Spanish Diplomatic and Parliamentary Practice in Public International Law, 2003

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Except when otherwise indicated, the texts quoted in this section come from the OID, and more specifically from the OID publication *Pol. Ext.* 2003 (*http://www.mae.es*), and from the International Legal Service of the Ministry of Foreign Affairs, whose collaboration we appreciate.

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

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

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

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

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

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

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

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

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

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I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis and Purpose

The Final Declaration adopted at the XIII Ibero-American Summit of Heads of State and Government held in Santa Cruz de la Sierra (Bolivia), 14–15 November 2003, stated as follows:

"4. We reaffirm our commitment to the purposes and principles of international law enshrined in the Charter of the United Nations, respect for the sovereignty and legal equality of States, the principle of non-intervention, prohibition of the threat or use of force in international relations, respect for territorial integrity, the peaceful settlement of disputes and the protection and promotion of all human rights in order to address the issues on the international agenda of a globalized world. We call for an effective strengthening of multilateralism and of the role of the United Nations asa forum for resolving international disputes, maintaining international peace and security and promoting economic and social development throughout the world.

(. . .)

6. We reiterate our vigorous rejection of unilateral, extraterritorial application of laws and measures which contravene international law and the freedom of world markets, navigation and trade, and we therefore urge the Government of the United States of America to put an end to the application of the Helms-Burton Act. 7. We stress the importance of the establishment of the International Criminal Court as the body responsible for the investigation, prosecution and punishment of the crime of genocide, crimes against humanity and war crimes, which affect the entire international community. We note that distinguished Ibero-American jurists have been elected to the posts of judge and prosecutor for this Court, and we stress the importance of universal accession to and ratification of the Rome Statute.

(. . .)

8. We recognize that democracy, peace, justice, equity and sustainable development are closely related, mutually reinforcing concepts. In that regard, we reiterate our commitment to the strengthening of democracy, maintenance of the rule of law, protection and promotion of human rights, recognition of and respect for individual identity and the exercise of cultural diversity, and the right of each State to build its political system and institutions freely, without outside interference and in peace, stability and justice.

(. . .)

10. We reaffirm our conviction that the essential elements of democracy, independence and the balance of powers are: effective representation of majorities and minorities; freedom of expression, association and assembly; full access to information; and the holding of free, periodic, transparent elections on the basis of universal suffrage and by secret ballot as an expression of popular sovereignty, citizen involvement, social justice and equality.

(. . .)". (UN Doc. A/58/607, pp. 2–3).

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

On 9 January 2003 the Government intervened in the Senate and made the following statement in response to a question regarding the status of the negotiation and possible preparation work done on the additional Protocols of the double nationality agreements subscribed to by Spain:

"Regarding the rest of the countries with which Spain has signed double nationality agreements, the state of the additional protocols is as follows:

- The Additional protocol between the Kingdom of Spain and the Dominican Republic, amending the double nationality agreement of 16 March 1968, was signed in Santo Domingo de Guzmán on 2 October 2002.

  It has been applied on a provisional basis since 2 October 2002 (*BOE* – Spanish Official State Gazette n. 273 of 14 November 2002).
- The Additional protocol between the Kingdom of Spain and the Republic of Honduras, amending the double nationality agreement of 15 June 1966, was signed 'ad referendum' on 13 November 1999 in Tegucigalpa. It entered into force on 1 December 2002 and was published in the *BOE* n. 289 of 3 December 2002.
- The additional protocol between the Kingdom of Spain and the Republic of Ecuador, amending the double nationality agreement of 4 March 1964, was signed in Quito on 30 June 1999. Spain has complied with domestic constitutional requirements for the Protocol's entry into force. The Protocol is still being processed in Ecuador.
- The additional protocol amending the double nationality agreement of 24 May 1958 with the Republic of Chile is currently under negotiation".

(*BOCG-Senado.I*, VII Leg., n. 571, p. 155).

The Under-Secretary for Foreign Affairs, Ms. Morera Villuendas, appeared before the Foreign Affairs Commission of the Congress on 5 November 2003 to answer a question related to the enforcement of the Agreement between Spain, France and Andorra regarding the movement, residence and establishment of their nationals of 4 December 2000, and stated as follows:

"A fundamental characteristic of the structure of the agreement was its lack of symmetry. This is reflected in the fact that Spain and France unilaterally conceded Community treatment to Andorrans to establish residence in their respective territories while Andorra made the establishment of French and Spanish subjects in its territory subject to the provisions of the agreement. This was done to compensate for demographic imbalances and to also keep Andorra's particularities in mind.

The most salient aspects of the agreement are, first of all, that it provides for treatment of Spanish and French hired workers on a par with that of Andorrans;

second of all, the place of residence for carrying out activities in the case of self-employed persons is reduced from the 20 years which the Andorran legislation currently calls for to ten years; third of all, liberal professionals are excluded from its scope of application and finally, with regard to access to the public sector in Andorra, the exclusivity of Andorran citizens is recognised the first time a job is announced but there is a possibility for Spanish and French nationals who are employed in that sector to compete on an equal footing at that first announcement and in the follow-up announcement, Spanish and French nationals are given priority with regard to nationals from third countries. Moreover, the right to family regrouping with no length of stay requirement is recognised and a tripartite joint committee has been created and can be convened upon request from one of the parties when a problem of its concern arises.

It is still too early to assess the enforcement of the agreement because it just entered into force on 1 September 2003 . . . We are, however, convinced that the system that it has established will substantially modify the former situation affecting Spanish and French subjects in Andorra and Andorrans in Spain and France; all subject to the general alien regime which, in the case of Andorra, is quite one-sided. The agreement is also an important step forward in bringing Andorra closer to the European Union".

(*DSC-C*, VII Leg., n. 861, p. 27238).

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-determination

a) Palestine

On 6 March 2003, in response to a parliamentary question concerning the European Union's upholding of the Preferential Trade Agreement with Israel, The Government stated the position of the European Union and Spain with respect to the conflict in the Middle East:

"The Association Agreement with Israel provides the EU with an excellent framework within which to analyse EU – Israeli relations and also to evaluate the progress made on different aspects of common interest.

Thanks to this agreement, a mechanism for ongoing political dialogue has been put in place via the Council of the Association Committee regarding all issues of common interest. Both in the Council as well as in the Committee, not only are strictly commercial matters discussed but also political issues such as the fight against terrorism, non-proliferation, disarmament and arms control, the Euro-

Mediterranean process and the human rights situation throughout the country. Thus, in the Association's Committee and Council meetings held on 8 and 21 October 2002, the EU transmitted the following messages:

- The need for Palestinians and Israelis to return to the negotiating table.
- For Israel to withdraw from its positions of 28 September 2000 putting and end to the construction of settlements, including those in East Jerusalem, to the deliberate destruction of Palestinian infrastructures and to activities such as extra-judicial executions, demolitions of Palestinian homes and the deportation of family members.
- To resume the transfer of VAT to the Palestinian National Authority.
- For Israel to open borders and put an end to curfews and guarantee safe and unhindered access of international humanitarian personnel in light of the worrisome deterioration of the humanitarian situation.
- Respect for the *status quo* concerning Jerusalem until such time as the parties agree to a permanent statute.

Moreover, respect for democratic principles and human rights as set out in article 2, is an essential element of the Association Agreement with Israel. The EU defends the universality, interdependence and indivisibility of human rights. Furthermore, one of the fundamental objectives of EU foreign policy is the promotion and protection of human rights – including those of minors – as well as fundamental freedoms. Therefore at the Association's Council and Committee meetings the European Union constantly reminds Israel that its interest in security matters should be defended while maintaining full respect for human rights and within the framework of Rule of Law. It constantly urges Israel to put an immediate end to all activities which are not in accordance with international humanitarian law and human rights.

(. . .)

President Bush, in his speech of 24 June 2002, affirmed United States' support for the creation of a Palestinian State by 2005 with sights set on the existence of two states living in peace and security. In order to accomplish this, reforms must be introduced in the Palestinian National Authority and Israeli occupation must come to an end.

The current stance taken by the European Union (and therefore Spain) coincides with that of the United States on fundamental aspects: pacific and negotiated conflict resolution in order to achieve just and lasting global peace based on the resolutions of the United Nations, the principles of the Madrid Conference and the agreements between the parties, leading to the creation of two states living together in peace and security".

(*BOCG-Congreso.D*, VII Leg., n. 500, pp. 118–119).

b) Western Sahara

On 9 February 2003 the Government appeared before the Senate to answer several parliamentary questions related to the situation in Western Sahara. Initial references were made to the steps taken by the Government to foster peace in the area:

"(. . .)

As concerns the steps taken by the Government in support of peace in Western Sahara, it should not be forgotten that fortunately . . . peace has prevailed in the Western Saharan dispute ever since the two sides agreed to a cease-fire as a direct consequence of the Settlement Plan accepted by both parties in 1991. This situation of peace has prevailed thanks to the work of the United Nations Mission for the Referendum in Western Sahara (MINURSO), which was deployed in the area in 1991 shortly after agreeing to the Settlement Plan.

Spain's activity in keeping the peace in Western Sahara has focused on supporting the United Nations efforts to enforce the Settlement Plan and the efforts made by the Secretary General and his Special Envoy in seeking a political solution to overcome the difficulties now standing in the way of enforcing the Settlement Plan.

MINURSO is the main guarantor of respect for the cease-fire and peace while a definitive solution is sought. Spain has never participated in that force but has supported its efforts and believes that its permanence on the ground is essential both now and in the future to help the parties reach a political solution to the conflict.

And finally it should be pointed out that Spain has at all times strived to encourage the parties to seek an agreed solution".

(*BOCG-Senado.I*, VII Leg., n. 597, p. 18).

The Government's official position with respect to the Peace Plan approved by the UN was explained in the following terms:

"In 1991 the parties to the conflict accepted the Settlement Plan which included a strict protocol the purpose of which was to lead to a referendum on self-determination in Western Sahara. This Settlement Plan is currently paralysed due to the parties' failure to come to an agreement on determining the census of voters who would participate in said referendum and the tabling of a long list of appeals regarding the final census list.

In light of this deadlock, the United Nations Secretary General's Personal Envoy, Mr. Baker, has tabled a number of possible solutions over the last several years which have been endorsed by the Security Council.

On 30 July 2002 the Security Council passed Resolution 1429 extending the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) to 31 January 2003 and requesting that the Secretary General present a report on the situation with his new proposals as well as those of his Personal Envoy James Baker before the expiration of said mandate. The Resolution explicitly underscores the validity of the Settlement Plan while recognising the fundamental differences between the parties when it comes to its enforcement.

The Government has repeatedly expressed its position on the dispute in Western Sahara and said position has not changed as of late despite the different stances taken and the number of different alternatives that have been suggested.

In line with Spain's position of active neutrality in this dispute, on a number of occasions the Government has expressed its commitment to support the efforts

made by the United Nations in the quest for a solution that is acceptable to all parties. Spain has expressed its position based on five points:

- Respect for the Resolutions of the United Nations and support for the efforts made by its Secretary General and the latter's Personal Envoy in the search for a solution to the conflict.
- Support for any lasting agreed solution viable for both parties and in accordance with international legality because only thus will it be possible to guarantee regional stability.
- The need to make headway with regard to humanitarian aspects independent of the conflict's political solution.
- Confirmation that to date, and as long as no other agreement is reached, the 1991 Settlement Plan is the only one on which both parties have agreed.
- Spain does not consider the abandonment of MINURSO a viable option and therefore supports its presence given that it continues to perform essential functions to preserve those aspects resolved in 1991, especially the cease-fire and humanitarian issues.

This situation should not go on indefinitely and over the last several months we have witnessed a major effort on the part of the international community to find a way out of the deadlock that the dispute is currently in. Therefore the Government is taking an active part in the efforts to encourage negotiation, foster confidence-building measures between the parties and palliate the humanitarian problem mentioned earlier".

(*BOCG-Senado.I*, VII Leg., n. 597, pp. 18–19).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protection

In response to a parliamentary question posed on 6 February 2003, the Spanish Government provided information regarding action carried out with respect to the Spanish citizen Hamed Abderrahamn who was detained at the U.S. military base in Guantanamo subsequent to his transfer from Afghanistan:

"As soon as word was received regarding the presence of a Spanish citizen in Guantanamo, a request was filed with the U.S. authorities for authorisation travel to Guantanamo, visit the detainee and verify his nationality. That visit took place during the first week of March 2002 and the Spanish nationality of Mr. Hamed Abderrahamn Ahmed was indeed verified. In conversations with officials from the Spanish Embassy in Washington who interviewed him, he stated that he was in good health and was receiving proper treatment. His family in Spain was immediately informed of the result of this visit.

A second visit was subsequently made during the month of July and it was once again confirmed that this Spanish citizen was being treated by the responsi-

ble authorities in compliance with the Geneva Conventions of 12 August 1949 concerning prisoners of war even though said U.S. authorities consider these detainees to be 'illegal combatants' and not prisoners of war.

Through its embassy in Washington the Spanish Government has drawn the attention of the U.S. authorities on a number of occasions to the need to establish the legal status of this Spanish subject.

It should also be pointed out that another five European Union countries (France, Great Britain, Denmark, Sweden and Belgium) also have nationals detained at Guantanamo and therefore the Spanish Embassy in Washington remains in contact with the embassies of those countries to coordinate the monitoring process that each one of them is carrying out with regard to their respective cases. A third trip is envisaged to Guantanamo to visit this Spanish national".

(*BOCG-Congreso.D*, VII Leg., n. 500, p. 272).

In response to a parliamentary question posed on 25 September 2003, the Spanish Government provided information regarding steps taken in the case of the Spanish citizen, Mr. Hamed Abderrahaman Ahmed, being held by the U.S. Government at the military base in Guantanamo:

"The Government is closely monitoring the case of the Spanish subject, Mr. Hamed Abderrahaman Ahmed, being held at the U.S. base in Guantanamo and has reiterated to the U.S. authorities, at every possible opportunity both in Madrid and Washington, its concern over the undefined legal status and lack of any concrete accusation filed against this Spanish citizen.

The U.S. authorities responsible for the custody of the detainees at the Guantanamo base consider them to be non-regular combatants and they are therefore not given prisoner of war status as envisaged under the 1949 Geneva Convention. Notwithstanding the above, said authorities assert that the detainees are being treated in accordance with the provisions applicable to prisoners of war under article 5 of said Convention. Diplomatic officials from the Spanish embassy in Washington travel periodically to Guantanamo to visit said compatriot and to monitor any developments in his status.

Three visits have been made to date and a number of bilateral meetings have been held with two clear objectives in mind in favour of this Spanish subject: the search for a legal solution allowing for the defence of his rights and encouraging the U.S. authorities to take note of the need for the detainee to be given a clear legal status".

(*BOCG-Congreso.D*, VII Leg., n. 606, p. 302).

2. Humanitarian Protection

In response to a parliamentary question posed on 26 June 2003, the Spanish Government furnished information on contacts made with the Government of Morocco to request the freedom of the journalist Lmrabet:

"In action taken with regard to this criminal proceeding against the journalist Lmrabet, the Government has focused on defending freedom of expression while at the same time expressing its respect for a legal proceeding taking place in a friendly country with which Spain has far-reaching relations within the framework of a friendship, cooperation and neighbourly relations agreement.

Moreover, the Spanish Government is by no means indifferent to the strong personal and professional ties that link Ali Lmrabet with our country or to how this case could affect Morocco, a country immersed in a complex process on the path towards democracy with the support of the Spanish Government; a process that includes open and frank dialogue with the Moroccan authorities.

On a number of occasions since the time of his imprisonment, the Minister of Foreign Affairs has communicated the concern of the Government to her counterpart, Minister Benaissa, regarding this situation. Furthermore, the Spanish Embassy in Rabat, via its Press Council, has remained in permanent contact with AH Lmrabet's family members, his lawyers and his Spanish friends.

On 30 May a Verbal Note was sent from the Embassy to the Moroccan Foreign Affairs Ministry reiterating the request made the previous day by our Consulate-General to the Directorate-General for Penitentiary Institutions calling for, based on exceptional and humanitarian circumstances, authorisation for the visit of his girlfriend, of Spanish nationality, who was denied this authorisation for not being a direct relative based on the penitentiary regulation. She was able to visit him for the first time last Monday the 16th of June and has made several visits since then.

Direct personal verbal contact has been made by Spain and within the framework of the EU with the Moroccan authorities expressing an interest in the case and encouraging them realise the possible damage that a case like Ali Lmrabet could do to Morocco's international image.

There is no need to stress the absolute respect shown by the Government for a pending judicial process given that Mr. Lmrabet has the option of filing a Supreme Court appeal".

(*BOCG-Congreso.D*, VII Leg., n. 571, pp. 238–239).

3. Human Rights

a) Death penalty

In response to a parliamentary question posed on 9 May 2003, the Spanish Government provided information on the measures adopted to rescind the execution of a convict and advocate the abolition of the death penalty.

"With respect to measures adopted in support of abolishing the death penalty in the United States, Cuba and the rest of the countries, the Spanish Government has traditionally co-sponsored the resolution on the universal moratorium of the death penalty and this year has once again been a co-sponsor, together with the rest of our European partners, of the draft resolution proposed by the Greek Presidency.

The Government, in line with the rest of our European Union partners, has established as one of the principle priorities in the area of human rights, promotion of the abolishment of the death penalty throughout the world. This policy is, in fact, one of the perennial priorities at the top of the European Union's foreign policy list.

Thus, in the institutionalised human rights dialogues established with Iran as well as with China, the Spanish initiative focuses not only on convincing the respective governments to prohibit the death penalty or to establish a moratorium, but also considers individual cases denounced by NGOs and others and specifically summons governments to report on these concrete situations.

In fact Spain, during its term heading the European Union Presidency in the first semester of 2002, provided new impetus for the monitoring of death sentences in friendly countries such as the United States by means of judicial follow-up and even taking part as *amicus curiae* in cases involving minors or mentally disabled persons.

As for other issues related with the death penalty in the United States and action taken by the Spanish Government, it should be pointed out that Spain fully and actively shares the actions and proposals of the European Union with regard to the death penalty: its universal abolition as a final goal, approval of a moratorium on executions as an interim measure and the progressive restriction of its scope of application as an immediate goal.

In the case of the United States, the European Union and its Member States are focusing attention on three groups: convicts who were minors at the time the crime was committed, the mentally retarded and those with serious mental illness and convicts whose consular protection rights set out in the Vienna Convention were not respected. Today there are approximately 80 convicts on death row in the United States who were minors when they committed their crimes.

In general terms, the European Union can take two types of actions:

a) Intervention in individual cases via communications reiterating the European position and requesting a pardon from the governor and the Clemency Commission of the state in question.
b) The physical presence of the European Union in cases heard by the United States Supreme Court by means of *amicus curiae brief.*

During the Spanish Presidency the following activities were carried out in cases of convicted minors:

- Napoleon Beazley. Texas. Despite action taken, execution took place on 28 May 2002.
- Alexander Williams. Georgia. The State Clemency Commission commuted the death sentence to life imprisonment.
- Christopher Simmons. Missouri. The State Supreme Court suspended the execution while waiting for a decision from the United States Supreme Court on a related case. The case is still pending and no execution date has been set.

As for judicial appeals, the Spanish Presidency on behalf of the Union filed an «amicus curiae» brief before the United States Supreme Court in the case of Alexander Williams. Clemency issued by the Clemency Commission fortunately blocked the court from delivering a decision on the case. However, the negotiation and drafting process of the *amicus* text among EU members under the leadership of the Spanish Presidency gave rise to a document which, with changes made as needed, could be used in cases of minors that are the focus of the Supreme Court in the future.

During the Spanish Presidency which represented the Union at the oral proceedings, a very important judgment was delivered by the Supreme Court in the Atkins case in which the European union was also represented through an amicus. The Supreme Court declared the execution of the mentally retarded unconstitutional considering it 'cruel punishment' which is prohibited by the eighth amendment to the U.S. Constitution. Equally important to the essence of the judgement are the arguments used by the Court to gauge the degree of social consensus throughout the country against the execution of certain groups of individuals; arguments that *mutatis mutandis* could also be applied to cases involving minors.

At the conclusion of its semester the Spanish Presidency therefore proposed that the partners update the *amicus curiae brief* on minors used at the Williams case in light of the judgement delivered at the Atkins case. The Spanish Presidency also proposed that the 15 draft and approve an *amicus curiae* model brief for cases in which consular rights have been violated".

(*BOCG-Congreso.D*, VII Leg., n. 547, pp. 771–772).

b) Genital mutilation

In response to a parliamentary question posed on 17 February 2003, the Spanish Government reported on action taken in the fight against the genital mutilation of women:

"The genital mutilation of women, defined as any number of procedures involving the partial or complete removal of a woman's external genital organs, constitutes a violation of the human rights of women as set out at the 1993 Vienna World Conference, regardless of cultural, religious or any other motive not related to therapeutical medical treatment.

Within the European Union, Spain continues to play a very active role in denouncing and eradicating these traditional practices detrimental to women. Spain has always asserted that traditional or common law practices which damage the health of women and girls, including genital mutilation, are a serious violation of women's rights and keeps women from the full exercise of their human rights and can never be justified alleging social, cultural or religious factors.

In this sense special mention should be made of the support given by Spain and the rest of the EU countries to the resolutions which, within the framework of the United Nations, are traditionally tabled on this subject.

(. . .)

. . . The Government is aware that as a result of migration western countries will have to more frequently deal with these situations and therefore, in addition to the continuing condemnation of these practices at different international fora, a series of measures is also being adopted on the national level to keep them from taking root in our country.

Furthermore, it should not be forgotten that in our legal system the legal asset under protection is freedom as well as the physical and/or sexual integrity of the individual thanks to the important change brought about in our criminal legal system by Organic Law 10/1995 of 23 November of the Criminal Code.

(. . .)

Along these same lines the amendments to Title VIII, Book II of the Criminal Code introduced by Organic Law 11/1999 of 30 April and Organic Law 14/1999 of 9 June amending the 1995 Criminal Code on the subject of protecting victims of abuse and the Code of Criminal Procedure, provide effective protection to women who are victims of violence.

(. . .)

Moreover, it should be pointed out that on 17 January 2003 the Council of Ministers announced the Government's intention to specifically introduce the crime of genital mutilation against women into criminal legislation and, as evidence of this intention, the preliminary draft law drawn up by the Ministry of Justice proposes the amendment of article 149 referred to above by adding a second paragraph.

. . . Within the framework of European Union activities the most significant initiative is the DAPHNE Community Action Programme (2000–2003) on preventive measures to fight violence against children, adolescents and women and representatives from the Institute are on its Management Committee.

(. . .)

Furthermore, the Women's Institute and the Institute for Migrations and Social Services of the Ministry of Labour and Social Affairs has published an information brochure on the serious physical and psychological consequences of the genital mutilation of women as well as the legal ramifications given that in our country this practice is considered a crime.

(. . .)

With this action the Women's Institute seeks to heighten the awareness of immigrant families with a view to putting an end to this type of violence perpetrated against their daughters.

. . . The upcoming IV Plan for Equal Opportunities between Women and Men (2002–2005), currently at the consultation stage within the ministerial departments, associations and competent NGOs, will include a number of actions the purpose of which is to disseminate information among the immigrant population with regard to:

- The risks associated with these types of practices;
- The legal consequences of such practices in our legal system;

- The proposal of taking away residence permits in the case of consent to practices of genital mutilation of daughters;
- The establishment, within our legal criminal system, of the enforcement of the principle of extra-territoriality to persecute and punish such practices".

(*BOCG-Congreso.D*, VII Leg., n. 605, pp. 56–58).

