particular consideration, as the approval of an extension of the International Security Assistance Force (ISAF) seeks to create adequate conditions of stability and normality required for the correct development of the first democratic electoral process in the country's history.

These and other top priority issues for our foreign policy, such as the fight against poverty and hunger, or the reform of the United Nations, will be matters for discussion in various meetings to be held with both the President of the Government and the Ministry of Foreign Affairs and Cooperation scheduled in New York with the main world leaders.

Making the most of the fortuitous presence of so many world leaders at the same time, Spain decided to organize on 22 September a Special Session of the Council with the Minister of Foreign Affairs and Cooperation, focused on a particularly relevant current issue, of vital importance, namely, civilian aspects of conflict management and peace-building”.

(*BOCG-Senado*, VIII Leg., n. 95, pp. 105–106).

b) Reform of the United Nations System

On 19 October 2004, the Minister for Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, appearing before the Committee for Foreign Affairs, explained the Spanish position on the reform process, emphasizing the fact that the question is not solely a matter of reforming the Security Council, but in fact the whole United Nations system:

“The Spanish Government considers that we only have one opportunity to carry out a reform which would strengthen the mechanisms of multilateral action and renew and reinforce the United Nations system.

... The reform of the United Nations system should seek to democratize its institutions, renew its sectorial programmes and agencies, and create new organisational structures which respond to current challenges, and to obtain the financial and human resources which will guarantee coordinated and efficient functioning of the complete system. In this respect, as expressed by the President of the Government and the General Assembly on 21 September, the Spanish Government supported the reform process and the institutional strengthening of the United Nations enshrined in the Millennium Declaration, and therefore supports the General Secretary's initiatives in this respect.

It is without doubt an essential aspect of the Security Council. The Spanish position on this question is the result of various years' consideration, and is not in any way a defensive position nor is it directed against any specific country. Spain aspires to ensure that the reform of the Security Council will genuinely serve the interests of the organisation and the international community, and not a small group of States. In this respect we favour the enlargement of the number of members, in order to increase their representativeness, and we are prepared to debate on proposals which merit a broad consensus on the increase in the number of non-permanent members, as well as the possible regulation – and

this is important – of the right to veto. We consider that there is a need to tackle these two questions in order to augment the democratization and efficiency of the Council, which in our opinion is badly needed if it is to be seen as a credible body whose decisions are not only respected, but more importantly, implemented and enforced.

We consider that the reform of the Security Council should not be restricted merely to the question of membership numbers. Its operation and work methods should also be improved by encouraging coordination between the Council, the General Assembly and the Ecosoc, as well as the regional organisations which play an increasingly important role in the prevention and management of conflicts. We believe this to be particularly important in ensuring continuity between the Council actions aimed at peacekeeping and those following situations of conflict, in order to consolidate peace by means of technical assistance, reconstruction and development assistance. We also consider it specially important to open up a more intense dialogue between the Council and civilian society, including the parliamentary sphere, as stated in the report of the Cardoso panel.

With respect to the General Assembly, which is where the real sovereignty of the organisation lies, it is necessary to rationalize its work and to encourage interactive relations with other major organisations so that it recovers its authority and significant role. At the same time, as a Spanish initiative, we consider it essential to reinforce the figure and the authority of the Secretary General, who could be given a more significant role, both in questions affecting conflict prevention and management and in those initiatives designed to palliate and resolve serious social and economic problems. Article 99 of the United Nations Charter has already conferred on the Secretary the ability to indicate to the Security Committee any issue which jeopardizes peace or international security, but perhaps his opinions and recommendations should be given more specific weight, in consonance with his moral authority and with the knowledge accumulated in the Secretariat of which he is head on matters arising in the organisation's agenda.

The reform of the Economic and Social Council is particularly complex. It is a body which was originally enlarged to strengthen its representativeness; however, if we are truthful, these days it seems to carry out a function which has little to do with its initial role of assessment and coordination of United Nations special, social and economic activities, particularly those concerned with development. It would, therefore, be appropriate to conduct an in-depth and realistic analysis of its present tasks and revitalize its operations.

Finally, but no less important, there is the President of the Government's initiative to establish a permanent dialogue with civilizations leading to an alliance aimed at combating phenomena which threaten the everyday existence of our peoples, such as terrorism, intolerance, religious fanaticism, xenophobia and cultural incomprehension.

In short, and to conclude, Spain has a legitimate interest in all these questions which it proposes to defend, and it hopes to do so in coordination with

our fellow members of the European Union and with those countries which share similar concerns and goals”.

(DSC-C, VIII Leg., n. 114, pp. 4–5).

c) Action Programme for Renewed Multilateralism

On 1 July 2004, in reply to a parliamentary question, the Government referred to initiatives planned for encouraging coordination within the United Nations in the framework of the Action Programme for Renewed Multilateralism:

“The relaunch of multilateralism and the reform of the United Nations system may only be achieved through consensus. The search for consensus is one of the pillars of foreign policy in Spain. Therefore, Government actions promoted within the scope of the United Nations aim to be coordinated with our fellow members of the European Union and other allies, both in the Security Council and in the General Assembly, and seek to consolidate a stronger international society with more efficient international institutions, based on the rule of international law within the vital framework of the United Nations. Our principal goal is to construct a fluid and flexible United Nations system, able to adapt to changing circumstances in a world in transformation, and able to provide effective solutions to the crises and challenges it faces.

The Government considers that the best way to contribute to renewed multilateralism is to fulfil and ensure the fulfilment of the commitments entered into, not only in the Millennium declaration but within other forums such as the International Conference on Development Funding, the World Summit on Sustainable Development and the Doha Ministerial Declaration. The Millennium Declaration’s follow-up conference next year may be the ideal occasion to assess progress and provide greater impetus to the renewed multilateralism supported by this Government.

It is considered that greater cooperation is needed in the United Nations between its peacekeeping aspect and international security (Security Council) and the promotion of peace and development as well as reconstruction (General Assembly, ECOSOC) through a coordination mechanism whereby the main bodies of the United Nations, as well as the Funds, Programmes and other subsidiary organisations will be connected, in addition to other international bodies involved (financial institutions, NGOs), and this will permit the optimization of resources and a coordinated response to international society vis-à-vis the crises which affect peace and international security”.

(BOCG-Congreso.D, VIII Leg., n. 47, p. 51).

On the same date, the Government also referred to the need to democratize the United Nations Security Council to make it more representative of the international community, within the Action Programme for Renewed Multilateralism:

“The Security Council, the main body of the United Nations, has demonstrated during recent years both its essential nature for the tasks entrusted to it by the

United Nations Charter as well as the conditioning factors imposed on its composition and Regulation. If it is to be modified, this should be done with infinite care. On several occasions Spain has presented its position on the reform of the Security Council of the United Nations . . . pursuant to the recognized principles of representativeness, efficiency, democracy and transparency. However, above all, consensus. None of the challenges we need to face can be resolved unilaterally, they require political, legal and economic instruments such as security and close cooperation with the countries and other actors in international society. Nevertheless, the more functions accorded to the Security Council, the more necessary it becomes to ensure its legitimacy. The Council needs an agenda for real threats, some of which have not been sufficiently considered in the past. The preventive aspect needs to be improved by means of some early warning mechanism either of its own or in coordination with other institutions. The Counterterrorism Committee presided over until now by Spain and, in general, the fight against terrorism are positive examples of what the Council is able to do”.

(*BOCG-Congreso.D*, VIII Leg., n. 47, p. 52).

d) Terrorism

On 10 June 2004 the Minister of Foreign Affairs, Mr. Moratinos Cuayubé, reporting in general terms on his Department's policy, made special reference to the importance of the fight against terrorism for Spain:

“We shall mobilize our efforts and resources to promote the development of this European Union anti-terrorist strategy and to encourage the responsive capacity of the United Nations, an objective in which we have already collaborated significantly by promoting the revitalization of the Security Council Counterterrorism Committee – and where we have also achieved the important appointment of Javier Rupérez – and to build universal consensus in the face of terrorism by means of dialogue and cooperation in bilateral and regional areas. The objective should be twofold; on one hand, to contribute to preventing the threat of terrorism by examining the factors and regional conflicts which may exacerbate it or serve as a pretext for it, and on the other, to contribute to fighting it by helping to strengthen commitment and operational and legislative capacities of the countries where terrorism occurs”.

(*DSC-C*, VIII Leg., n. 6, p. 5).

2. North Atlantic Treaty Organisation

a) NATO Response Forces (NRF)

On 15 December 2004, the Minister of Defence, Mr. Bono Martínez, appeared before the Congress Defence Committee to report on the international commitments assumed by Spain in this area, referring in this respect to Spain's participation in the NRF:

"The so called Response Force or NRF is a joint force which includes land, naval and air contingents under a sole command, available to intervene rapidly wherever necessary and acting on decisions of the Atlantic Council; it is a force which can be deployed in just five days, following its initial requirement, and is able to remain in the theatre of operations for up to thirty days with its own resources, for which it needs to be fully trained and qualified in the event of possible occurrences. For what purpose was the NRF conceived? Well, for operations involving the evacuation of non-combative personnel, to respond to humanitarian crises, and also crises which include peacekeeping, anti-terrorist actions, including embargo operations, and also honourable members – as has been specified – if necessary, the NRF can act as a rapid entry force in a conflict.

The NRF, under Spanish leadership, should carry out its training and qualification phase in the first six months of 2005, and must be available by the second half of the year. Spain's next turn on the rota of land forces will be in 2009. This is according to the established rota; however, due to problems raised by France, it will probably be in 2008, although it should be remembered that between July and December 2006 the land component of the NRF will fall to the Eurocorps and therefore, Spain will in principle be required to contribute 21 percent of the forces for its general headquarters, amounting to a contingent of approximately 70 soldiers. The military concept of these groups was devised in 2003 and a short time later, in July 2003, a rotation system was established which includes Spain as one of the leaders of these groups, and which will include contingents from twelve other countries".

(DSC-C, VIII Leg., n. 171, p. 5).

