Spanish Diplomatic and Parliamentary Practice in Public International Law, 2001 and 2002

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

Except when otherwise indicated, the texts quoted in this section come from the OID, and more specifically from the OID publication *Pol. Ext.* 2001 and 2002 (*http://www.mae.es*), and from the International Legal Service of the Ministry of Foreign Affairs, whose collaboration we appreciate.

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

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

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

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

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

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

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

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

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

Index

X. Environment

XI. Legal Aspects of International Cooperation

1. Development Cooperation
   a) *The Master Plan for International Cooperation*
   b) *Defence of human rights, democracy and fundamental freedoms*
   c) *Control of illegal immigration*
2. Assistance to Developing Countries
   a) *Latin America*
   b) *The Mediterranean*
   c) *Sub-Saharan Africa*
   d) *Middle East*
   e) *Asia*
   f) *Oceania*

XII. International Organisations

1. United Nations
2. North Atlantic Treaty Organisation
   a) *Enlargement*
   b) *Relations between the European Union and NATO*
3. Western European Union
   a) Relations between the European Union and the Western European Union

XIII. Enropean Union

1. Enlargement
2. Spanish Presidency
   a) *Fight against terrorism*
   b) *Asylum and immigration*
   c) *Economic and social development*
   d) *Debate on the future of Europe*
   e) *External relations*
3. Area of freedom, security and justice
   a) *Asylum*
4. Economic and Social Development
   a) *Sustainable development*
5. Convention on the Future of Europe

XIV. Responsibility

1. Responsibility of States

XV. Pacific Settlement of Dispntes

1. Jurisdictional Modes of Settlement

XVI. Coercion and Use of Force Short of War

1. Unilateral Measures
   a) *Cuba*
2. Collective Measures. Regime of the United Nations
   a) *Iraq*
   b) *Afghanistan*

XVII. War and Neutrality

1. Humanitarian Law
2. Disarmament
3. Exportation of Arms

I. INTERNATIONAL LAW IN GENERAL

1. *Nature, Basis and Purpose*

The XI Ibero-American Summit of Heads of State and Government, held in Lima (Peru), 23–24 November 2001, approved a Final Declaration that included:

"(. . .)

2. The shared values and principles that define us represent our community's heritage and coincide with the universal principles embodied in the United Nations' Charter, particularly sovereignty, territorial integrity, refraining from the use or threat of force in international relations, non-intervention, states' legal equality, as well as all peoples' right to freely establish in peace, stability and justice their own political system and institutions, and respect and promotion of human rights. Similarly, we share a firm commitment to democracy.

3. At the onset of a new century we witness the prevalence and consolidation of democracy in Ibero-America. Consequently, we reaffirm our commitment to strengthen democracy and its institutions, the respect for the rule of law, political plurality, all human rights and fundamental freedoms, as well as the armed forces' subordination to the legally constituted civil authorities, within our countries' constitutional framework.

4. The stability and transparency of democracy, both its manifestations and functioning, are an imperative.

(. . .)

5. The premier importance and operation of the rule of law and the respect for democratic principles represent the frame of reference and a shared commitment linking Ibero-American nations. At the same time, political cooperation implies a commitment between nations based on the uncompromised support of sovereignty, territorial integration, self-determination and each country's independence. Within this context, we reject any attempt to alter or interrupt the democratic institutional order chosen with sovereignty by each Ibero-American country and we will make use of consultation mechanisms and carry out specific actions should particularly urgent and relevant cases require it.

(. . .)

7. We reiterate our unwavering commitment to protect, promote and guarantee the full application of human rights. This requires the prevalence of the rule of law as well as the creation and improvement of the conditions leading to its effective and full implementation. We condemn all human rights violations and demand full compliance with the principles embodied in the Universal Declaration on Human Rights and the pertinent international and regional instruments.

(. . .)

24. We reiterate our strong rejection of any unilateral and extraterritorial application of a State's national laws or measures that may infringe upon international law and attempt to impose on third countries a state's own internal laws. In this

regard, we call upon the government of the United States to put an end to the application of the Helms-Burton Law, in accordance with the pertinent United Nations General Assembly resolutions.

(. . .)".

One year later, the Final Declaration adopted at the XII Ibero-American Summit of Heads of State and Government held in Bávaro (Dominican Republic), 15–16 November 2002, stated as follows:

"1. The Heads of State and Government of the twenty one Ibero-american countries, committed to the goals of closer links between our peoples, who share similar cultural values and a common aim to strengthen the rule of law and democracy and forge cooperation links with a view to insuring sustainable development and social equity, as well as better and more effective participation in a globalized world, have agreed on the following Declaration:

2. We reaffirm our support to the aims and principles of international law consecrated in the United Nations Charter, the respect for the sovereignty of states and equality before the law, the principle of non-intervention, the non use or threat of force in international relations, respect for territorial integrity, the pacific solution of disputes and the protection and promotion of all human rights. We reiterate our commitment to the promotion, consolidation and preservation of democracy and all peoples' right to choose their political system freely and to the acknowledgement of their cultural identity.

3. In our common aim to strengthen the democratic system, thus insuring democratic governance, we acknowledge the need to promote and continue to support actions aimed at consolidating a democratic culture and the rule of law, based on freedom, peace, tolerance, social and citizens' participation and social justice. At the same time, we underline the importance of those institutions that ensure transparency and efficiency in the actions of governments, political parties, groups and other entities representing civil society, as well as a more active participation by the people in matters relating to public life.

(. . .)

6. We reiterate our strong rejection of the unilateral application of extra-territorial laws or measures, which run counter to international law, the freedom of markets and world trade. Thus, once again, we exhort the government of the United States of America to put an end to the enforcement of the Helms-Burton Law, in accordance with relevant United Nations General Assembly resolutions.

(. . .)

8. We renew our commitment to fight, with a comprehensive outlook, against terrorism in all its forms and manifestations wherever it may manifest itself and whoever participates in it, to deny assistance or refuge to the authors, promoters or participants of terrorist activities. Similarly, we shall fight it by strengthening national legislations to prevent impunity and bolster international cooperation in all areas to prevent, fight against and sanction these type of activities that threaten life, peace, democratic stability and development, in accordance with the United

Nations Charter and fully respecting international law, including human rights and the norms of humanitarian law.

(. . .)".

The Declaration adopted by the Heads of State and Government of the European Union, Latin American and the Caribbean at the II Summit held in Madrid (Spain), 17 May 2002, stated:

"We need to face together the serious challenges and seize the opportunities of the twenty-first century. In a spirit of mutual respect, equality and solidarity, we will strengthen our democratic institutions and nurture the processes of modernisation in our societies taking into account the importance of sustainable development, poverty eradication, cultural diversity, justice and social equity.

Therefore, to develop a solid bi-regional strategic partnership . . . we undertake the following commitments:

In the political field:

I. To strengthen the multilateral system on the basis of the purposes and principles of the United Nations Charter and international law.

2. To reinforce our democratic institutions and the rule of law, we will strengthen judicial systems ensuring equal treatment under the law and promoting and protecting respect for human rights.

3. To welcome the imminent establishment and effective functioning of the International Criminal Court, and to seek universal adherence to the Rome Statute.

4. To combat terrorism in all its forms and manifestations – which threatens our democratic systems, liberties and development, as well as international peace and security – in accordance with the UN Charter and with full respect for international law, including human rights and humanitarian law provisions.

(. . .)".