4. Refugees

In response to a parliamentary question posed on 28 May 2003, the Spanish Government provided information on the concession of political asylum to Iraqi citizens since 1994:

"Data is available from 1994, the year of entry into force of the amendment of the Law regulating the right to asylum and refugee status. Since that time and up to 9 March 2003, 1,208 people alleging Iraqi nationality have applied for asylum in Spain. The year by year breakdown is as follows:

Iraqi asylum seekers:

YEAR	ASYLUM SEEKERS
1994*	125
1995	137
1996	202
1997	50
1998	134
1999	197
2000	136
2001	73
2002	83
2003**	71
TOTAL	1.208

* As of 13 June, the date Law 9/1994 entered into force.
** To 9 March 2003

750 Iraqi petitions were processed accounting for 62 per cent of the total; 384 were not accepted for processing (31.7 per cent) and 74 withdrew their petitions (6.1 per cent).

Of the total number of Iraqis whose petitions were not accepted for processing, it was impossible to notify 25 per cent of them because they had abandoned the proceeding without informing the Government.

As for the petitions which were accepted for processing but were subsequently turned down, it was only possible to notify 26 per cent (123 of 473 cases).

From 1994 to 2002, refugee status has been granted to 94 Iraqis and 154 have been granted subsidiary protection for humanitarian reasons.

The motive for failing to grant refugee status to petitioners allegedly of Iraqi

nationality is that during the investigation stage of the process, no evidence was found that they even met the requirements to be considered refugees set out in the 1951 Geneva Convention on Refugee Status for the reasons given below.

When petitioners failed to meet the requirements for refugee status, protection for humanitarian reasons was granted in cases in which it was proven that departure from Iraq was illegal and punishable by serious sanction and penalty but such proof was not furnished.

Special mention should be made of the following situations leading to the adoption of unfavourable resolutions in the case of requests for asylum filed by Iraqis:

Many asylum seekers in Spain (approximately 80%) do not have any documentation (those alleging Iraqi nationality among them) and therefore the statistics register the nationality claimed at the time the request for asylum is filed. Further on at the investigation stage of the process it is often found that the nationality claimed is false.

A large percentage of asylum seekers claiming to be Iraqis also fails to follow through with the procedure. It is estimated that approximately 60% of Iraqi asylum seekers disappear only a few days after having formalised their petition. It is a proven fact that the number of nationals from Middle Eastern countries is significantly greater in other European Union countries and on the other side of the Atlantic (as indicated by the figures appearing above: number of petitions rejected and tacit abandonment of the process without waiting for a resolution or notifying the government).

In that sense it should be pointed out that the granting of the right to asylum is not a discretional act but rather follows a set protocol. Each request is studied individually based on the facts expressed in each one.

Asylum regulations establish a series of procedural guarantees for the resolution of the requests: investigation is carried out by a specialised body such as the Asylum and Refugee Office and the United Nations High Commissioner for Refugees (UNHCR) plays an important role in the processing of the files both at the initial phase of admission as well as within the Inter-ministerial Asylum and Refugee Commission (CIAR) where resolution proposals are formulated. It should be indicated that globally in 2002 the criteria applied by the Government and that of the UNHCR coincided in 98% of the cases with regard to admitting cases for processing and the resolution proposals made by the CIAR.

Also, the number of government appeal cases filed against administrative resolutions regarding asylum issues that are admitted in court is also low: less than 1% resulting in judgements granting the right to asylum and 8% repealing resolutions to not process petitions in the year 2002".

(*BOCG-Congreso.D*, VII Leg., n. 550, pp. 124–125).

In response to a parliamentary question posed on 11 September 2003, the Spanish Government provided information on those evacuated from the Basilica of the Nativity in Bethlehem and received in Zaragoza following the agreement reached between the Palestinian National Authority and the Government of Israel in May 2002:

"1. Within the context of extreme tension at that moment in the Israeli-Palestinian conflict, an agreed solution between the Palestinian Authority and the Israeli Government regarding the crisis of the Basilica of the Nativity provided for the peaceful evacuation of said temple.

The agreement envisaged a temporary rather than definitive solution.

In this sense the Common Position adopted on 21 May 2002 by the European Union Council regarding the temporary reception by Member States of certain Palestinians from Nativity provided for temporary precautionary measures in light of the evolution of the political and humanitarian situation of the Palestinian Territories. Any decision to transfer Natividad refugees back to the Territories should be agreed to by the parties that decided on the evacuation of the Basilica to other States.

The Common Position of 2002 expired at the end of May 2003. In light of the difficult conditions prevailing in the Gaza Territories and the West Bank subsequent to more than two and a half years of Intifada and which are evidence that the humanitarian motives behind the adoption of that Common Position have not substantially changed, the EU adopted Common Position 2003/366/CFSP of 19 May 2003 concerning extension of the reception of the twelve Palestinians for another twelve months.

2. Article 6 of the Common Position adopted in May 2002 fosters, to the degree possible, comparable treatment for the 12 Palestinians in EU territory although this situation is covered by the legislation of each host Member State.

Issues concerning housing, living standards, relations with family members, access to employment or vocational training are governed by the law of each host Member State.

In the case of Spain, the assistance received includes a series of items that, both in cash and in kind, bring the total amount of assistance received to a level comparable to that received by the Palestinians hosted by other EU Member States.

3. Article 8 of Common Position 2002/400/CFSP does indeed envisage that 'The Council shall examine the application of this Common Position and shall evaluate it eleven months subsequent to its adoption or upon request from any of its members'.

As mentioned above, that examination was carried out in light of the critical conditions prevailing in the Gaza Territories and the West Bank following more than two and a half years of Intifada and it was discovered that the humanitarian conditions originally behind the adoption of the Common Position of 21 May 2002 had not changed substantially and this led the EU to adopt Common Position 2003/366/CFSP of 19 May 2003 by virtue of which it was decided to extend the reception of the twelve Palestinians for another twelve months".

(*BOCG-Congreso.D*, VII Leg., n. 603, pp. 160–161).

VI. STATE ORGANS

1. Foreign Service

On 5 November 2003, The Under-Secretary for Foreign Affairs, Ms. Morera Villuendas, appeared before the Congressional Foreign Affairs Commission to report on the management and control criteria concerning heritage in the form of property entrusted to the Spanish Embassy at the Holy See denominated *Obra Pía*. During this appearance she answered a question concerning the reasons for the immediate dismissal of the Advisory Minister at the Spanish Embassy at the Holy See in the following terms:

> "Moving on to the subject of the dismissal of Mr. López Jacoiste, this is in no way related to the *Obra Pía*. He is not being replaced because of any of his allegations; actually just the opposite is true. For some time now, ever since his arrival in Rome, Mr. López Jacoiste has shown a lack of interest in this post; a fact which has been put in writing a number of times. In other words, when the Ministry arrived at this conclusion, it was not thinking about the *Obra Pía*. In response to the question of whether this has anything to do with the famous rental of a flat to a member of the group Forza Nova that was in the press my answer is clearly no. Moreover, his denouncement of the flat rented to Forza Nova came after the decision was taken. One thing had nothing to do with the other. . . . I hold Julio López Jacoiste in high regard and I do not believe that this dismissal can be called arbitrary. You asked why Ambassador Abella is still at his post. There is no rule, nor are there any minimum or maximum time limits for an ambassador at a particular post. He continues at that post because the Government continues to put its confidence in him".
>
> (*DSC-C*, VII Leg., n. 861, p. 27252).

In response to a question posed by the Senate with respect to the staff changes made at Spanish consulates to deal with the updating of the Electoral Census of Absent Residents (Spanish initials CERA) and the entry into force of the latest amendment of tbe Civil Code as regards nationality, the Government appeared on 11 June 2003 and made the following statement:

> "Increase in the number of staff members at Spanish consulates and consular sections of Spanish representations abroad to deal with tasks derived from the entry into force of the civil code amendment concerning nationality . . .
>
> (. . .)
>
> As concerns the total number of civil servants and hired personnel at the consulates for the past 5 years, the figures reflected below indicate growth, especially in the year 2001 when the greatest number of new job posts were created in response to the Alien Law and in the year 2002 in response to the entry into force of the Nationality Law:
>
> – In 1999 there were a total of 1,361 workers, 343 of which were civil servants, 928 had permanent contracts and 90 had temporary work contracts.

- In the year 2000 staff numbered 1,371, 342 of which were civil servants while 1,029 were hired workers.
- In the year 2001 staff numbered 1,383, 327 of which were civil servants while 1,056 were hired workers. A further 17 civil servants and 164 hired workers were added to these numbers due to the Greco Plan.
- In the year 2002 staff numbered 1,564, 336 of which were civil servants and 1,200 were hired workers. A further 20 civil servants and 88 hired workers were added to these numbers in accordance with the Nationality Law.
- In the year 2003 the figures remain the same as in the previous year. The possibility of broadening the measures adopted remains open depending on the number of requests received over these several months and the real capacity of the consulates once having overcome the first phase of the application of the Nationality Law".

(*BOCG-Senado.I*, VII Leg., n. 675, pp. 21–22).

2. External Activities of Autonomous Communities

On 21 July 2003, in response to a question posed in the Senate concerning the conclusions reached at the Conference on issues related to the European Communities regarding the formula for participation of Autonomous Communities in European institutions, the Government stated as follows:

"The Conference on issues related to the European Communities regulated by Law 2/1997 of 13 March, is a cooperation body between the State and the Autonomous Communities the aim of which is to properly organise the participation of such communities in issues calling for their participation in European Community affairs with a special accent on guaranteeing the effective participation of Autonomous Communities at the stage at which the State expresses its will before the Community institutions and in the enforcement of Community law.

In light of this legal description, it should be understood that the Conference is basically a deliberation body at which the participants express their respective opinions and hold to criteria that are not always shared by all participants and therefore it is not possible to systematise in a strict sense the possible conclusions reached on a given subject. The different opinions expressed during the course of the deliberations are registered in the corresponding minutes of the meetings.

However, with regard to the participation of Autonomous Communities in the growth phase of Community law development, one should remain mindful of the applicability of the so called Internal Participation Agreement adopted by the Conference on issues related with the European Communities in 1994.

By means of this Agreement a framework procedure was established by which the meetings of the different Sectoral Conferences and their support bodies were attributed the function of looking after and integrating the Autonomous Community position into the State's position to be held by state representatives at subsequent Council meetings.

In this respect, on a number of different occasions the Government has expressed its support for the full development of this Agreement because it feels that this is the best and most fitting way under the Spanish constitutional system to come up with an Autonomous Community position in the formation of a national position to be held by the Kingdom of Spain at meetings of Community institutions in which Member State representatives participate.

With this aim in mind, the Government has constantly reiterated is willingness to help come up with the formula deemed most suited so that compliance with this Agreement is eventually perfected.

The Government has also arranged that as of 1 January 2003, subsequent to the corresponding agreement reached at the Conference on issues related to the European Communities, representatives of the Autonomous Communities be able to take part in meetings of 95 of the so-called 'execution' or 'comitology' committees; i.e. committees of Member State experts the purpose of which is to provide assistance to the European Commission in those cases in which said institution is responsible for the execution of a Community initiative."

(*BOCG-Senado.I*, VII Leg., n. 703, p. 40).

VII. TERRITORY

1. Territorial Division, Delimitation

Note: *See* VII.3.a) *Gibraltar* and VIII.3.a) *Canary Islands*

2. Territorial Jurisdiction

Note: *See* VIII.3.a) *Canary Islands* and VIII.4. Fisheries

3. Colonies

a) Gibraltar

On 18 June 2003 in an appearance before the Foreign Affairs Commission of the Congress to report on the current state of negotiations between Spain and the United Kingdom, the Secretary of State for European Affairs, Mr. Miguel y Egea, stated that:

"... Next year marks the 20th anniversary of the commencement of the Brussels Process instituted by means of the joint communiqué issued on 27 November 1984 by Ministers Fernando Morán and Sir Geoffrey Howe in application of the joint declaration of Lisbon in 1980. The Brussels Process is the route that Spanish democracy has chosen to resolve the dispute, based on the recognition of an increasingly evident reality concerning Gibraltar, which I will summarise in three fundamental aspects: the bilateral dimension, the multilateral dimension and the Gibraltarian dimension.

As for the first, i.e. Gibraltar as an obstacle in Spanish-British relations, . . . the dispute is a stumbling block to the full development of bilateral relations between Spain and the United Kingdom that are full of opportunities in the economic, political, social and cultural terrain, as Community partners and as partners in the Atlantic Alliance . . .

The multi-lateral dimension of the dispute is increasingly more evident. The difficulties caused by this colonial anachronism in the area of European integration, within the Atlantic Alliance and in other international fora are of different natures but can be summarised in two large groups: one containing those subjects that require a specific technical solution to safeguard the respective positions taken while at the same time allowing for the development of Community legislation or the corresponding conventional activity. In this group we find the solutions adopted allowing for the development of the European Union air transport proposals or the formula applied in the year 2000 to competent authorities with a view to channelling communications between the local Gibraltarian authorities and those of Member States or third states negotiating agreements with the Union. With respect to these and other formulas, Spain has taken a leading role in approaching the practical difficulties created by Gibraltar in the regulatory development of the European Union and of other international organisations of which we form part, especially NATO and the Council of Europe . . . On the multilateral level there are difficulties which directly call into question the very compatibility of the political integration process, especially within the European Union, with the existence of a colony and a territorial dispute as part of the common acquis . . . We are confronting this contradiction with a bilateral dialogue between the Spanish and British governments but this is an unavoidable debate that will probably transcend mere bilateral dialogue if we are not able to resolve it between ourselves . . . The Gibraltarians should also be aware that the best, and in fact the only way to continue benefiting from the privileged situation that they currently enjoy is within the framework of a global agreement between Spain and the United Kingdom providing them with a modern and sustainable status with a greater degree of self-government allowing them to assume increasing degrees of responsibility over their daily lives and to preserve their traditions, customs and lifestyle . . .

. . . The colony of Gibraltar, as it stands today, is radically incompatible with the enormous development that European integration has undergone. The incompatibility of the colonial situation with this framework and with the very process of integration is plain to see in today's Europe which has been able to heal the wounds of the last great war and pave the way to a true unification of the continent. The European dimension is also a useful instrument to help solve this dispute . . .

It is important to remember that the Brussels Process had been halted since the last ministerial level meeting held in December 1997. What took place in July 2001 was a re-launching of that same process which continued during the course of the following months. Since that time we have developed a fluid dialogue in the framework of a close bilateral relationship. In this process there has been no change whatsoever in the willingness of both sides to negotiate . . . The negotia-

tions stem from Article 10 of the Treaty of Utrecht and are therefore based on a real state policy and their development is based on the Brussels Process.

(. . .)

. . . Significant headway has been made at this latest stage. Everyone is aware of the public statements made by the British Government, especially by Minister Jack Straw, on the United Kingdom's commitment to reach a satisfactory global agreement for both parties guaranteeing a better future for the citizens of Gibraltar and Campo, profiting from the advantages of a modern statute fully in line with the European framework shared by British and Spanish subjects alike. Cooperation and the claiming of sovereignty are two sides of the same coin; they are complementary concepts that go together and should therefore advance in parallel fashion . . . Negotiations, therefore, remain open. It is my hope that within a reasonable amount of time in this house we can assess the final agreement between the United Kingdom and Spain regarding Gibraltar . . .".

(*DSC-C*, VII Leg., n. 780, pp. 24768–24770).

In response to a parliamentary question at the Senate Foreign Affairs Commission on 23 April 2003, Mr. Miguel y Egea provided information on the action of the Gibraltar police, the interception of vessels and the detention of Spanish journalists and activists from the Greenpeace Organisation in the waters of the Bay of Algeciras stating that the most serious part of the incident was:

". . . The poor treatment received in the arrest of those journalists and members of Greenpeace. Even after they learned who they were, some were held longer than necessary and were subject to a series of accusations not based on fact.

This is just one more of the humiliations that citizens of Spain, the Community and those of other nationalities suffer due to the arbitrary nature of a local authority such as the Government of Gibraltar . . .

The Ministry of Foreign Affairs rapidly appealed to the British authorities with a view to achieving the immediate liberation of those arrested . . . Moreover, two important issues were reiterated: first of all, that Spain does not recognise any further rights over the maritime waters of Gibraltar than those set out in Article 10 of the Treaty of Utrecht; and second of all, that Spain does not recognise the sovereignty of the United Kingdom over the isthmus situated to the north of the territory handed over in accordance with the Treaty of Utrecht which, as everyone is well aware, was illegally occupied. Therefore, this also applies to the waters adjacent to said isthmus in which the Gibraltarian police was patrolling.

(. . .)".

(*DSS-C*, VII Leg., n. 454, p. 13).

VIII. SEAS, WATERWAYS, SHIPS

1. Baselines and Boundaries

Note: *See* VII.3.a) *Gibraltar* and VIII.3.a) *Canary Islands*

2. Islands

Note: *See* VIII.3.a) *Canary Islands*

3. Exclusive Economic Zone

Note: *See* VIII.4.a) *Fishery agreements subscribed to with non-Community States*

a) Canary Islands

The Senate draft law on the delimitation of the marine zone of the Canary Islands proposed by the political party *Coalisión Canarias* tabled on 27 February 2003 at the Senate plenary session states that:

> "Delimitation of Canary Island zones.
>
> Between the furthermost points of the islands and islets that comprise, in accordance with article 2 of their Statute, the Autonomous Community of the Canary Islands, straight baselines shall be drawn in such a way that the resulting perimeter follows the general outline of the archipelago as set out in Annexes I and II of this Law.
>
> Interior waters shall be considered those that are found within the straight baselines drawn as indicated in the above paragraph.
>
> The rest of the maritime areas recognised internationally shall be considered outside of the straight baselines marking the perimeter of the archipelago. And the additional provision is entitled 'Respect for International Law and jurisdictional distribution'".
>
> (*DSS-P*, VII Leg., n. 125, pp. 7740–7741).

During the corresponding Senate consideration of this Senate Draft Law on the delimitation of the Canary Island marine zone, Senator Ríos Peréz argued that:

> ". . . The inhabitants of the archipelago which is known as the Canary Islands watch with precaution and anguish as totally obsolete oil tankers, taking advantage of the anomalous situation characterising certain marine zones adjacent to the islands – for example, the 30 miles between Gran Canaria and Tenerife, six of which are considered international waters or high seas while the remaining 24, in accordance with the 4 January 1997 Law on territorial seas, are the sum of the territorial seas of the two islands: 12 miles each –, dump all sorts of substances into the sea with no control whatsoever . . .
>
> Furthermore, this is not only an environmental demand: there has also been an increase in the illicit traffic of emigrants that has its own set of problems based on the type of boats they use which can lead to the loss of human life.
>
> . . . Just recently the Secretary-General of the European Commission, in the report on the ultra-peripheral regions which include the Canary Islands, as a result of the development of the Treaty of Amsterdam – article 299–, stated the following: Thanks to these ultra-peripheral regions, the European Union has the largest maritime territory in the world with 25 million square kilometres of economic area

that will be of crucial importance in the 21st century due to the numerous resources and potential it possesses. As is well known, these ultra-peripheral regions are the French overseas territories of: Guadalupe, Martinique, Guyana and Reunion, the Portuguese archipelagos of Azores and Madeira, and the Canary Islands. As has already been stated, all of these regions have delimited exclusive economic maritime zones except for the Canary Island archipelago.

... The United Nations Convention on the Law of the Sea, ... refers to the enforcement of the delimitation regime of the different marine areas in accordance with the application of the straight baseline method to archipelago states but this does not mean that this same method cannot be applied, in accordance with the general limitation regime set out in the general part of said convention, to mixed states or archipelagos belonging to states (the Canary Islands), as is the case with several different countries such as Australia and the Houtman Islands; Portugal and the Azores and Madeira; Denmark and the Faroe Islands; Norway and the Spitzberg Islands and Ecuador and the Galapagos Islands, to name but a few.

According to article 132.2 of the Constitution, territorial seas as well as the natural resources of the exclusive economic zone are assets of state public dominion which means that the state in question has jurisdiction in their delimitation in accordance with international legal rules regulating these issues . . .".

(*DSS-P*, VII Leg., n. 125, pp. 7740–7741).

4. Fisheries

Note: *See* XIII.5 Headquarters

a) Fishery agreements subscribed to with non-Community States

In response to a parliamentary question posed in the Senate with respect to the countries with which Spain currently has fishery agreements and the duration of such agreements, the Government responded as follows:

"The negotiation and management of fishery agreements is under the jurisdiction of the EU Commission. Ever since January 1986, the fishery possibilities allowed for under the bilateral agreements subscribed to by Spain with third countries were eventually integrated into Community agreements. The only remaining agreement is with South Africa which, since 1992, has been extended on an annual basis despite the fact that it does not have an enforcement protocol.

The following is a list of the countries with which the EU has fishery agreements currently in force and the duration of their enforcement protocols:

Atlantic Ocean:

- Angola. Duration: 2 years (3 August 02 to 2 August 04).
- Cape Verde. Duration: 3 years (1 July 01 to 30 June 04).
- Ivory Coast. Duration of the enforcement protocol of this agreement was 3 years (1 July 00 to 30 June 03) but in light of the difficulties in negotiating

a new protocol given the political situation of the country, it was agreed to extend the current protocol until 30 June 2004.
- Gabon. Duration: 4 years (3 December 01 to 2 December 05).
- Guinea Bissau. Duration: 5 years (16 June 01 to 15 June 06).
- Guinea Conakry. The second annual extension of the enforcement protocol of this Agreement will come to an end on 31 December of this year and as of 1 January 2004 the new protocol will enter into force with a duration of 5 years (1 January 04 to 31 December 08).
- Mauritania. Duration: 5 years (1 August 01 to 31 July 06).
- Sao Tome e Principe. Duration: 3 years (1 June 02 to 31 May 05).
- Senegal. Duration: 4 years (1 July 02 to 30 June 06).

Indian Ocean:

- Comores. Duration: 3 years (28 February 01 to 27 February 04).
- Madagascar. Duration: 3 years (21 May 01 to 20 May 04). Negotiations are now under way for the renewal of the enforcement protocol of the agreement that could enter into force on January 1 of next year.
- Mauritius. The enforcement protocol of the agreement that expired on 2 December of last year was extended for one year. Negotiations are now under way for its renewal.
- Seychelles. Duration: 3 years (18 January 02 to 17 January 05).

Countries with which fishery agreements have been signed and are awaiting entry into force:

- Kiribati. The entry into force of this agreement, the protocol of which will have a duration of 3 years, is pending the authorities' communication of ratification once all legal steps have been finalised.
- Mozambique: This new agreement will enter into force on 1 January 2004 with a duration of 2 years.

The Spanish fleet may engage in fishery activities under all of these agreements". (*BOCG-Senado.I*, VII Leg., n. 734, pp. 41–42).

b) France

In response to a parliamentary question posed in the Senate with respect to the characteristics of the agreement reached between Spain and France on the renewal of the Fishery Agreement of Arcachon, the Government responded as follows:

"The Government has decided to renew the Arcachon Agreement . . .

The interruption of this exchange of quotas with France would lead to the compulsory closure of these fisheries and the paralysation of this fleet before the end of the year. Moreover, France's transfer of small quota amounts of species which Spain lacks such as cod, haddock, saithe, etc., allows us to keep accessory catches of such species instead of having to throw them back into the sea.

It should not be forgotten that this agreement not only affects the 258 vessels and 3,673 crew members of the coastal fleet but also the 227 vessels and 3,283 crew members comprising a fleet of 300 and the long liners under 100 trb focusing on species such as hake, megrim or anglerfish.

The renewed agreement is beneficial for the coastal fleet because it continues providing for stoppages on the weekends and temporary closed seasons in winter from 1 December until 10 January each year.