XIII. EUROPEAN UNION

1. Intergovernmental Conference on the European Constitution

In his appearance before the Joint Committee for the European Union, on 10 June 2004, the Minister of Foreign Affairs, Mr. Moratinos Cuayubé, reported on Spain's position regarding the Intergovernmental Conference on the European Constitution:

"With respect to institutional questions, Spain considers that it should be compensated with an increase in its number of Euro MPs in the new European Parliament within the framework of the institutional package reached. As you are aware, Spain's number of deputies was reduced to 14 with the Nice Treaty; it is now a question of recovering as many as possible. Regarding the Commission, the formulas currently being discussed at the Intergovernmental Conference are based on a large Commission until 2014, when the Commission will be reduced to 18 or 20 commissioners with equal rotation. With respect to the Council voting system, Spain accepts the principle of double majority of States and population but does not consider the thresholds proposed in the Convention to be

acceptable: a qualified majority of 50 percent of the States representing 60 percent of the population. This formula concentrates power in the four most populated States of the European Union, and is therefore not balanced. The Government proposes that the qualified majority be obtained with the support of half the States, or even half plus one, and that these States should represent a qualified majority of the citizens of the Union. Decisions should not be made contrary to the opinion of a third of the Union's citizens, that is, more than 160 million people; a decision should be legitimate as well as legal. The Government also proposes introducing corrective factors in the voting system to avoid the possibility of *de facto* control of the Union by a triumvirate – a possibility which does actually exist in the Nice Treaty, to the detriment of Spain – by requiring a minimum of four States to block a measure and increase the effectiveness of the decision making process, and proposing that abstentions should no longer count as a negative vote. Our objective is, therefore, to achieve overall balance and to maintain the influence of Spain in community institutions as a whole; that is, in the Council, the Parliament and the Commission.

The second important issue concerns the broadening of the scope of application of the qualified majority. On this point there are some issues on which there is disagreement regarding decision making by qualified majority. Nevertheless, Spain fully supports the proposals of the European Convention in this area. The third section deals with non-institutional questions which occupy and concern Spain in particular; we have managed to introduce into the constitutional treaty a declaration condemning violence against women, and protection of victims, which we consider to be particularly important and which reflects Spanish society's sensitivity towards this serious problem.

Another top priority matter for the Government is the treatment of outermost regions. Spain will continue working to achieve special treatment so that the Canary Islands, as an outermost region, will obtain a stronger partnership. The first objective has already been achieved, as on 26 May the Commission approved the outermost regions report which presented the innovative proposal for the adoption of a specific programme for all outermost regions. In addition, we hope to include the Canary Islands in the new European Union Neighbourhood Policy. In this respect we shall be intervening in the next European Council, which will encourage economic and social development of border regions, to encourage its action in areas such as the environment, the fight against organized crime, border controls and promotion of economic activity, with a proposed annual allocation of 800 million euros from 2007 onwards.

Finally, the Irish Presidency has grouped together a series of proposals on which the various positions are already very close. However, there are two matters on which the Government would like to have seen more ambitious proposals: those relative to social Europe, with a greater use of qualified majority voting; and, secondly, economic governance of the Union, with a more active institutional intervention of the Commission, and greater coordination of the economic policies of the Member States.

Within the framework of the Intergovernmental Conference, there is another matter which I would like to underline: recognition of and respect for our country's linguistic variety. In the Union we are working to obtain adequate legal recognition for languages which, alongside Spanish, are official in some of our autonomous regions. I will not deny that this is a difficult task. By exercising reasonable ambition in this matter, the Government has acted in a realistic manner and has formulated two proposals: one, the possibility of official translations of the constitutional treaty into the official languages in those areas of the Member States which request this; and on the other hand, the possibility that citizens may address Community institutions and bodies in those languages, in addition to receiving a response in the language in question. The first proposal has been practically accepted, the second, conversely, is encountering serious difficulties and we are still working on it".

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 6, pp. 3-4).

2. Ratification of the Treaty Establishing a Constitution for Europe

a) Prior Control of Constitutionality

On 10 June 2004, the Heads of State and Government of the 25 Member States of the European Union unanimously adopted the Draft Treaty Establishing a Constitution for Europe. On 29 October 2004, the Treaty was signed in Rome together with the Final Act of the Intergovernmental Conference, thus opening the channels for the Member States to ratify the Treaty.

On 2 November 2004, the Secretary of State for the European Union, Mr. Navarro González, announced the Government's intention to demand from the Constitutional Court a Declaration on the compatibility of the Constitutional Treaty with the Spanish Constitution:

"I am convinced that there is no incompatibility between the draft constitutional treaty and the Spanish Constitution. This treaty is fully constitutional from a Spanish perspective and in this respect the Minister of Foreign Affairs has issued a report which was authorized and signed and sent to the Council of Ministers last week. The Council of State has issued a report in which it also declares the compatibility and constitutional nature of the various questions analysed, which are an innovation in this treaty, as well as the legal personality of the Union, the charter of fundamental rights and the primacy of community law.

It suggests, however, that the Government make use of its powers, enshrined in the Spanish Constitution, and request that the Constitutional Court issue a binding declaration for the Government.

(. . .)

In this regard, later this morning, the Government will request an appropriate declaration from the Constitutional Court in a spirit of consensus and understanding with all the political powers, because I consider that neither Europe

nor the Spanish Constitution should be treated lightly. The Government therefore understands the importance of this question and, as I have said, in the next few hours the main opposition party will make public its consensus and agreement so that this request of the Council of Ministers shall be made to the Constitutional Court this Friday, and we shall know whether it is possible, before the end of the year prior to 31 December, for the Court to issue a declaration. I firmly believe that full compatibility is possible; if you read article 1.6 of the European Constitution it states that the Constitution and law of institutions in the exercise of the competences attributed to them shall prevail over national laws. Therefore it clearly states 'in exercising of the competences attributed to it' – the same terms used by the Spanish Constitution of 1978, which envisaged our joining the European communities, and in which article 93 establishes the possibility that the exercise of the competences of the Spanish Constitution be transferred to international bodies by means of a treaty; the European Union or the European Communities are not mentioned, and it would perhaps be advisable to include this reference in article 93 in order to Europeanize our Constitution a little, but I believe that there is no incompatibility; nevertheless, obviously, it is the task of our highest constitutional body, the Constitutional Court, to issue an opinion in this respect, and in January a referendum will be called with full knowledge of its purpose so that Spanish citizens will know what their vote means in this referendum".

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 16, pp. 19–20).

b) Call for a Consultative Referendum

On 27 December 2004, having submitted a request to the Council of Ministers, Congress authorized a referendum to consult the people on the ratification of the Treaty Establishing a Constitution for Europe:

"Despite the fact that Spain's ratification could have been implemented through the procedure envisaged in article 93 of the Spanish Constitution, that is, by approval of the Organic Law of the *Cortes Generales*, without further procedure, the Government considers that, given the political importance of the Treaty establishing a European Constitution, in addition to the need to ensure that society participates in that process, it would also be advisable to consult the citizens, so that they may freely express their opinion on the approval of the Treaty prior to its ratification by the *Cortes Generales*.

Among the direct democratic institutions provided by our legal system as channels for adapting the exercise of citizens' fundamental right to participate in politics in its non-representative aspect, a right which is recognized in article 23.1 of the Constitution, a consultative referendum, pursuant to article 92 of the Spanish Constitution and Organic Law 2/1980, of 18 January, on the regulation of various referendum models, appears to be the appropriate channel for proceeding to the aforementioned consultation.

In virtue of which, at the request of the President of the Government . . .

I Hereby State:

Article 1. Government Decision.

All Spanish citizens shall be subject to a consultative referendum with the right of active vote on the following question:

‘Do you approve of the Treaty establishing a European Constitution?’

In the autonomous regions with co-official languages this question will be asked in both languages.

Article 2. Date of the referendum.

Voting will take place on Sunday, 20 February 2005.

Article 3. Institutional campaign

Pursuant to the terms of article 50.1 of Organic Law 5/1985, of 19 June, on the General Electoral system, for the purpose of the referendum called in this Royal Decree, the General State Administration shall carry out an institutional campaign for the purpose of informing citizens of the date of the referendum, the voting procedure and the requirements and procedure for postal voting. The government will make public the provisional result of the referendum pursuant to the provisions of article 98.2 of Organic Law 5/1985, of 19 June, on the General Electoral System.

Article 4. Electoral Campaign.

In compliance with the terms of article 15 of Organic Law 2/1980, of 18 January, the electoral campaign shall take place over a period of 15 days.

The electoral campaign will begin at 00:00 hours on 4 February and end at 24:00 hours on 18 February.

Article 5. General scrutiny.

1. The general scrutiny will be carried out according to the terms of article 17 of Organic Law 2/1980, of 18 January, and also the following articles of Organic Law 5/1985, of 19 June, on the General Electoral System: article 75.4 and 5 and articles 103 to 108.

2. The General Scrutiny shall be concluded by 27 February.

3. In compliance with article 18 of Organic Law 2/1980, of 18 January, the Central Electoral Board, through its President, shall officially declare the results of the referendum, and will immediately notify the Presidents of the Government, the Congress, and the Senate.

Article 6. Procedure.

Pursuant to the terms of the second final provision of Organic Law of 18 January, the Government will issue the necessary provisions for holding the referendum called in this Royal Decree.

Article 7. Regulations governing this referendum

The referendum called in this Royal Decree shall be governed by the following regulations:

a) Organic Law 2/1980, of 18 January, on regulation of various types of referendum and their amendments.

- b) Organic Law 5/1985, of 19 June, on the General Electoral System and its amendments.
- c) Royal Decree 605/1999, of 16 April, on complementary regulations for electoral processes and their modifications.
- d) The remaining regulatory provisions for electoral processes and those which are issued for the purposes of this referendum.

Final sole provision. Entry into force.

This Royal Decree shall enter into force on the same day of its publication in the *Boletín Oficial del Estado*".

3. Participation of the Autonomous Regions in European Questions

In reply to a parliamentary question, on 6 October 2004, the Government stated its objectives with regard to recognition in the multinational, multicultural and multi-linguistic reality of the State:

"The Government has undertaken to request a reform of the Regulation on the linguistic system of the European Union, which dates from 1958, in order to incorporate officially those languages which are territorially recognized as official in Spain. The Minister of Foreign Affairs already requested this on 13 September and it is of course a formal and serious proposal by the Government of Spain.

(...)

Secondly, the Government, prior to ending the current session, shall present a proposal which would enable representatives from the autonomous regions of Spain to act as representatives of those regions in Spain's permanent European Union delegation, participating in all committees which discuss the competences of the communities, including Correper. ... In addition, it will also permit the presence of autonomous regional councillors in the Spanish delegation in the same sectorial Councils of Ministers, and we propose implementing this immediately, at least in the Councils for Agriculture and Fisheries, Environment, Social Affairs, Culture, Youth and Education. In addition, the Government considers that the autonomous regions should be able to have recourse to the European Court of Justice on questions within their competence, in all matters relating to the principle of subsidiarity established in the text of the draft Constitutional Treaty, as well as in the protocol on the application of principles of subsidiarity. This philosophy is a response, for example, to the fact that the Government had decided to incorporate autonomous regions into the bilateral summits with bordering countries as occurred in the case of Portugal and France".

(DSC-P, VIII Leg., n. 38, p. 1649).

In addition, on 23 June 2004, in response to various parliamentary questions, the Government referred respectively to the European treatment of co-official Spanish languages and participation of the Autonomous Regions in the community sphere:

“The Government has attempted to grant clear and explicit recognition of linguistic and cultural plurality in Europe and logically, to the co-official languages of Spain. In order to do so, the new section two of Article IV.10 of the Treaty literally states: This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council. Also, since the Government was not completely satisfied with this statement, it proposed a supplementary declaration to the Treaty of the European Union, and it does so, precisely in explicit acknowledgement of the cultural diversity of Europe and with the specific intention that attention should be paid in future to these and other languages. In short, we left open the possibility of continuing to advocate greater recognition for Spain’s co-official languages.