II. SOURCES OF INTERNATIONAL LAW

I. *Unilateral Acts*

In the presentation made by the Spanish representative, Mr. Pérez Giralda, at the Sixth Committee of the UN General Assemhly, at its 56th Session, to comment on the International Law Commission's Report, stated the following with respect to the subject of unilateral acts:

"(. . .)

The Special Rapporteur, Mr. Rodríguez Cedeño, has made a valuable contribution in his fourth report on unilateral acts. Witness to the difficulty of this subject is the recurring discussion in the General Affairs Commission concerning the feasibility of this study and the difficulties that States seem to run into in processing and submitting their practice on this suhject to the Commission. We reiterate our interest in this work and the advisahility of its concentrating on the

characteristics of certain types of unilateral acts and the legal system applicable to each one of them. It is of maximum interest to clarify an issue that has been debated by the Commission and that affects the very essence of the institution that it seeks to regulate. It is our understanding that the interpretive elements that should be used in the determination of whether an act or omission does indeed constitute a unilateral act in the spirit of the draft belong to the very description of such act. They should be considered as a preliminary issue with respect to the subsequent work of interpreting the terms of an act that has been established as such and that could give rise to doubts as concerns its content and scope. With respect to these latter aspects, we support the transposition, *mutatis mutandis*, made by the Special Rapporteur of the rules of the Vienna Convention on the Law of Treaties placing the emphasis on examination of the intention of the State formulating the unilateral act in question.

(. . .)".

2. *Treaties*

a) Reservations

With regard to the work of the International Law Commission on the subject of reservations to international treaties (Chapter VI of the Report), the Spanish representative, Mr. Pérez Giralda, stated before the Sixth Committee of the UN General Assembly, at its 56th session:

"(. . .)

We agree with the assessment made by the International Law Commission in its consideration of the Rapporteur's proposal, especially regarding the function of the depositary. Indeed, my Delegation is of the opinion that there is no reason for the guidelines being drafted by the Commission to diverge from the articles of the Vienna Convention on the Law of Treaties. The functions of the depositary are, indeed, of great importance, but their content should be especially functional and operational when it comes to reservations and possible objections to the Treaties with the exception, pursuant to Article 77 of that Convention, of those cases in which the Treaty stipulates something different or in which the Contracting States agree to a different system".

3. *Codification and Progressive Development*

Note: See II.1 Unilateral Acts; II.2.a) *Reservations*; XIV.1 Responsibility of States

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

IV. SUBJECTS OF INTERNATIONAL LAW

1. *Self-Determination*

a) East Timor

Assessment of the situation in East Timor led to a question posed in Congress to which the Government responded on 26 January 2001 in the following terms:

"In Spain's view the situation in East Timor, a little over a year subsequent to the departure of the Indonesian civil and military authorities (concluded on 31 October 1999), merits a positive assessment in light of the complexity that a process of this nature entails.

The task faced by the United Nations when the Transitional Administration in East Timor was established (UNTAET, created by Resolution 1272 of the United Nations Security Council of 25 October 1999) was enormous. UNTAET . . . had to take on a number of challenges: watch over the keeping of law and order, set up an effective administration, create an infrastructure for public and social services, coordinate and deliver humanitarian assistance and set the stage for sustainable development. The stage has progressively been set for the realisation of these objectives. Specific mention should be made of the following advances on the institutional level:

- At the end of October 2000, an exclusively Timorese National Council was set up comprised of 36 members, 13 of whom are women. . . . This is considered the first step towards the creation of a true Timorese Parliament. The ex-head of the East Timor resistance, Xanana Gusmao, was elected President of this new National Council.
  (. . .)
- And finally, it should be pointed out that East Timor will soon begin a consultation process to draft a new Constitution and elections are scheduled to be held in the summer of 2001 and will subsequently give rise to the creation of the Constituent Assembly.

Currently there are two issues that the UNTAET is working on with regard to West Timor. The pressure being exerted by the International Community (Security Council Resolution 1319 of 8 September 2000) . . . led to a Mission of the United Nations Security Council being sent (from the 13th to the 17th of November 2000) to the area to take stock 'in situ' of the situation in East and West Timor; and the commencement of initiatives, on the part of Indonesia, to curtail militia activity.

(. . .)

The initial UNTAET mandate runs until 31 January 2001 although the transition process leading to the independence of West Timor is predicted to last between two and three years and the mandate should therefore be extended in the future by the UNSC".

(*BOCG-Congreso.D*, VII Leg., n. 125, p. 277)

b) Palestine

The constitution of a Palestine State was the subject of a question raised in Congress. On 31 October 2002, the Government replied:

"The Government advocates a pacific and negotiated settlement of the conflict in order to achieve just and lasting global peace. Spain, like the European Union, shares the vision put forward by President Bush of two States living side by side in peace and security and that includes an end to occupation and the expedient establishment of a sovereign, viable and pacific Palestine State with democratic institutions.

One of the EU's latest contributions to the Peace Process was the development of a "road map" or calendar for the creation of a Palestine State in the year 2005. This calendar foresees the holding of Palestinian elections at the beginning of 2003 and the Palestinian National Authority (PNA). General elections have, in fact, been organised for 20–1–03.

(. . .)

Spain, in line with the European Union, does not make the replacement of Arafat a condition for the proclamation of a Palestinian State. Also in line with the rest of the Members of the Union, Spain firmly believes that the Palestinian people have both the right and responsibility to elect their leaders by means of democratic and fair elections. The EU has reiterated its position on a number of occasions to the rest of the members of the quartet (USA, Russia and the UN), to the parties involved in the conflict and to the countries in the region. As regards Spain's Presidency of the Union in 2002, the following assessment may be made with regard to the Middle East:

(. . .)

During the course of the semester under the Spanish Presidency, the EU paid particularly close attention to the Middle East conflict with the aim of opening up a political perspective that would make it possible to return to the negotiating table from a global perspective encompassing elements of security, politics and economy viewed as inseparable and interdependent elements of the same process under the conviction that there is no military solution to the conflict. This was expressed in a number of declarations made by the General Affairs Council and in the Barcelona and Seville Declarations.

Moreover, action taken by the Spanish Presidency was aimed at palliating the serious humanitarian crisis that the region is undergoing. The EU participated in the donors' meeting (AHLC) in April in Oslo where it reiterated its commitment to provide economic assistance for the PNA of which it is the biggest donor.

At the same time, Spain pushed for close coordination with other international actors: the US, the Russian Federation, the UN and the most affected Arab countries. One of the major achievements of the Spanish Presidency of the EU was the creation of the "Quartet" comprised of representatives from the UN, the EU, Russia and the US that . . . have been pushing for the search for a solution to reach a just and lasting world peace based on the Resolutions of the United Nations, the principles of the Madrid Conference and the agreements reached by the parties.

Another of the fruits of the push for coordination was the EU's firm backing of the Saudi Peace Plan proposing the establishment of normalised relations between Israel and the Arab countries.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 430, p. 73).

c) Western Sahara

The complex legal conflict affecting the Western Sahara has been the basis for a number of appearances before Congress and the Senate during 2001 and 2002. Specifically, on 28 January 2001, the Government answered a question before the Senate related to the proposal for Saharan autonomy tabled by the UN Secretary General's Personal Envoy, Mr. Baker, affirming that:

"The proposal tabled by the Personal Envoy of the Secretary General of the United Nations, Mr. James Baker, features a regime of autonomy for the Western Sahara territory under Moroccan sovereignty in an attempt to break free of the stalemate that has stood in the path of the implementation of the 1991 United Nations Settlement Plan over the last several years. This stalemate is due to a manifest lack of will on the part of the two sides – Morocco and the Polisario Front – to come to an agreement on the implementation procedure, mainly the list of voters for the self-determination referendum envisioned in the above-mentioned Settlement Plan that would lead to the culmination of the process.