But what is most important is the stoppage of midwater trawlers on the part of France in the springtime between 20 March and 31 May which has permitted anchovy fishing by the Spanish coastal fleet in French waters without incidents or problems avoiding the simultaneous presence in fishing areas of fleets that are often incompatible and especially because it allows our fleet to achieve the greatest possible yield at this time of year when sales and prices are optimal for anchovies.

We have also managed to get the French to definitively renounce putting limits on the Spanish autumn fleet in Brittany; one of France's principal demands and the cause of disputes in 2001 and 2002.

(. . .)

In conclusion, the agreement reached between Spain and France for the renewal of the Arcachon Fishery Agreement is balanced and keeps the whole of the Spanish fishery sector in mind".

(*BOCG-Senado.I*, VII Leg., n. 658, p. 35).

c) Portugal

On 15 October 2003 the Minister of Agriculture, Fisheries and Food, Mr. Arias Cañete, reported on the bilateral fishery agreement with Portugal at a plenary session of the Senate:

"The Spanish Government has been negotiating since 1996 and has been doing so at all bilateral meetings with a view to coming to an understanding on fishery issues. Thus the Spanish-Portuguese Committee met in 1999; the Albufeira Summit was held in 1998; the Limit Commission in the year 2000 and a proposal was also made to the Portuguese Government for the drafting of an agreement to regulate fishery relations. In other words, hundreds of meetings have been held.

Spain has reinforced its monitoring and inspection in the area in order to avoid the greatest number of conflicts. Since 1996 there has been a long period of time during which no significant conflict has arisen until 2003 with the *Nuevo Mari Carmen*, the *Pepe Andrea* and *El Ladrillo*.

. . . An agreement was reached last Monday with the Portuguese Government to regulate our fishery relations in the Miño, Guadiana and in all waters of Portuguese jurisdiction beyond the 12 mile limit. This is a 10–year agreement with a monitoring commission in which Spain and Portugal commit to having their fishing fleets fully comply with legality. It is an agreement which clearly establishes fishing zones in the Guadiana and calls for compulsory enforcement of the law by Spaniards and Portuguese alike as well as fair collaboration between our two countries.

The Spanish Government will not protect any fishing vessel sailing under the Spanish flag if it is fishing in prohibited waters, using illegal methods or is not officially registered in the vessel census . . . This Government defends responsible fishing".

(*DSS-P*, VII Leg., n. 153, p. 9499).

d) Morocco

On 22 May 2003, in response to a parliamentary question in Congress with respect to negotiations with Morocco to reach a new fishery agreement the Government responded as follows:

"The offer made by King Mohamed VI on 23 December to allow fishing in fishing grounds under Moroccan sovereignty by the fleet affected by the sinking of the Prestige and the recent extension of that offer for a period of three additional months to 17 July 2003 should not be interpreted as the starting point for the eventual commencement of negotiations for a new Fishery Agreement. This offer should be interpreted as an important gesture of friendship between neighbouring countries whose relations should be maintained and based on close ties for future collaboration.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 543, p. 385).

On 15 October 2003, in response to a parliamentary question in the Senate with regard to fishery negotiations with Morocco the Government responded as follows:

"The decision to return to the negotiating table with Morocco with a view to reaching a new fishery agreement is under the complete jurisdiction of the EU without the participation and initiative of which it would not be possible to formulate new ideas in the context of the fishery agreements that have allowed the Spanish fleet to fish over the last several years in Moroccan waters.

Morocco has been developing a policy of closing the gap with the EU and, within the framework of these relations, one should not definitively rule out a new agreement. Morocco is immersed in an intensive modernisation programme of its fishery sector and the possibilities for a new fishery agreement would require a different approach than the ones employed up until the breaking of the last EC/Kingdom of Morocco agreement.

With regard to bilateral fishery relations between the Kingdom of Spain and Morocco, cooperation channels are being strengthened on fishery issues, and fisheries were included as one of the main topics of discussion at the 5th Spanish-Moroccan Joint Committee on bilateral cooperation in the area of agriculture and fisheries for the period 2003–2005 held in Rabat on 16 July".

(*BOCG-Senado.I*, VII Leg., n. 734, pp. 43–44).

5. Ships

Note: See VIII.3.a) *Canary Islands*

a) Maritime safety

On 23 October 2003, in response to a parliamentary question posed in Congress with respect to measures taken to minimise the risk of accidents such as the *Prestige* in the Finisterre corridor (La Coruña), the Spanish Government stated as follows:

- Implementation of mechanism by which to separate maritime traffic in Finisterre.

"... On 25 February, Spain tabled a new mechanism for the separation of maritime traffic in Finisterre before the Subcommittee for the Safety of Navigation (NAV 49) of the IMO.

(...)

It should be highlighted that ..., for the first time on a global level, a mechanism has been established for the separation of traffic in four lanes, specifically separating the transit of vessels transporting dangerous bulk cargo from those transporting conventional goods. Moreover, it is the mechanism keeping vessels furthest from the coast of those that exists in the world today.

The newly approved compulsory notification zone extends to the 010 to 15' west meridian and includes the entire area of the new mechanism approved extending beyond the 42 nautical miles of the coast of Finisterre.

(...)

- Implementation of the maritime traffic separation mechanisms at Cape Palos and Cape La Nao.

The Maritime Safety Committee of the International Maritime Organisation held last December approved the implementation of two traffic separation devices at Cape Palos (Murcia) and at Cape La Nao (Alicante) which had been proposed by the Spanish Government to the Subcommittee for Navigation ...

... The mechanisms entered into force at 00:00 on 1 July 2003.

The design of the traffic separation mechanisms is similar to those found on motorways. Vessels sail in their corresponding 'traffic lanes' and there is a middle or separation zone to eliminate any possible uncertainty as to the position of a vessel. These mechanisms organise traffic in congested areas, separate traffic from fishing grounds, regulate the passing of vessels and reduce the risk of accidents and therefore of pollution".

The Government also provided information on the following measures of interest regarding maritime traffic safety:

" – Compulsory nature of audits

On 8 March Spain tabled two proposals before the IMO in relation to the Audit Plan. One of them proposed that the IMO model audit plan for flag states be

compulsory and that the results of such audits be made freely available to the public. In the other Spain presented comments to document MSC 77/7/2 tabled by the United States, France, the Marshall Islands, Japan, Luxembourg, the Republic of Korea, the United Kingdom and Sweden on the development of a voluntary IMO audit model.

(. . .)

With respect to making the audit results public, the Spanish proposal received no support and the Council decided that the results of the audits shall remain confidential and at the disposal of the audited State only. Spain holds the view that this goes against the principle of transparency and dissemination of information affecting the quality of maritime traffic and therefore we will continue to push for making results public.

The Council . . . decided that the Audit Model be developed in such a way that it can be made compulsory in the future. Spain holds to making it compulsory immediately.

(. . .)

– Refuge sites

. . . The Ministry of *Fomento* (public works) has tabled a number of proposals before the IMO regarding the international drafting of guidelines, including both technical as well as legal aspects, on refuge sites for vessels in need of assistance.

Spain's view is based on the principle of 'prevention at source' which means that vessels must be constructed, maintained, managed and manned in such a way that outside assistance does not become necessary during navigation. However if a 'safe vessel', due to exceptional circumstances, finds itself in need of calling on outside assistance and must moor at a place of refuge, the following principles should be kept in mind:

- Vessels should comply with all safety conditions, identify all of their operators and establish unlimited financial guarantees for damages they could cause.
- Coastal states should base their decisions on strictly technical and internationally pre-established criteria.
- A financing system should be devised to cover the costs of establishing refuge sites in coastal states.
- Refuge sites should be set up on a world scale applying risk analysis methodology and parameters on which to base site designations.

(. . .)

– Restricted navigation zones

On 11 April 2003 Spain, together with France, Portugal, United Kingdom, Ireland and Belgium, and with the support of the European Union subsequent to the Council meeting of Ministers of Transport, tabled before the International Maritime Organisation (IMO) the most ambitious initiatives to limit the navigation of vessels such as the *Prestige* . . .

The proposal tabled before the IMO covers an area, in Spanish waters, which

extends up the Atlantic coast and continues along the Cantabrian coastline to the maritime limit between France and Spain in the Gulf of Biscayne with a maximum range of 80 nautical miles measured from the coast line out to sea and the Atlantic Ocean, adjacent to the coast of Galicia, to the maritime limit between Spain and Portugal with a maximum range of 130 nautical miles measured out to sea and including the Galician fishing bank.

Tanker ships, except double-hull vessels, transporting heavy crude and fuel oil, bitumen, tar and its emulsions would be prohibited from entering this zone. Spain also reserves the right to table requests before the IMO to obtain the designation of particularly vulnerable areas. Specifically the Ministry of Public Works plans to table a proposal before the IMO to declare a restricted navigation zone in the waters of the Canarian archipelago before 31 October by means of a joint proposal with the Government of Morocco. If an agreement in that sense cannot be reached, Spain will table it as the sole author.

– Removal of single hull oil tankers

On 11 April 2003, together with the other European Union members, Spain filed a draft amendment to the International Convention for the Prevention of Pollution from Ships (MARPOL) with a dual objective in mind:

On the one hand to accelerate the removal of oil tankers such as the *Prestige* at the age of 23 and of the rest of the single hull oil tankers in accordance with a schedule proposed based on the type of vessel and its date of construction. The proposed amendment also provides for the expressed prohibition of the transport of heavy hydrocarbons in single hull oil tankers as of its adoption by the IMO and entry into force.

– Compensation fund

The Spanish Maritime Administration tabled a proposal before the International Maritime Organisation (IMO) to establish an International Compensation Fund in the amount of 1,000 million euro from which to make compensation payments for oil pollution caused by maritime accidents.

Experience from the latest maritime accidents has shown that the amounts available to compensate for these damages is currently below 175 million euro, a sum that is clearly insufficient.

(. . .)

In order to satisfy this need, Spain presented a document to the International Diplomatic Conference called by the IMO. This document, in line with the decisions adopted at the EU Copenhagen Council in December 2002, proposes that the total amount of compensation that the new Complementary Fund would pay out equal 800 million in special drawing rights – SDR – (approximately 1,000 million euro) and said amounts should be available before 2004.

The Spanish proposal received majority support throughout the negotiations after having been debated and approved at the International Diplomatic Conference called by the IMO and held in London on May 12–16. Said Conference concluded with the adoption of an International Convention Protocol for the Compensation of Damages arising from Oil Pollution for which a Complementary

Compensation Fund was constituted the limit of which is 5.5 times higher with respect to the former increasing from 135 million in special drawing rights (equivalent to approximately 175 million euros) to 750 million in special drawing rights (close to 1,000 million euro depending on the exchange rate)".

(*BOCG-Congreso.D*, VII Leg., n. 609, pp. 113–116).

IX. INTERNATIONAL SPACES

Note: *See* VIII.3.a) *Canary Island* and VIII.4

X. ENVIRONMENT

On 8 July 2003, the Government answered a question posed in the Senate regarding compliance with the motion by virtue of which it is invited to promote the recognition of the right to the environment in the European Union's Charter of Fundamental Rights and that said charter form part of the Treaties of the European Union:

"Article 37 of the Charter of Fundamental Rights, solemnly proclaimed in Nice in December 2000 indicates that 'high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.' The environment, therefore, forms part of the Charter of Fundamental Rights of the European Union.

(. . .)".

(*BOCG-Senado.I*, VII Leg., n. 693, p. 64).

Compliance on the part of the Government concerning the motion calling for the adoption of measures needed to meet the agreements adopted at the World Summit on Sustainable Development held in Johannesburg (South Africa) was the subject of a parliamentary question answered by the Government on 13 August 2003 in the following terms:

"The Ministry of the Environment assumes that the question refers to the motion passed at Senate Plenary session 662/245 held on 24 October 2002 by virtue of which it called on the Government 'to adopt, in cooperation with the Autonomous Communities and local governments within the scope of their respective competences, the measures needed to comply with the agreements adopted at the World Summit on Sustainable Development held in the city of Johanneshurg (South Africa)'.

The Ministry of the Environment and the Spanish Federation of Municipalities and Provinces (Spanish initials *FEMP*) are planning for the signing of a collaboration agreement to encourage, promote and disseminate the development of the Local Agendas 21 in the municipalities that have yet to initiate the process and to develop working tools so that those that are already immersed in the process are able to make further progress and periodically assess their achievements.

In addition to other actions the agreement is going to promote the establishment of a Spanish network of sustainable cities where, based on a technical organisation coordinated by the Ministry of the Environment and the *FEMP* the following action lines *inter alia* are developed:

- Creation of a forum for experience sharing.
- Creation of a Local Agenda 21 web page.

This network will not only be a quantitative register of municipalities which develop sustainability processes but it will also be qualitative in that it will become a forum for experience sharing and ongoing learning to continue with the work process and move on, in accordance with the mandate of the World Summit of Johannesburg (2002), from Local Agenda 21 to Local Action 21.

The Ministry of the Environment also participates in training programmes such as the Seminar on the Practical Application of Sustainability:

Local Agenda 21 organised this seminar held in Madrid on 9–13 June 2003 jointly with the Spanish International Cooperation Agency within the framework of the *Azahar* programme".

(*BOCG-Senado.I*, VII Leg., n. 714, p. 44).

On 25 September 2003 the Government answered a question posed in Congress with regard to the preparation of the measures necessary to comply with the Kyoto Protocol and affirmed:

"The Government, through the Ministry of the Environment, Directorate-General for Environmental Quality and Evaluation (Spanish Office for Climate Change), has been promoting a number of fora in compliance with the commitments acquired in the Kyoto Protocol:

Within the framework of the development of the Spanish Strategy to Fight Climate Change an analysis was done of the problem existing in all sectors and the negotiation of measures in the 14 work sessions held since June 2001 at the Standing Commission of the National Climate Council with the participation of the principal public and private representatives affected.

- Identification of the policies and measures being implemented on the sub-sectoral level since 2001 in the 16 working groups created among the competent ministerial departments and the CEOE.
- Launching in 2001 of the pilot stage of Spanish investment projects based on Kyoto mechanisms with the participation of those sectors and companies directly interested in the possibilities it offers for compliance with the Kyoto Protocol, mechanisms for clean development and joint implementation".

(*BOCG-Congreso.*D, VII Leg., n. 591, pp. 117–118).

1. Protection of the Marine Environment

The ecological catastrophe caused by the accident of the oil tanker *Prestige* on 13 November 2002, was the subject of a number of different parliamentary questions

during 2003 related especially to increasing maritime security and the prevention of marine pollution and to the payment of compensation for damages caused by the accident:

a) Maritime safety

On 17 June 2003 the Government answered a parliamentary question posed in the Council regarding plans to avoid possible black tides and affirmed that:

"The Government is taking action in different areas with a view to preventing, to the degree possible, events causing marine pollution and to increasing the material and human means of the State government to fight against contaminating spills in our waters.

As concerns prevention, mention should be made of the following specific actions:

- Prohibiting the entrance in Spanish ports of single hull oil tankers older than 15 years of age transporting heavy oil; this regulation has been in force since 1 January 2003 and has been strictly enforced since that date at all ports.
- Tabling before the International Maritime Organisation of a joint proposal with neighbouring countries for the declaration of the Spanish coast along the Cantabrian Sea and the coast of Galicia as an especially sensitive marine zone thus allowing the application of stricter regulations controlling the maritime traffic of vessels carrying potentially polluting cargos with a view to preserving the marine ecosystem and reducing the risk of accidents in areas where marine traffic is particularly intense.
- Distancing sub-standard vessels transporting heavy oil from the Spanish coastline to the periphery of the Exclusive Economic Zone (200 nautical miles).
- Increasing the number of inspections of vessels at Spanish ports in line with the prescription set out in the Paris Memorandum (MOU) to which our country is party.
- Support and encouragement of the European Union initiative before the International Maritime Organisation for the accelerated entry into force of the 'double hull' requirement in the case of oil tankers via an amendment to Annex I of the MARPOL Convention 73/78.

These initiatives are accompanied by the necessary preparation to deal with any type of polluting event caused by a maritime accident in accordance with the commitments acquired as a contracting party to the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 and in this sense the State Government is carrying out an information campaign with the coastal Autonomous Community governments to inform them of the 'National Contingency Plan for Accidental Marine Pollution' passed by an Order communicated on 23 February 2001 highlighting the need for said communities, in compliance with the prescriptions set out in said Convention, to develop their respective 'Territorial Plans' in coordination with the 'National Plan' for which the corresponding technical support is offered.

All of these aspects are supported with the material means with which to fight against pollution acquired as a result of the accident of the 'Prestige' and those from the development of the National Plan for Special Services regarding the Protection of Human Life at Sea and the fight against pollution 2002–2005".

(*BOCG-Senado.I*, VII Leg., n. 680, p. 50).

The double hull requirement for European Union flagships or vessels sailing into a port of a European Union Member State was the subject of a question in Congress posed to the Government which was answered on 1 July 2003 in the following terms:

"With a view to increasing maritime security, monitoring protection of our tourist, fishery and environmental interests and keeping vessels like the *Prestige* from entering our waters, the Government drafted Royal Decree-Law 9/2002 of 13 December providing for the adoption of measures applicable to tankers transporting dangerous or polluting cargo.

Article 1 of the above-mentioned Royal Decree-Law published in the *BOE* of 14 December 2002 prohibits, as of 1 January 2003, the entrance of single hull oil tankers transporting heavy fuel, tar, asphaltic bitumen or heavy crude oil into Spanish ports, terminals or anchoring sites, regardless of the flag they are flying.

Moreover, for the reasons set out above, at the end of November the Government, in coordination with the French Government, arranged for the distancing of sub-standard vessels transporting heavy hydrocarbons from the Spanish coast to the periphery of the Exclusive Economic Zone (200 miles).

With respect to the extension of the prohibition imposed in Spain to the rest of the European Union countries, the Spanish Government has stepped up the effort it was already making in the European Union and in the International Maritime Organisation for the expedient adoption of preventive measures to keep an accident like that of the *Prestige* from happening again. In this sense special mention should be made, *inter alia*, of the Agreement of the Council of Ministers of Transport of the European Union of 27 March on the following marine safety measures:

- A political agreement regarding a draft regulation moving forward the date by which single hull oil tankers must be removed and substituted by double hull vessels.
- The tabling of a joint proposal by Spain, France, United Kingdom, Northern Ireland and Portugal before the International Maritime Organisation for the declaration of an especially sensitive zone among maritime areas situated in the Exclusive Economic Zone of said States allowing for the enforcement of stricter maritime traffic control regulations applied to vessels transporting potentially polluting cargos.

Within the scope of the International Maritime Organisation, special mention should be made of the proposals tabled by the Spanish Government for:

- Carrying out audits of flagship states guaranteeing the proper enforcement of safety regulations.

- Establishing technical criteria at the international level for the definition of refuge sites for quality vessels in need of assistance.
- Distancing from the coast of Galicia of the Finisterre traffic separation mechanism with respect to circulation lanes for vessels transporting dangerous bulk cargo".

(*BOCG-Congreso.D*, VII Leg., n. 560, pp. 312–313).

And finally on 17 July 2003, in response to a question regarding Spanish proposals in the field of International Maritime Law to allow coastal states to control and limit the traffic of vessels transporting dangerous cargo within the 200 mile limit, the Government stated:

"The Commission of the European Union is studying the need for changes in the United Nations Convention on the Law of the Sea (UNCLOS) for the non-discriminatory control and possible limitation in shipping traffic transporting dangerous cargo within the 200 mile limit.

Moreover, the International Maritime Organisation (IMO) is processing a proposal co-sponsored by Spain the purpose of which is to name as especially sensitive maritime zones certain maritime areas within which limitations would be put on the navigation of vessels carrying dangerous or polluting products.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 571, pp. 175–176).

b) Civil liability. Compensation

The measures taken to request assistance from the European Union for Galician fishermen affected by the *Prestige* catastrophe were the subject of a question directed at the Government in Congress. The Government answered on 21 April 2003 affirming that:

"At the request of the Spanish Government the Commission of the European Union (EU) adopted regulation 2372/2002, provided with 30 million euro, establishing a specific measure by which to compensate the shellfish harvesting and aquaculture sector affected by the *Prestige* accident.

This Regulation, passed by the Council of Ministers of Fisheries of the EU of 20 December 2002, permits completion of the actions undertaken in the context of the structural fund interventions, broadening their scope of action to persons and companies working in the area of shellfish harvesting and aquaculture whose activities were interrupted; replacement of fishing apparatus and other structural equipment; repair of affected vessels and replacement of damaged elements; cleaning, repair and reconstruction of shellfish harvesting and aquaculture areas and shellfish repopulation. Some limits established under Regulation 2792/1999 on FIFG assistance regarding the total quantity and time of action of certain measures were also eliminated.

In addition to these funds, 110 million euro from the FIFG financial plans, reprogrammed by unanimous decision of the Sectoral Fishery Conference of 2 January

2003, will also be used. This amount formed part of a reserve fund provided for at the outset of the 2000–2006 programming period in the Autonomous Communities.

It is the view of the Government that, according to currently available data, the financial contribution from the EU may be enough to face the extraordinary expenditures resulting from the Prestige accident".

(*BOCG-Congreso.D*, VII Leg., n. 527, p. 337).

With regard to the promotion within the International Maritime Organisation (IMO) of a stricter civil liability system regarding oil pollution, the Government answered a question posed in Congress on 1 July 2003:

"The Government has supported an increase in the civil liability limit applied to damages from oil pollution approved by the Legal Committee of the International Maritime Organisation (IMO) via Resolution 1(82) of 18 October 2000 (*BOE* 3 October 2002), representing an increase of approximately 50% vis-à-vis the previous limits, raising the Special Drawing Rights (SDR) for ships the weight of which is not superior to 5,000 GT from 3 to 4.5 million and increasing this limit proportionately in the case of ships of greater gross tonnage. This amendment to the limits will enter into force on 1 September 2003.

As set out in the International Convention on civil liability for damages generated by hydrocarbon pollution, 1992 (CLC 1992; *BOE*, 20 September 1995) ". . . no amendment shall be considered regarding limits on liability proposed under this article before the 15th of January 1998 nor within a period of time inferior to five years from the date of the entry into force of a former amendment introduced by virtue of this article . . .".

Therefore, until 1 September 2008, the Legal Committee of the IMO may not examine any amendment to limits on civil liability thus making any proposal in that sense non-viable until said date.

Notwithstanding the above, the Government is actively participating in the work being done at the International Oil Pollution Compensation Fund (IOPC 1992) where a working group has been formed to study possible amendments to international instruments (CLC 1992/IOPC 1992) with a view to improving the operability of the current international compensation system.

Within this group Spain, together with France, has proposed an amendment to the current civil liability system so as to make it possible to breach the right of the ship owner to limit his liability for causes other than fraud or possible fraud through the inclusion of actions by which the accident is caused by some specific error or fault of the owner.

In the case of causes of this nature the owner would lose the right to limit his liability and would thus have unlimited liability.

The joint Spanish-French proposal also contains amendments to limit the rights protecting other actors in maritime traffic, specifically the registered owner and/or charterer. Such amendments call for their exclusion from the list of actors that are currently protected from paying compensation unless they took part in fraudulent actions leading to the accident.

Among the different subjects under scrutiny, the Group is also studying the possible amendment of the concept of environmental damage.

The work carried out by this Group will give rise to specific proposals for amendment of the above mentioned international instruments which will be subsequently debated by the bodies forming part of the International Maritime Organisation (IMO) which will, in turn, call a Diplomatic Conference in order to approve the corresponding amendments.

(. . .)

The bodies of the European Union have expressed the opinion that, in the event that satisfactory results are not reached within a relatively short period of time, the European Union shall implement the necessary measures on the regional level to come up with a compensation system that is more favourable to victims and stricter with regard to those engaging in maritime traffic.

(. . .)