(. . .)

The Government has given considerable attention to the question of participation of the autonomous regions in the community sphere, particularly during negotiations for the European Union Constitutional Treaty. For this reason not only did it raise the question of co-official languages, but we were also concerned with strengthening the presence of the autonomous regions in the regional institutions of the Union. We therefore made use of article I.5 of the European Constitutional Treaty, which explicitly establishes not only the Union’s respect for the identity of Member States, but also of the regional and local autonomous areas. Thus article 1.9.3, when explaining the principle of subsidiarity, introduces an innovative reference to the levels of regional and local activity. In the development of article 1.9, the protocol on the principles of subsidiarity and proportionality increases considerably the role of regions in the community regulatory process.

(. . .)

Finally, the Government proposes promoting and giving impetus to implementation mechanisms existing in legal practice and in our legal system for the participation of autonomous regions in community matters, such as the Conference for Matters relating to the European Communities (*CARCE*), sectorial conferences, the Reper Board of Economic Matters (Permanent Spanish Representation), and the participation of civil servants and agents of the autonomous regions”.

(*DSS-P*, VIII Leg., n. 9, pp. 364 and 366–667).

4. Enlargement

a) Bulgaria and Romania

On 20 December 2004, the Secretary of State for the European Union, Mr. Navarro González, in his appearance before the Council of Europe in Brussels held on 16 and 17 December, referred to the accession of Bulgaria and Romania:

“With respect to Bulgaria and Romania, the European Council welcomes the conclusion of negotiations with these two countries and has recalled that both countries 2007 face important challenges of administrative and institutional consolidation between now and 1 January. The Council requests that work be expedited on the drafting of the accession treaty which, it is hoped, will be signed in April 2005. In addition, the Council of Europe also recalls the basic guarantees of the European Union to ensure adequate preparation for this accession, such as the safeguard clauses and the monitoring by the Commission ‘so that periodical reports may be drafted on the manner in which both countries are incorporating the community *acquis* into their legislation up until their joining as full-fledged Member States on 1 January 2007.

(...)

We have extremely important political reasons for supporting this enlargement, but also economic reasons. With this fifth enlargement of the ten countries recently entering, along with Romania and Bulgaria, which will be doing so in a matter of months, we are extending the domestic market by over 100 million citizens. If we do this well, enlargement should also provide the impetus for economic growth and the creation of jobs.

(...)

Together with political and economic reasons, I have always stressed, from the Spanish point of view, the moral and ethical reasons for supporting enlargement, since the Spanish, more than anyone else, should not close the door to the European club on these young democracies, when we have seen, through our own experience, how Europe has consolidated our democracy and how we have now had several years, almost 19, which have been the best of our recent history”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 20, pp. 2 and 14).

b) Croatia

At the same time, the Secretary of State for the European Union also referred to the accession of Croatia:

“With respect to Croatia, the Council of Europe has invited the Commission to prepare the framework document for accession negotiations and has asked the Council of Ministers to approve this document for the purpose of formally opening negotiations for Croatia’s accession on 17 March 2005, provided that Croatia fully collaborates with the International Criminal Court for the Former Yugoslavia. There is therefore a clear political condition with regard to negotiations with Croatia”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 20, p. 2).

c) Turkey

With respect to this country, on 20 October 2004, in reply to a parliamentary question, the Government explained its position on opening negotiations for Turkey’s accession to the European Union:

"This Government, like various previous Spanish governments, is favourable to Turkey initiating its path to full integration in the European Union. The Government intends to maintain this position. I will not deny the difficulties arising in deciding the date for negotiations between Turkey and the European Union, but with the elements and requirements expressed in the document, and the reports of the Commission, we believe that we are on track to making Turkey's incorporation into the European Union a reality".

(*DSS-P*, VIII Leg., n. 17, p. 732).

In addition, on 20 December 2004, the Secretary of State for the European Union, Mr. Navarro González, when informing the European Council held in Brussels on 17 and 18 December, referred once more to the issue of Turkey:

"Decidedly the most important decision which has generated most debate in the European Council, is that of initiating accession negotiations with Turkey. There were basically three main questions, the first being to establish the date for initiating formal negotiations for Turkey's accession. The European Council has set a date for 3 October 2005. The second point was the nature of these negotiations and their final result. It is clear that the goal is Turkey's full membership of the European Union. And the third question, which took the most time, was the normalization of relations with Cyprus. Obviously, there is no sense in Turkey entering the European Union when it does not recognize one of its Member States.

(. . .)

Turkey has undertaken, prior to entering into negotiations for joining the Union, to sign a protocol adapting the Ankara Agreement to include the accession of the 10 new Member States by 3 October. There will therefore be some normalization with regard to Cyprus, and, at the same time, in the wording of the conclusions, where it speaks of Turkey's willingness to peacefully resolve territorial conflicts which are still outstanding; although it does not mention the Member State in question, it is obvious that we are talking about Greece and the question of sovereignty of the Aegean islands.

Therefore, I consider that we may all be pleased with this decision. . . .

As in other negotiations for joining the Union, the European Council recalls that these will take place within the framework of a diplomatic conference, an intergovernmental conference whose decision should be unanimously adopted. The European Council also recalls that the opening and closure of the chapters over which the whole community *acquis* is divided will be subject to unanimous decision and may even set some indicative criteria, objectives for the provisional closure of such chapters and for the opening of others.

Secondly, reference is made to the possibility of introducing extremely prolonged transitional periods, including repeals, specific provisions, permanent safeguard clauses, provided that their impact on the competition and operation of the domestic market is duly taken into account. The conclusions of the

European Council refer explicitly to three areas: the free movement of citizens, agriculture and structural policies.

And with respect to financial matters, the European Council established that when a country's accession has significant financial consequences – obviously, without mentioning that Turkey is the country in question – these must be particularly taken into account in the financial framework after 2014. That is, that financial perspectives from that year on – and in this way it indirectly indicates Turkey, which will not enter the Union until that date – will need to be taken into consideration in the negotiations.

There is also an important reference which should be mentioned in the conclusions, which establish that in the event of serious or persistent infringement of democratic principles or respect for human rights, the Council may, by a qualified majority, at the request of the Commission or a third of the Member States, suspend negotiations with a candidate country.

... regarding Turkey, I believe that a very important target has been set on opening negotiations for accession, however... there are some safeguards and a series of comments which have no precedent in other enlargement procedures. To speak of the possibility of prolonged transitional periods, exceptions, specific provisions or permanent safeguard clauses without mentioning other references such as democracy, human rights, or the possibility of suspending these negotiations at any time, plainly heightens the fact that this is an enlargement negotiation of a very specific and special nature, which will be the object of political control, and which will not simply follow the model of the most recent enlargements or that of the fourth, involving Austria, Sweden and Finland. I believe that it will be more inspired by the Spanish model... in some of its points, for example, the Spanish Accession Treaty in 1986 established a transitional period of 17 years in fishing matters or 10 years for the free movement of workers, although later some of these periods were shortened. Turkey is more likely to follow the Spanish model.

We need to monitor this process; it is not enough simply to consider that on 3 October negotiations will begin, and that the European Union will remain static, waiting to see what occurs. We have the obligation to promote greater knowledge of European and Turkish society, and to encourage exchange programmes, contacts with civil society. Turkey has to launch a real campaign of public diplomacy and sell itself better.

(...)

For although in Spain it is not a crucial question or a matter for great public debate, we are very well aware that other Member States are particularly sensitive to this question and opinion polls clearly reflect many Member States' opposition to this accession".

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 20, pp. 2–3 and 14–15).

5. Common Fisheries Policy

On 30 January, in response to a parliamentary question on measures envisaged with the proposal of Commissioner Fishler to reduce fishing in the community fishing grounds, which includes Galician waters, the Government replied:

“It should be pointed out that the Spanish Government did not at any time condone the drastic cuts in fish catches initially proposed by the Commission and that it maintained a position of supporting fishing possibilities compatible with sustainable management of resources, for which it constantly defended medium- and long-term proposals in the case of recovery of stocks acceptable to the fishing sector and scientific reports.

This objective was achieved following improvements introduced into the Commission proposal. The Council understood and acted in the light of the Spanish claims and this is reflected in the TACs approved for 2004, which will ensure that activity can be carried out without social and economic prejudice to the fleet. The criterion of designing multiyear management plans was followed, with the aim of bringing stocks up to safe levels, as proposed by Government, instead of the drastic immediate recovery measures originally planned by the Commission, which would seriously damage the sector without necessarily guaranteeing that fisheries resources would be recovered at the same speed”.

(*BOCG-Congreso.D*, VII Leg., n. 661, p. 318).

6. Lisbon Process

On 27 December 2004, in response to a parliamentary question, the Government referred to the Lisbon process when outlining Spanish foreign policy in the light of the challenges of the European agenda:

“The ‘Lisbon Process’ is closely linked to the economic growth of the Union, and its social dimension. In recent years the European Union has reiterated its objective that by 2010 Europe should be the world’s most competitive and dynamic knowledge-based economy, able to grow economically in a sustainable way, and with more and better jobs and greater social cohesion.

To make these goals a reality by 2010, the Union needs to make efforts in 4 specific and important areas:

- Modernization of the social model through education and a campaign to eliminate social exclusion.
- Maintenance of an average economic growth rate of around 3 percent annually.
- Achievement of a knowledge-based economy, with improved R&D (the target for 2010 is to allocate 3% of the GDP to R&D, a third of which will come from the private sector).
- To make growth compatible with sustainable development.

From the outset Spain has contributed to launching this process, and it is firmly committed to the halfway review to be carried out by the Spring

European Council and to provide new political impetus in order to maintain the objectives of the process”.

(*BOCG-Senado.I*, VIII Leg., n. 146, p. 6).

In addition, on 2 November 2004, the Secretary of State for the European Union mentioned the Lisbon Agenda once more:

“With regard to the Lisbon Agenda, I would like to state that we should defend it and more, and I support what you said about being a reference, that Spain should be an example of how to put the goals of Lisbon into practice. A piece of information which fills me with pride, and which I believe should make all Spaniards proud, since it includes the work and efforts of the last Government too, aside from more economic questions, is the fact that Spain leads the twenty-five Member States in the statistics on transposition of directives to domestic law. Along with Denmark, we are the only two Member States to fulfil the two criteria established by the Commission: that we do not have any directives with a two-year transposition term which has already elapsed, and that we have achieved 98.5 per cent transposition of all the directives, which is four hundred and something legal instruments. This should make us very proud, the fact that Spain and Denmark are the only two Member States which fulfil these two criteria shows that we have worked well and that we need to continue at this pace and here the Congress and the Senate play an important role, because many of these transposition regulations are laws, and a decree or ministerial order is not sufficient to implement them”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 16, p. 19).