Said proposal has met with the rejection of the Polisario Front and Algeria while it has been accepted (although with reservations) by Morocco.

Throughout this conflict, Spain has always maintained an active position consisting in providing support for the United Nations' efforts and in encouraging the parties to put aside the obstacles that for a number of years have blocked the way to the application of the Settlement Plan that, for the time being, continues to be the only instrument accepted by tbe parties.

(. . .)

Specifically, during the discussion process that arose at the Security Council following the presentation of this new initiative, the Spanish stance was guided by respect for the consensus reached in the past between Spain's political groups and as expressed in the Green Paper of 22 December 1997; the need to guarantee the presence of MINURSO (United Nations Mission for the Referendum in Western Sahara) in the territory by extending its mandate to 30 November . . ., and maintaining the commitment of the international community with the resolution of this conflict within the framework of the United Nations.

In short, Spain is of the opinion that Mr. Baker's proposal can open up new perspectives for negotiation between the parties in the quest for a mutually acceptable solution for the parties involved within the framework of international legality".

(*BOCG-Senado.I*, VII Leg., n. 350, pp. 4–5).

One month later, on 28 February 2001, the Foreign Affairs Minister, Mr. Piqué i Camps, appeared before the Foreign Affairs Commission of the Congress to respond

to a number of questions on the stance and initiatives taken by the Spanish Government in response to the stalemate in the enforcement of the Settlement Plan and the possible extension of the MINURSO mandate:

"For many years now, Spain has maintained the same position when it comes to the conflict in Western Sahara, that of full support for the United Nations resolutions, full support for the so-called Settlement Plan and full support for the efforts being made by the Secretary-General of the United Nations and for his special envoy, James Baker, to finally resolve this conflict. The Settlement Plan does indeed contain a special element, the celebration of a referendum that is coming up against enormous difficulties.

(. . .)

In light of this context, the Secretary-General of the United Nations and his personal representative have got behind a possible reorientation of the process that Spain, as well as the rest of the governments, has supported to the degree that it can contribute to a solution; that of requesting that the Government of Morocco come up with a proposal for a political solution that could be mutually acceptable to the parties. Today the MINURSO mandate ran out but was extended as requested by Messrs. Baker and Annan. The mandate extension has been approved two times now with a view to giving Morocco time to define its position that, *a priori* and without being privy to its contents, seems to have been rejected by the Polisario Front.

(. . .)

At any rate, Spain is not going to budge even one millimetre from the position taken at any time by the Security Council or by the Secretary-General of the United Nations.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., p. 5023).

Subsequently, on 7 May 2002, the Secretary of State for Foreign Affairs, Mr. Nadal Segala, appeared before the congressional Foreign Affairs Commission to provide information on Western Sahara pointing out the following:

"Our position is based on a stance of active neutrality, . . .

In this sense the Government has repeatedly stated its commitment to the efforts being made by the United Nations in its quest for a solution acceptable to all parties. Specifically, the Spanish position is based on the following points. First, to continue supporting the efforts of the United Nations, of the Secretary-General of the United Nations and of his personal envoy to find a solution to the conflict. Second, to reiterate our willingness to support any solution reached by consensus and that is feasible from those included in the latest report of the Secretary-General of the United Nations, it is believed that only an agreement or consensus will be able to guarantee regional stability. Third, Spain does not recommend the fourth option, withdrawal of MINURSO and recognition of the United Nation's inability to resolve the problem. It is our view that MINURSO continues to carry out essential functions in maintaining the cease fire and its intervention would also be

necessary in the application of any of the three options proposed by Mr. Baker. Fourth, Spain has noted that the only framework to date that has met with the backing of the parties continues to be the Settlement Plan that calls for a referendum. Fifth, Spain considers it necessary to insist on the humanitarian aspects of the conflict independent of the overall political solution. The Polisario Front should be energetically reminded of the need to free the more than 1,300 Moroccan war prisoners that are still being held in Tinduf and the Moroccan authorities should also be encouraged to permit refugees and their families to get together in the Saharan territories.

In short, the Government feels that the situation should not be drawn out over time and that over the last several months we have been witnessing a concerted effort on the part of the international community to free itself of the apparent deadlock in which the conflict finds itself.

(. . .)

The solution to the Sahara conflict lies fundamentally in the Maghreb and the international community can play a positive accompanying role. But if we all agree that the solution should be consensus-based, that solution lies fundamentally within the Maghreb region and should be a solution that respects the dignity of the Saharawi people, that respects their legitimate rights and also bears regional stability in mind. This is the basis on which we should involve ourselves at the initial stages.

(. . .)".

(*DSC-C*, VII Leg., pp. 15676 and 15684).

Finally, on 22 October, the Government answered a question raised by the Senate regarding the steps taken to promote peace in the Western Sahara:

"The Government has repeatedly stated its position with respect to the Western Sahara conflict, which has not changed as of late despite the different positions taken and the different alternatives that have been posed.

Based on the position of active neutrality taken by Spain in this conflict, the Government has stated on a number of occasions its commitment to the efforts being made by the United Nations in the quest for a solution that is acceptable to all sides.

(. . .)

This was the position taken in the past . . . and will be the case as well in the future of the conflict now marked by Resolution 1429 of 30 July.

(. . .)

Resolution 1429 once again underscores, as the Spanish Government has done on all occasions, the large-scale humanitarian problem affecting both the Saharawi refugee population at the Tinduf camps as well as the 1,260 Moroccan prisoners of war being held in such camps, most of them for over twenty years now.

In this sense, the steps taken in June of 2002, while Spain held the Presidency of the European Union, resulted in a memorandum that was sent to Algeria, Morocco and the Polisario Front expressing the Union's concern over these issues and

undoubtedly contributed to the liberation in July by the Polisario Front of 100 Moroccan prisoners".

(*BOCG-Senado.I*, VII Leg., pp. 15–16).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. *Diplomatic and Consular Protection*

a) Diplomatic Protection

In his appearance before the Sixth Committee of the United Nations General Assembly at its 57th Session, the Spanish representative, Mr. Yáñez-Barnuevo, made the following assessment of the work carried out by the International Law Commission:

"All of you are well aware that diplomatic protection is an institution of considerable importance in international relations and the in-depth examination under way by the ILC is a logical extension of its recently completed work on the responsibility of states for illegal international acts. To this end, the Commission must, first and foremost, base its work on relevant and established international practice without prejudice to meeting new needs or trends to the degree to which this is necessary and does not alter the essential structure and guidelines of the codification project. It is our understanding that this has been the basic concern of the Commission upon examining the reports and proposal made by the Special Rapporteur Mr. John Dugard and we fully share this approach.

For that same reason, we feel that it is appropriate for the ILC to focus basically on the aspects that characterise the exercise of diplomatic protection, i.e. the nationality of the charges and having first exhausted domestic appeal procedures. The ILC should therefore, to the degree possible, avoid other fields – such as the functional or any other sort of protection provided by international organisations or other issues linked with diplomatic protection –, the examination of which could lead the Commission away from its main objective in this field with the result of possibly not being able to bring its work on this subject to a close, as planned, during this five-year period. This of course does not exclude some of these issues being the focus, at a given point in time, of a separate examination that could take advantage of the results that are obtained in the project that is currently under way.