Given that we are a Member State of the European Union and of the International Maritime Organisation and are party to the different international conventions on pollution liability, it is the Government's view that our interests are better served by promoting the above mentioned reforms in both organisations. Any possible unilateral regulation of the liability system would lead to the denouncement of the international treaties referred to thus running the risk of non-recognition by the rest of the States".

(*BOCG-Congreso.D*, VII Leg., n. 560, pp. 203–204).

On 17 July 2003, in response to a question posed in Congress, the Government also referred to compensation for damages from oil pollution stating:

"(. . .)

Moreover, on 16 May 2003 the IMO adopted a Protocol for the creation of a Complementary Oil Pollution Compensation Fund the limit of which would be 5.5 times greater than the current fund rising from 135 million in special drawing rights to 750 (close to 1,000 million euro considering the exchange rate).

This new Protocol will be available in London for signing for a period of one year as of 31 July 2003 and will enter into force three months after at least eight states, which together add up to an amount of 450,000 tons of hydrocarbons per year, sign the new Protocol".

(*BOCG-Congreso.D*, VII Leg., n. 571, p. 176).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

a) Development cooperation 2003–2004

On 6 May 2003, in response to a parliamentary question, the Government informed Parliament of the objectives and priorities of development cooperation set for the period 2003–2004:

". . . The Government's priorities and chief lines of action over that period will be as follows:

1. To pursue the preferential treatment of Latin America as laid down in the Spanish regulations and recommended by the community of donors, which has accepted Spain's special interest in Latin America and has requested that Spain carry the initiative in the region. In addition to the attention devoted to the nine priority countries, Argentina will be afforded special treatment in view of the current situation there.

In this connection, a meeting of the Joint Commission for Hispano-Argentine Cooperation will be held in 2003. This will provide a basis, taking into account any proposals put forward by Argentina, for the content of Cooperation with Colombia designed to accompany the peace process, and for Cooperation with Cuba, which is intended to assist the country's internal development and improve living conditions for the population.

2. Having regard to North Africa, progress in the Master Plan for country programmes is on target except for Morocco, owing to recent incidents in bilateral relations. However, once these relations return to normal, the requisite level of Cooperation can be swiftly and easily recovered so as to meet the commitments of the Joint Commission. Thus, the Moroccan funds earmarked for 2002 will be recovered in 2003, so that the objectives can be met in time for the next Joint Commission meeting, which may take place in 2003.

3. As regards the Middle East, the priority set in the Master Plan for 2001–2004 is active collaboration in the peace process, in which Spain is very much involved, particularly in connection with the Palestinian territories.

4. Spanish Cooperation with Subsaharan Africa is a token of the political commitment made in the Ministry of Foreign Affairs' Action Plan for Subsaharan Africa, which is part of the strategy of the New Partnership for Africa's Development (NEPAD).

5. Having regard to Asia, until very recently Spanish Cooperation there was limited to the Philippines. Since the Master Plan 2001–2004 and the Asia-Pacific Framework Plan 2001–2002 were approved, the scope of action has been extended to Vietnam and China, each of which receive 15% of the funds devoted to Asia (Philippines receives 43%)

6. Finally, it is intended to continue Cooperation with Central and Eastern Europe, specifically the Balkans. There, the object of Spanish Cooperation is to sustain our commitment to the peace process, in addition supporting transition processes in the rest of Europe. Spanish Cooperation activity in the region – one in which Spain has not traditionally been present – was facilitated by the opening of the Sarajevo Office for Technical Cooperation in April 2001.

7. Furthermore, in 2003 the Spanish International Cooperation agency run by the Ministry of Foreign Affairs will continue to build up the network of Technical Cooperation Offices, opening new offices in Algiers, Dakar, El Cairo and Hanoi; it will also continue building up the network of Cultural Centres, with new centres in Montevideo and Malabo. These new inaugurations reflect the geographical scope of development cooperation, which extends to Arab countries in North Africa and the Middle East and to Subsaharan Africa and Asia.

8. On a different front, the Office of the Secretary of State for International Cooperation and Latin America proposes to link the microcredit programme with the Workshop-Schools, given that 20% of the pupils going through the Workshop-Schools subsequently start up small building, joinery or plumbing businesses.

9. The Ministry of Foreign Affairs is also resolved, once they are passed by the consultative Cooperation bodies, to approve Spanish Cooperation Strategies for Good Government, Health, Education, and Capital and Promotion of Economic Fabric.

10. Finally, the Government will continue to sponsor the drafting of Rules for Cooperating Bodies, based on the principle that governed approval of the Cooperation Act – that is, agreement with the sectors and agents involved – which was reiterated in the motion passed by Plenary Session of Parliament in February 2002".

(*BOCG-Congreso.D*, VII Leg., n. 500, pp. 431–432).

b) Immigration

In response to a parliamentary question put to the Commission on International Development Cooperation of the Congress of Deputies in connection with official development aid to countries which are sources of migration, the Secretary General of the Spanish International Cooperation Agency (*AECI*), Mr. Rodríguez-Ponga y Salamanca, reported that:

"... The main countries of origin of immigrants to Spain are: in Africa, Morocco, Algeria and Senegal; in Latin America, Ecuador, Colombia, Peru, Dominican Republic, Argentina and Cuba; in Asia, China and the Philippines; and in Europe, Romania, Ukraine and Bulgaria. In other words, all except the European countries are covered in the Spanish Cooperation Master Plan for 2001/2004. African, Asian and Latin American countries are priority objectives of Spanish Cooperation; moreover, there is a technical office in every one except Senegal, where we hope to open up a Technical Cooperation Office shortly in Dakar. The three European countries – Romania, Ukraine and Bulgaria – also receive official Spanish aid, but as candidate countries, albeit in the second or third wave, they are also in receipt

of assistance from European Union countries to help them adapt their economies and laws to European standards.

. . . It is true that coordinating public policies is a good thing in that it makes for greater efficacy, and in this particular case we are in fact committed to coordinating immigration policies with development policies . . . However, whether immigration policy is dependent on Cooperation policy or vice versa is a difficult issue to which there is no clear answer . . . On the other hand it is the case – and is seems that there is evidence to support this – that emigrants who save money, who acquire new skills or knowledge, learn new ways of working and return to their countries of origin, become factors of development; and indeed, we may well have experienced something like it in Spain. . . .

We need to identify activities that have a track record of serving both policies. In other words, we need on the one hand to contribute to the development of countries in receipt of Official Development Assistance; on the other hand we need to promote the integration in donor countries of nationals of recipient countries residing legally in the former, and as a corollary we also need to control illegal immigration. One difficult issue here is how to orient the ultimate destination of emigrants' remittances. These do not constitute Official Development Assistance, but emigrants' remittances undoubtedly also contribute to the development of these countries. Naturally, the training of immigrants, in their countries of origin and in Spain, is another issue on which we are working. In fact, through the AECI we have proposed some specific initiatives through which we will be able to assist working relations with countries of origin of large-scale migration, for example by way of a microcredit programme. . . .".

(*DSC-C*, VII Leg., n. 725, p. 23314).

c) Forgiveness of external debt

On 24 November 2003, in response to a parliamentary question, the Government informed Parliament of the countries in respect of which the Spanish State has forgiven foreign debt in the last ten years:

"Spain's policy of external debt forgiveness operates in three different ways:
- Forgiveness multilaterally coordinated with other creditors.
- Forgiveness through debt conversion programmes.
- Direct debt forgiveness decided by Spain independently.

Action within any of these frameworks is the result of interaction between two components. Firstly, there is the essential factor, which is the need to comply with resolutions passed multilaterally at the Paris Club, a forum to which we belong and in which the world's major public creditors coordinate policies and guidelines on matters of foreign debt. Secondly – and this only within the margin allowed by compliance with multilateral commitments – there are Spain's own independent criteria for the management of foreign debt.

These independent criteria for the management of foreign debt are as follows:

- Pursuit of active foreign debt management based on criteria of three kinds: purely financial criteria, criteria of trade policy and criteria of development assistance. These criteria are prioritised in a flexible manner.
- Case-by-case application to the needs of individual debtor countries, so that debt initiatives are consistent with general action in the case of the debtor country.
- Coordination with International Financial Institutions and other official creditors.
- Forgiveness coordinated multilaterally with other creditors operates first and foremost through the Paris Club when poor countries' debts are restructured in a way that entails not only rescheduling of payments but also debt liquidations.

Also particularly important in the field of coordinated forgiveness is the HIPC (Heavily Indebted Poor Countries) initiative of 1996, which has since been reviewed and extended to become HIPC II or the enhanced HIPC. Its objective is to help the benefiting country attain a debt situation that is sustainable over the long term.

Countries classified as HIPCs benefit from considerable debt forgiveness upon reaching certain milestones (known as "decision points" or "completion points") in the adoption of and compliance with IMF adjustment and reform programmes.

Spain is an active participant in the initiative and forgives the appropriate part of a debt as these milestones are reached.

– Debt conversion programmes also entail some debt forgiveness. Under these programmes, the debtor country undertakes to use part of the resources needed to pay its external debt to start up investment operations and development projects in that country. From the standpoint of Spain, this constitutes debt forgiveness since the sums thus converted are not recoverable.

These programmes come within the framework of a policy that the Economics Ministry has been promoting in recent years, to pursue active management of the debt of third countries with the Spanish State. The result has been a large number of programmes to convert debt into investment, both public and private.

Priority within this strategy is awarded to programmes that bring debt relief to highly indebted poor countries, and also to programmes entailing the conversion of debt into investments in countries where Spanish producers are or wish to be present – particularly in strategic areas where penetration in the early stages can be a determining factor.

These programmes are also subject to observance of the Paris Club rules, which limit the conversion of commercial debt. ODA (Official Development Assistance) can be converted in its entirety.

– Finally, the least-used alternative is bilateral debt forgiveness, which is very much restricted by the agreed rules of multilateral discipline in the Paris Club. According to these rules, independent forgiveness is only allowable in the case of debt deriving from concessionary funding – DAF (Development Assistance Fund) debt in the case of Spain. Independent forgiveness is not allowed in the case of guaranteed commercial debt – *CESCE* (Spanish Export Credit Insurance Company) debt in Spain.

Within the margins allowed – forgiveness of DAF debt – Spain has only resorted to this option in implementation of development assistance criteria – for example, debt forgiven in 1999 in response to Hurricane Mitch.

Those then are the general criteria governing debt forgiveness in Spain. Following are the countries some of whose debt Spain has forgiven in the last ten years.

1. Belize
2. Bolivia
3. Burkina Faso
4. Cameroon
5. Congo, PR
6. Costa Rica
7. Dominican Republic
8. Ecuador
9. Egypt
10. El Salvador
11. Gabon
12. Ghana
13. Guinea Bissau
14. Haiti
15. Honduras
16. Indonesia
17. Ivory Coast
18. Jordan
19. Madagascar
20. Malawi
21. Morocco
22. Mauritania
23. Mozambique
24. Nicaragua
25. Niger
26. Pakistan
27. Peru
28. Republic of Guinea (Conakry)
29. Senegal
30. Sao Tome and Principe
31. Togo
32. Uruguay
33. Yugoslavia, FR".

(*BOCG-Congreso-D*, VII Leg., n. 639, pp. 59–60).

d) The Millennium Summit on Development

On 12 June 2003, in reply to a parliamentary question in Congress about the contribution of Spanish Cooperation to the objectives set at the Millennium Summit on Development, the Government reported that:

"The Millennium objectives, which Spain has also taken on board, consist in attaining quantifiable goals in the fight against poverty by the year 2015. With that end in view, the Office of the Secretary of State for International Cooperation and Latin America at the Ministry of Foreign Affairs . . ., with the support of the Secretariat of the DAC (the OECD's Development Assistance Committee), seeks to give an annual estimation of the degree to which Spanish Cooperation actions are oriented towards the accomplishment of these objectives.

The first results of this estimation were published by the Ministry of Foreign Affairs last year in a document recording the follow-up on the Annual International Cooperation Plan for 2001 (follow-up PACI 2001). As the document indicates, 35.58 per cent of Spanish Cooperation projects were directly oriented towards the Millennium objectives, and 50 per cent of projects were so oriented indirectly. Thus, about 85 per cent of Spanish Cooperation actions in 2001 were oriented towards Millennium objectives.

The Millennium objectives comprise eight goals to be met by the year 2015. They address the following areas: eradication of extreme poverty and hunger; universal primary education; promotion of equality between men and women; reduction of infant mortality; improvement of maternal health; the fight against the AIDS virus, malaria and other diseases; the assurance of environmental sustainability; and development of global collaboration for development.

Of these objectives, the one that has absorbed most Spanish Cooperation resources has been the promotion of global collaboration for development: over 35 per cent of the projects funded by Spanish Cooperation were indirectly oriented towards this goal.

The second most important objective in terms of volume of Cooperation funding was eradication of extreme poverty and hunger (defined as reducing by half, between 1990 and 2015, the proportion of the population with an income of less than a dollar a day). Twenty-five per cent of resources was applied directly or indirectly to achieving this objective; as a goal it comes within the framework of Spanish Cooperation to reduce poverty – which is the ultimate aim and the guiding principle underlying all its actions.

As to the other objectives, we would note that ten per cent of actions were oriented towards improving and achieving the universalisation of primary education, and that almost three-quarters of this percentage was directly applied to this objective. There were also significant efforts to improve the situation of women: 15 per cent of actions were intended to eliminate inequality between men and women at all levels of education by the year 2015, and almost 10 per cent were devoted directly to that goal. The percentages were similar in the cases of reducing infant mortality and improving maternal health.

Finally, we would note that Millennium objectives do not affect only International Cooperation; these are broader objectives for development that ought to inform the action of governments of poor countries. . . . In this connection, the contribution made by International Cooperation to fulfilment of the Millennium objectives will be limited to the extent that the donors' aid does not constitute a major part

of the GDP or the general budget in developing countries, as is frequently the case in medium-income countries where Spanish Cooperation operates.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 550, pp. 118–119).

2. Assistance to Developing Countries

a) Latin America

On 20 February 2003, the Minister of Foreign Affairs, Ms. Palacio Vallelersundi, appeared before the Senate Latin American Affairs Commission to report on the general lines of her department's action in Latin America. She stressed that:

"Relations with Latin America have always been central to Spanish foreign policy because the Latin American dimension is, if I may say so, our chief asset in the world. I frequently recall that Spanish foreign policy rests on three central pillars: first, our geostrategic position in the Mediterranean sphere; second, our Europeanness – we are ontologically speaking Europeans – and third our Latin American vocation. And perhaps because it is in that Latin American vocation that we have most exercised our freedom and our free will, it is that vocation that still best defines us . . .

(. . .)

One distinctive feature of our presence on the American continent in recent years has been the considerable increase of Spanish investment in Latin America. . . .

Spain today is the largest European investor in the Latin American area and second in the world, exceeded only by the USA; and I believe we need to publicly acknowledge this endeavour and this effort, not only of specific enterprises but of Spanish society as a whole.

. . . Our policy towards Latin America has produced major fruits in these last three years of legislature. Let me mention just a few of them. Firstly, there is Latin American support in the fight against terrorism, with the odd exception. Secondly there is the establishment of special channels of dialogue with some countries like Mexico, Argentina, Brazil and Chile. Thirdly, there is the inclusion of relations with Latin America in a number of bilateral European summits. Fourthly, there is the change in the format of Latin American summits which allows more political debate and the initiation of a reform process that I shall refer to later. And finally, let me mention the strengthening of ties between the European Union and Latin America through association agreements with Mexico and Chile and the intensification of negotiations with other regional groups.

(. . .)".

(*DSS-C*, VII Leg., n. 4166, pp. 13–14).

b) Western Mediterranean: Morocco, Algeria, Tunisia, Mauritania and Libya

See: Note XIII.4.d) *Mediterranean*

On 10 March 2003, the Minister of Foreign Affairs, Ms Palacio Vallelersundi, appeared before the Senate Foreign Affairs Commission to report on Spain's external action in the Western Mediterranean as a whole. She defined such action as follows:

". . . Global because it seeks to encompass each and every aspect of interest to our foreign policy – economics, migration, development cooperation and political dialogue – but also cultural and human exchanges and the promotion of investment in the area. At the same time we may describe it as a maximalist policy in that its objective is to take each of these policies as far as it will go with each of the countries in the region – without prejudice, as I shall also note, to Spain's interests in regional integration processes.

From a strictly bilateral standpoint, Spain has consolidated a framework of legal and political relations based upon treaties of friendship, good neighbourliness and cooperation. With the signature of a treaty with Algeria during President Butefliqa's State visit in October last year, we have consolidated this pattern, acquiring a similar instrument with the three main partners of the Maghreb – and in fact the only ones to be linked to the European Union by an association agreement. . . .

Always within this frame of reference, in addition to strictly legal instrnments, development cooperation with countries in the area deserves separate mention as a primary instrument of our foreign policy and for its impact on other areas, for example on the management of migratory flows, and on programmes like the one named 'Azahar' or the health programme, which attest to the regional and bilateral scope of our development assistance. . . .

(. . .)".

(*DSS-C*, VII Leg., n. 429, pp. 2–6).

With reference to actions undertaken by Spain in connection with each of the Western Mediterranean countries, the Minister explained that:

". . . Morocco is our closest neighbour in the region and the one with which we have the fullest relationship and hence the most complex because of its wealth and intensity. As you will recall, my instatement in the Ministry of Foreign Affairs practically coincided with the Perejil island incident, during which tensions in our bilateral relations peaked. I feel great satisfaction in being able to state that that incident is now long past and that today, happily and thanks also to the spirit of dialogue and political willingness evinced by the governments of Morocco and Spain . . .

. . . The various different issues that affect our bilateral relationship by means of an approach whereby each of the nain components of this relationship is dealt with separately by a specific work group. The first three groups – political affairs, issues relating to immigration and demarcation of Atlantic maritime waters in the Canaries region – started work on 16 January on the occasion of a visit to Rabat by the Secretary of State for Foreign Affairs, Ramón Gil-Casares . . .

Spain is Morocco's second supplier after France. Our exports to Morocco are the largest of all those to the African continent and among our largest outside the

European Union; they are only exceeded by our exports to the United States and Mexico. We in turn are Morocco's third best customer after France and Germany . . .

At the same time we have to bear in mind that Morocco is a priority country for Spanish Cooperation; it is the largest recipient of non-refundable Spanish assistance in the Maghrib area and the Middle East. It is also the only country in the Arab world with which Spain has two cooperation agreements: one on scientific and technical cooperation, and another on cultural and educational cooperation, each with a joint commission that meets separately.

. . . Algeria. The excellent political relationship that Spain has sought to achieve with the Algerian authorities over the last decade, based on a clear position, has begun to bear fruit. This clear position means that Spain has always expressed its solidarity with the people and the government of Algeria in their fight against terrorism, and it has kept its embassy, its consulates in Algiers and Oran and its cultural offices and activities open even at times of maximum tension.

We are certain that both the friendship, good neighbourliness and cooperation agreement signed last year and the association agreement between Algeria and the European Union, with the reduction in duties that they envisage, constitute reference points for the future which guarantee an additional interest for Algeria as an object of Spanish interests.

. . . Tunisia. Tunisia has become another important partner for Spain. Since the friendship, good neighbourliness and cooperation agreement was signed in 1996, trade in both directions has increased tenfold. In a mere five years, Spain has risen from tenth place to become Tunisia's fourth largest economic partner. Spanish enterprises have become the leading tourist operators in Tunisia, while the country's privatisation policy has attracted investment in widely varying sectors such as textiles, construction and services. At the same time we have consolidated a productive political dialogue which has produced outcomes as important for Spain and Tunisia as the Barcelona process or regional integration.

(. . .)

In view of Tunisia's socio-economic development, Spanish Cooperation arrangements are peculiar. On a bilateral scale, the emphasis is shifting from initiatives addressing basic social needs and agricultural development to more diversified economic programmes and to technology transfer, research and upgrading of Tunisian industries. The ultimate aim is to support Tunisia in its bid for full integration in the Euro-Mediterranean free trade area. Also, initiatives are in progress, through non-governmental development organisations, to help in the fight against poverty in the most deprived populations. Tunisia is a programme country, which means a priority country for Spanish Cooperation; Spain is the fourth largest European donor country . . .

. . . Mauritania . . . is also the object of special attention. Because of its proximity to the Canary Islands, we consider Mauritania a close neighbour for purposes of our cooperation objectives. Spain is one of Mauritania's chief partners in Europe and is the principal beneficiary of the fishery agreement that Mauritania renewed with the European Union in August 2001. . . . Mauritania has expressed

its desire to cooperate with Spain in such crucial matters as the fight against illegal immigration. It is not a source of illegal immigration as such, but it is a country of transit for many immigrants coming from other Sub-Saharan countries.

Non-reimbursable assistance by the Spanish Cooperation Agency within the framework of development cooperation totals 6 million euros, making Mauritania the second largest recipient of funds in the Maghreb after Morocco. Our cooperation is currently governed by the three-year objectives decided by the fourth joint commission in 2001, and the tendency is to increase the volume of funding and cooperation in matters of fisheries as a priority sector.

(. . .)

. . . Libya. The first point to emphasise about Libya is its geographic position in the central Mediterranean. It does not therefore come strictly within the framework addressed today, but as a member of the Arab Maghreb Union and a participant in the 5+5 dialogue forum . . .

We have found in recent years that Libya has been making an effort to regain its normal place in the international community. The United Nations sanctions have been suspended and the process of normalisation of relations with the United Kingdom and the United States, which had been seriously disrupted by the Lockerbie incident, seems to be well on the way to a final solution. It is Spain's desire to see Libya fully integrated in the great Euro-Mediterranean family, as this would not only help attain the return to a normal situation but would also promote bilateral cooperation on such major issues as the fight against illegal immigration or non-proliferation.

From a bilateral standpoint, as it affects economic interests there is no doubt that the opening of Libya to the world opens up a market which although not immense is highly dynamic. Libya constitutes a field of opportunity for Spanish investment that ought not to be wasted, and the Spanish Administration will strive to support Spanish interests and obtain as much information as possible from the Libyan authorities on their programmes for liberalisation and privatisation of the economy".

(*DSS-C*, VII Leg., n. 429, pp. 2–6).

c) Equatorial Guinea

In reply to a parliamentary question in the Senate on the policy pursued by the Government with Equatorial Guinea, the Minister of Foreign Affairs, Ms. Palacio Vallelersundi, stated as follows:

"The Government's policy seeks plainly and simply to assist in democratising the country, in defending those human rights and in achieving the well-being of the people of Equatorial Guinea. Where we differ is that we want to normalise bilateral relations, relations which have been subject to fluctuations, contradictions and cycles that have been of no benefit either to the process or indeed to the people of Equatorial Guinea . . .

In October 2002 the policy pursued by the Government of Spain was clearly

aimed at persuading President Obiang to pardon 120 prisoners, many of them belonging to the Bubi tribe, convicted of involvement in an attempted coup d'état in 1998. This year we have made insistent representations to the authorities regarding the need to improve the living conditions of prisoners, and I should like to say that last April we found evidence of improvements in the living conditions of convicts. Finally, Plácido Micó, Secretary General of the Party of Convergence for Social Democracy, was released last August – you referred to this fact – along with 17 other persons. The Honourable Member knows of this, and also of the efforts by the Government of Spain, thanks to the close relations he has with the team in charge of this matter at the Ministry.

(. . .)

Our bilateral relations . . . will be enriched if the Government of Equatorial Guinea takes steps to improve the material conditions of life of the country's population, and in this respect our analyses coincide – at least in general terms. But our cooperation is there and it is not dispensable. Our cooperation is valued at seven and a half million euros, and with that we seek to work in especially sensitive sectors such as education and health, and at the same time to support institutional reform and improvement in the technical capacity of Guinean society. The benefits of this cooperation will be felt in the long term . . .