7. Financial Perspectives

At the same time the Government also explained its position with respect to financial perspectives:

“Negotiations relative to Financial Perspectives are extremely important, since they are the financial reflection of the Union’s political priorities for the period 2007–2013.

The European Council of December 2004 will attempt to agree on ‘principles and general guidelines’. At the end of Luxembourg’s Presidency in June 2005, it is planned to reach a political conclusion to negotiations. Finally, during the British Presidency in the second six-monthly term of 2005, the whole legislative package will be approved. This will enable preparatory work to be channelled into new Community Programmes throughout 2006, so that they may be applied right from the start of the new Financial Perspectives in 2007.

The Spanish position is based on three main concepts. On the one hand, the need to provide sufficient resources for new priorities formulated in order to achieve the objectives of the various policies during the next seven years, closely related to the Lisbon commitments mentioned previously. On the other hand,

there is a need to emphasize the fact that the enlargement process should be funded in an equitable way. The recent accession of ten new States with a relative prosperity amounting to under 50 percent of the European average will only serve to increase regional disparity. Budgetary efforts should be distributed equitably between all the Member States. Finally, Spain aims to respect the principle of graduality as it passes from one financial situation to another.

The Government is confident that Spain's willingness to contribute to the effort to seek a permanent dialogue will also be shared by other Member States so that between all of them the negotiating process will be successfully concluded and consensus will be reached".

(*BOCG-Senado.I*, VIII Leg., n. 146, pp. 6–7).

In addition, on 21 December 2004, appearing before Congress to report on the Brussels European Council of 16 and 17 December, the Government evaluated the conclusions reached on financial perspectives:

"... We have approved some conclusions which will allow negotiations on financial perspectives for the next six months to be begun, with a view to concluding them in June. It should be pointed out that the aim of this Council was not to negotiate figures yet, but to organize the debate. The report issued by the presidency achieves this aim and adequately reflects our approach. I would like to point out that it concludes that the new financial framework will require the means available to respond effectively and equitably to future challenges, including those deriving from the disparities in the level of development of an enlarged Union. This formulation has four very positive aspects for Spain: maintenance of the policy of cohesion, the conviction that any required changes should be made in an equitable manner, the consideration of new elements such as the technological gap, and the proposal that the agreement reached will be a balanced one.

Firstly, explicit mention of the enlarged European Union presupposes a reaffirmation of the principles which were valid for the European Union of Fifteen States, and which are still equally valid for the European Union of Twenty Seven States. In this respect, the Spanish argument is that although the special circumstances of new members must be considered, it does not mean that there should be any rupture in the basic community principle, which is that the cohesion policy is unique and should be applicable to all Member States. Secondly, the attention accorded to the challenges of an enlarged Europe should be paid in an equitable manner, taking up Spain's contention that enlargement affects us all, and therefore the sharing of the cost of enlargement should also be equitable for all. Thirdly, the text acknowledges the special care which will be required due to an increase in disparity of development levels, which will come with enlargement. This increase in disparity of income levels is an objective fact, just as is the existence of the technological gap between some countries and others. This last aspect is something that the European Union will need to address, and it is particularly pertinent for Spain. Finally, the agreement should

be satisfactory all round, which implies that discussion on costs should be linked to discussion on the system of each country's own resources which is also an important issue for Spain".

(DSC-P, VIII Leg., n. 60, pp. 2836–2837).

8. Area of Freedom, Security and Justice

On 10 November 2004, the Secretary of State for the European Union, when reporting on the informal European Council meeting held on 4 and 5 November in Brussels, appreciated the progress made in building an area of freedom, security and justice, drawing attention to achievements in various aspects of this area: fundamental rights, visas, asylum, immigration and borders, terrorism and judicial and police cooperation:

"(The) second point of the European Council Agenda dealt with achieving an area of freedom, security and justice, and the approval of the Hague Programme, which is linked to the conclusions of the European Council.

(...)

The European Council has approved this multi-year programme, known as the Hague Programme, establishing the bases for Union activity in these important matters over the next five years. There is no doubt that this is a new political impulse for achieving this area of freedom, security and justice after the important progress achieved in the last five years with the Tampere programme, and the Commission is invited next year to present a more detailed action plan with proposals, specific schedules so that the various initiatives of the Hague Programme will be adopted.

In a very general manner I propose to refer to the various points of the Hague Programme. Firstly, to all aspects of human rights, where the programme emphasizes that they are an essential goal as a safeguard against possible abuse, and for growing mutual confidence between the authorities of Member States in this important area of human rights. One result of this programme is the creation of a European Agency for the Protection of Human Rights. Secondly, in terms of visas, asylum immigrations and borders, in fulfilment of this *passerelle* clause of the Treaty of Amsterdam, matters of immigration, asylum and borders, which until the present have been unanimously decided on by the Council, will now be subject to a procedure of co-decision and approval by a qualified majority from 1 April 2005 onwards, with the sole exception of matters relating to legal immigration. Therefore, the provisions contained in the constitutional treaty have been brought forward, at the petition of the European Parliament. In the matter of visas, the programme also provides for the possibility of future common visa offices.

In asylum and immigration matters, there has been some progress towards the target of a common asylum policy, reinforcing the minimum regulations already in place following an assessment of their national application and through the creation of the European Refugee Fund. The creation by 2007 of a

European return fund is also planned, as well as the creation of the role of special Commission representative for this policy. In this global approach to questions of asylum and immigration, particularly in respect of country of origin and transit, attention should be drawn to the use of the new European neighbourhood instrument, particularly in the Mediterranean. I should point out that the programme also introduces a social aspect, referring to the importance of the integration of immigrants legally established in the various European societies. Finally, we should mention that next year it is proposed to create a European Borders Agency, and in 2006 a European fund for border management will be established, committed to the principle of solidarity between Member States, with a mid term goal of possibly establishing a European system of border guards.

Thirdly, terrorism is dealt with in a very significant manner within this new multiyear programme, which explicitly acknowledges that it poses a threat to the whole union of Member States, giving rise to the need to formulate a common response. Europol (you are well aware, honourable Members, that it was one of the Spanish priorities) will become a key player in assisting Member State operations in the fight against terrorism, while the Council Situation Centre, known as Sitcent, will be responsible for strategically analyzing the terrorist threat. Spain has also ensured that funding of terrorism has received the importance this issue deserves, and next December this aspect of the fight against terrorism will be incorporated in an anti-terrorist action plan. The Commission has recently published a substantial communication in this respect.

As regards the fight against terrorism, the Hague Programme also mentioned the need for stricter controls in storage and transport of explosives. This aspect constitutes one of the most relevant elements of the European Council Declaration against terrorism on 25 March, and it is furthermore one of our most important priorities. In terms of achieving greater security, the Hague programme aims to propose a common approach to the use of passenger data with regard to air security and domestic security. Politically, the Hague Programme provides for the Union to create a long-term strategy in respect of the factors leading to radicalization and recruitment by terrorist groups, which is an enormously important issue for Spain.

Fourthly, judicial and police cooperation is of particular importance, especially as regards the need for a greater exchange of information. In accordance with the Spanish points of view, the Hague Programme establishes the principle of availability of information, so that this principle will become reality in 2008, through the interconnection of national, police and judicial databases, and the inclusion in these databases of biometric data. The programme also plans to promote cooperation in a number of police investigation techniques, including forensic ballistic fingerprints and DNA etc. In this field the Hague Programme plans to create a European police school next year known as Cepol, in order to improve the training of security forces in the Member States.

Spain would have liked to go further in several areas, for example in the principle of mutual recognition of criminal judgments, although it should be recognized that the programme contains significant progress in improvements in the coordination of investigations, the establishment of the regulation of jurisdictional conflicts, the procurement and admissibility of evidence, and the connection of criminal record registers in the various Member States. On this last point I can state that the Commission has just presented to the Council a project for a framework decision which aims to extend to the 25 Member States what has already become a well advanced initiative between Spain, France and Germany, for the interconnection of criminal record databases. Although it is true that the Hague Programme does not mention the possible creation of a European public prosecutor, which is recognized in the constitutional treaty, it does propose a notable strengthening of Eurojust, which is an embryonic European public prosecution service. Finally, in the area of judicial civil cooperation, and with the prospect of mutual recognition of judicial decisions, it has been proposed that this objective be achieved by 2011, with special emphasis on full regulation, conflict of laws, judicial competence, recognition and enforcement of judicial decisions in questions of family and inheritance”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 18, pp. 3–4).

a) Visas

When questioned on the initiatives proposed in the European Union for putting into practice a Common Visa Information System, the Government replied on 22 July 2004:

“The establishment of a Common Visa Information System is based on a consideration of the European Council in Seville in June 2002, and a European Commission feasibility study submitted to the European Council which in June 2003, at Thessaloniki, considered it necessary to establish guidelines for planning the development of a VIS, its legal basis, and funding commitments.

The Commission currently has a Council decision proposal to establish the VIS, on which technical debates are taking place regarding the nature and procedure of the VIS Committee.

The Spanish Government shares the opinion of other Community Members concerning the development of the physical architecture of the system and a network of communications, and the establishment of technical aspects such as data protection, financial and technical repercussions that the VIS may have on our Administration and the requirements of the system in terms of security”.

(*BOCG-Congreso.D*, VIII Leg., n. 59, p. 85).

b) External Borders (Schengen)

On 15 September 2004, the Government, in response to a parliamentary question on its position with regard to the request to declare Santa Cruz de la Palma (Santa

Cruz de Tenerife) an external border, according to the Schengen Agreement, referred to the possibility of opening new Schengen ports in Spain:

“In Spain we have 31 Schengen ports, three of which are in the Canaries, which need to fulfil a series of requirements. The State needs to optimize available resources throughout the whole of Spain’s territory in order to adequately guarantee the ministry’s top priority, which is to ensure the security of all citizens and, of course, the citizens of the Canary Islands. I mention this because we shall make strenuous efforts within this framework of optimization and rationalization to consider the opening of the new Schengen ports. However, you will understand that what we cannot do is maintain an attitude which would be considered, and with good reason, irresponsible, in permitting the opening of new Schengen ports without the necessary and sufficient resources”.

(*DSS-P*, VIII Leg., n. 11, p. 461).

In addition, on 22 October 2004, in reply to a parliamentary question on the proposed Government Action to develop a policy of cooperation between Member States for border checks, he stated:

“On the initiative of the Governments of Spain and Greece, the Council approved the creation of two Sea Border Cooperation Centres, one for the Eastern Mediterranean with a base in Greece, and the other for the remainder of the European Union seas, with its base in Madrid.