Having examined the first seven articles provisionally approved by the ILC together with their respective commentaries, my delegation will limit its observations to the most salient aspects. First of all, we would like to highlight the importance of coming up with a very accurate definition of the very concept of 'diplomatic protection' in draft article 1 and its commentary. Although we agree in general terms with the content of this draft article, we are afraid that it does not sufficiently differentiate diplomatic protection *per se*, as a notion with specific characteristics in international law, from other concepts that may be related but that should not be confused with it. I am specifically referring to general protection that, in the

form of diplomatic or consular assistance, a State may always lend to its citizens abroad even in those cases – commonplace in international practice – in which not all of the requirements for the exercise of diplomatic protection *per se* are fulfilled. It is our hope that in its second reading the ILC will get back to this issue that we feel is important because it affects the project as a whole, and that it clarifies these concepts in the wording of the articles themselves or at least in the commentary.

We support the approach adopted by the ILC in its configuration of the exercise of diplomatic protection as a right or a faculty – not an obligation, at least in the international arena – of the state of nationality of the natural or corporate person affected by an internationally illegal act perpetrated by another State. This points to the importance of defining as precisely as possible the features characterising the nationality link requirement as a prerequisite for the exercise of diplomatic protection as well as the limited exceptions to that principle that are set out in contemporary international law.

Aspects relating to the nationality of natural persons are covered by draft articles 3 to 7, provisionally approved by the ILC and generally satisfactory for my delegation with a few adjustments. Specifically, in light of the importance in draft articles 3 and 4 of the concept of the acquisition of the nationality of the State filing suit 'in such a way that it does not violate international law', we would have liked to have seen further development of this notion in the commentary. To state it another way, if one abandons – as proposed by the ILC – the effective links criteria, upheld by the International Court of Justice in the *Nottebohm* case, to determine the international effects of nationality, what would it be replaced with? How would opposition based on nationality be argued with respect to third countries? It is the opinion of my delegation that this fundamental point is not at all clear in the text proposed by the ILC.

Along these same lines and sharing the negative formulation given to draft article 6 regarding the exercise of diplomatic protection in cases of double or multiple nationality among the States in question, we believe that the text of the provision itself should provide greater precision regarding the criteria of predominant nationality. To that end, and including elements that are found in the commentary, we would propose the addition of a paragraph 2 stating more or less as follows: 'For the purposes of paragraph 1, the nationality of the State with which the person had the greatest effective links on the dates in question shall be considered as predominant'.

And finally, I would like to express our delegation's support for draft article 7 on the diplomatic protection of stateless persons and refugees provided by the State of legal and habitual residence of the person in question with the cautionary measures contained in said provision. Although this is an example of the progressive development of international law, from our perspective it appears to be perfectly justifiable, it is supported to a certain degree by international practice and is in line with the aims pursued by international regulations on this subject.

I am now going to turn my attention to the issues examined by the ILC at its

last session concerning the second Special Rapporteur's report on diplomatic protection the examination of which was already under way during the past period of the Sixth Committee sessions. I will also address the third report tabled this year. On that occasion, the Spanish delegation was pleased to receive the Special Rapporteur's proposal that made an innovative effort to overcome the traditional disquisition as concerns the procedural or substantive nature of the rule requiring that domestic appeal procedures in the exercise of diplomatic protection first be exhausted. We therefore regret the fact that draft articles 12 and 13 proposed hy the Special Rapporteur have not been passed on to the Drafting Committee. We therefore hope that these ideas will be expressed in the form of a commentary to draft article 10, containing the basic formulation of exhausting appeal procedures, and will help to clarify to some degree the doubts surrounding this subject that are not of a purely theoretical or academic nature as is rightly pointed out by the Special Rapporteur.

With respect to the proposed regulation of the exceptions to the rule of exhausting domestic appeal procedures contained in draft article 14 proposed by the Special Rapporteur, my delegation supports the first of such exceptions, focusing on the uselessness of such appeals being formulated with the necessary adjustments, in relation to the third option proposed by the Special Rapporteur that highlights the circumstance in which the existing appeals offer 'no reasonable possibility of obtaining effective remedy'.

As concerns the second exception proposed regarding the renunciation on the part of the accused State of the requirement to exhaust appeal procedures, we share the idea that this renunciation should, in principle, be expressed. The possibility of an implicit renunciation, however, should not be discarded at the outset but this type of renunciation would certainly not be easy to presume or deduce. Basically the same could be said of the own acts (estoppel) doctrine that, in order to produce effects, would have to comprised of unequivocal acts on the part of the State in question.

With regard to the proposed exceptions on grounds of absence of voluntary links or territorial connection between the person affected and the State that is the alleged perpetrator of the internationally illegal act, my delegation is of the opinion that neither practice, nor case law, nor doctrine support beyond doubt the justification for such exceptions and it would therefore be preferable for both issues to be dealt with in the commentary of draft article 14. As concerns the exception to the rule to exhaust domestic appeals based on undue delay, we share the opinion expressed by the ILC and by the Special Rapporteur himself that, while recognising the validity of the exception based on the practice of States, case law and doctrine, its regulation would be better placed, with the necessary adjustments, in the first section of draft article 14. And finally, with respect to the lack of accessibility to appeal, envisioned in the last section of draft article 14, my delegation shares the Commission's decision to reject the proposal on the grounds that it could be added to the case contemplated in the article's first section, i.e. lack of a reasonable effective appeal.

The proposal made by the Special Rapporteur to include a draft article 15 on burden of proof in issues concerning the exhaustion of domestic appeals is certainly interesting to us although we do share the opinion expressed by the ILC regarding its excessively procedural nature and we therefore prefer that it not be included in the draft unless a place were found for it, with the necessary adaptations, in the final part of the draft articles relative to the manner in which diplomatic protection is to be exercised.

With regard to the second part of the third report on diplomatic protection concerning the so-called Calvo clause, my delegation thanks the Special Rapporteur for his exhaustive investigative work. We acknowledge the irrefutable relevance that the Calvo clause, as a manifestation of the doctrine bearing the same name, has had in the practice of the Latin American nations. However, in keeping with the classic concept of diplomatic protection understood as a right or faculty of the State that my delegation has been defending, we cannot conceive of a person renouncing the exercise of a right that basically is not his to renounce given that this privilege lies with the State of his nationality. We therefore share the final position adopted by the ILC in not including draft article 16 proposed by the Special Rapporteur putting, however, appropriate references to this issue in the commentary of the draft articles.

And finally, with respect to the specific issues raised by the ILC to the Governments, and without prejudice to the corresponding written commentaries that may be subsequently forwarded, my delegation is, in principle, of the opinion that the regulations of the 1982 Convention on the Law of the Sea, as regards the exercise of faculties on the part of a ship's flag State, provide sufficient protection for the crew members that are not nationals of the flag State. It therefore does not deem convenient the inclusion of a precept on the exercise of diplomatic protection by the flag State in said cases in the draft articles. The same consideration applies to other similar cases such as those concerning the crew of an aircraft or a spaceship.

As regards the issue of diplomatic protection for companies and their stockholders or partners, my delegation feels that this subject is both important and delicate, merits careful attention and should bear in mind the different hypotheses registered on a practical level. At any rate, we are of the opinion that any approach to this subject should be based on the case law established by the judgement of the International Court of Justice in the *Barcelona Traction* case that reflects current international rule of law in this regard and contains sufficient detail and nuances to cover the most relevant cases. Moreover, in a globalised world in which the ownership of a company's stock can change hands several times in a single day, it is difficult to speak, in practical terms, of a 'shareholders State of nationality' or even of States of nationality given that these could be numerous and continuously changing in many cases".

b) Consular Assistance

On 21 January 2002 the Government replied to a parliamentary question related to the frequency of consular visits to Spanish prison inmates abroad in the period 1996–2000 stating as follows:

"One thousand two hundred fifty-nine Spanish citizens are serving sentences in foreign prisons in the zones covered by ninety-nine different Spanish Consular Offices; . . .