On 17 June last, Spain and Equatorial Guinea signed an agreement for reciprocal protection and promotion of investment to enhance the quality and quantity of our investments. We agreed to restructure the bilateral debt, including partial forgiveness and the conversion of part of that debt to both public and private investment. In fact we and the European Union hope shortly to address the issue of programmes of governability and support for the rule of law, something we have been unable to do until recently due to the reluctance of the Guinean government to let Spain become involved in what are undoubtedly sensitive matters.

Laws and judges. . . . it is the Government of Equatorial Guinea that is asking Spain for support to help reform such important institutions as its police, its army, its judicial system and its parliamentary system, in a bid to achieve greater judicial independence and better parliamentary control of the government. All these trends confirm the rightness of this policy of critical but always constructive dialogue.

(. . .)".

(*DSS-P*, VII Leg., n. 148, pp. 9163–9164).

In reply to a parliamentary question on Spain's contribution to the restructuring of Afghanistan in the Congress of Deputies Commission on International Development Cooperation, the Secretary General of the Spanish International Cooperation Agency reported that:

". . . Since the autumn of 2001, the Spanish government has been especially attentive to, sensitive to and concerned about the situation of the Afghan population, and also of the thousands of refugees who fled to neighbouring countries, particularly Pakistan. The Spanish International Cooperation Agency has spent a total

of six million euros in round figures on Afghanistan, or rather in connection with the Afghan crisis in Afghanistan or in neighbouring countries, despite the fact that neither Afghanistan nor that region are priority targets for Spanish Cooperation. This entails a considerable effort on the part of the Spanish International Cooperation Agency, but it had to be done given the circumstances and was clearly within the scope of the general principles laid down by the Cooperation Act. For its part, the Ministry of the Economy committed 100 million euros for the next five years.

The Spanish contribution has been organised in several phases. In the first, emergency phase, an aircraft was sent by the Spanish International Cooperation Agency on the instructions of the Spanish Prime Minister, in collaboration with the Spanish Red Cross and the International Federation of Red Cross and Red Crescent Societies. Subsequently, also as part of this first phase, other consignments were sent to the world food programme . . .

In a second phase – that is after the first rush – a second aircraft was sent on 6 November 2001 with 40 tonnes of aid from the Spanish Red Cross and Doctors of the World, with finance from the Spanish International Cooperation Agency. The aircraft carried all-terrain vehicles, blankets, drums, tents, first-aid kits, food, sundry materials. . . .

The third phase, organised on the basis of a meeting of donors held in January 2002, is concerned with reconstruction proper, with funds that have been transferred to the United Nations programme for development, for the institutionalisation of the new authorities in Afghanistan. . . .

All this goes to show that there is still a determination to continue working in Afghanistan, to see through the reconstruction of Afghanistan with the same commitment as at the outset five years ago – and I repeat, despite the fact that this was not designated as one of the priority areas of Spanish Cooperation either by the Cooperation Act or by the Master Plan. Nevertheless, given the special circumstances, the Government made a very great effort . . .".

(*DSC-C*, VII Leg., n. 725, pp. 23311–23312).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

In a speech at the 28th plenary meeting of the General Assembly on 13 October 2003, the Spanish Representative at the United Nations, Mr. Arias, made the following statements on the question of Security Council reform:

"(. . .)

As has been noted on various occasions, including at the Millennium Summit, the great majority of Members of the Organisation desire a reform of the Security Council that will make it a more efficient and more participative organ. A reform of that kind can be carried out only if there is consensus on the elements such a reform consists of. The Millennium Declaration echoes this need when it calls on

all to carry out a comprehensive reform of the Security Council in all its aspects. The clarity of the Declaration is obvious and completely excludes any partial focus. Unfortunately, we are still far from reaching consensus on the various aspects of reform, and, therefore, discussions in the Working Group of the General Assembly should continue.

One of the key aspects of reform is the decision making process in the Council, including the veto. The question of the veto is an essential aspect of Council reform. It is of prime importance. The great majority of States unhesitatingly wish that this unparalleled instrument of power be eliminated or – if nothing else – reduced in scope.

However, we know that our ambition is somewhat illusory. Those possessing the veto power are unlikely to surrender it, even partially. We also know that the status of permanent member is inexorably linked to the veto power. Bearing that in mind, an obvious question must once more be asked: do we realize – in 2002, 57 years after the last war – what it would mean to increase the number of permanent members, based on more than debatable criteria, in addition to granting them the all-powerful prerogative of being able to veto any resolution of the Council? Can we, today, collectively and bitterly lament that the United Nations has been prevented from acting because the vote of a single member has paralysed it, and then tomorrow grant that same paralysing power to another handful of chosen States? The veto is a crucial element of reform, in particular as it relates to an increase in the membership. When, in the twenty-first century, there is a demand among Members to abolish an existing power, it is, to say the least, strange that we should grant that power to yet another group of countries. Aside from acting paradoxically, we would be creating a new class of privileged States, poorly serving the United Nations".

(UN Doc. A/57/PV.28, pp. 15–16).

2. North Atlantic Treaty Organisation

On 3 February 2003, in reply to a parliamentary question, the Government reported to Parliament on the creation of a rapid intervention force within NATO:

"1. During the informal meeting of NATO Defence Ministers at Warsaw on 24 September 2002, the United States proposed the creation of a force to be called 'NATO Response Force' (NRF). This proposal received the political backing of all the Defence Ministers, among them the Spanish Defence Minister. Thereafter, military authorities commenced studies to determine the nature, size and composition of the force.

On completion of the preliminary studies, a report was submitted at the Prague Summit of Heads of State and Government, recommending that the summit approve the creation of the force referred to and that it order the Atlantic Council, with the advice of the military authorities, to develop the idea of this force and report the results at a meeting of Defence Ministers in the spring of 2003. This report was supported by the Spanish Prime Minister.

Having regard to the territorial scope, we would note that the territorial scope defined in article 6 of the North Atlantic Treaty was superseded by the Strategic Concept of 1999, which contemplated operations 'beyond the Allies' territory' (article 52) and 'when and where necessary' [article 53.b)]. Having regard to defence against terrorism, the Alliance has approved document MC 472 (NATO military concept for the fight against terrorism), paragraph 20 of which, with reference to counter-terrorism, mentions the possibility of actions against terrorists and those harbouring them 'as and where required'.

Finally, we should note that the NATO Response Force and the European Union's 'Headline Goal' are mutually reinforcing initiatives.

2. The NATO Response Force (NRF) must be capable of undertaking all kinds of missions, whether as a force to respond to a crisis, as a force that is deployed to demonstrate the Alliance's resolve and reinforced later, or as a force to be deployed initially in a large-scale operation. Also, the missions to be undertaken by the NRF include those intended to combat terrorism. At the same time, this force will be the focal point of improvements in the Alliance's military capabilities.

3. This force will not be approved until spring 2003; at the moment, the NATO military authorities are working on its composition, the system of rotation of forces, requirements, training and activation. Part of the forces that will comprise it will probably come from the pool of forces in the new NATO forces structure. However, it is too early to determine what the national contribution to the NRF will be, given that its structure has not yet been developed. Spain has not yet committed any unit to the NATO Response Force.

4. If and when Spain offers forces, these will be existing forces, and none will have to be created for that specific purpose. Such forces would probably be taken from the land and sea High Availability GHQs and from high availability air units.

These forces must be interoperable and must possess the capabilities required by the Alliance, which means they may have to be equipped with the latest technologies. This would favour not only NATO but also the capabilities of the forces offered to the EU 'Headline Goal', and it would improve the capabilities of the Spanish armed forces.

5. We would note first of all that defence is a commitment shared by all the allies in the Alliance and cannot be made to depend disproportionately on one single country (the USA). This initiative offers the possibility of sharing the defence burden. In the event of an operation, the USA has sufficient capability to act alone without depending on the NATO Response Force, and from an operational standpoint it would be simpler to act without it.

The decision to deploy a force like the NRF is taken by the Atlantic Council, a body subject to a consensus rule, in which every country has speaking and voting rights and hence the interests of the USA are constrained by those of the other allies. Likewise, the NRF can be used to defend the common interests of any of the allies and not only those of the USA".

(*BOCG-Congreso.D*, VII Leg., n. 485, pp. 158–159).

3. World Trade Organisation

On 24 March 2003, in reply to a parliamentary question, the Government explained its position at the World Trade Organisation (WTO) as regards access to essential medicaments by the poorest countries:

"1. . . . the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 'can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all'.

2. The Doha Declaration refers not to authorisation to produce generics but to the possibilities of countries with no or insufficient manufacturing capacity to make effective use of compulsory licensing.

3. Improved access to essential medicaments is granted to the poorest countries (there is no mention of persons), and this benefits the poorest people in those countries.

(. . .)

The posture defended by Spain

The EU has been very actively seeking a solution throughout this process and has repeatedly acted as a mediator in overcoming the existing differences. Spain has played and will continue to play a significant role in upholding the Community position.

Spain's interventions take place within the framework of the Community procedure for discussion and adoption of decisions (133 Committee, COREPER, General Affairs and External Relations Council [GAERC] and Community coordination at Geneva). However, the positions defended by Spain throughout the process are readily identifiable.

a) In the preparatory stage of the Doha Conference, Spain showed great sensitivity to the concern of the developing countries. In a speech to the WTO Conference at Doha on 10 November 2001, the Second Deputy Prime Minister and Minister of the Economy stated in this connection:

'Another subject to which Spain attaches great importance is the needs of countries afflicted by epidemics and serious health crises. We believe it is essential to give this issue our best attention and to ensure that these countries can benefit from flexibility in the TRIPS Agreements, thus encouraging effective and immediate access to medicaments by their populations. To stimulate innovation and research for the development of new drugs and improvement of existing ones is in the interests of all, and especially of those countries afflicted by pandemics'.

b) During its Presidency of this Council in the first half of 2002, Spain constantly encouraged the spirit of leadership and mediation exhibited by the EU in the WTO. It also supported the implementation of the Commission's Action Programme to speed up the fight against HIV/AIDS, malaria and tuberculosis, within the context of the campaign to reduce poverty initiated during this Presidency.

c) During the negotiations it has consistently supported the Commission's position in favour of the compromise proposal of the President of the GAERC.

d) After the breakdown of agreement in 2002, Spain still favours a definitive solution, particularly in the terms that could have been agreed on 20 December, based on the proposal of the President of the GAERC. While such a definitive solution is not forthcoming, Spain supports a moratorium, which means not sanctioning those exporting to countries which need medicaments produced under compulsory licence".

(*BOCG-Congreso.D*, VII Leg., n. 510, pp. 122–123).

4. World Health Organisation

On 5 August 2003, in reply to a parliamentary question, the Government explained Spain's position with regard to the possible accession of Taiwan as an Observer to the World Health Organisation:

"Spain's position as regards the possibility of Observer Status for Taiwan at the WHO has been dealt with by the European Union in the Coordination Group for Asia (COASI). The EU seeks a practical rapprochement on this issue, such that all persons can benefit from the highest possible level of health as laid down in the WHO Constitution. In this connection, all possible means of cooperation between Taiwan and the WHO that are compatible with the European Union's general 'one China' policy should be explored, . . .

The last World Assembly of the WHO in Geneva in May last year decided not to include the subject of possible Observer Status for Taiwan in its agenda. There were two addresses on this issue in the Plenary Session:

- Senegal and Taiwan pronounced in favour of including the point in the agenda and hence granting Taiwan Observer Status, linking the issue to the present atypical pneumonia epidemic.
- On the other side, China and Pakistan pointed out that the WHO regulations are clear as to the conditions that have to be met to become a member and/or observer, which conditions are not met in the case of Taiwan.

Thus, as in previous years, the issue remains pending. Taiwan indicated that its government would continue to claim its right to be present in this international organisation".

(*BOCG-Congreso.D*, VII Leg., n. 578, pp. 564–565).

XIII. EUROPEAN UNION

1. Intergovernmental Conference. Future of the Union

a) In general

On 24 September 2003, in reply to a parliamentary question on Spain's position vis-à-vis the IGC, the Government expressed its support for the following issues:

". . . The draft treaty includes more than 90 per cent of the proposals that Spain made at the Convention through its Minister of Foreign Affairs. Spain would like to see the draft approved before the end of this year. . . . The Spanish government is resolved to submit this commitment to stronger European institutions not only to the opinion of Parliament but also to the population as a whole by referendum. . . .

(. . .)

Having regard to the contents, I should like to explain the Spanish Government's position. . . . The fact that there is a single treaty, that the two treaties should have been merged, that there is no longer any distinction between the European Community and the European Union, we see as an advance, we see as a contribution, and we believe that this single treaty is most certainly a new step forward that Spain will defend. This we must do, but not on the basis of a clean slate. It must be based on the principle of the succession of rights and obligations, a rule that is *sine qua non* in the succession of international treaties and which we regard as a good principle. It is also a good thing that those rules of international law that govern the practice of good faith among partners should goveru the succession of treaties; the succession of regulatory legal instruments – constitutional in this case – in the European Union.

In the second place, the division into pillars is now to be eliminated. This is a legacy of Maastricht which was undoubtedly necessary at the time but which has proved a tremendous obstacle to the evolution of the European Union. . . .

(. . .)

In the third place, there is something that Spain has proposed and with which it agrees, and that is the need to endow the European Union with a single legal personality. . . . All those in the Convention today know that to endow the European Union with a single legal personality is to advocate a stronger European Union, a European Union that is not only economic but also has a soul.

In the fourth place it was essential to simplify the instruments and procedures for legislative action. . . . To create a regulatory sphere similar to that already existing in all constitutional systems of the European Union, which distinguishes between laws and framework laws, is something that undoubtedly clarifies and facilitates matters. To have a second level of European regulations whose adoption may be delegated to the Commission if need be also enhances the regulatory capacity of the European Union. Finally, the existence of executive acts . . . undoubtedly also makes for greater agility and clarity in the way decisions are made in the European Union. Also, the procedures for preparation of all these instruments has been simplified – and Spain agrees with this – so that the procedure for co-decision making between the Council and the European Parliament has become the general rule for approval of all Union regulations having the rank of law.

There is a fifth point with which Spain agrees, and that is the incorporation of the Charter of Fundamental Rights in the draft treaty. The sixth point that Spain agrees on – as the Honourable Member has in fact noted – is the strengthening of the space for common security and freedom. In this connection Spain has

undoubtedly played a pioneering role, acknowledged by all the countries in the European Union".

(*DSC-P*, VII Leg., n. 280, pp. 14697–14699).

Also, appearing before the Joint Commission for the European Union on 7 October 2003 to report prior to the European Council at Brussels on 16–17 October, the Minister of Foreign Affairs, Ms Palacio Vallelersundi, referred once again to other aspects proposed by the Convention which constitute an advance in the opinion of the Spanish government. She referred firstly to the twofold legitimacy of the European Union:

"(. . .)

. . . The Convention's proposal clearly establishes in article 1 that the European Union rests on a basis of twofold legitimacy, being the product of the will of the citizens and of the States. The Union is based upon the will of the States, which confer upon it competences with which to attain common objectives. Thus, the States are still the basic element and the essential factor in the process of European integration. For that reason article 5 of the draft treaty clearly establishes that the Union will respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. In this connection, the same article further states that the Union will respect the Member States' essential functions. In particular it will be intended to ensure their territorial integrity, maintain law and order and safeguard internal security. All this is not, nor should it be, an obstacle to acknowledgement by the Union of the reality of what has come to be known as the regional dimension of the process of European construction, in particular as regards respect for the principle of subsidiarity.

As I said, the Union is also a union of citizens. The set of proposals in the Convention's draft is informed by concern for citizens, for the promotion of their interests and for the defence of their individual rights. In our view this marks an end to the attempt to lump individuals together in collective constructs possessing putative organic rights, whose origin has no place in the future of European construction. In this context, the most significant element of the reform is the incorporation in the Treaty, with full legal force, of the charter of fundamental rights proclaimed by the Union on 7 December 2002. The Government attaches particular importance to this incorporation".

She then went on to mention the area of freedom, security and justice:

"In another different sphere, the European area of freedom, security and justice is strongly promoted by the Convention's proposals. This is a sphere in which Europe as an entity is especially manifest to the citizens . . . We would highlight the way that the draft enshrines the principle of mutual recognition of judicial and extra-judicial decisions in both civil and criminal matters. The draft treaty also incorporates the embryo of a European public policy where it envisages the possibility of enacting rules of criminal law in connection with acts which have a particular

impact or are particularly repugnant to legal conscience, where such acts have a trans-national dimension or are harmful to European interests or to a policy of the Union. At the same time, practical cooperation among competent national administrations is reinforced. Nor should we forget that the Convention's proposals include the enshrining of a genuine common policy on asylum and immigration. Finally, in this connection we would highlight the generalised introduction of voting by qualified majority and of a co-decision procedure between Council and Parliament".

And lastly, with respect to external action, she said:

"The most important development as regards external action is the creation of a European Ministry for Foreign Affairs using the double poll formula. This new figure proposed by the Convention will act solely under mandate from the Council on matters of external policy and common security; however, the draft also proposes that it be part of the Commission, coordinating the Commission's external relations area. On the other hand, the Convention has not gone as far as Spain would have liked in proposing the use of qualified majorities in external policy. Spain would have liked qualified majorities to be the general rule, with exceptions to that rule for emergencies, so that unanimity is required where a Member State justifiably claims a national interest.

On defence, progress was and still is absolutely vital if we wish to develop a common external and security policy that is minimally credible. At the same time, it is an area in which formulas for flexibility must be accepted. The Convention's proposal provides for this with what are called structured cooperation and closer cooperation. Structured cooperation means groups of Member States which are willing to acquire stricter commitments in connection with military capabilities with a view to operational missions. Closer cooperation means a mutual defence clause, rather like article 5 of the Treaty of Brussels creating the WEU. The Government supports such flexible cooperation formulae and has already expressed its desire that Spain be part of such groups in the future.

At the Inter-Governmental Conference, Spain also came down clearly in favour of the Union as a player of weight at the international headquarters, which by no means need signify a weakening of the transatlantic link – to the contrary, it should help reinforce it. The philosophy underlying the Convention's proposals as regards European security and defence policy is exactly that presented at the Convention on 29 April last by representatives appointed by the Government".

(*DSCG-Comisiones*, VII Leg., n. 151, pp. 3705–3706).

b) Ultra-peripheral regions

Appearing before the Joint Commission for the European Union on 17 June, the Minister of Foreign Affairs said:

"At the instance of the Commission, of France, of Portugal and of Spain, there is a title on common provisions containing the content of the present article 299.2

of the European Community Treaty on the regime applicable to ultra-peripheral regions. In this way not only is the wording of the present article maintained, but its location is improved from a legal viewpoint, as it is now clear that the regime applying to ultra-peripheral regions is a horizontal norm which modulates the way in which the Union's common policies are applied to certain regions.

(. . .)".

(*DSCG-Comisiones*, VII Leg., n. 145, pp. 3546–3549).

c) Presidency of the European Council

Addressing the Joint Commission for the European Union on 29 April 2003, the Minister of Foreign Affairs stated:

"Spain has been a defender and was a pioneer regarding the idea of a stable presidency of the European Council. The draft treaty presented to the Convention last week takes up the ideas defended by the Spanish and other governments for a stable, full-time president whose mandate would be incompatible with the holding of a position of national responsibility or in another European institution and who would be elected by the European Council from among its members or from among persons having been part of the Council previously. In addition, such a president could be accompanied by a bureau, cabinet or committee composed of three members of the European Council elected by a system of fair rotation. We view this proposal positively and believe that it would help to preserve the essential characteristics of the process of European integration".

(*DSCG-Comisiones*, VII Leg., n. 140, p. 3429).

On 3 December 2003, the Minister of Foreign Affairs again referred to this issue when analysing the proposed amendments to the draft treaty on the Constitution presented by the Italian presidency prior to the European Council of December 2003:

"As regards the presidency system, the Italian proposal confirms the elimination of references to rotating six-monthly presidencies and remits the question to a decision of the European Council, to be adopted unanimously, which will specify the details of the presidency system. In this context the Italian presidency has also presented a proposal for a decision. This entails a system of team presidencies. Each team would be composed of three States, and after the debate that took place at Naples the presidency does not rule out increasing the duration of each presidential mandate for such teams from twelve – the original proposal – to eighteen months. The above-mentioned proposals essentially reflect the position of Spain, albeit we would have preferred the teams to be composed of four members and the duration to be increased to twenty-four months, the idea being to better ensure implementation of each team's work programme and more coordination between that work programme and the progress of each budget period".

(*DSCG-Comisiones*, VII Leg., n. 159, p. 3913).

d) Minister for Foreign Affairs of the Union

Addressing the Joint Commission for the European Union on 29 April 2003, the Minister of Foreign Affairs, Ms. Palacio Vallelersundi, stressed the need to specify the status of the Minister for Foreign Affairs, and in particular his status in the Commission in order to avoid institutional imbalances:

> ". . . The draft articles envisage the creation of a minister for Foreign Affairs who will take on *ad personam* the functions currently discharged by the high representative and the commissioner for external relations. Such a new figure is essential. However, there remain to be defined a number of important issues regarding how he fits institutionally between the Council and the Commission. For instance, it must be ensured that this new figure acts in CFSP matters under mandate from the Council, and it will also have to be considered to what extent, if he is a full member of the Commission, he can properly discharge the duties of the presidency of the External Relations Council from an institutional standpoint".
>
> (*DSCG-Comisiones*, VII Leg., n. 140, p. 3430).

When reporting to the same Commission at a later date, on 3 December 2003, prior to the Brussels Council, the Minister of Foreign Affairs stated:

> "There is a high degree of consensus on the basis of the latest proposals presented for the presidency. These introduce further details on this figure, which is one of the major achievements and major innovations presented by the Convention. They clarify the presidency's functions as head of the Council for the CFSP and as a member of the Commission; as such, it is responsible for coordinating the external action of the Union. Some clarifications are also made regarding the minister's status as a member of the Commission.
>
> Nevertheless, some issues still remain to be settled. For example the title, since some Member States insist that the term minister is inappropriate; or the presidency of the External Relations Council, which many – including the government of Spain – consider incompatible with full membership of tbe Commission for the minister. For our part, we would also like clarification of some other more concrete but no less important issues, such as the extent to which rotation of the ministry among the Member States should be equalitarian".
>
> (*DSCG-Comisiones*, VII Leg., n. 159, p. 3913).

e) Composition of the Commission

On this subject, in her appearance before the Joint Commission for the European Union on 29 April 2003, the Minister of Foreign Affairs, Ms Palacio Vallelersundi, made Spain's position clear:

> "The draft treaty presented to the Convention envisages a reduced Commission with a maximum of 15 members.
>
> (. . .)

The new Member States consider it essential for the success of the European integration process that they have a commissioner of their own nationality. The Treaty of Nice provides that the composition of the Commission ought in principle to be one commissioner per Member State, and therefore the most populous countries, among them Spain, will give up a commissioner until the twenty-seventh State accedes to the Union. At that time the Council, acting unanimously, will determine the number of Commission members, which will be smaller than the number of Member States, and a rotation system based on the principle of equality, so that the demographic and geographic range of all the Member States of the Union is satisfactorily reflected. The Government is in favour of a strong and effective Commission and believes that this can best be achieved through a reduced Commission; however, we do not believe that the Convention is today the forum nor this the appropriate time to reopen a difficult debate which was settled at Nice with the provision for a reduction in the number of commissioners. Unless we wish to bog down the work of the Convention, this is clearly a bridge that we should not cross until we come to it – that is, when the twenty-seventh State joins the Union. In the meantime, let us give the new Member States the opportunity to sit on the Commission and thus gain personal experience of the institutions whose prime purpose is to safeguard the general interest, and with that experience let them have the opportunity to understand our view as to the desirability of a slimmed-down Commission. As regards the president of the Commission, the debate has focused on the roles to be played by the European Parliament and the Council in his election. Practically all the Member States advocate a greater role than at present for the European Parliament. Where differences arise is in defining the terms of its intervention. At the centre of the debate is whether it is proper that the Parliament alone elect the president of the Commission and the European Council be confined to ratifying the appointment, or whether the Parliament should decide on a candidate proposed by the European Council. For the Spanish government, and for the governments of other Member States, the essential thing is to preserve the independence of the Commission. If we want a strong Commission, its independence must be assured in respect of both the Council and the Parliament, and indeed also in respect of political parties. On this point, the document presented to the Convention last week provides that the European Council, by qualified majority, will propose a candidate to the Parliament and that this candidate will be elected by a majority of the members of the European Parliament. That is a proposal that we shall examine with great interest from a global perspective on institutional reform. I can say now that in any event the Government is not in favour of proposals which, as I said, signify a politicisation of the presidency of the Commission or the College of Commissioners, as this would water down the essential characteristics of the Commission as representative of the general European interest and depositary of the power to initiate legislation".