In addition, a Land Border Cooperation Centre has been created, based in Germany, another for Air Borders with its base in Italy, and yet another for Risk Analysis in Finland, as well as a Training Centre for Border Police which will be located in Austria.

Representatives of the National Police Force and the Civil Guard will actively participate in the activities of these Centres.

In the case of the Sea Border Cooperation Centres, work has begun this year on improving cooperation between Member States under the guidance of the ‘common unit of external borders practitioners’ which is part of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

Additionally, the Regulation for the creation of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union will shortly be approved, and it is planned to be up and running in the first half of 2005. At present, it is planned to begin operating in the first half of 2005. Currently, new joint Ulysses-type operations are being developed, with dates yet to be set”.

(*BOCG-Senado.I*, VIII Leg., n. 103, p. 23).

c) Terrorism

The Secretary of State for the European Union, Mr. Navarro González, in his appearance on 20 December 2004 before the Joint Commission for the European

Union, in order to report on the Brussels European Council (16–17 December), once more reiterated the importance for Spain of the fight against terrorism:

“I would underline the European Council conclusions on the fight against the terrorist threat and terrorism. The Council insists, and this is a matter which is important for Spain, on the integration of non-community members in our societies, while it also calls for the fight against radicalization and recruitment of terrorists. It also asks that measures regarding improvements in the exchange of information proposed by the Hague Programme approved by the European Council of November be implemented without delay, which, as you are aware, is a top priority for Spain.

Several specific points are mentioned in the conclusions with a view to reviewing the action plan for the fight against terrorism, while it is requested that a new action plan should be ready by June next year. It specifically stresses stepping up police cooperation, particularly through Europol and the operating unit of police chiefs of the European Union. Secondly, in relation to judicial collaboration, there is talk of improved exchange of information on criminal records and of obtaining a European application for obtaining evidence, requesting in addition that the Commission – I believe what I say will be of particular satisfaction to Spaniards – present a proposal for a European programme for the support and protection of victims of terrorism. Thirdly, it also stresses border security, travel documents, the inclusion of biometric data in passports, and the creation of a European Borders Agency which will be operational as of May next year. In questions on the fight against funding for terrorism, for the first time, as Secretary General and senior representative, Javier Solana has provided a general and coherent focus, also with the support of the Commission and the all the Union policies. This strategic document includes a Spanish proposal for reaching an agreement on controlling the entry and exit of cash, as well as on the third directive relating to money laundering. In matters of civilian protection, the European Council also calls for reinforcement of all the prevention and response capabilities in the face of terrorist attacks, and the creation of a programme of solidarity vis-à-vis the consequences of terrorist threats and attacks. It is asked that all these questions be taken into account in the European Union’s external relations, with an increase in cooperation in the fight against terrorism with priority third countries, and anti-terrorist clauses in the agreements signed by the Union with third countries”.

(DSCG-Comisiones Mixtai, VIII Leg., n. 20, pp. 3–4).

9. Common Foreign and Security Policy (CFSP) European Security and Defence Policy (ESDP)

On 24 November 2004, the Director General of External Policy, Mr. Dezcallar de Mazarredo, explained to the Congress Foreign Affairs Committee the Government’s position regarding the CFSP and the ESDP:

"Both the CFSP and the ESDP, but basically the ESDP, have made important progress in the text of the European Constitution. In the case of the CFSP, it has been decided to create a European Foreign Affairs Minister, who will cover the responsibilities which until now have been carried out separately by the high representative for the CFSP and the Commissioner for External Relations. It has also been decided to create a European foreign service which will be based on the existing services of the Commission and the General Secretariat of the Council, but also with important contributions from the Member States. What was not achieved in the Constitution was progress in the decision making process and further communitarization of this process. Decisions continue to be made unilaterally or in certain cases by consensus, a qualified majority not having been reached in any case. In the case of ESDP, progress in the Constitution has been much more spectacular than that of the CFSP. This is important because it is in the extremely sensitive field of security, and the concept that each State has of its own security.

Firstly, article 1.15 has established a future commitment by affirming that the competence of the Union in matters of external policy and common security will include all the areas of external policy and all the questions relating to the security of the Union, including the progressive shaping of a common defence policy which could lead to common defence. This means an important degree of ambition and that what was hitherto no more than a series of more or less specific instruments for crisis management and conflict prevention will now become something which aims to develop into a common policy in the future, like the single currency or the single market.

Secondly, the Constitution also establishes greater solidarity between Member States. On the one hand, it includes a solidarity clause which establishes the obligation of the Union and its Member States to act jointly, including with military resources, to assist a Member State which has been the victim of a terrorist attack, or a natural or manmade disaster. Naturally, you will recall that the European Council of March decided to apply this clause provisionally, precisely to the benefit of Spain following the terrorist attacks of 11 March. On the question of solidarity, the Constitution also establishes a mutual defence clause. In the event that a Member State is the object of armed aggression in its territory, the other Member States will assist with all the means in their power, pursuant to article 51 of the United Nations Charter. This cooperation will be provided pursuant to the commitments entered into within NATO, which continues to be the basis for collective defence. This collective defence clause is important. Firstly, in a way it also makes the European Union a military alliance, and secondly, it reflects a compromise between the sensibilities of defence and security between the Member States. On one hand, the most pro-Atlantic Alliance states are reassured by the mention of the fact that the Alliance continues to be the basis for collective defence, as the text states, which also reflects reality. No one wishes to change this state of affairs in the European Union at the present. And it also reflects a reality which is very con-

structive, for the progress made in the building of a more integrated European defence has been possible precisely thanks to the commitments of the Atlantic Alliance in the framework of the Berlin plus agreements, which allow the European Union to use the Alliance's military assets. The second commitment in this defence clause relates to neutral States. At first the clause was to be optional; nevertheless, an agreement was reached in the Convention to make it compulsory, though adding a reference to the effect that this mutual defence clause does not prejudice the specific nature of the security and defence policy of any State. This basically leaves the door open to neutral States to decide at any time whether or not they wish or feel obliged to apply defence methods to back any other State which is under attack. And finally, this defence clause has evident implications for the Western European Union, which is an extremely old institution in Europe, having been established in 1948. Until now it has been the only existing truly European mutual defence clause, and its future now undoubtedly depends on the development of the European Union in this direction.

Thirdly, the Constitution establishes what is known as structured cooperation mechanisms between States who are willing and able to progress more rapidly in the sphere of the ESDP. These States should be prepared to commit more intensely to the development of defence capabilities by increasing their national contributions and by participating in European equipment projects. The key idea when speaking of structured cooperation is flexibility. . . . It is important for this structured cooperation process to be decided on by a majority, and not unanimously, simply because if it were done so by a majority, States not wishing to go any further could prevent those who did wish to proceed. However, the development in practice of this structured cooperation, once its implementation, its practical application has been decided, must be decided on unanimously, precisely because it is a very sensitive issue and the other States, even if they do not participate in the cooperation, should be able to have some influence on decisions which ultimately will also affect them. In order to be implemented, structured cooperation depends on the NATO agreements, and the agreements established in the Berlin plus framework, which permit the European Union to use NATO military assets for strictly European operations, and not those of NATO. To make this possible, there has to be a degree of mutual trust between the European Union and NATO, which is of vital importance.

(. . .)

Two important aspects of this increased cooperation are the European Defence Agency, which establishes a permanent mechanism for integration and creation of common armaments policies between Member States. Up to now, what have been considerable, yet isolated endeavours, such as, for example, defence programmes involving the European fighter plane, will now become something which will have a permanent training and coordination base. There is also the rapid response capability provided by battle groups, which it is was specifically agreed to develop at the GAERC (General Affairs and External Relations Council).

(...)

Returning to the CFSP once more, its sphere of activity is global. The CFSP is designed to be global in scope. Terrorism, weapons of mass destruction and human rights are the three horizontal areas of permanent CFSP action. In the field of terrorism, for example, the European Union has developed external action based on reinforcement of multilateral actions, by striving to ensure that all United Nations agreements on terrorism will be signed and ratified by all countries, including that element in its bilateral policy towards countries which have not signed, by introducing the issue of terrorism into political dialogue with third States, particularly those which are considered to be risks, and by devising technical assistance programmes for those States needing assistance to fight terrorism more efficiently. In the case of weapons of mass destruction, the policy is a similar one. The aim is to strengthen the international system of non-proliferation, both in terms of regulations and also with the effectiveness of control systems, as well as introducing this matter in bilateral policies towards countries in which there has been a problem or suspicion of proliferation. For example, in the agreement being negotiated with Syria for some time, the problem which was blocking a deal was precisely the clause on weapons of mass destruction. An understanding was reached with Syria on this matter about a month ago, and the text has been agreed on. In agreements being negotiated on the European new neighbourhood policy, the weapons of mass destruction clause is also one of the main obstacles in the case of Israel. In the case of other countries where there may also be this type of problem, the issue of weapons of mass destruction will undoubtedly be one of the central topics of negotiation. I have mentioned this in order to stress the fact that this is not simply a declaratory policy, but that the European Union really is attempting to carry out and apply these negotiation principles to other countries. In the case of human rights, honourable Members, you are well aware that it is one of the defining elements of the international identity of the European Union and which has always been central to its foreign policy, as regards both the strengthening of multilateral instruments and the incorporation of clauses concerned with human rights, bilateral agreements with other countries and its relations with other countries. In the case of Iran, in addition to the problems of weapons of mass destruction, the issue of human rights is a permanent element of dialogue of the European Union with Iran and with many other countries in the world".

(*DSC-C*, VIII Leg., n. 143, pp. 19–21).

On 15 December 2004, the Minister of Defence, Mr. Bono Martínez, informed the Congressional Defence Committee of the commitment assumed:

"The other commitment I would like to inform you about is that of the European Union battle groups. They are also groups prepared for a rapid response, the concept of which was defined during the Irish presidency during the first half of this year. What are these? What are the essential features of the battle groups? These are units of 1,500 troops which may be increased to 2,500,

depending on the needs of each mission. There is a distinction between groups comprising an integrated unit from one or several countries and the contribution to others is not ruled out, and multinational groups. These groups are assigned to crisis management missions and the possibility of acting as rapid deployment forces in the theatre of operations. They have been conceived to act within an area of 6,000 kilometres extending concentrically from Brussels. If the European Union Council decides on an operation, within five days from approval of the general concept, the forces must be prepared to carry out their mission in ten days. That is, within fifteen days of approval of the mission, the battle group should be operational. Duration of the mission will be thirty days and if the groups then have further supplies and equipment they can be deployed for up to one hundred and twenty days. At the capabilities commitment conference on 22 November, development was specified in two phases: a period of initial operation including 2005 and 2006, and from 2007 full operation, with a system of thirteen battle groups in the European Union which will rotate on an approximately three-year basis. What did Spain offer the conference? During the initial period, a multinational framework battle group, based on the Spanish-Italian amphibious forces, SIAF, which will include Greek and Portuguese capabilities, as agreed at the last November meeting. During the phase of full operation, there will be a Spanish national framework battle group, which will include French and German forces, and in return for the incorporation of French and German troops into the Spanish battle group, Spain will participate in the Franco-German brigade, another battle group practically identical in terms of the number of French and German troops”.