The frequency with which consular visits are paid to detainees varies substantially from country to country and from Consular Office to Consular Office depending upon the size of the country, the number of official and honorary consular offices in each country, the laws and regulations affecting visits to detainees in the host State – given that this consular function must comply with Article 36.2 of the Vienna Convention on Consular Relations of 24 April 1963 – the distance between the detention centre and the Consular Office, the availability of personnel in each Consular Office, etc.

Based on what has just been said, it is clearly impossible to carry out an investigation that requires the ninety-nine Heads of the Consular Offices in the areas within which there are detention centres with Spanish inmates in 2001 to file a report on the visitation schedule followed during the five previous years with each and every one of the said detainees.

Since this information does not exist, it would be necessary to carry out a long-term investigation . . .

In response to the question of whether monthly correspondence is maintained with the Spanish inmates, I can inform you that only exceptionally is Circular Order 3106 referred to by your Excellencies called upon because the general rule is that each and every detainee must be visited personally, regardless of the penitentiary centre where the sentence is being served, at least once a year".

(*BOCG-Congreso.D*, VII Leg., n. 294, p. 90).

On 25 October 2002, in response to a parliamentary question, the Government provided information on assistance granted by Spain to its nationals abroad, particularly to those in Argentina and Uruguay:

"The Ministry of Foreign Affairs, via its 158 Consular Offices abroad, helps with situations of grave necessity faced hy Spaniards outside of Spain (regardless of whether they are permanent or temporary residents abroad). These expenditures are charged to budget section 493 with 4,098,900 euros for the year 2002. The Ministry, in continuous contact with the consular network, manages available resources giving priority to situations of grave need faced by Spaniards who are elderly, those that are handicapped and unable to work or unprotected minors. Over the past several years consular assistance in Argentina and Uruguay has been reinforced as much as possible while also bearing budget restrictions in mind.

Approximately 10,000 of these grants were issued in fiscal year 2001. The modalities of the aid granted are defined by Ministerial Order AEX/1059/2002 of

25 April on the regulatory bases for consular protection and assistance aid abroad: repatriation, subsistence aid, special individual aid, aid for detained persons, aid for legal assistance and evacuations . . ., but under no circumstances may expenditures be in excess of the approved budget for said budgetary concept. Subsistencc aid is one of the most important both in Argentina and Uruguay although, in light of budgetary restrictions, only on some occasions is the amount commensurate with assistance pensions granted through the Ministry of Labour and Social Affairs. In contrast to assistance pensions, subsistence aid – like the rest of the aid granted through Consulates – does not imply any right whatsoever regarding future grants.

Focusing specifically on Argentina, the overall budget earmarked under budget item 493 at the beginning of 2002 for Spain's five consulate generals in Argentina totalled 710,000 euros. Recently, thanks to the favourable development of the euro during the course of the year and due to the fact that the reference currency in Argentina is the US dollar, the budget for those Consulates was increased by 45,000 euros. The 755,00 euros earmarked for consular assistance for Spanish residents in Argentina accounts for 18.42% of said budgetary item. Moreover, at the end of December 2001 and in light of the serious crisis suffered by that country, funds from item 493 that went unused were sent to the Consulate General of Spain in Buenos Aires for an emergency plan allowing for an allotment of 200 dollars to more than 1,200 Spanish families in need.

As concerns Uruguay, approval was given at the beginning of 2002 for the amount of 325,000 euros for the Consulate General in Montevideo and more recently an additional 15,000 euros was added representing a total amount of 340,000 euros, i.e. 8.29% of budget item 493".

(*BOCG-Congreso.D*, VII Leg., n. 246, p. 546).

On 15 March 2001, in response to a parliamentary question, the Government provided information on the situation facing Spanish inmates imprisoned in Morocco and on the enforcement of the Repatriation Agreement for the serving of sentences in Spain:

"1. It can be said that the Agreement on the Transfer of Sentenced Persons between Spain and Morocco of 30 May 1997 has functioned and continues to function in a satisfactory manner because both sides have tirelessly sought flexible solutions permitting maximum speed in the transfer of sentenced persons to their countries of origin; considering each case individually and invoking humanitarian reasons under certain circumstances.

Although the transfer of the detainees should be carried out within the framework of the Agreement, implying the necessary fulfilment of the requirements foreseen in said Agreement such as the duration of the sentence, final judgement and absence of appeal, on a number of occasions, thanks to multiple initiatives taken by the Spanish Embassy as well as the Consulates General, the Moroccan Party has agreed to the transfer of detainees facing serious health problems even in the absence of payment of the fine imposed.

At any rate, the Spanish authorities are going to continue to insist that the responsible Moroccan authorities speed up procedural questions that in some cases create undue delays in the transfer of some detainees for humanitarian reasons.

Proof of the correct functioning of the Agreement is that to date 64 compatriots serving sentences in Morocco have benefited by being transferred to Spanish prisons.

2. Moreover, the objective figures of compatriots transferred to Spain since 1999 thanks to this Agreement are as follows:

Year 1999:	14 transfers.
Year 2000:	12 transfers.
Year 2001:	2 transfers.

(. . .)

4 and 5. The Foreign Affairs Ministry has paid special attention to this problem in the travel recommendations found at the Ministry's web page that is open for consultation by any person who wishes to travel to Morocco or to any other country in the world. With respect to the issue of drugs, the web page specifically states: 'the consumption and possession of drugs, regardless of the amount, is punishable under the law with a prison sentence and fine'. Also in the recommendation for travel to Morocco it recommends that 'in the event of a problem, get immediately in touch with the closest Spanish Consulate or with the closest European Union Consulate'".

(*BOCG-Congreso.D*, VII Leg., n. 149, pp. 271–272).

On 11 February 2002, in response to a parliamentary question, the Government provided information on Consular assistance furnished by Spain to Spanish nationals being held in Moroccan prisons:

"1. The number of Spaniards detained or imprisoned within the territory of the different consular districts of Morocco is as follows:

Agadir:	1
Casablanca:	3
Larache:	No Spaniard detained.
Nador:	No Spaniard detained.
Rabat:	9
Tangiers:	36
Tetuan:	14

2. As concerns the crimes for which they have been accused or sentenced, 95 percent have been accused or sentenced for drug trafficking while the remaining 5 percent for 'abuse of trust' – criminal category corresponding to fraud –, writing bad checks and murder.

The sentences imposed following judgement vary from between one and ten years imprisonment in the case of narcotic drug trafficking, six months for fraud and twenty years for murder.

3. Spanish prison inmates or detainees are visited hy the Spanish Consul as many times as the objective situation requires but at least once a year. At any rate they are visited upon request in writing or by telephone. Specifically the visitation calendar is as follows: In the case of the Consulate General of Tetuan, every fifteen days, the Consulate General of Casablanca pays at least three visits per month, in Agadir every two months, in Rabat every month and a weekly visit is paid by the Spanish Consulate in Tangiers.

4 and 9. Said visits are paid by Spanish Consulate personnel and to date it has not been necessary to resort to any other European Union Consulate for this purpose. Neither has any notice been received from any European Union Consulate requesting that a Spanish Consulate visit a detained compatriot on their behalf.