(*BOCG-Comisiones*, VII Leg., n. 140, p. 3430).

f) Voting system in the Council

Appearing before the Joint Commission for the European Union on 29 April 2003 to report on the debate in the informal Athens Council, the Minister of Foreign Affairs, Ms Palacio Vallelersundi, expressed Spain's reservations in this respect:

> ". . . The Government has systematically supported the extension of voting by qualified majority to new areas, excepting only those that we have considered necessary for clearly-defined reasons of national interest. Nonetheless, we have made it clear throughout the debates at the Convention that this position of acceptance of qualified majorities is based upon respect for the agreements reached at Nice on the system of voting, which agreements have since been ratified by the 25 in the various treaties of accession. However, the draft treaty presented at the Convention last week proposes a reformulation of the qualified majority such that it would not be based on the weighted voting agreed at Nice but would be defined as a double-majority system consisting of a majority of Member States representing at least three-fifths of the population of the Union. I wish to make it absolutely clear that this proposal is not acceptable to the Spanish government. The current reform of the Union cannot bring into question the balances achieved at Nice without risk of the entire exercise failing. Moreover, a modification such as that proposed in the definition of the qualified majority would seriously upset the balances and agreements achieved in the enlargement process, including the conditions on which the new Member States have accepted the enlargement. We therefore believe that this is not a good proposal".
>
> (*BOCG-Comisiones*, VII Leg., n. 140, pp. 3429–3430).

Later, on 7 October 2003, the Minister returned to this issue:

> ". . . highlight the reform of the system of voting in the Council as agreed at Nice. At Nice, despite the reforms tabled in the European Parliament to accommodate the parliamentarians of the new Member States – a process in which Spain adjusted its participation – the fact is that Spain's global institutional position in the European Union came out very well, thanks in particular to Spain's specific weight in the European Council. The Convention's proposals entail changing from a system of weighted voting to a double-majority system, of Member States and population, in which the vote of half plus one of the Member States representing 60 per cent of the population would count as a qualified majority. It is public knowledge that both during and after the Convention, the Government placed particular stress on the fact that we did not accept this proposal, which we believe is in flagrant breach of the balances so arduously achieved at Nice. Moreover, the system proposed by the presidency of the Convention is harmful for the future of the Union, as in practice it eliminates the fundamental balances on which European construction has been based and on which the work of the Union has been founded. This new system would impoverish the Union by radically reducing the weight of the medium-sized States and hence the influence of the majority of the States in the Union. The new system of vote distribution runs directly counter to Spain's interests,

which are not short-term interests and which the Spanish government has sought to maintain".

(*DSCG-Comisiones*, VII Leg., n. 151, p. 3706).

g) European Security and Defence Policy

In reply to a parliamentary question on 1 July 2003 regarding the European Security and Defence Policy (ESDP), the Government explained the Spanish position on the ESDP and its proposals to promote it:

"The position expressed by the Government may be summarised as follows:

- Spain views with satisfaction the recent progress in the sphere of the ESDP, and likewise the debate currently taking place within the framework of the Convention on the need for the ESDP to address the present crises and security challenges more effectively and coherently.
- Strengthening of the transatlantic link is essential to deal with new threats, and EU-NATO cooperation in particular will help increase the effectiveness of both organisations in crisis management.
- Europe needs to do more for its own security and defence, especially to improve its own capacity to act independently in crisis management when NATO as such is not involved.
- Spain proposes a number of concrete measures to achieve further advances in the ESDP. All these measures have been proposed within the institutional channels of the Union, and particularly within the Convention.

Details of these measures can be found in the document on Spain's contribution to the ESDP, which is attached as an annex.

ANNEX

European Security and Defence Policy

Spain's contribution

(. . .)

– On the basis of the experience gained in the FYRM, and as the EU's capabilities are further developed, the EU ought to progressively take on commitments in military operations for crisis management, in order to augment the Union's contribution to international peace and security. The EU has already expressed its willingness to take over from the SFOR in Bosnia Herzegovina.

– The EU should take whatever steps are necessary to reinforce the command and control measures and capabilities available for Union operations. The EU needs at least a permanent multinational European HQ as a common European resource. This would enable the Union on short notice to undertake autonomous crisis management operations requiring a rapid response where NATO is not involved. This would make for more balanced participation of the Member States in the chain of command. The different European multinational formations created by groups of European countries (Eurocorps, Eurofor, Euromarfor, etc.) could be assigned to this European GHQ as high-availability forces. We could also consider the possibility of basing the new European GHQ on the GHQ of one of these multinational formations.

– Efforts should be intensified to attain in 2003 the initial military capability goals set in the Helsinki General Objective. The EU should develop new capability targets on the basis of the results of the European Capability Action Plan. These objectives should be designed to ensure that the forces available to the Union are capable of meeting the high military standards required in the new security context, including the necessary flexibility, rapid deployment, capacity to deal with terrorist threats or weapons of mass destruction and capacity to undertake simultaneous operations. Any new capability should be available for operations directed either by the EU or NATO.

– The role of the Defence Ministers in the management of military aspects of the ESDP should be reinforced. We need to consider the possibility of setting up a Council of Defence Ministers.

– A Minister for External Affairs of the Union needs to be created. As the representative of the Council, this figure would help in defining and implementing the Common Foreign and Security Policy, including the ESDP.

– The security and defence aspects of the Seville mandate on the contribution of the CFSP, including the ESDP, to the fight against terrorism need to be fully implemented. More attention should be paid to these aspects of security and defence. We need to consider the possibility of developing a military concept of defence against terrorism and other new threats.

– As has already been proposed in the Convention on the Future of Europe, a solidarity clause should be included in the new Constitutional Treaty. Such a clause would establish the principle of solidarity and mutual assistance among Member States to deal with the threats menacing our common security, including in particular the threats posed by terrorism and the proliferation of weapons of mass destruction.

– We need to establish a broader definition of the Petersberg missions to include other tasks entailing the use of military resources, including the prevention of conflicts, post-conflict stabilisation operations, military guidance, disarmament operations and support for third countries in the fight against terrorism. It should also include the use of military resources in support of Member States against the threat of terrorism and weapons of mass destruction.

– While preserving the rule of unanimity for decisions relating to the ESDP, the new Constitutional Treaty should provide a flexible framework for different means of achieving closer cooperation which would be open to all Member States willing and able to progress in that direction. In particular, we are promoting the following mechanisms:

- Implementation of Petersberg missions by a group of Member States that so wish and possess the requisite capabilities.
- Establishment of a European Military Capabilities Agency, possibly on the basis of existing frameworks of multinational cooperation in matters of armaments (OCCAR, LOI, etc.). Such an agency would identify requirements and assess results in the process of attaining the target capabilities. It would promote cooperation to achieve these objectives with the best

cost-effect ratio. It would also provide a framework for multinational armament projects and for better coordination of research and development effort by Member States in this sphere.

- Establishment of structured cooperation among Member States willing and able to meet stricter military capability requirements, particularly in qualitative terms, with a view to undertaking military operations that entail greater demands.
- Establishment of a mutual defence clause in a Protocol annexed to the Constitutional Treaty, for which those Member States so wishing can opt under certain conditions and in a manner entirely consistent with NATO commitments. This would reproduce within the framework of the EU the commitment already existing among WEU members in the Brussels Treaty, without in any way interfering with NATO".

(*BOCG-Senado.I*, VII Leg., n. 689, pp. 85–87).

2. Enlargement

Reporting to the Joint Commission for the European Union on 3 December 2003 on the European Council to be held at Brussels later that month, the Minister of Foreign Affairs referred expressly to enlargement of the Union:

"Having regard to enlargement, I would begin by recalling that Spain's commitment to the fifth enlargement is absolute, to the extent that on 24 October last the Parliament ratified the accession of the ten and the ratification instrument was subsequently deposited with the Italian government on 26 November . . .

We also largely agree with the conclusions of the reports . . . We find the Commission's proposal that the signing of a general accession treaty be arranged for a date in 2005 satisfactory. Also, we believe it particularly important that the objectives identified by the next European Council should include both the accession of Bulgaria and Romania in January 2007 and the conclusion of the negotiations in 2004, preferably with the present Commission . . .

Spain likewise agrees with the conclusions of the Commission's reports on Turkey's candidature. In the last year Turkey has made great strides as regards the priorities listed in the pre-accession association document. Nonetheless, additional efforts will be necessary in such spheres as enhancing the independence and functioning of the judiciary, the general framework for the exercise of fundamental freedoms and closer alignment with European practice in respect of relations between the civil power and the armed forces. According to the guidelines laid down by the European Councils of Helsinki and Copenhagen, as a candidate for accession Turkey is subject to the same criteria as all other candidates. In this context, we would insist once again that as soon as Turkey evidences compliance with the political guidelines, the European Council must take the decision to initiate negotiations for accession.

As to the Cyprus dispute, this is not one of the political criteria, although it is true that from a strictly political point of view there is no ignoring the fact that

the lack of a solution has clearly negative effects. For that reason the Turkish authorities must use their influence over the Turkish Cypriot leader to bring him back to the negotiating table and reach a permanent global settlement based on the proposals of the United Nations Secretary General, and that before 1 May next. Finally, as regards Croatia, next March the Commission will present an opinion on its application for accession, based upon the advances achieved with respect to the criteria defined at Copenhagen in June 1993 and subject to the terms of the stabilisation and association agreements".

(*DSCG-Comisiones*, VII Leg., n. 159, pp. 3911–3912).

3. Area of freedom, security and justice

a) Immigration

With regard to immigration, in an address to Congress in full session on 25 June 2003 to report on the European Council held at Thessaloniki on 19 and 20 June, the government said:

"At Thessaloniki we agreed that the financial resources should be allocated to the preparation of a common European policy on asylum and immigration for the years 2004 to 2006. Also in the financial perspectives from 2006 on. This express acknowledgement constitutes a success for the Greek presidency, building on the foundations laid at Seville, and it has received the encouragement and support of our country.

Thessaloniki initiated a Community-wide common policy on integration of legal residents in the Union. This sphere had hitherto been the exclusive province of the States. Specifically, there are three novelties: a definition of common principles, establishment of a European migration network, which may eventually become an agency, and the drafting of an annual report by the Commission on immigration and integration.

The European Council also addressed the issue of the return of illegal immigrants. On the initiative of Spain, the Council acknowledged the need to establish a specific Community instrument, with financial provision, to coordinate and promote the return of illegal immigrants.

Having regard to the Union's relations with third countries, carrying on in the line initiated at Seville, the Council established a mechanism for assessing relations with countries that do not cooperate with the Union in the fight against clandestine immigration. In this connection I should like to highlight the consensus that there is on the need to examine legal means that will enable nationals of third countries to emigrate to the Union, taking into account the Member States' capacity of absorption, within the framework of enhanced cooperation with the countries of origin. Spain is already applying such a system to facilitate the orderly arrival of legal immigrants to this country".

(*DSC-P*, VII Leg., n. 263, pp. 13617–13618).

b) External borders

In reply to a parliamentary question on 9 January 2003, the Government explained its policy with respect to Spain's condition as an external border of the European Union:

"Spain plans to participate in nine of the projects on management of external borders that have been examined by the Strategic Committee on Immigration, Frontiers and Asylum during the meetings held last July and September.

With these projects in view, at the last JHA Council (Justice and Home Affairs) meeting on 14–15 October the Danish presidency presented a Document listing the initiatives in progress and setting deadlines for their implementation and the order of priorities in connection with the plan. These projects are open to participation by the candidate countries since their geographic situation means that they will play an important role in controlling the external borders.

The following operations and projects have been set in motion:

I. Joint operations on external borders:

1. Projects involving maritime borders.

This initiative was approved on 26 September last. It is directed by Spain, Greece, the United Kingdom and Italy and is a combination of four different operations in the Mediterranean, two of which will be carried out before the end of this year. These operations, which were presented by Spain, will focus on the control of ports and control on the high seas.

The first of these is called ULYSSES and its objective is to control illegal seaborne immigration, especially from North Africa and from the coasts of the Western Sahara to the Canary Islands.

The objective of the second, called OPERATION RIO IV, is to control and assess risks of illegal immigration in the EU. These two operations will be coordinated by Spain and are open to all Member States of the EU.

In addition there are a further two operations: one is to be carried out before the end of June 2003, and the fourth, which is to be carried on continuously, will focus on cooperation with countries of transit and countries of origin.

2. Operation VISA, to be implemented at international airports in the Member States, was approved on 22 July last and focuses on the possible improper use of Schengen visas.

3. Operation Eastern Land Borders, approved on 26 September last. To be directed by Greece.

4. A Land Frontier Cooperation Centre is to be set up. It will be directed by Germany and will act as coordinator of operations on land borders. The first meeting of the participating countries was held in Berlin on 10 and 11 October last.

II. Immediate commencement of pilot projects open to all interested Member States.

There is a project proposed by Italy called the International Airports Plan. Approved on 16 September last, its aim will be to examine the possibilities of

introducing common control procedures, training courses, personnel exchanges and detection of false documents.

III. Creation of a network of liaison officers linking the Member States' immigration services.

The Presidency has initiated a survey of liaison officers in 14 different high-risk countries and will present a report on the current degree of cooperation in this respect. There is also a pilot project directed by Belgium on a network in the Balkan region.

IV. Preparation of a common model for analysis of risks, with a view to arriving at a common, integrated assessment of these risks.

There is a project on this which was approved on 22 July last and is directed by Finland. In view of the importance of this common analysis, Finland has been asked to speed up the completion of the project so that a common risk analysis model can be presented before the end of this year. For its part, the Danish presidency has asked EUROPOL and several groups in the Council to bring their own experience to bear on this subject.

V. Establishment of a common core curriculum for border guard training.

There is a project directed jointly by Austria and Sweden, which should be concluded by the end of June 2003.

VI. Consolidation of the European regulations relating to borders.

The Commission has presented a document on small-scale cross-border traffic, now being debated by the Member States, which if accepted will entail amendment of the Common Manual on external borders".

(*BOCG-Senado.I*, VII Leg., n. 571, p. 31).

Reporting to Congress in full session on 23 October 2003 on the European Council held at Brussels on 16 and 17 October, the Government referred to the Plan for management of the Member States' external borders:

"Having regard to development of the external borders plan, we have been pressing for the creation of a European border agency – a proposal that the Commission ought to present before the end of the year. This agency will reinforce coordination of the activities already being carried on, without the need to replace the Member States' corps of border guards. Also, the Council has expressed support for the start-up of border control centres, which should operate in close cooperation with one another. The Berlin coordination centre for land borders and the Helsinki risk analysis centre are already operational. There are others in the pipeline, such as the air border centre, to be located in Italy, and two maritime border centres, one for the Eastern Mediterranean in Greece and the other for the Western Mediterranean, to be located in Spain, specifically at Algeciras. This last project, in which our Police and Civil Guard will be involved, is being finalised and implemented by the Ministry of the Interior".

(*DSC-P*, VII Leg., n. 288, p. 15177).

5. External Relations

a) Albania

In reply to a parliamentary question on 11 March 2003 on whether it supports the association negotiations between the European Union and Albania currently being promoted by the European Commission, the Government stated:

"The Government of Spain is a firm supporter of what is known as the Zagreb process, which since November 2000 has been the basis for progressive consolidation of relations between the EU and the countries of south-western Europe that are involved in the Stabilisation and Association Process.

The Government shares the favourable disposition of the European Union and its Member States regarding Albania's integration in Community political and economic strnctures and recalls that the European Councils of Feira and Nice sanction Albania's status as a 'potential' and 'foreseeable' candidate for accession, provided that it meets the criteria defined by the European Council at Copenhagen in 1993.

The Government takes the view that the negotiations now begun for a Stabilisation and Association Agreement with Albania are the logical consequence of a gradual process of approximation and exchanges with their authorities, in which both the Commission and the Member States have made a special effort to follow the dictates of prudence and good judgement . . .

(. . .)".

(*BOCG-Senado.I*, VII Leg., n. 612, pp. 48–49).

b) Latin America

Reporting to Congress in full session on 17 December 2003 on the conclusions of the European Council held at Brussels in December 2003, the government stated:

"Having regard to Latin America, the Council took a favourable view of the progress made in the negotiations for a European Union-Mercosur association agreement. As a result, there is now a prospect of concluding negotiations with Mercosur without this being contingent, as on previous occasions, on the conclusion of the World Trade Organisation round. . . . The two agreements on political dialogue and cooperation with the countries of the Andean Community and Central America were signed in Rome on the 15th last . . . Spain has been a firm advocate of these decisions, which constitute a clear example of the attention that the Union needs to pay to relations with Latin America and the Caribbean".

(*DSC-P*, VII Leg., n. 306, p. 16145).

c) Cuba

Reporting on 25 June 2003 on the European Council held at Thessaloniki on 19 and 20 June, the Government stated:

"... at the European Council, the 25 ratified the previous decisions taken in connection with recent decisions by the Cuban government. The European Union once again expressed its firm opposition to the repeated violation of fundamental rights and freedoms in Cuba. We cannot at this time forget the 75 political dissidents who have been recently jailed, with their sentences confirmed, or the close to 300 others already serving prison sentences for offences purely of opinion. The Union has therefore reiterated that its relations with Cuba will not be completely normalised until the said rights and freedoms are fully respected as stated in the common position adopted by the European Union in 1996".

(*DSC-P*, VII Leg., n. 263, p. 13619).

d) Mediterranean

Regarding the Mediterranean partnership, in reply to a parliamentary question on 4 March 2003 on the EU's free trade agreements with countries in the Mediterranean area and their repercussions for Spain, the Secretary of State for European Affairs, Mr. De Miguel y Egea, said:

"There has been considerable progress in the constitution of the Euro-Mediterranean Partnership since those first steps at the outset of the Barcelona process which took place in 1995 when Spain occupied the presidency of the European Union.

(...)

This cooperation between the European Union and the Mediterranean countries operates essentially through what are known as Euro-Mediterranean association agreements, inspired by the European agreements between the European Union and the countries of Central and Eastern Europe, which establish a regulatory framework for such matters as trade policy, customs, competition, protection of intellectual property and movement of capital. They also contain rules of procedure that will allow the activation of other sectors of cooperation as appropriate and the future incorporation of other matters such as services, public matters or technical standards.

Since the end of the 1990s there has been a growing fabric of agreements, sufficient to justify use of the term 'partnership'. For instance, the agreement with the PLO came into force in July 1997, the Mediterranean agreement with Tunisia in March 1998, the agreement with Morocco in March 2000 and the agreement with Israel in May 2000. The agreement with Jordan came into force in May 2002, and agreements have been signed but not yet ratified with Egypt (June 2001), Algeria (April 2002) and Lebanon (June 2002). The only country with which a Mediterranean association agreement has not yet been signed is Syria, but negotiations are in progress.

The association agreements also establish a political dialogue, an increasingly important instrument covering all areas of mutual interest, which operates through association councils. All these agreements contain what is known as a democratic clause, an essential element whose infringement may warrant the adoption of such measures as unilateral suspension of financial assistance or trade benefits.

There are still major steps to be made in the field of human rights in the Southern Mediterranean countries, for instance positive or incentive measures such as support for electoral processes or free information media.

(. . .)

As regards Spain, the consequences of the association agreements are positive, with quite favourable effects on the evolution of exchanges and exports. Since the agreements came into force, most of them up to 2002, our trade balance has improved considerably, even although it is still negative on aggregate due to energy imports from Algeria. Of all the Mediterranean partners, leaving aside our imports from Algeria, which are a special case, our main trading partner is still Morocco, followed at a considerable distance by Israel and Tunisia. For investment, Spain's preferred country is Morocco. France is the largest investor in the region; Italy invests in Malta, Turkey and Tunisia; Germany in Turkey and Israel, and the United Kingdom in Cyprus, Egypt and Jordan.

(. . .)

Of particular importance with respect to investment is the creation of a Euro-Mediterranean facility for the promotion of investment, contained in the action plan drawn up at the Valencia Forum . . .

For its part, financial cooperation is governed by the MEDA Regulation . . . MEDA I subsidies are intended basically to finance classic cooperation initiatives: support for economic transition and private sector development, support for structural adjustment and regional cooperation. In future, MEDA financial cooperation will focus progressively more on technical assistance . . .

I should like to conclude by saying that I am convinced that the Southern Mediterranean ought to continue to occupy a prominent place in the external relations of the European Union. I need not stress again that this is certainly so in the case of Spain, as the Spanish government demonstrated during its presidency of the European Union in both 1995 and 2003. The difficulties, or on occasions divergent interests, that may arise in that relationship cannot be allowed to pose insurmountable obstacles to the extension and intensification of cooperation with the countries in that area".

(*DSCG-Comisiones*, VII Leg., n. 128, pp. 3120–3122).

6. Headquarters

On 17 December 2003, the Government informed Congress in full session of the resolution adopted by the European Council held at Brussels in December 2003 to the effect that the headquarters of the Fisheries Control Agency should be located in Spain:

"The Council has reached general agreement on the allocation of the headquarters of various European agencies. The headquarters of the Fisheries Control Agency is to be located in Spain, specifically at Vigo. I am pleased at this decision, which was arrived at after lengthy negotiations that have gone on ever since the summit at Laeken".

(*DSC-P*, VII Leg., n. 306, p. 16146).

XIV. RESPONSIBILITY

1. Responsibility of Individuals

In reply to a parliamentary question, on 18 September 2003, the Spanish Government reported on the reasons why the Spanish representation to the UN Security Council considers that citizens of the United States should be granted immunity from the prosecution by the International Criminal Court of any crimes against humanity:

"Security Council Resolution 1487, adopted on 12 June, renews the provisions of Resolution 1422 of the same date in 2002. Like the previous one, the new Resolution specifically *requests*, consistent with the provisions of Article 16 of the Rome Statute, that the International Criminal Court, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall not commence or proceed with investigation or prosecution of any such case for a twelve-month period starting 1 July 2003, unless the Security Council decides otherwise.

In the light of the provisions of the Rome Statute, to which Spain is a party, and the aforementioned Resolution, and considering Spain's membership of the Security Council, the Government wishes to offer the following explanations:

1. Since the beginning of the talks on a Statute for establishing an International Criminal Court, Spain has been distinguished for its enthusiastic support for this initiative, which is a decisive means of putting an end universally to the impunity of the most serious infringements of human rights and of international humanitarian law.

Today Spain is not only participating actively in setting up the Court, but also, following the signature, is prepared to begin the procedure to ratify the Agreement of Privileges and Immunities and is rapidly progressing with the adaptation of national laws to ensure close cooperation with the Court. Our financial contributions to the maintenance of the Court are furthermore characterized by their punctuality.