(DSC-C, VIII Leg., n. 171, p. 6).

10. Foreign Relations

a) Iraq

On 15 June 2004, when appearing before Congress to inform on Spain's position vis-à-vis the Brussels European Council (17–18 June), he referred to Iraq:

“With respect to Iraq, at the European Council Spain will defend the need to continue to contribute to the efforts of the international community to return full sovereignty to the Iraqi people at the earliest opportunity. It is hoped that the European Council will adopt yesterday's (Monday) conclusions of the General Affairs Council, which endorsed the joint communication of the Commission and the high representative, Javier Solana. As the honourable Members are aware, this document underlines the Union's decision to promote the central role of the United Nations, as well as the work of its representatives in this area, not to impose any measure without previous consultation with the legitimate Iraqi authorities and to support the process of normalization in Iraq in the short and medium term, by collaborating in democratic elections. Finally with

respect to Iran, the European Council will take note of the progress made in the field of nuclear proliferation and will urge the Iranian authorities to speed up their efforts”.

(*DSC-P*, VIII Leg., n. 16, p. 588).

Also, on 10 November 2004, the Secretary of State for the European Union, Mr. Navarro González, when reporting on the European Council held in Brussels on 4 and 5 November, stated:

“In relation to Iraq, the debate with Prime Minister Alawi provided a general view of the difficult situation which Iraq is currently experiencing and the plans of the provisional Government. The Prime Minister also reported on the date of the Iraq elections set for 27 January, and the European Council approved the conclusions and a declaration on Iraq which includes the main elements of what the European Union’s future relation with that country should entail. At the present time, the two clear priorities are security and preparation for the elections on 27 January. On this second point the European Union committed to substantial financial and logistic support for the elections. These elections are, without doubt, a basic link in the process of progressive legitimization of the Iraqi authorities, and a political event of considerable importance which requires our support. Secondly, financial support for the protective forces of the United Nations to enable the UN to play a role in these elections. Thirdly, an assignment for the Commission to prepare a future possible agreement between the European Union and Iraq, and to present to the Council a mandate to promote political and trade cooperation between the European Union and Iraq. And finally, an operation in support of the institutions necessary for the rule of law. This operation would commence following the election of 27 January with training activities in the judicial, penitential spheres etc. and all aspects of the rule of law. These measures reflect the European Union’s global commitment to Iraq and its implementation obviously depends to a considerable degree on the security situation in the territory, which at this time is extremely precarious. An improvement in these security conditions is indubitably an indispensable condition and totally necessary if the process of political, economic and social reconstruction of Iraq is to progress”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 18, p. 5).

b) Iran

Following the revelations of the International Atomic Energy Agency on the existence of a nuclear programme for military purposes in Iran, the European Union, in the light of the clear violation of Iran’s obligations under the terms of the non proliferation Treaty and the enormous risk to international stability, began negotiations with a view to avoiding international conflict.

In this respect, on 4 November 2004, the Director General of External Policy, Mr. Dezcallar de Mazarredo, explained the following to the Congress External Affairs Committee:

“The solution, which will be approved by the governors of the International Atomic Energy Agency, includes the Iranian commitments and steers the conflict towards channels of negotiation and dialogue. Following the conclusion of negotiations, the European Union has appeared on the world stage as a promoter of a dialogue-oriented approach that often produces results and which, although perhaps more laborious initially, will be more stable than other means in the long term. Naturally, not everything is achieved with this agreement. It is only a beginning, but if the agreement had not been achieved, the issue would have gone to the Security Council, and we would have immediately been drawn into a process of sanctions which would have generated opposing reactions, and we would probably have sparked a much more negative turn of development than that which could arise; it may open up or it may close, depending naturally on how the agreement is applied. This is the fundamental issue. The Iranian authorities have to understand that agreements, and this one in particular, must be applied without reservation, and with total transparency; otherwise, the negative side of the matter would probably come to the fore again”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 143, p. 31).

A month later, on 20 December 2004, the Secretary of State for the European Union, Mr. Navarro González, informing on the Brussels European Council of 16 and 17 December, stated in this respect:

“With respect to Iran, the European Council has welcomed the agreement reached on nuclear issues and weapons of mass destruction and is committed to future cooperation, and is in favour of resuming talks on a trade and cooperation agreement with Iran following the recent verification of suspension of activities relating to uranium enrichment”.

(*DSCG-Comisiones Mixtai*, VIII Leg., n. 20, pp. 4–5).

c) Middle East

On 24 November 2004, the Director General of Foreign Policy, Mr. Dezcallar de Mazarredo, explaining the Government’s position on the Common Foreign and Security Policy, referred to the peace process in the Middle East:

“The European Union believes that at the present moment there may be opportunities for progress in the peace process which has been going on for so long now. The ultimate goal of the European Union is obviously to achieve two States, an Israeli and a Palestinian State, living side by side in peace, with safe, internationally recognized borders. The plan to withdraw from Gaza and the succession to President Arafat open up new perspectives in this respect, and the European Union plans to take advantage of them. In an attempt to do so, it approved an action plan at the GAERC in early November with a series of short-term measures in areas such as the elections, the reform of the Palestinian Authority, economic assistance and security. A number of specific actions aimed

at each of these areas and their chief actors have been defined: Israel, the Palestinian Authorities and neighbouring countries involved in the issues.

Reference was also made to the long-term solution, but at the moment top priority is accorded to short-term actions, taking advantage of the situation which has been created. It is currently important to generate a dynamic which in recent years has been non-existent, and which may now begin to take shape. It is evident that this plan is included in the Road Map; it is a short-term plan but it does not end there, but is part of a process which can ultimately only be shaped in the Road Map in order to achieve a solution to the problem”.

(DSC-C, VIII Leg., n. 143, p. 32).

d) Barcelona Process

On 24 November 2004, the Director General of Foreign Policy, Mr. Dezcallar de Mazarredo, reporting on the position of the Government in respect of the European Union's Common Foreign and Security Policy, commented on the Barcelona Process:

“Next year will be the tenth anniversary of the process, and the Government wishes to celebrate it with a summit to preserve the significance of this process and its importance for the European Union Mediterranean members, strategic members for a number of reasons. We consider that if other countries which are important to the European Union, such as Canada or India, but which are perhaps considerably distant in geographical terms, can hold summits with the European Union it would also be productive for the Mediterranean countries to have a summit process, or at least on this tenth anniversary we should take the opportunity to mark the importance we attach to relations with these countries by holding a summit. . . .

(. . .)

We consider that the Barcelona Process is the forerunner of a series of projects being developed in other areas. The European Union began with Barcelona and NATO followed suit with its Mediterranean dialogue. The first ministerial meeting between NATO and the Mediterranean countries will take place in ten days' time . . . G-8 has also generated the idea of a broader Middle East and North Africa, which will have its first meeting in the future Forum in Morocco at the beginning of December. The European Union has therefore paved the way in this respect. We need to motivate this process, which took root ten years ago, and to give it a content which is more in accordance with current needs, and therefore we need this meeting next year in Barcelona. What will it entail? It may deal with multiple issues, both in the field of political dialogue and also judicial and domestic matters, or also the integration of the Barcelona Process into the new neighbourhood policies, which currently are the most promising instrument around for the economic integration of the Mediterranean countries in community policies, and Spain of course has been a key nation in integrating Mediterranean countries into the sphere of the new neighbourhood policy”.

e) Latin America-Caribbean

On 20 December 2004, the Secretary of State, Mr. Navarro González, reporting on the European Council held on 16 and 17 December in Brussels, stated:

“Also, on the initiative of Spain, the conclusions acknowledge the European Union’s commitment to the strategic and regional association with Latin America and the Caribbean, which is translated into the Union’s desire to progress towards concluding negotiations on the association agreement with Mercosur, and to launch early next year a joint assessment of the integration processes with Central America and the Andean Community, which should also permit progress in free trade agreements with these two Latin American areas”.

(DSCG-Comisiones Mixtai, VIII Leg., n. 20, p. 5).

11. Appointments

On 15 June 2004, the President of the Government, Mr. Rodríguez Zapatero, reporting to Congress on Spain’s position at the Brussels European Council (17–18 June 2004), referred expressly to the appointment of the President of the Commission and of the General Secretary and high representative for Foreign Policy and Common Security:

“With regard to the President of the Commission, Spain will keep an open mind, without losing sight of the ultimate goal of a strong Commission. However, what is clear is this: we want the new President of the Commission to be a committed Europeanist. With respect to the high representative, Spain will express its strongest support for the candidature of Javier Solana, to whose tremendous efforts and commitment we owe the strengthening of foreign policy and common security in recent years; in addition Spain is hoping for – and will work towards this – the European Council’s announcement that he will become the European Union Minister of Foreign Affairs on the day that the Constitution comes into force”.

(DSC-P, VIII Leg., n. 16, p. 586).

XIV. RESPONSIBILITY

XV. PACIFIC SETTLEMENT OF DISPUTES

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Iraq

On 7 January 2004 in response to a parliamentary question, the Spanish Government reaffirmed the statement made by its President who affirmed the existence of weapons of mass destruction and chemical arms in Iraq:

“Time and again Saddam Hussein has refused to completely, immediately and unconditionally collaborate with the United Nations inspectors in revealing the whereabouts of the arms, materials and components liable to be used for the manufacture of weapons of mass destruction catalogued by the United Nations inspectors and which were not verifiably destroyed.

The regime of Saddam Hussein had weapons of mass destruction and used them in the war against Iran and also to exterminate part of his own people. He invaded neighbouring Kuwait, attacked Israel with long-range missiles and, after suffering defeat in 1991 at the hands of an international coalition, continued to conceal a large proportion of his non-conventional weapons programme from the United Nations, especially chemical and bacteriological arms, despite the severe sanction and inspection scheme which was imposed. This concealment lasted until 1995 when the inspectors managed to discover, thanks to revelations from distinguished members of the Iraqi regime in exile, the true dimension of the Iraqi arms programme.

Following years of inspection, the final report of the United Nations Special Commission, UNSCOM (S/1999/94), the so-called Amorim Report (S/1999/356), the working document of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) of 6 March 2003 and Annexes I and II of the UNMOVIC work programme of 17 March 2003 continued to indicate that the whereabouts of a considerable proportion of the materials and components used in the manufacture of chemical and biological weapons remained unknown and the Iraqi regime failed to express its will to actively collaborate in revealing these whereabouts. The new and last opportunity that the international community granted to the former Iraqi regime in Security Council Resolution 1441 was scorned by Saddam Hussein’s regime which once again refused to collaborate in the active, immediate and unconditional manner required by the Security Council.