5. Tbe majority of the Spanish detainees in this country are in permanent telephone contact with their respective Consular Offices that they can call whenever they like. Some of them, however, prefer written correspondence with the Consular Office which answers all letters received.

6. In the Consulates General of Casablanca, Rabat and Tangiers a system of visits by volunteers has been developed. Said volunteers are from service institutions such as the *Hijas de la Caridad* (Daughters of Charity) in the case of Tangiers, clergy from the *San Francisco de Asís* Parish in Rabat or clergy from the area covered by the Consulate General of Casablanca. Visitation systems of this sort have not been set up at the rest of the Consulates General because such visits are paid directly by the personnel from the respective Consulates.

7 and 8. Spanish detainees in Morocco are provided with the economic aid provided for in Circular Order 3106 of the Foreign Affairs Ministry. In cases of health care they are granted special economic aid to defray such costs. Concession of this aid is individually assessed and authorised".

(*BOCG-Congreso.D*, VII Leg., n. 303, pp. 218–219)

2. *Aliens*

On 17 September 2001, in response to a parliamentary question, the Government provided information on security conditions and regulations applied in the transfer to Nigeria of persons from that country illegally entering Spain:

"In the way of background information, one must bear in mind that the enforcement of an expulsion sanction entails the taking of a number of administrative steps with their corresponding guarantees such as communication of the initiation of proceedings to the Consular Office of the respective country or to the Ministry of Foreign Affairs, the court appearance or the possibility of appealing the resolution for expulsion. As of the initial stages of disciplinary measures of expulsion filed against an alien, the authorities of that alien's home country are informed by the Spanish authorities and the former must authorise the entry of their nationals that are expelled to their country.

Accordingly, the Nigerian citizens to which reference was made were interviewed

by their diplomatic authorities in Spain and such authorities issued the corresponding safe-conduct pass needed to follow through with the surrender. Subsequently, in Nigeria, they were brought before the Nigerian immigration authorities in presence of diplomatic personnel from the Spanish Embassy in Nigeria.

As concerns the conditions under which these persons were transferred from Spain to Nigeria, officers of the National Police Force took custody of the persons expelled until arrival at their destination (Police Station officers as well as police from the Intervention Units).

In all of these transfers the proper safety measures are adopted for the aliens being repatriated, for the police officers and for the rest of the passengers when applicable. The location of the passengers and other conditions affecting the aliens are subject to the discretion of the captain of the aircraft who is the competent authority to assess in each case the safety of travel conditions as established, in the case of air transport, in the Chicago Convention of the International Civil Aviation Organisation – ICAO.

While carrying out repatriation measures, not only are Spanish regulations applicable, but also the different international conventions that regulate the air transport of passengers as well as the principle of 'non refoulement' contained in the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Moreover, on 19 June an agreement was initialled between the Government of the Kingdom of Spain and the Government of the Federal Republic of Nigeria on immigration matters. The agreement is therefore pending signature and ratification.

As regards the content of that Agreement, its aim is to improve cooperation between the contracting parties with a view to improving the enforcement of the provisions on the migration of persons and respect and guarantee of their fundamental rights in compliance with applicable legislation in both States, combating illegal immigration, facilitating the repatriation of the nationals of one contracting party illegally residing in the territory of the other party and treating such person with dignity, protecting their human rights.

The articles of this Agreement therefore include provisions covering rights, a readmission procedure providing for and explicitly including the rights and guarantees that must be protected and recognised (such as data protection, not subjecting detainees to undue force, torture or cruel, inhuman or degrading treatment) the means and instruments to follow through with this process, competent authorities to take charge of enforcement and finally, a commitment for mutual technical assistance between the authorities of both countries is established".

(*BOCG-Congreso.D*, VII Leg., n. 231, pp. 507–508).

On 31 July 2002, in response to a parliamentary question, the Government provided information on the granting of refugee status by Spanish authorities:

"1. From the year 1997 to 2001 the total number of asylum seekers in Spain was 37,650 persons. The number of asylum seekers by year is as follows:

1997, 4,975
1998, 6,764
1999, 8,405
2000, 7,926
2001, 9,490

(. . .)

3.

Year	Unfav.	Est. refugee	Hum. reasons	Other protec.
1997	1,431	156	205	
1998	2,067	238	491	193
1999	1,930	294	679	59
2000	2,475	394	273	109
2001	2,103	314	84	168

Upon notification of an unfavourable decision, the asylum seeker is informed that he must leave national territory within 15 days.

4. This data is not easily accessible because there is not always just one single cause for failing to process the request meaning that many refusals to process are due to more than one reason. Data can be provided, however, on the most frequent reasons that a request is not processed.

Most frequent motives for refusal to process:

	Art.5.6a)	Art.5.6b)	Art.5.6c)	Art.5.6d)	Art.5.6e)	Art.5.6f)
1997	1	1,790	47	1,962	148	498
1998	—	2,079	26	1,405	87	283
1999	—	2,555	18	1,566	112	485
2000	—	2,778	8	1,981	186	512
2001	—	4,435	28	2,436	123	223

5. The help of a lawyer is always guaranteed whether that lawyer be privately hired by the asylum seeker, is found through the Spanish Lawyers' Association, via the free legal assistance agreements signed with the Ministry of Justice or, if specifically requested, is a lawyer from one of the NGOs that specialise in work involving asylum seekers and refugees.

As concerns interpreters, the Home Ministry has a hired service providing interpretation for asylum seekers in the following languages: English, French, Arabic, Chinese, Russian, Kurdish, Turkish, Rumanian, Georgian, Farsi, Armenian, Afghan, Urdu, Albanian, Hindi, Somalian, Serbo-Croatian and Portuguese. Moreover, the Asylum and Refugee Office has personnel that speak dialects of Arabic, Georgian and Italian. It can also be confirmed that all asylum seekers that have needed interpreters of languages other than the ones listed above have been provided with such interpreters. This should be recognised as an important achievement on the part of the Central Government given that it is not always easy to find interpreters

given the tremendous linguistic diversity of asylum seekers, many of whom speak only dialects or minority Sub-Sahara African languages.

As concerns medical services, asylum seekers may request health care if so required and this is provided through agreements with the Spanish Red Cross. In the event that hospitalisation is required via medical prescription, this is done through the National Health System.

No complaint has been filed for failing to be provided with legal, health or interpreting services.

6. Extradition procedures are suspended when asylum is requested. As regards persons granted refugee status, this implies the right to reside and work in Spain and therefore expulsion procedures are suspended.

(. . .)

Denial of a request for asylum or refugee status can lead to a residency permit for humanitarian reasons but this person would never be considered an 'immigrant' for registry or statistical purposes. The term 'immigrant' refers exclusively to those persons that from the very beginning apply for a job which at that moment can only be done by signing a contract in the country of origin and with prior approval in the annual contingent".

(*BOCG-Congreso.D*, VII Leg., n. 393, pp. 526–527).

3. *European Convention on Human Rights*

On 26 January 2001, in response to a parliamentary question, the Government provided information on Spain's reasons for failing to ratify Protocol 12:

"One of the issues that was highlighted at the Rome meeting, commemorating the Convention's Fiftieth Anniversary, was the fact that the European Court of Human Rights (ECHR) runs the risk of falling victim to its very success. The influx of appeals to the Court is putting it in danger of collapse. It was also concluded that by simply covering the lack of human and material resources suffered by the Court, it will be able to find a solution over the middle term.

In light of this situation, the adoption in the immediate future of a new legal instrument sucb as Protocol 12 would spell the definitive paralysis of the ECHR. Its content offers no doubt whatsoever as to its goodness.