2. With respect to Resolution 1487, Spain has considered, like eleven other Council States, there being no vote of opposition, that article 16 of the Rome Statute is invoked in the first paragraph of the Resolution in full conformity with the aforementioned Statute, and that its renewal by no means affects its integrity. Article 16 makes possible precisely what the Security Council has done pursuant to Chapter VII of the Charter of the United Nations, thereby acting with quasi-legislative powers and under the protection of the Rome Statute itself.

3. The provisions of Resolution 1487 do not apply exclusively to the United States or to all United States citizens; rather, as already pointed out, they apply to current or former officials or personnel of any contributing State that is not a party to the Rome Statute. Nor should these people be immune, since the Security Council and Spain do not accept any type of immunity. They should be subject to their national jurisdiction, as laid down by law, for the Rome Statute enshrines the principle of complementarity of national jurisdictions. Furthermore, as already

stated, paragraph 1 of the Resolution establishes that in a particular case the Council could adopt a contrary position with respect to the people in question.

4. The Government took into account the fact that the Council would study the circumstances surrounding each case and, in its opinion, it should not be taken for granted that the invocation of article 16 of the Rome Statute in the future will necessarily become consolidated. As laid down in paragraph 2 of the provisions of the Resolution, the Council should always study the prevailing circumstances, as it did on this occasion, as they may change in the future, and remains at liberty to renew the request for as long as may be necessary, as stated in the Resolution itself.

5. Paragraph 6 of the preamble to the Resolution states that the operations established or authorized by the United Nations Security Council to which the provision refers are deployed to maintain or restore international peace and security, and paragraph 7 likewise determines that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council. This is the aim of the Resolution in question.

7. The Government is not motivated by particular interests or rewards but simply by its abidance by the Rome Statute, which Resolution 1487 fully respects, and by its determination to meet its obligations as a member of the Council as regards the maintenance of international peace and security".

(*BOCG-Congreso.D*, VII Leg., n. 603, pp. 126–127).

2. Responsibility of International Organisations

Addressing the Sixth Committee of the General Assembly on 28 October 2003, the Spanish representative, Mr. Yáñez Barnuevo, explained Spain's position on this issue:

"My delegation is now going to concentrate on the aspects of the ILC relating to the responsibility of international organisations. And in doing so, we cannot fail to make a prior observation on the consideration of the issue as a whole, even before giving our opinion on the draft articles provisionally approved by the ILC or outlining an initial response to the questions the Commission has raised to Governments.

I am referring to the very title of the subject, which appears to limit the matter to the responsibility of international organisations, presumably vis-à-vis any other type of international subjects, be they States or organisations. However, we should bear in mind that in relations of responsibility in the international sphere there is always at least a responsible party and an injured party. This is laid down in the articles on state responsibility according to which any State can be an active subject (responsible party) or a passive subject (injured party).

We should likewise consider that, in principle, any international organisation can find itself in the situation of active subject (responsible party) or passive subject (injured party) in a relationship of responsibility. It is reasonable to deduce that, just as an international organisation can be responsible to a State or other

organisation, it can also be injured by an internationally unlawful act, whether committed by a State or another organisation. This was explicitly recognized by the advisory opinion delivered by the International Court of Justice in 1949 at the request of the General Assembly on *Reparation for injuries suffered in the service of the United Nations*, which precisely dealt with this type of situation.

We would therefore like the ILC also to examine this aspect, which affects the current draft as a whole, so that the end result is truly complementary to the articles on state responsibility (which concerns only relations of responsibility between States), in order that the new draft encompasses relations of responsibility between international organisations or between organisations and States. This would thus be similar to what was carried out in the codification of the Law on Treaties, first with the Vienna Convention of 1969 on treaties between States and subsequently with the Vienna Convention of 1986 on treaties between international organisations or between States and organisations.

We wish to take the liberty of pointing out that this was the focus of the work carried out by the *Instituto Hispano-Luso-Americano de Derecho Internacional*, which at its 15th Congress held in San José de Costa Rica in 1985, examined the paper given by Professor Manuel Pérez González of Madrid University on 'International Organisations and the Law on Responsibility', which rightly took a global approach to the rules applicable to relations of responsibility involving organisations, in whatever capacity.

The second general observation we wish to make is methodological, and in this respect the Spanish delegation agrees with what a considerable number of the previous speakers have stated. When tackling this issue, the ILC has based its approach on the existing articles on state responsibility and has progressively asked itself to what extent each provision was applicable or not, and in what manner, to international organisations. This approach has its logic but also its limitations, and we therefore believe it should be supplemented by other points of view.

Indeed, the position of the State and organisations is evidently not the same in the international order. States are primary subjects under the international order and, with all the constitutional differences they may display, have common characteristics with respect to international law: hence the principle of equal sovereignty of States. On the contrary, organisations are secondary subjects created by States using constitutive instruments, which are those which afford them personality and specific functions and responsibilities, in accordance with the principle known as attribution or speciality, to which the ICJ referred in its advisory opinion of 1996 in reply to the request of the World Health Organisation on the *Legality of the use of nuclear weapons in an armed conflict.*

But the fact is that the very diversity of international organisations – with respect to their legal nature, composition, functions and responsibilities, their scope and methods of action – calls for a detailed study of the practice of organisations and their relations with States, whether or not they are members of any of them, in order to draw to a successful conclusion the codifying task begun by the ILC in this area. We therefore agree with the Italian delegation as current presidency of

the European Union, especially as regards the peculiar nature and singular experience of the European Community in both its internal structure as an integrating organisation and as a player with an identity of its own on the international scene – factors that must be duly taken into account during the course of the ILC's work.

I have already said that, for Spain, international organisations, at least those that are genuine subjects under international law, in principle are competent to participate actively and passively in legal relationships of responsibility. This general statement must immediately be qualified depending on the legal personality of each of them and the scope of their functions and responsibilities in the matter to which the activity in question refers. This is the basic consideration that will inspire our comments on the draft articles 1 to 3 which have been provisionally adopted by the ILC on this matter, on the basis of the reports submitted by the Special Rapporteur, Professor Giorgio Gaja, to whose valuable work we are very grateful.

Draft article 1 refers to the 'scope of the present draft articles'. I have already stated why we think the envisaged scope of the draft should be broadened to encompass relationships of responsibility between international organisations or between organisations and States. Only in this context would meaning be given to the proposed paragraph 2 of draft article 1, which is currently a foreign body in the draft articles as it refers to an aspect of state responsibility though paragraph I has just stated that the draft will centre on the responsibility of international organisations.

Apart from this fundamental consideration, which is related to the very conception of the draft articles, it should be pointed out that the current wording of paragraph 2 of article 1 lends itself to confusion and, in addition, is out of keeping with what is stated in the commentary on the article. To prevent any misunderstanding, if the paragraph is maintained, it needs to be reworded in order to make it clear that this is a possibility (the possible responsibility of a State for the internationally wrongful act of an organisation) whose scope and consequences will have to specified in the related provisions of the draft.

Going on to draft article 2, we agree with the Commission that, given the content of this draft article, a definition of 'international organisation' like that found in other codifying conventions, which refer simply to an 'intergovernmental organisation', would not be sufficient. Apart from the fact that such a definition, which is almost tautological, is imprecise and inexact – because it would be more appropriate to speak of an 'interstate organisation' – the characteristics of the draft articles require us to make an effort to find a more appropriate definition in keeping with the requirements of relations of international responsibility.

We therefore appreciate the effort made by the ILC and believe that draft article 1 marks a step in the right direction, as it lists some of the essential characteristics that an international organisation should display in order to truly be one, but we believe that this text needs further shaping. On the one hand, we are not satisfied by the fact that part of the defined concept ('organisation') is used in

the definition: it would be preferable to replace this word by 'entity' (a term used for this purpose by the ILC in its opinion of 1949 on *Reparation for injuries suffered in the service of the United Nations*).

In addition, the second sentence of the draft article seems to us to be unfortunate, as it is worded descriptively as opposed to normatively, and takes for granted that the members of international organisations include other entities apart from States. We believe, on the contrary, that what defines international organisations is the fact that they have been established by and are made up of States and that the presence among them of any other type of entity is secondary. We therefore propose that this sentence be deleted and replaced by another – in the body of the definition – that includes a reference to the eminently inter-state composition of the international organisations included within the scope of the draft articles. In this connection we found the suggestions made by the French delegation interesting.

Finally, while on the subject of definitions, it should not be forgotten that in the previous codification conventions the article in question includes a paragraph expressly stating that its provisions shall be interpreted without prejudice to the use of such terms or the meaning they could be attributed in the internal law of any State or in the rules of a particular international organisation. It should perhaps be thought that, when the time comes, a similar proviso should be included in the draft articles currently being prepared.

The ILC has also put some questions to us regarding the attribution of a conduct to an international organisation in order that the Governments' comments and replies may serve as a guide to the Special Rapporteur and to the Commission itself when they tackle the question at the next session.

With respect to questions 1 and 2, both of which refer to the concept of 'rules of the organisation', my delegation agrees, in principle, with the appropriateness and even the need for the related provisions of the draft articles to contain appropriate references to this concept, which was established in the 1975 Convention on the representation of States in their relations with international organisations of a universal nature and in the Vienna Convention of 1986 on the law of treaties between States and international organisations or between international organisations.

As for the content of this concept, we believe that it should indeed be based essentially on the definitions given in these Conventions – which display some differences – making the necessary adjustments. What seems more important to us is the use that should be given to that concept in order to outline certain aspects of the responsibility of international organisations, bearing in mind that – as the Commission itself points out in the commentary on draft article 3 – the rules of an organisation are not fully comparable to the internal law of a State.

As for the third question on the attribution of the conduct of peacekeeping forces, whether to the State that has provided these forces or to the United Nations, this question – perhaps more than any other – requires a thorough study of practice throughout the past half century. Not only the United Nations but also other

organisations, mainly regional, may carry out operations of this kind and we even find operations in which missions belonging to several organisations take part. Naturally such operations and missions may vary greatly as to their mandate, form of action and relations between the organisation and the States involved. It would be necessary to study closely the resolutions of the competent United Nations organs, the agreements on the contributions of national contingents to these operations and the agreements on force status with the recipient States, in addition to the practice developed by the UN in dealing with complaints lodged by certain States as a result of certain actions by United Nations forces.

Within the diversity of operations and international missions, it might be thought that the decisive issue in each case is the arrangements on the command and control of the forces in question, and in particular the circumstances in which the conduct in question has occurred. We already know that in other contexts the ICJ has used the concept of 'effective control' (in its judgment on the *Military and paramilitary activities in Nicaragua* case) and the International Criminal Tribunal for the former Yugoslavia refers to 'general control' (in the judgment passed by its Appeals Chamber on the *Tadic* case), concepts that do not entail the same meaning and may lead to different consequences in certain cases. In this field of international peace operations, the key notion that will probably need to be discussed in detail is that of 'operational control', which has been used, among others, by the Security Council in the presidential declaration of 3 May 1994 on peacekeeping operations (doc. S/PRST/1994/22).

Whatever the case, this is such a complex and delicate subject that the ILC would be well advised not to tackle it in the draft articles until it has carried out a thorough study of relevant practice and has received the comments of the Governments and international organisations most directly concerned. As there are undoubtedly other questions that need addressing first in this draft, it would not be a bad idea to devote this question the time and care it deserves".

XV. PACIFIC SETTLEMENT OF DISPUTES

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Collective Measures: Regime of the Uuited Nations

a) The Democratic Republic of the Congo and Liberia

In reply to a parliamentary question, on 18 September 2003 the Spanish Government reported on the specific actions it has performed or intends to perform to help put an end to the human rights violations in the Democratic Republic of the Congo and Liberia.

"As regards the Democratic Republic of the Congo, Spain, as a member of the Security Council, has supported all the declarations condemning this and has taken

part in all the sessions to debate on the need to reinforce the United Nations Mission in the Congo (MONUC), particularly now that this force has taken over from the European Operation Artemis troops.

In recent months the Security Council has passed several resolutions, all of them supported by Spain, on the situation in the Democratic Republic of the Congo, of which the following should be emphasized:

- Resolution 1468 (March 2003) stressing concern over the situation in north Kivu and Ituri.
- Resolution 1484 (May 2003) authorizing the Security Council to deploy an Interim Emergency Multilateral Force (IEMF) to the city of Bunia until I September.
- Resolution 1493 (July 2003), adopted under the Spanish presidency of the Security Council, extending MONUC's mandate until 20 July 2004 and imposing an arms embargo on the Democratic Republic of the Congo.
- Resolution 1501 (August 2003) authorizing the IEMF to provide assistance to MONUC after 1 September and reinforcing MONUC's mandate. In this connection, Spain has supported the need to strengthen the operational capabilities of this United Nations mission, for which it needs to act under Chapter VII of the Charter as opposed to Chapter VI, as was finally approved in the Resolution.

In addition, in Kinshasa, the Embassy of Spain has been part of the Committee of member States of the Security Council and has performed intense work to seek a lasting solution to the Ituri conflict, including a number of contacts with the parties to the conflict.

Spain has three military officers in the United Nations Observer Mission in the Democratic Republic of the Congo: a colonel, who holds the post of Chief of Military Logistics, a commander and a captain, in the capacity of military observers.

Within the European Union, on 5 June, together with the rest of the Member States, our Government approved the deployment of the aforementioned Operation Artemis, a French-led European Multilateral Force of 1,500 soldiers whose purpose is to conduct stabilization missions in the city of Bunia, in the Ituri region. This is the first time that military forces from the European Union have acted outside European territory independently and with their own military and logistic capabilities, albeit under the mandate of a United Nations Security Council Resolution, number 1484 (2003).

The European Union is providing significant economic aid to the Democratic Republic of the Congo through the Humanitarian Assistance programmes channelled through the Humanitarian Assistance Office and the contributions the country makes as a signatory of the Lomé and Cotonou Conventions. The National Indicative Programme, charged to the 8th EDF (European Development Fund), was signed by the Democratic Republic of the Congo and the Commission allocated 120 million euros to this country in 2002. During that year, the Democratic Republic of the Congo was earmarked a supplementary sum of 130 million euros charged to unspent items from the 6th EDF; this has been allocated to justice,

assisting refugees and displaced people within the country, food security and emergency aid. The 9th EDF allocates 250 million euros to this country, plus a further 200 million in uncommitted funds from previous EDFs, which will be used to support policies to relieve this country's foreign debt.

As the negotiations for the first Sun City Inter-Congolese Dialogue coincided with Spain's presidency of the European Union in the first half of 2002, the Spanish Government has played a major role on the ground in seeking solutions between the negotiating parties, closely monitoring the work performed by the International Committee for Support to the Transition (CIAT) for the implementation of the Pretoria Agreements. In order to give impetus to these talks, Spain contributed 20,000 US dollars last year.

As for Liberia, our country has attempted to soften the impact of civil strife by attempting to cut off the financial sources that enable Charles Taylor's troops to procure weapons. For this purpose the Security Council adopted Resolution 1478 in 2003 to extend the embargo imposed some time ago on Liberia on the export of diamonds and timber.

In addition, Spain and the Security Council have backed the peace process through the Accra peace talks, which ended in a cease-fire agreement on 17 June, which unfortunately has not been respected. Precisely in order to enforce the implementation of this Agreement in August 2003, Spain has backed the adoption of Resolution 1497 which authorizes Member States, acting under Chapter VII of the Charter, to establish a Multinational Force to back the implementation of this Agreement and help establish and maintain security in the period following President Taylor's departure.

Our country has welcomed the decision of the Economic Community of West African States (ECOWAS) to deploy three battalions of African troops initially led by Nigeria to stabilize the humanitarian situation until the deployment of a Multinational Force to help establish a transition Government and enable humanitarian tasks to be resumed".

(*BOCG-Senado.I*, VII Leg., n. 729, pp. 36–37).

b) Libya

Replying to a parliamentary question, on 28 October 2003, the Spanish Government reported on Spain's position with respect to the sanctions imposed on Libya:

"The Lockerbie and UTA attacks were terrorist acts: this has been recognized not only by the international community in various United Nations resolutions and EU communiqués but also by Libya. By fulfilling the requirements of the United Nations Security Council (UNSC) and, eventually, through Libya's handing over to justice of those responsible for the attack and the agreement on the payment of compensation to the victims' relatives, a solution to the Lockerbie case has been found.

As for the Government's opinion on the recognition of this attack (we are referring to Lockerbie, as the UTA case was previously settled) by Libya, the opinion of the Spanish Government can only be positive for the following reasons:

It puts an end to over a decade of complicated tripartite negotiations that precisely included Libya's recognition of this responsibility, which was the most difficult part.

The settlement of the Lockerbie case has allowed the multilateral sanctions imposed by the UN through UNSC Resolution 1506 to be permanently lifted.

Libya is likewise showing a wish to return to the international community and since the late nineties has confirmed with facts its previous declarations of renouncing terrorist activities. We should recall, for example, the cooperation shown following the 11 September attacks and its ratification of the 12 international conventions on terrorism. Libya's interest in leaving behind a stage in which it was linked to terrorism can also be seen in its readiness to consider increasing the compensation in the UTA case and beginning negotiations on the La Belle case.

Like all other questions of international interest, terrorism is a regular topic of conversation between the president of the Government and other leaders and is therefore included on the agenda of issues to be addressed. Libya has been constantly encouraged to continue to progress on the path embarked on. Furthermore, it should be pointed out that the present situation regarding Libya differs from that of the eighties and nineties. The Spanish Government has not ceased to point out to the Libyan Government and to Colonel Gaddafi the need to cooperate as fully as possible in this area in order to make a complete comeback to the international community and supplement the efforts made to adapt to the new international situation. This positive attitude would likewise pave the way for a possible lifting of the sanctions imposed unilaterally by the United States.

As to the statements of the White House spokesman on maintaining the unilateral sanctions for other reasons, it should be stressed that this is a matter that pertains to the foreign-policy decisions of a friendly country and it is therefore not appropriate to comment on this".

(*BOCG-Congreso.D*, VII Leg., n. 62, p. 253).

XVII. WAR AND NEUTRALITY

1. War

a) Iraq

Replying to a parliamentary question, on 31 March 2003 the Spanish Government reported on Spain's position in the armed conflict against Iraq initiated by the United States:

"Spain and the United States are bound by many legal and political links. They are allies both multilaterally (NATO) and bilaterally and share the same principles and values with regard to defending the rule of law, democracy and freedoms, and to fighting terrorism and maintaining international peace and security.

Special mention should be made of the close bilateral cooperation in fighting terrorism, which was enshrined in the Joint Declaration of January 2001,

as a commitment that has been strengthened following the terrorist attacks of 11 September 2001.

On the basis of these links, and with respect to the crisis provoked by Iraq, the American and Spanish governments agree in their analysis of the threat that the Iraqi regime entails for international peace and security and for that of its region, since:

- Iraq has already used weapons of mass destruction against its neighbours and against its own people.
- It has failed and continues to fail to disarm itself of all its weapons of mass destruction, refusing to cooperate immediately, fully and unconditionally with the system of inspections established by the United Nations Security Council.
- There is a real risk that those weapons of mass destruction may be used by groups and for terrorist purposes. As a Security Council member, Spain has spared no effort to settle the crisis triggered by Iraq in the multilateral context of the United Nations Security Council and to do so peacefully. For this purpose it has cooperated closely with the other members of the Security Council, especially the United States and the United Kingdom, with which it submitted a draft Resolution essentially designed to maintain the crisis triggered by Iraq in the multinational context of the United Nations and increase the diplomatic and political pressure on the Iraqi regime to force it to disarm.

Regrettably, the threat continues. Iraq has not disarmed, disobeying the Council's requirement that it do so immediately, fully and unconditionally. Saddam Hussein's regime, which has attacked the country's neighbours and its own people with weapons of mass destruction and has systematically failed to comply with the Security Council Resolutions over the past twelve years, has ignored Resolution 1441, which offered it a last opportunity.

The Spanish Government is convinced of the need to reaffirm our solidarity and commitment to fighting terrorism, weapons of mass destruction and those States that do not respect the minimum requirements of international coexistence. In these efforts, cooperation with the USA is essential".

(*BOCG-Senado.I*, VII Leg., n. 641, p. 80).

On 17 July 2003, appearing before parliament, the Defence Minister, Mr. Trillo-Figueroa, reported on the agreement of the Council of Ministers of 13 July 2003 on the sending of a contingent of troops to Iraq:

"... I am appearing before the Defence Committee to account for the characteristics of the peacekeeping mission that the last Council of Ministers agreed to send to Iraq. The aim of this mission is essentially to provide security and stability to the Iraqi nation and people, and to facilitate the reconstruction of the country materially and politically. No more than 1,300 troops will be deployed, including reinforcements for the barracks and liaison officers required, in addition to the necessary support, and will initially continue until 30 December of this year, 2003.

This contingent supplements the Spanish Government's effort to assist and support Iraq, as it has done since the beginning of the crisis: first, by politically supporting the United Nations' efforts to disarm Saddam Hussein, as required by 17 Security Council resolutions, and then by providing military backing to the coalition formed to enforce all these resolutions, by sending a joint humanitarian force. Now, the Government is providing support simultaneously on two fronts: the actions aimed at reconstructing Iraq and forming a democratic Government in that country, and the sending of an Armed Forces contingent to take part in the international peace mission agreed by the United Nations Security Council at its meeting of 22 May and enshrined in Resolution 1483.

At its meeting on 21 March, the Council of Ministers authorized the participation, on the one hand, of a joint Spanish Armed Forces unit for humanitarian support in the Iraq crisis and, on the other, of Air Force units to defend Turkey, within the framework of the Atlantic Alliance, though it was not necessary to put this into practice although it had been agreed by the Alliance's defence planning committee on 16 February 2003, in the framework of article 4 of the Washington Treaty. That agreement established a maximum number of 1,100 initial troops for a temporary three-month period which ended on 21 June 2003. As was only appropriate in view of the development of the crisis and subsequent events, the Council of Ministers authorized the Defence Minister to restructure the contingent in an agreement of 15 April 2003 in the event of the need to raise the number of troops to 1,500, albeit without modifying the initial timescale agreed on in March.

The joint national force, known internationally as Task Force-840, left Spain on 19 and 20 March and arrived at the Iraqi port of Um Qasr on 9 April. Thereafter the contingent, until departing for Spain on 21 June, carried out the following actions: in healthcare assistance, 5,238 patients were examined and 1,129 operations were performed. All the patients were Iraqis. In coordination with the local administrative office, the provisional authority of Um Qasr, as many as 152 tonnes of food and water were distributed. The contingent also distributed a variety of school and sporting equipment and 300 pallets of medical and pharmaceutical products and cooperated in repairing and fitting out schools, basic infrastructure works, deactivation of explosives, including a whole minefield, radiological, chemical and bacteriological examinations, and holiday programmes for children, who have amazingly managed to overcome the difficulties and reflect the confidence the Iraqi people have in Spain, at the Armilla camp in Granada.

We should stress that Spain's mission had an identity of its own and was non-combatant. Through it the Government has proved that we, the Spanish Government, choose our own status in accordance with international law, in missions of this kind.

They returned a few days ago with no casualties, and Spain's name and flag are therefore now linked to the defence of humanitarian values in Iraq, which is incidentally the best means of preparing the ground for the new mission. The agreement of the Council of Ministers of 11 July, adopted at the insistence of the Foreign Affairs and Defence ministers, authorized the participation of Spanish

military units in operations designed to provide stability and security in Iraq, and to facilitate its reconstruction. The agreement of the 11th, although different for several reasons, relates to that of 21 March of the current year authorizing the participation of the joint unit whose tasks I have listed. As I stated earlier, both agreements are fully in accordance with the responsibilities and attributions bestowed on the Government by article 97 of the Constitution and article 1.1 of Law 50/1997, of 27 November, on matters relating to foreign policy and defence. And I might also state for the Committee's record that the Council of Ministers dismissed, in the form of an appeal for reversal lodged by the platform of jurists in favour of peace, the agreement of 21 March; the appeal also called for suspending the implementation of the appealed act. The Constitutional Court, in a unanimous decision of the first chamber, rejected outright the appeal lodged by Mr Gaspar Llamazares and other *Izquierda Unida* deputies who were attempting to reverse the decision made by Congress on 25 March, simply because the appeal lacked any constitutional grounding.