Following the intervention by the international coalition, Security Council Resolution 1483 of 22 May 2003 reaffirmed, in preamble paragraph three ‘the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq’. Moreover, enacting paragraph eleven reaffirms that Iraq must meet its disarmament obligations, encourages the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard.

In accordance with this resolution, the coalition forces took up the work of the inspectors of the International Atomic Energy Agency (IAEA) and of the UNMOVIC creating for that purpose a Survey Group which commenced work in June of this year shortly following the adoption of resolution 1483. Since

that time the United States and United Kingdom have furnished information to the Security Council regarding the makeup of the different tasks assigned to the Survey Group and at the information meeting held on 21 November by virtue of resolution 1483, the US informed on the preliminary results of the work carried out by the said Group.

(...)

The Spanish Government has taken due note of this provisional information and is awaiting the definitive information from the Coalition Survey Group once its work is complete which will still take quite some time”.

(*BOCG-Congreso.D*, VII Leg., n. 650, pp. 299–300).

On 2 June 2004 the new Minister of Defence of the Socialist Government elected on 14 March 2004, Mr. Bono Martínez, explained Spain’s position regarding the Iraq conflict and specifically in respect of the decision to withdraw Spanish troops:

“The Spanish Government’s assessment is positive and is based on three aspects: it was expedient, it was safe and it was coherent. It was expedient because it was the first decision adopted by the Government of President Rodríguez Zapatero on the very day the Government was constituted and in less than a month 1,300 soldiers returned and also in less than a month all of the Spanish forces and material were out of Iraq. It was safe because, despite the difficulty of that operation, there were only four minor injuries although we do still lament the thirteen Spaniards who lost their lives in Iraq, 11 military personnel and the journalists Couso and Anguita. It was coherent because it fulfilled the promise made by the President of the Government one year ago in February 2003 and it was coherent also because, regardless of the outcome of the elections, the overwhelming majority of the citizens wanted the troops back home. Those that never should have been sent in the first place are now back home and they returned having fulfilled their duties and the Government has kept its word which is no small accomplishment.

And lastly, a small detail . . . this cost us \$369 million, in other words, 61 billion pesetas which is the amount needed to build 10 regional hospitals, provide 60,000 students with scholarships or 60 residence homes for the elderly”.

(*DSC-P*, VIII Leg., n. 14, p. 542).

On 16 June 2004 the Spanish Government responded to a parliamentary question regarding its assessment of United Nations Security Council Resolution 1546 at the session held on 8 June regarding the situation in Iraq:

“. . . the Government make a positive assessment of Resolution 1546. It is true, as the Government has stated on a number of occasions, that it is not perfect. It is not the Resolution that we would have chosen or that would have shown that the United Nations could take control of the entire process including military and political administration. Therefore, the approval of this resolution proved that the decision taken by the President of the Government to withdraw the troops was the correct one because, unfortunately, the United Nations

has not, as we all would have liked, been able to take over the political and military control of the Iraqi stabilisation, democratisation and reconstruction process.

However, the resolution has given rise to debate and has got this process on track and given it a new opportunity and the Iraqis will have to deal with this situation over the upcoming weeks and months.

First of all I can say that thanks to this resolution, unity and consensus has been recuperated first in Europe. For the first time the countries taking part in the Security Council, the European countries, have voted unanimously and jointly.

Secondly, consensus has been revived in the United Nations. We have given multilateralism a new opportunity and this was accomplished with the active participation and decided, open and constructive action taken by the Spanish Government's permanent representative to the United Nations.

Thanks to this resolution, two days ago in Brussels the European nations, the 25 Foreign Affairs Ministers approved a declaration in which we agreed to back the political process which will emerge as of 30 June. However, we are aware of the enormous difficulties that must be taken stock of and confronted by the Iraqi people themselves. Therefore, in this resolution the Spanish Government strongly emphasised that a deadline date be established for the presence of the multinational forces and it achieved its aim; this deadline date will mark the end of the political process, i.e. the end of 2005.

Furthermore, thanks to Spanish intervention at the Security Council, respect for international humanitarian law was renewed so that incidents and actions like the ones that occurred at Abu Ghraib are never repeated. Likewise the multinational forces were called upon to inform the Security Council every three months and as of 30 June sovereignty will formally be transferred to the new Iraqi executive.

(*DSS-P*, VIII Leg., n. 7, pp. 250–251).

On 26 November 2004 in response to a parliamentary question, the Spanish Government stated its position regarding the occupation of Iraq and its consequences:

“It is the Spanish Government's desire that Iraq become a safe, stable, united, prosperous and democratic state within safe borders and that it contribute to regional stability. Spain is willing to take part in the reconstruction of Iraq by contributing the funds promised at the Madrid Donors' Conference and supporting the political process, especially the holding of free elections scheduled for January of 2005.

All of the members of the UN Security Council, including those who most vehemently opposed the war such as France, passed Resolution 1546 on 8 June. That Resolution reaffirms the Iraqi peoples' right to freely determine their own political future and to exercise full authority and control over their financial and natural resources.

It likewise highlights the need to hold direct democratic elections, if possible by 31 December 2004 and at the latest by 31 January 2005, for a Transitional National Assembly which, *inter alia*, will be responsible for establishing a transitional Iraqi Government and for drafting a permanent constitution for Iraq which will lead to a constitutionally elected government by 11 December 2005.

This election, organised with the active support of the UN, will give Iraq a fully legitimate government with the popular support needed to confront the worrisome situation in terms of security with an inordinately high number of Iraqi civilian casualties and in terms of national reconstruction. Therefore all of the nations of the International Community, Spain among them, support the holding of elections in which the Iraqi people can express their political will. Among the objectives of the international conference set for the end of November in Egypt bringing together neighbouring countries and others is to support these elections.

The Spanish Government trusts that a fully sovereign Iraqi people can attain the degree of stability and prosperity to which they are entitled and is ready to do all that is in its power to help them achieve this goal. The Government therefore supports the UN and the Commission charged with the organisation of elections and trusts that everyone will make an effort to contain the situation so that the security aspect does not become an obstacle to the elections.

As laid down in Resolution 1546 itself, the mandate of the multinational forces will be reviewed upon request from the Government of Iraq or within a period of twelve months from the date of the said Resolution. Said mandate shall expire upon conclusion of the political process (December 2005) or at an earlier date if so requested by the Government of Iraq. It is the desire of the Spanish Government that the Iraqi people progressively assume all of the responsibilities inherent to sovereignty, including those that affect security and public order”.

(*BOCG-Congreso.D*, VIII Leg., n. 111, p. 301).

2. Afghanistan

On 1 July 2004 the Ministry of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, and the Minister of Defence, Mr. Bono Martínez, in a joint parliamentary appearance informed on the participation of Spain in the International Security Assistance Force in Afghanistan:

“... The participation of Spanish forces is as follows: a total of 475 soldiers if we count the 115 serving in Strasbourg in the Eurocorps which will be deployed to Afghanistan on 10 August. 26 soldiers at the Kabul airport, 40 in the multinational brigade, 69 in the support unit, 2 at ISAF headquarters, the 115 already mentioned at headquarters, 6 civil guards performing personnel protection duties and 217 soldiers on the frigate that Spain has as part of operation *Enduring Freedom* also directly linked with Afghanistan. As I said, a total of 475 forces.

The purpose of that mission is the same as it was under the former Government, i.e. peace and reconstruction, and Spain has the internationally renowned means called upon to complete this mission. The Government would like to hear your opinion before taking a decision and would like to give you information regarding military criteria. The first criteria is to maintain the entity of our current troops. Secondly, I would like to inform you that it is our opinion, without prejudice to listening to Parliament and taking a decision, to withdraw the Spanish contingent forming part of *Enduring Freedom*. Third, to increase our presence in the purely humanitarian sector by setting up a hospital. And fourth, to be effective in helping maintain public order thus allowing the electoral process to follow its course making elections a possibility. The proposal that we submit to you, members of Parliament, so that we can listen to your criteria consists of health-care assistance with transport facilities for evacuation and sufficient air support, aid to maintain public order during the course of the electoral process, withdrawal of the support contingent upon conclusion of the elections – we calculate approximately 80 or 90 days – and we expect the presence of Spanish volunteers together with the military contingent.

In short, the total is as follows: 475 Spanish troops currently stationed in Afghanistan; proposal to increase troops: a health-care team and a battalion of approximately between 793 and 893 troops and exactly 328 troops will be withdrawn in accordance with the following breakdown: ISAF headquarters, 2; *Enduring Freedom* 217, multinational brigade 40 and support unit 69. Troops present according to this proposal in the month of September in Afghanistan between 940 and 1,040; troops at the end of 2004 – once elections have been held – 540, i.e. more or less the same number of troops that Spain has today. The economic cost of the proposal which will be submitted to the Cabinet . . . 54 million. With respect to the possibility of activating the NRF (NATO Response Force) I would like to inform you that the Spanish Government announced at the Istanbul summit that it fully opposed the activation of the NRF. We hold the view that the presence of a Spanish battalion and the forces present from the nations that I mentioned are arguments against the deployment of the NRF and, if it is activated, Spain would veto its own participation because the numbers that I have just given you are maximum figures and are not cumulative as far as the NRF is concerned”.

(*DSC-C*, VIII Leg., n. 61, pp. 6–7).

3. Haiti

On 1 July 2004 the Ministry of Foreign Affairs and Cooperation, Mr. Moratinos Cuyaubé, and the Minister of Defence, Mr. Bono Martínez, in a joint parliamentary appearance informed on the participation of Spain in the United Nations Stabilisation Mission in Haiti (MINUSTAH):

“With regard to Haiti . . . , the situation is of concern for two reasons: the political instability and the natural catastrophe that the international community has

responded to. Yesterday marked the end of the provisional multinational force led by France and today, as you are aware, deployment of the stabilisation force began under the authorisation of the United Nations and consisting of 6,700 military troops and 1,162 civilians. To date only 3,800 troops have been deployed. What is Spain's proposal for participation? Spain would like to present to you, members of Parliament, the possibility of making our presence in Haiti contingent upon the autonomous, tactical recognition of the unit we plan to send which would be comprised of a 110-member Civil Guard company.

(...)

Haiti is teetering on the edge of disaster as a nation state and therefore we all have a certain historic responsibility to contribute to upholding Rule of Law and the consolidation of that country and that regime.