However, the probable number of complaints filed for alleged discrimination for such a wide array of reasons (sex, race, colour, language, religion, opinion, social origin, membership in a national minority group, lot, birth or any other situation) will most likely be greater than the number already filed based on the existing provisions of the Convention and its protocols.

All of these worrisome circumstances are being kept very much in mind in the careful consideration that the Spanish Government is giving the possible signing of this Protocol. The basic issue is whether it might be necessary to solve the problems that the ECHR faces today before taking a decision of this nature".

(*BOCG-Congreso.D*, VII Leg., n. 125, pp. 317–318).

VI. STATE ORGANS

1. *Foreign Service*

The functions of the new Ambassador on special mission for migrations and the protection of Spaniards abroad led to a parliamentary question that was answered before Congress by the Minister of Foreign Affairs, Mr. Piqué i Camps on 21 March 2001:

> "(. . .)
>
> Protection of our compatriots is a priority of our foreign policy that I would like to reiterate here today. It is true that this protection is provided on a permanent basis through our diplomatic missions and consular offices but with this appointment we seek to act in this context with greater social impact and with greater technical specialisation in accordance with the specific circumstances of Spanish emigration to the host countries.
>
> This special mission will include fact-finding visits that will provide the Government, via the Foreign Affairs Ministry, with studies and proposals aimed at improving the situation being faced by our compatriots abroad and to meet their needs with all sorts of protection measures – legal, economic and social – when circumstances so require.
>
> In the field of migrations, these functions shall include the participation and collaboration in conventional bilateral and multilateral policy and in community policy on migrations as well as guaranteeing, as needed, the representation of the Foreign Affairs Ministry in the collegiate bodies with an advisory role in these matters.
>
> Special missions could also be set up for the Foreign Affairs Ministry to the countries of origin of the migratory flows. This is a very important subject; it is a matter of verifying the proper operation of the agreements in force and providing information on the means available to the embassies and consulates to comply with their function of protecting Spaniards residing in countries in which they are accredited.
>
> Naturally all of this needs to be developed bearing in mind the material and administrative competences that correspond to all Government bodies.
>
> (. . .)".
>
> (*DSC-P*, VII Leg., n. 71, pp. 3498–3499).

Subsequently, on 28 May, the Government answered a parliamentary question before Congress regarding commercial services provided by Spanish Embassies in Southeast Asia in the following terms:

> "There is a programme known as the 'European Business Information Centre' (EBIC) governed by Council Regulation 443/92 of 25 February and funded through the PVD/ALA budgetary programme.
>
> (. . .)
>
> The EBIC has given rise to some coordination problems among Member States

and the EU Commission. Said Community Programme affects an area that is of the exclusive competence of the Member States. Trade promotion should involve the rigorous enforcement of the principle of collaboration and coordination that entails a series of aspects, especially those regarding information.

This criteria was shared by the majority of the Member States' delegations in the debates held in the PVD/ALA Committee. The Member States, Spain among them, have instructed their diplomatic representations throughout the region to participate in coordination meetings with Commission Delegations from each country trying to avoid the overlapping of activity between the EBICs and the national trade promotion entities to offer the best global public service to the companies.

This coordination work was especially intense in 1998 and 1999. In the end, thanks to impetus provided by Spain and other countries, the 150th PVD/ALA Committee meeting was held on 2 December 1999 and approved a financial proposal that envisioned the participation of representatives from the embassies of members states of the Advisory Committees set up for each EBIC and that will receive and evaluate the annual work plan and trimestral programmes and the annual and trimestral reports on activities carried out.

Spain has a network of commercial services present in nearly all the countries where EBICs are established (Thailand, Malaysia, India, Sri Lanka and Philippines and being set up in Vietnam and Indonesia)".

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

A Senate appearance was also made on 25 July in response to a question about complaints expressed by Spanish prison inmates abroad and follow-up on support efforts and aid payments made by the Embassies and Consulates:

"The Ministry of Foreign Affairs, through its Consular Offices abroad, carefully monitors and is well aware of the situation facing each one of the Spanish detainees abroad. With this aim in mind, the inmates are visited and permanent contact is established with them. A study is made of those that have special needs and efforts are made to satisfy them.

Specifically, special attention is paid to needs related to nourishment, medical care and even clothing. Depending on the situation found in each country or individual case, aid can be provided in the form of pocket money or in kind.

Above all, the aim is to see to it that their basic living conditions are perfectly taken care of".

(*BOCG-Senado.I*, VII Leg., n. 246, p. 66).

The Government also responded before Congress on 28 November 2002 to a question related to the resignation of the Business Attaché of the Spanish Embassy in Baghdad (Iraq), stating as follows:

"On 17 October 2002, the Government became aware that the Spanish Business Attaché in Baghdad had informed the press of his resignation. This was subse-

quently formally confirmed by telegram to the Ministry of Foreign Affairs. This situation, in and of itself, is as unusual as it is incompatible with the most basic rules governing public service given that civil servants do not resign from their posts; Career Diplomat civil servants may request a transfer to Madrid for personal or family reasons.

(. . .)

One can only guess that the unusual action taken by Mr. Valderrama was based on the pressure of his post; the alternative explanation would be more serious still implying a political manipulation of the exercise of his post. It is not up to civil servants to publicly judge the appropriateness of carrying out or failing to carry out Executive policy in affairs entrusted unto them. Control of the Government is exercised by the Legislative branch and, in cases of failure to uphold the law, the Judiciary.

The attitude taken here violates two basic rules that should be borne in mind by all who embark upon a Diplomatic Career: caution in the exercise of their duties and consideration for the effects of their actions on the interests of their country.

(. . .)

It should not be forgotten that Article 7 of Royal Decree 33/1986 of 10 January approving the Disciplinary Regime Regulation applicable to Government Civil Servants considers as a serious offence 'serious lack of consideration for superiors, colleagues and subordinates', as well as 'failing to keep due secrecy with respect to affairs that they are familiar with because of the post they hold when this could be damaging to the Government or is used for self gain'.

As concerns questions related to the Spanish Government's stance on Iraq, Spanish foreign policy respects national interests in accordance with the values proclaimed in our Constitution and the duties arising from international legality, within the coordinating framework arising from the European Union Treaty.

The current Iraqi regime has a history of serious and reiterated human rights violations perpetrated against its own citizens as well as those of neighbouring countries and constitutes a serious threat for peace and stability throughout the world as demonstrated by its systematic failure to comply with international orders and with UN Security Council Resolutions seeking to restore that order.

Spain, in line with its Community partners and with all of the members of the UN Security Council, coincides in denouncing the Iraqi violation of International Law and trusts that diplomatic, political and legal pressure will be successful in re-establishing international order and its respect for the Iraqi regime".

(*BOCG-Congreso.D*, VII Leg., n. 447, pp. 119–120).

Finally, the Secretary of State for Foreign Affairs, Mr. Gil-Casares Satrústegui, appeared before the Senate Foreign Affairs Commission on 4 December 2002 to respond to a question related with the lack of Spanish diplomatic representation in States such as Gambia and Cape Verde in light of the pressure being felt from irregular emigration from West African countries:

"... Of the States that you specifically refer to, Cape Verde does not constitute a serious emigration problem at this time....

There are currently three thousand Cape Verdians registered and in principle there is no serious problem with illegal immigrants. The situation is different with Gambia that does pose a problem of illegal immigrants but not of the dimensions of other countries like Nigeria where we have a resident embassy and it is one of the highest risk countries or nations such as Senegal or Mali.