Having proved the legality of this agreement, with the same legal grounds as the previous ones, and being open to any new initiative from the groups who appealed against it, I will now concentrate on the full international legitimacy of the agreement. As stated in the preamble to last Friday's agreement of the Council of Ministers, this legitimacy derives from Resolution 1483 which the United Nations Security Council adopted on 22 May. It undoubtedly took much effort to draw up, amend, negotiate and eventually adopt Resolution 1483. Following countless negotiations, a text was finally adopted that is undoubtedly the key document to understanding the missions to be performed by our Armed Forces in Iraq and to lend full legitimacy to such missions in accordance with international law. First, I shall concentrate on the first paragraph, which takes into account all previous United Nations Security Council resolutions on Iraq. In accordance with the most correct political and legal interpretation, this allows us to give full continuity to the new tasks assumed by the international community in Iraq and to link them to those performed in the past, from the famous Resolution 660 of 1990, 678 of 1991 allowing the armed intervention of the United States and its allies in Kuwait, and Resolution 687 of 1997, which suspended the previous authorization of recourse to force until Resolution 1441, which triggered the allied intervention leading to the fall of Saddam Hussein's regime. All these resolutions continue to form the basis of the new Resolution 1483, though the legal basis of this resolution is also partly provided by United Nations Security Council Resolutions 1472 and 1476, of 28 March and 24 April, which appealed strongly to the international community to involve itself immediately in the huge and praiseworthy task of providing humanitarian relief to the Iraqi people in accordance with the needs considered by the occupying powers. It was precisely the need to guarantee aid to the Iraqi people in the best possible way that led the Security Council to adopt practically unanimously the new Resolution 1483. The text is tremendously respectful of the basic principles of international law and this is reflected in its defence of Iraq's sovereignty and territorial integrity, the Iraqi people's right to determine freely

their own political future and to control their own natural resources. For this purpose – as the resolution states – it is essential to create a secure environment in which the Iraqi people may form a totally representative Government based on the rule of law, with the recognition of equality between citizens, without discrimination on the grounds of race, religion or gender, as required by Resolution 1325, of 31 October 2000.

Having reiterated these principles, the resolution reflected the United Nations' firm decision to play a fundamental role in providing humanitarian relief, rebuilding Iraq and re-establishing the formation of national and local institutions for a representative Government. This involvement of the United Nations then took the form of a series of concrete measures, such as assistance from the central banks of the G-7, from the International Monetary Fund and from the World Bank, as well as from all the United Nations organisations specializing in the important field of humanitarian relief. The secretary-general furthermore announced his decision to appoint a special adviser for Iraq, whose wide-ranging responsibilities would be subsequently expressly defined in the new sections of paragraph eight of the aforementioned resolution. The text commented on reiterated the full validity of the commitment undertaken by the United States and the United Kingdom in the letter sent to the president of the Security Council, of their rights and obligations, in accordance with international law, as occupying powers with the duty to act under a unified command that the resolution recognizes as an authority.

The resolution also clearly envisaged the participation of other States in stabilizing and rebuilding Iraq without the status of occupying powers and acting under the aforementioned authority. The Security Council expresses its satisfaction, and perhaps its pleasure, that other Member States are willing to contribute to stability and security in Iraq by providing personnel, equipment and other resources. Finally, the resolution, after recognizing that the situation in Iraq, despite having improved, continues to constitute a threat to international peace and stability, invokes the possibilities of action of the Security Council on the basis of chapter VII of the Chapter of the United Nations in order to appeal to Member States and concerned organisations to assist the people of Iraq in their efforts to reform their institutions, rebuild and stabilize the country, and contribute to conditions of stability and security. It urges the Member States to respond immediately to the humanitarian appeals of the United Nations and other international organisations for Iraq. It calls on the authority of the two occupying powers, thereinafter 'the administration', to promote the welfare of the Iraqi people through the effective administration of the territory.

. . . But it seemed to me to be essential to recall the thorough work performed by the Member States of the United Nations Security Council, both permanent and non-permanent, like Spain, to set up a mechanism capable of reintegrating Iraq into the large group of nations that, inspired by democratic values and principles of international law of the civilized nations, seek to offer their citizens the best living conditions. We thus have a good resolution, number 1483, which fully

legitimates the action of our Armed Forces in Iraq, and this is expressly recognized in the text of the agreement of the Council of Ministers of the 11th.

It should not be forgotten that in some cases there has been no similar resolution, there has been no Security Council resolution, yet this has not prevented the international community from taking its own intervention measures to pacify the various areas in question. The most paradigmatic cases are the armed intervention of the international community in Kosovo, led by the Atlantic Alliance, and the successive actions of the Armed Forces in very many countries in the effort, still under way, to stabilize permanently those territories that have borne witness to so many political, religious and ethnic clashes in the past and, only rightly, even intervention. The lack of a United Nations Security Council resolution did not prevent the Spanish Government from involving itself actively in such an important task, responding to the urgent appeal launched by the then secretary general of the Atlantic Alliance, Mr. Javier Solana, with the natural backing of the main opposition group at the time. In other crises the Security Council has acted in a very similar manner to that which we are discussing. The successive resolutions on the international security force in Afghanistan are very similar, as is the response of the main opposition party. But at the time the United Nations did not involve itself in Afghanistan through the well-known formula of sending blue helmets, that is, the United Nation did not involve itself in such a way that the forces were organized, funded and directed by the very United Nations Organisation, through it is obvious that on some occasions on which the blue helmets have intervened, there has been no reason for complaint, while on others there have been grounds for complaint, and for considerable complaint. Indeed, experience has shown that United Nations missions performed through the blue helmets are not always the best solution in every case. We might recall some that ended their difficult task with undeniable success, such as the United Nations mission to East Timor, though it is equally true that other blue-helmet missions have left public opinion with a certain feeling of failure. I have already referred to the conclusions of one of the most recent books on missions of this kind, by the Dutch author Linda Polman, with a disappointing title and even more disappointing content, *We Did Nothing*, dealing with the United Nations blue-helmet missions in Somalia, Haiti and Rwanda.

It is not difficult to agree that the complicated Iraq crisis required ad hoc solutions, which are those which are being implemented with the active participation to this day of over 40 nations. Spain, in accordance with Resolution 1483, wished to be one of those nations and is sending the previously described stabilization forces to the sector assigned to us. Some nations – and I believe that the French foreign minister has recently done so – might consider that they do not like this type of mission and would prefer it to remain fully under the command, organisation, leadership and financing of the United Nations. You will agree with me that this opinion does not prevent other nations from being convinced that the present formula is the best solution possible given the current situation. We are undoubtedly an important group of nations who think we should involve ourselves in these tasks of stabilizing Iraq. We do so individually, but many of us also as

members of the Atlantic Alliance and we share the NATO decisions that have led it to provide direct logistic support to Poland in response to this nation's request to help it better meet its deployment needs in Iraq. Yesterday the Atlantic Alliance's secretary general, Lord Robertson, had to answer requests from many United States senators for a greater commitment from NATO in Iraq, and he made this very clear. The secretary general recalled that the main decision to be present in Iraq has already been made by NATO through its logistic support to the Spanish-Polish division and recognized the major contribution Spain is making to the operation in Iraq (Robertson *dixit*). But the European Union, at the Thessaloniki European Council, overcoming the disputes between some of its members, also wished to support the task performed in Iraq on the basis of United Nations resolution 1483, expressly stressing that certain Member States and candidate countries were already contributing to creating security and stability conditions in that country.

Having made this observation, I would like to end this part of my address by underlining that in their future actions our Armed Forces will comply with the obligations that fall to them, in accordance with international law. Naturally, as they have done at Um Qasar. For this purpose paragraph 5 of Resolution 1483 expressly refers to the Geneva Conventions of 1949 and The Hague Regulations of 1907, which I have so often quoted in previous debates on Iraq in this Chamber. The aforementioned IV Geneva Convention of 1949 refers to the protection of civilians in wartime, which, in accordance with the text itself, should be extended to all cases of total or partial occupation of a territory. That rule of international law, which has been ratified by the main countries taking an active part in this crisis, such as Iraq, the United States, the United Kingdom and also Spain, includes precise requirements as to respect for citizens, their honour, their family rights, their religious convictions and practices, their habits and their customs. It also calls on all nations involved to protect the civilian population from any act of violence or intimidation, insults or any other form of ill-treatment, adding express protection for women against any attack on their honour or modesty. It furthermore calls for respect for values such as non-discrimination and prohibits the use of coercive measures or reprisals against people or property.

I will now refer in greater detail to the characteristics of the mission sent to Iraq. I have just recalled the agreement of 11 July and on that same date I signed directive number 396 for the development of the military aspects required for the operation. This confidential directive, the main aspects of which are nevertheless not confidential, especially for the purpose of informing Congress, regulates the participation of Spanish military units in operations designed to provide security and stability in Iraq and to facilitate its rebuilding. The authorization of the Government, as I have already pointed out, is initially valid until 30 December.

Spanish troops must not outnumber 1,300 and will form the multinational Plus Ultra brigade that will be joined by tactical groups from Honduras (a light infantry battalion of 370 men), Nicaragua (military police units, special operations and a medical unit of a total of 111), El Salvador (a light infantry battalion of 346 men) and the Dominican Republic (a light infantry battalion of 300 men). This brigade

will in turn be part of a multinational Spanish-Polish division that will be joined by brigades from Poland and Ukraine and by smaller units from the Philippines, Hungary, Mongolia, Romania and Slovakia. This division is one of the four that will operate in Iraq during this stage of the operation and, of the other three, one, the southern division, will be led by the United Kingdom and those of the north and centre by the United States. A total of 44 countries will make up the coalition and 17 of them currently have forces committed to deploy in Iraq.

Our division, which will be based in the so-called centre-south zone, will deploy in one of the four sectors into which the country has been divided and will include the provinces of Wasit, An Najaf, Al Qadisiyah, Babil and Karbala. The brigade contingent will deploy in the provinces of Al Qadisiyah and An Najaf, and the distribution between the two provinces of the tactical groups from each country has yet to be decided on, in accordance with the security reports received from the zone and which the Chief of the Army Staff has just informed me of on my way here. There will be two: the Spanish one and that of the Dominican Republic in Al Qadisiyah, and the two other Central American ones in An Najaf.

(. . .)".

(*DSC-C*, VII Leg., n. 799, pp. 25220–25228).

2. Humanitarian Law

In reply to a parliamentary question, on 23 October 2003 the Spanish Government gave its opinion of the Pentagon's report on the death of the journalist José Couso and the cameraman Taras Protsyuk as a result of shots fired by a United States army tank against Hotel Palestine in Baghdad:

"Early in the afternoon of 8 April 2003, the day of the tragic death of the Spanish journalist José Couso, the Minister of Foreign Affairs held as many as three telephone conversations with the American Secretary of State, Colin Powell, asking him for information about what happened in relation to the Hotel Palestine in Baghdad. The Secretary of State reported that the US authorities had opened an investigation of the events.

On 21 April, Mr. Powell sent a letter to the Minister of Foreign Affairs pointing out his considerable interest in this issue and again expressing his condolences for the death of Mr Couso Permuy, which he extended to the deceased's family; he stated that the attack on the Hotel Palestine took place in a war zone while US forces were responding to hostile gunfire and promised to keep her informed of any other circumstances arising from the tragic happening.

On 1 May, during the joint press conference held in Madrid, the US Secretary of State reiterated his condolences for Couso Permuy's family and pointed out that what had occurred was a 'war accident', recalling that the Hotel Palestine 'was occupied by civilians and journalists and therefore it had not been attacked during the air strikes' but that 'however, that day we had a battle on the ground in which the American soldiers who attempted to free that area of Baghdad suffered serious attacks that risked their lives, and they therefore fulfilled their duty to

respond'. He likewise recalled that the building of the Hotel Palestine was in a 'war zone' and concluded that the deaths of the two journalists, one Spaniard and one Ukrainian, were 'tragic incidents that occur in battles', reiterating his commitment to continue investigating whether 'anything inappropriate occurred'.

The US Embassy in Spain subsequently passed on to the Ministry of Foreign Affairs the conclusions of the communiqué drawn up by the United States Central Command belonging to the Defence Department. These conclusions generally confirm Mr. Powell's words and reiterate that the US forces responded to the gunfire that appeared to be coming from the Hotel Palestine in part of which, according to intelligence sources, the enemy had set up an operational base.

The Government deeply regrets the sad death of the journalist Mr. Couso". (*BOCG-Congreso.D*, VII Leg., n. 609, p. 153).

In reply to a parliamentary question, the Spanish Government expressed its view on the bases of international law that allow the actions of the State of Israel against the Palestinian people:

"According to the international law applicable to this case, not only is there no basis for the deportation of Palestinians by the Israeli authorities insofar as it affects civilians, but, in principle, it constitutes a violation of the obligations laid down in the Geneva Convention relative to the protection of civilian persons in time of war (Convention IV), of 12 August 1949, which is applicable to the military occupation of territories.

Indeed, article 33 of Convention IV states that "no protected person may be punished for an offence he or she has not personally committed" and that "collective penalties and likewise all measures of intimidation or of terrorism are prohibited".

The forcible transfer of Palestinian civilians to the Gaza Strip is also prohibited under article 49 of Convention IV. The relevant paragraph of this article states:

'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive'.

Therefore, in principle, Spain and the European Union consider that there is no basis in international law to justify the Israeli Government's deportation plan.

Exceptions could be allowed to this general rule, as proven by article 78 of the aforementioned Convention, which states:

'If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention'.

Indeed, in recent weeks the international legality of the plan drawn up by the Israeli authorities to deport relatives of suicide bombers to Gaza has been discussed. This plan has led to diplomatic démarches, debates in Israel and even judgments passed by its Supreme Court. The Israeli authorities have responded to the criticism of other States, international organisations and non-governmental organisations by stating that deportation is permitted under international law and Israeli law if it meets certain conditions: that each case is considered individually, that deportation is to Gaza and not to a third country, that the Government does not impose collective or mass punishment and that it proves the existence of a link between the terrorists' relatives and the attacks.

Basing itself on arguments that are debatable from the point of view of international law, the Supreme Court of Israel has recognized the legality of the deportation of relatives of suicide bombers to Gaza on the grounds that these deportations, which the high court calls 'assigned residence', are carried out considering each case individually, take place within the same country and not to a third country, and that the people concerned have the possibility of appealing against the official decision. The latter argument, together with the fact that the individuals are not assigned to a third country, led the Court to state that there is no breach of Geneva Convention IV and that deportation is legally justified in accordance with the aforementioned article 78 of the Convention.

Spain and the EU, like the United Nations through a communiqué of the Secretary-General Kofi Annan, have stated that, although they appreciate the situation of danger and insecurity that the suicide bombings create in Israeli society, they consider that the deportations constitute violations of international humanitarian law and have expressed this opinion to the Israeli authorities through a diplomatic demarche made by the Danish presidency of the European Union on behalf of all its members on 20 August 2002.

Specific reference is made to the events that occurred in the Church of the Nativity in Bethlehem in April and May 2002. The Ministry of Foreign Affairs considers that this incident is not similar to the deportation scheme referred to previously. On that occasion, the Israeli and Palestinian authorities reached an internationally sponsored agreement to put an end to the Israeli forces' siege of the Church of the Nativity, which involved the deportation of several Palestinian activists to third States, including Spain.

This agreement, in which the EU played a part, was aimed at easing a very serious crisis and the decision was clearly based on humanitarian reasons. Consequently, unilateral decisions to deport Palestinian citizens who are relatives of suicide bombers cannot be compared with the result of international negotiations for humanitarian purposes such as those that put an end to the siege of the Church of the Nativity in Bethlehem.

Consequently, at no point has Spain claimed there to be a basis in international law for the deportation of relatives of Palestinian citizens accused of terrorism.

On the contrary, together with the European Union, it has conveyed to the Israeli authorities its concern about the violation of the obligations under international law that such deportations entail.

Whatever the case, it should be recalled that, aside from legal considerations, Spain, through the EU, has expressed its opposition to this practice. More specifically, the General Affairs Council of 22 July urged Israel publicly and unequivocally to abstain from carrying out unjustified deportations. Spain considers that such measures do not help create the atmosphere needed to progress in finding a political solution to the conflict and only add to the frustration of the Palestinian people".

(*BOCG-Congreso.D*, VII Leg., n. 473, pp. 189–190).

3. Disarmament

In reply to a parliamentary question, on 23 April 2003, the Spanish Government reported on the initiatives to be adopted vis-à-vis North Korea's nuclear rearmament:

"Korea's announcement that it was withdrawing from the Treaty on the non-proliferation of nuclear weapons, together with its military capability and the possibilities of reprocessing 18,000 plutonium bars stored at Yongbyon nuclear plant, caused great concern in the European Union, and specifically in Spain.

The Government is working towards a peaceful and multilateral solution to the problem triggered by the North Korean authorities. We have been in close contact with all the countries involved, including the North Korean authorities, and in both the European Union and the United Nations Security Council we have urged the North Korean authorities to visibly respect their international obligations in respect of nuclear non-proliferation and to prevent any actions that may worsen this situation; and this very week talks are due to take place between China, the United States and North Korea, giving us a certain hope that a solution can be found to this situation.

I wish to point out that, after speaking to the authorities in Seoul, Beijing and Tokyo and to the European Union partners, the director general for Asia travelled to Pyongyang between 8 and 11 March to attempt to convey the message, as a European country and member of the Security Council for the next two years, about the concern that their actions were causing. The issue has been discussed at the Security Council and two positions have emerged, unfortunately one related to the Iraq question. One calls for adopting an approach of imposing sanctions on Korea, as carried out with Iraq, and the other, which is basically supported by China, Russia and the United States, advocates keeping up diplomatic talks as we are not in the same situation as with Iraq.

In the case of North Korea there has been no process of sanctions and condemnations by the Security Council. In the case of Iraq no channels for dialogue remained. Sixteen resolutions had been adopted against Saddam Hussein's regime – something that has not occurred in the case of North Korea – and although there are potential risks of a military crisis in the Korean peninsula, all the countries involved in the area, both China and Russia as well as South Korea and Japan,

wanted talks to be kept up with the North Korean authorities, which furthermore have no recent track record of aggression, unlike Saddam Hussein's regime.

In this respect the Government is going to maintain contact with all these countries, including the North Korean authorities, and within the Security Council will continue to back these initiatives and to call on the North Korean authorities to meet their international obligations".

(*DSS-C*, VII Leg., n. 454, p. 19).

In reply to a parliamentary question, on 14 April 2003 the Spanish Government reported on Spain's position with regard to the arms trade:

"(. . .)

It should be pointed out that the Spanish Government, through the Interministerial Board for the Regulation of Foreign Trade in Defence and Dual Use Goods (*JIMDDU*), fully analyses each operation on a case by case basis, strictly complying with the United Nations, European Union and OSCE embargoes, in addition to applying the eight criteria of the European Union Code of Conduct on arms exports. Any operation that does not meet these criteria is therefore not authorized, and the *JIMDDU* has studied in particular detail the aforementioned exports to the countries mentioned in the question.

Similarly, the *JIMDDU* requires addition control documents, specifically certificates of final destination and declarations of final destination, which must be signed by the national authorities of the importing country, thereby guaranteeing the final destination, user and use of the exported goods and preventing undesired re-exportation.

The *JIMDDU* has also adopted a set of highly restrictive principles regarding exports to certain countries in the throes of internal or regional conflict, prohibiting the export of weapons or equipment which, due to its characteristics, could be used to kill or harm people or as a means of internal repression or as antiriot equipment. As for operations involving small arms and light weapons, in 2001 the *JIMDDU* decided to make the authorization of exports of these weapons, in the case of particularly sensitive countries or those where there was a risk of them not being used for their intended purpose, conditional upon the fact that the end receiver/user was a public entity (Armed Forces and State Security). In such cases a control document is therefore required specifying this point before the licence can be granted. Finally, in December 2001 exports from Spain were banned of certain devices restricting the movement of human beings such as shackles and waist chains. This ban was incorporated as additional provision no. twelve to Law 24/2001 on Fiscal, Administrative and Social Measures of 27 December.

(. . .)

During its presidency of the Council of the European Union in the first half of 2002, Spain presented two initiatives of fundamental importance consisting of an extension of the eight criteria laid down in the Code to transit across European territory and the preparation of a draft Common Position with the commitment of the Fifteen for the establishment of checks and the need for prior authorization for mediation in transactions of weapons coming from that territory.

Also during the Spanish presidency a British initiative was approved on the application of the aforementioned criteria to the export of technology for the licensed production of Community goods in a third country.

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The application of the criteria of the Code of Conduct to the transit of weapons across EU territory is one of the most important initiatives presented by Spain during its presidency and marks an attempt to extend the eight criteria to goods in transit travelling to and from third countries. The Spanish presidency eventually succeeded in approving a text that has been included in the IV Annual Report on the Code of Conduct and according to which the Fifteen undertake to apply the eight criteria when analyzing the transit across Community territory of goods included on the Common List of the Code.

Finally, point eight urged the Government to implement the results of the United Nations conference held in New York in July 2001 on the illicit trade in small arms and light weapons.

At the Conference a Programme of Action was drawn up that is much less ambitious than the EU would have wished but nevertheless provided a useful basis for beginning various work projects.

Part II of this Programme of Action contains a number of provisions that should be adopted by countries. Most are much less strict than the current Spanish regulations, for example with respect to the control of exports of defence and dual use goods.

The Programme of Action calls for establishing a system for authorizing the export of these weapons that bears in mind 'the risk of diversion of these weapons into the illegal trade'. In order to authorize or refuse exports of defence and dual use goods, Spain applies the Code of Conduct on arms exports approved by the Council of the European Union in June 1998. This introduces much stricter criteria than the vague reference made by the Programme of Action. Similarly, in other aspects such as the marking, tracing and monitoring of these arms, Spanish and European regulations are much fuller and more ambitious than the provisions of the Programme of Action. Indeed, in Spain marking has been compulsory since 1929.

A second set of provisions contained in the Programme of Action makes it compulsory for States to incorporate certain rules into their laws. For example, the Programme of Action requires that the illicit trade in weapons be specified as an offence: this rule already exists in Spanish law, and the implementation of the Programme of Action has therefore not required any Government action.

A third set of provisions requires administrative measures to be taken to facilitate the coordination and transmission of information on the trade in small arms and light weapons. States are thus urged to designate a 'contact point' or are asked to voluntarily provide information to the international organisations on arms that are confiscated or destroyed. Spain provided its contact point in May 2002 and such measures have already been taken by our EU partners, with which there is a network of 'contact points' that make for a smooth exchange of information on these matters.

Finally, the Programme of Action contains a series of political provisions. These provisions urge States to cooperate in combating illicit trade in small arms and light weapons, to provide technical and financial assistance in this field to States that so require, to promote transparency measures, customs cooperation, etc. at regional level. Within the EU, the Common Action on Small Arms and Light Weapons and the Programme to Prevent and Fight against the Trafficking of Conventional Weapons deal with these questions in greater scope than the Programme of Action analysed.

In addition, in October 2002 Spain hosted the Third Inter-Parliamentary Meeting on Small Arms and Light Weapons, in which Spanish, Swedish and Central American parliamentarians took part. The meeting marked a decisive step in drawing up guidelines on small arms and light weapons that will assist Central American parliamentarians in their task of modernizing regional legislation relating to combating these weapons".

(*BOCG-Senado.I*, VII Leg., n. 641, pp. 68–70).