... Spain, as a non-permanent member of the Security Council, voted in favour of Resolutions 1529 and 1542 and has remained in permanent contact with the Secretary-General of the United Nations and with his special advisor for Haiti, John Reginald Dumas and likewise with the Brazilian Government. At the Summit meeting in Guadalajara President Lula himself expressed to the President of the Government his wish for Spain to participate in this stabilisation force, as have a number of Latin American governments including the Government of Chile and the Chancellors of Argentina and Uruguay, who expressed their desire for Spain to also take part in this stabilisation force. As you are aware, the stabilisation force has a dual component, civil and military. Therefore, together with that future contribution with a Civil Guard company, the Foreign Affairs Minister has held meetings with a number of different ministries with a view to combining and complementing the Spanish contribution within Minustha and the consolidation of Rule of Law. To this end we have sought to improve State management by training administrative executives of key ministries such as the Ministry of Agriculture, Planning and Cooperation and likewise by supporting the electoral process and judicial cooperation. Spain will also participate in the review of Haiti's foreign debt and will look kindly upon the possible consideration of the entire volume of debt which now stands at \$2.068 billion. The Ministry of Health is also willing to make a contribution by organising all efforts regarding matters of public health care, family medicine and infectious disease experts. To date a health-care organisation advisor, five family physicians for basic care, five advisors for infectious diseases such as AIDS, malaria and tuberculosis and a potable water advisor have been appointed. The Ministry of Labour and Social Affairs has also come on board to contribute on gender issues. Furthermore, as I mentioned earlier, the Spanish Government would like to participate in the electoral system, specifically in the electoral census and two or three experts will be travelling to Haiti for between seven and fifteen days. Thus, the Ministry of the Interior will also be taking part in organising Haiti's electoral process. The Public Administration Ministry has also offered its cooperation by assigning a central administration advisor, a regional administration advisor and a local administration advisor to the Haitian

Government. In short, an array of interventions to consolidate Rule of Law and the recovery of Haiti's institutional framework".

(DSC-C, VIII Leg., n. 61, pp. 7–8).

4. Ivory Coast

On 30 December 2004 the Spanish Government responded to a parliamentary question regarding actions envisaged by the Government in addition to assistance lent to Spanish citizens in that Republic in light of the conflict in the Ivory Coast:

"On 4 November hostilities once again broke out in the Ivory Coast. The Ivorian armed forces launched air attacks against the positions of the ex rebels of the so-called *Forces Nouvelles* in the northern part of the country and especially in the city of Bouake. During the course of these bombing attacks, a military base of the French peace mission LICORNE was also attacked and 9 French soldiers were killed. France responded by destroying Ivorian air force aircraft.

These events were the end to the cease-fire signed on 3 May 2003 within the framework of the Linas-Marcoussis Agreement intended to put an end to the civil war and which marked the commencement of a transitional period run by a National Reconciliation Government.

During the days subsequent to these events, groups of armed youths ('young patriots') performed acts of vandalism and pillage in the main cities mostly against French interests and, in certain cases, against Western interests in general.

During these days of crisis, the main concern of the Spanish Government was to offer assistance to our citizens. In so doing our embassy, in contrast to others, remained open at all times and was in permanent contact with Spanish residents in the Ivory Coast. Faced with a situation of deteriorating security, the Government decided to send two Air Force planes for the voluntary evacuation of 63 Spanish nationals and also persons of other nationalities such as, for example, 37 North Americans.

On the diplomatic front Spain, as a non-permanent member of the Security Council, is co-sponsor of Resolution 1572 passed by unanimous decision on 15 November. That Resolution envisages a sanctions scheme which includes an arms embargo against the parties to the conflict which has come immediately into force for an initial period of 13 months and further measures against individuals – in accordance with a list that needs to be drawn up – which shall be applied as of 15 December if the parties fail to comply with the Linas-Marcoussis and Accra III Agreements.

Moreover, from the vantage point of the European Union, Spain has contributed to the development of the stance taken and reflected in the Conclusions of the General Affairs and External Relations Council held on 22 and 23 November. These Conclusions express the EU's support for the activities of the African Union and of ECOWAS in seeking a peaceful solution to the crisis and

highlight the importance of enforcing the sanctions laid down in Resolution 1572 of the UN Security Council.

Looking towards the future, the main objective of the Spanish Government is to work along with our partners in the international community to maintain the cease-fire and foster the peace process so that elections scheduled for 2005 can be held throughout the entire country as established in the commitments made in the Linas-Marcoussis and Accra III Agreements. In this context the sanctions regime laid down in Security Council Resolution 1572 is an instrument both useful and necessary. And lastly, Spain has also expressed its support of the UN operation in the Ivory Coast (UNOCI) and of the French troops deployed in that country (LICORNE) that, under the command of UN Charter Chapter VII, are there to guarantee peace and security throughout Ivorian territory.

(*BOCG-Senate.I*, VIII Leg., n. 48, p. 118).

XVII. WAR AND NEUTRALITY

1. Humanitarian Law

Note: See XI.2.c) *Europe*

On 1 July 2004 the Spanish Government replied to a parliamentary question regarding awareness on the part of Spanish troops stationed in Iraq of the abuse and torture committed by US troops:

“The different Spanish contingents have complied strictly with the missions assigned to them, showing the utmost respect for international law and thus bear no responsibility in respect of the treatment received by Iraqi prisoners.

As part of the humanitarian aid operation in Iraq, the Spanish Armed Forces made arrangements for a contingent to be sent to the port of Umm Qasar in Iraq. On 11 April 2003 the Advanced Medical Services Unit (EMAT) was deployed at the BUCCA prisoner camp.

According to the information received by the Head of EMAT, a total of 4,101 persons were treated at that hospital. Hospital patients made no reference to having been mistreated. The psychological unit treated approximately 100 persons but made no reference whatsoever to ‘mistreatment’.

During the entire time that the Unit was at Camp BUCCA the team from the International Red Cross Committee in charge of monitoring compliance with the conventions on the treatment of prisoners of war was also there and the Head of the Spanish Unit had several meetings with Red Cross officials and did not receive any complaints whatsoever.

No written reports or notice of incidents have been received regarding violation of international law on the treatment of prisoners of war and neither have Spanish troops been informed or made aware at any time of the practices of American and British troops with Iraqi prisoners.

Neither has it been brought to our attention that any NGO has contacted the Advanced Medical Services Unit (EMAT) to report the use of torture.

Moreover, the Ministry of Foreign Affairs and Cooperation has expressed its firm condemnation of the said torture which is a violation of international law and it is counting on the affected Governments to comply with the commitment they have made to bring those responsible for the said acts to justice. The European Union has expressed itself in these same terms in the Conclusions of the General Affairs and External Relations Council (GAERC) of 17 May 2004".

(*BOCG-Congreso.D*, VIII Leg., n. 47, pp. 87-88).

2. Disarmament

On 10 December 2004 in response to a parliamentary question, the Spanish Government set out the position it will take at the upcoming Nairobi Conference, the purpose of which is to study the enforcement of the 1997 Ottawa Treaty:

"Spain has taken a proactive stance in respect of the problem of anti-personnel mines and its position concerning the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction is based on the following elements:

- As party to the Convention, Spain is firmly committed to the enforcement of its provisions and advocates its universal application;
- Spain was one of the first States to ratify it and also one of the first to destroy its arsenal of anti-personnel mines and to adopt domestic legislation prohibiting the manufacture, stockpiling and use of these mines;
- Spain has been an important 'donor' country in the fight against these mines and their effects: it created an International Demining Centre to meet the training needs of humanitarian deminers from all requesting countries; it has contributed to the implementation of demining efforts through the use of UN and OAS trust funds and it has financed programmes addressing the needs of mine victims.

This commitment will be renewed and reflected during the First Convention Review Conference to be held in Nairobi from 29 November to 3 December 2004.

Spain is taking part in the forums leading up to this Review Conference and is co-sponsoring a draft resolution in this regard with the main sponsor Thailand which will be submitted to the First Commission of the 59th United Nations General Assembly.

This draft resolution contains the following elements:

- The expressed desire for all States to adhere to the Convention and the determination to work in favour of its universal enforcement;
- It highlights the importance of enforcement;
- It urges the promotion of transparency measures and the undertaking of more effective efforts focusing on anti-mine actions through the exchange of information;

- It invites States and other organisations to join forces in lending support to programmes addressing rehabilitation and social and economic reintegration for victims, education on the risks of mines and demining;
- It reiterates the interconnectivity between demining initiatives and development and the need to integrate anti-mine efforts into national programmes and development strategies;
- It proposes interaction between this action and regional and international financial institutions (welcoming possible synergies between the initiatives implemented by the anti-mine community and the World Bank); and
- It stresses the need to improve cooperation and promote synergies on the regional level in order to take on the challenge of anti-personnel mines.

Spain, as a European Union member and prime contributor to anti-mine initiatives, is also co-author of the EU Strategy 2005–2007 entitled ‘European Roadmap to a Zero Victim Target’ created with a view to providing assistance to countries suffering the consequences of mines and explosive remains, reestablishing the necessary conditions of security for their citizens and assuring social and economic development.

The Review Conference will feature a presentation by the EU, on behalf of all of the partners, to reaffirm its commitment to the fight against landmines and in support of the countries which have fallen victim and to present this Strategy for which \$60 million have been allocated.

Spain will also make a national declaration stating its commitment to continue and, if possible, to increase funding for programmes promoting the rehabilitation and reintegration of mine victims and demining projects and likewise to inform of the availability of our International Demining Centre to meet the training needs of humanitarian deminers from all requesting countries”.

(*BOCG-Congreso.D.*, VIII Leg., n. 19, p. 256).

On 20 September 2004 in response to a parliamentary question, the Spanish Government informed as to the criteria that it is going to defend in the ongoing process of updating and reviewing the European Union Code of Conduct on the international arms trade:

“Spain has actively participated in the discussions regarding a series of initiatives based on the possible review of the eight criteria as well as the operational provisions of the EU Code of Conduct. From among the contributions made by the Spanish delegation, special mention should be made of two: the application of the eight criteria of the Code to transit through European territory and the drafting of a Common Position paper with the commitment of the Fifteen to establish registries and making mediation operations in arms trading in the said territory subject to prior authorisation.

Moreover, it is worth mentioning that a possible review of criteria 1, 6 and 8 of the Code has been suggested. As for criteria 1, the proposal is to introduce a commitment on the part of the States to supply small arms and light weapons especially designed for military use only to Governments or authorised public

agencies. Hunting and sporting arms shall be excluded from this commitment. Criteria 6 would include a reference whereby notification made by a country of its arms exports to the United Nations Registry must be borne in mind as an additional element in the analysis of the behaviour of the receiving country vis-à-vis the international community. Another subject which continues under study is the interpretation made by the States of criteria 8 of the Code and the possible use of economic development indicators in assessing, in economic terms, the compatibility of an export with a specific destination. Spain supports these three proposals and, regarding the export of small and light arms, the Inter-Ministerial Regulatory Board on Foreign Trade in Defence or Dual-Use Material (Spanish acronym: JIMDDU) took the decision in 2001 to make authorisation of exports of these arms, in the case of especially sensitive countries or when there is a risk of diverting final use, contingent upon the final user being a public entity (Armed Forces and Police Forces).

(*BOCG-Congreso.D*, VIII Leg., n. 69, p. 349).