The problem is not so much with the embassies there as it is with the embassies here because when it comes to the repatriation of illegal immigrants, the diplomatic representatives of the countries to which the illegal immigrants are going to be returned must acknowledge that they are from their country. This identification can be via the language of one of the country's regions, a physical characteristic that they may have thus making it almost more important their diplomatic presence here than ours there.

Within the budgetary constraints imposed by the Government's economic policy, currently Spain has a number of embassies in West Africa: in Mauritania that covers Mali; in Senegal that covers Gambia and Cape Verde; in the Ivory Coast, in Ghana, in Nigeria, in Cameroon, in Equatorial Guinea and in Gabon. With this number of diplomatic posts Spain's interests in these countries are sufficiently covered; unfortunately there are not more...

There are also honorary consulates in Banjul, in Gambia, in Paria and Mindelo, in Cape Verde... Neither of the two cases mentioned is a priority, at least for the time being.

(...)".

(*DSS-C*, VII Leg., n. 393, p. 13).

a) Consular Service

Note: See V.1.b) *Consular Assistance*

With respect to Spanish consular services, on 21 November 2001 the Government responded to a number of questions raised in Congress. Reference was made to the steps taken to open a second consular office in Venezuela:

"The Ministry of Foreign Affairs is carrying our the necessary studies to assess the possibility of opening a second consular office in Venezuela in compliance with the Green Paper approved by Congress at its Plenary session on 24 April 2001. In doing so they are bearing in mind the circumstances facing Spanish residents in Venezuela as well as that Department's budgetary status.

It should not be forgotten that the decision to open a consular office is based on the need to fulfil its corresponding duties in the framework of the Vienna Convention on Consular Relations of 24 April 1963. Of the duties incumbent upon a consular office, the most important is the protection of and provision of assistance for Spanish nationals residing abroad. For that reason consular offices are set up in places where a sufficiently large number of Spanish nationals are residing so as to justify the expenditure entailed in opening the office.

(. . .)

In Venezuela the overwhelming majority of the Spanish population (more than 100,000 out of a total of 131,000 Spanish residents in that country) reside in the Federal District and in the States of Miranda and Carabobo, both just outside of the Federal District where the Consulate General is located. The rest of the Spanish nationals are unevenly dispersed throughout the rest of the States.

The Consulate General in Caracas therefore attends to the needs of more than three quarters of the Spanish population residing in that country. So as to be able to carry out its functions, it is one of the best equipped consular offices in the world.

(. . .)

With a view to meeting the needs of this population there is also a broad network of honorary consulates; 19 honorary consulate offices that, in coordination with the Consulate in Caracas, provide effective support to compatriots established within their zones".

(*BOCG-Congreso.D*, VII Leg., n. 268, pp. 338–339).

The Secretary of State for International Cooperation and for Latin America, Mr. Cortés Martín, in his appearance before the Senate Latin American Affairs Commission on 27 February 2002, to provide information on assistance granted by the Spanish Government to Argentina and specifically to Spanish nationals residing in that country, made reference to the Spanish consular service and the activities that it carries out:

". . . The fact that Argentina ranks number one as the country hosting the greatest number of Spanish residents abroad focuses the importance and therefore the attention that the Ministry of Foreign Affairs gives to this subject.

(. . .)

What we did in the consular assistance programme was put a priority on the most needy; i.e. the Spaniards facing a precarious economic situation, especially those requiring medical attention but also those who, given their age, would often times have a very difficult time returning to our country. It is within this context that consular assistance has been provided from that time forward to more than 1,300 families. The total amount is around 250,000 dollars that I reiterate was in the form of immediate and urgent aid to the most needy Spaniards facing difficult circumstances in Argentina.

(. . .)

Moreover, I would like to provide information on the initiatives taken to reinforce the personnel of our consular offices in Argentina. First of all I would like to point out that Spain has a wide-ranging consular network in that country: five consulates general and 54 honorary deputy consulates. In order to meet the needs of the significant increase in Spanish and Argentinean persons that come to our consular offices, eight people have been added to the personnel list at the Consulate General in Buenos Aires . . .

Furthermore, additions have been made to the personnel at the Consulate General in Rosario. Studies are also under way at the Consulate General in Buenos Aires

looking into the need to scale up the current staff in the future. Although there continues to be a lot of work at the Consulate, these measures have alleviated part of this burden and, as a result, a greater degree of agility has been achieved in the performance of duties.

(. . .)".

(*DSS-C*, VII Leg., n. 241, pp. 4–5).

On 14 March 2002, the Government responded to a parliamentary question on the development and forecast concerning Spanish Consulates stating the following:

"In 1995 there were 87 Consulates; in 1996 there were also 87; in 1997 that figure fell to 86; in 1998 it fell again to 85 Consulates, and in 1999, 2000 and 2001 the number remained at 84 for the duration of the three years.

In 1996 there were 1,253 employees; in 1997 that number increased to I,254; in 1998 that figure was 1,266; in 1999 it fell to 1,255; in 2000 it fell again to I,234, and in 2001 it rose to 1,261.

Currently the Government plans to open a Consulate in Quito and another in Colombia. As to the creation of new employment at Spanish Consulates, the Government intends to announce visa official posts and all auxiliary personnel posts included in what is known as the *Plan GRECO*".

(*BOCG-Congreso.D*, VII Leg., n. 323, p. 162).

VII. TERRITORY

1. *Territorial Divisions, Delimitation*

Note: See VII.3.a) *Gibraltar*

a) Perejil Island

On 17 July 2002, appearing before the Joint Commission of Foreign Affairs and Defence of the Congress to provide information on the development of events in the aftermath of the occupation by the Kingdom of Morocco of Perejil Island on 11 July 2002 and the Spanish military reaction to take control of the Island on the morning of 17 July 2002, the Minister for Foreign Affairs, Mrs. Palacio Vallelersundi stated:

"First and foremost I want to make it perfectly clear that the objective of the Spanish Government, yesterday as well as today, is to re-establish rule of law and return to the status quo existing prior to 11 July and, based on that, set up a dialogue with Morocco and re-establish bilateral Spanish-Moroccan relations at a level from which they should never have strayed. We have not changed. Both before and after the action taken this morning the Spanish Government has said and defended the same ideal: a return to the status quo and frank and constructive dialogue with Morocco.

. . . The political and security objective is, and I reiterate, to re-establish the status quo existing prior to 11 July that permitted free access to the island which has been the case for the last 40 years subsequent to the evacuation of Spanish troops. This objective means that in the future the Spanish Civil Guard units will be able to continue using the territory of Perejil Island for control and pursuit missions against contraband, drug trafficking and, if need be, illegal immigration as it had been doing up to 11 July. I once again reiterate that the will of the Government is to put an end, as soon as possible and with due guarantee from the Kingdom of Morocco, to the current situation of control of the island by the Armed Forces. Spain has no interest in maintaining a permanent military presence on Perejil Island. Its desire is simply to return, without delay, to the situation prior to 11 July, i.e. prior to the Moroccan military occupation. This must, however, be an authentic status quo.

Allow me to remind you of the historical background to this situation. From 1415 until 1581 Ceuta and its zone of influence, which included Perejil, was Portuguese. As part of the Spanish-Portuguese Treaty of 1668, Spain returned Portuguese possessions to our neighbour with the exception of Ceuta and its surrounding area. From the time that it came under Spanish rule until 1746 the island remained void of effective occupation. In 1867 Spain built a lighthouse and raised the Spanish flag on the islet. The Spanish-French Treaty of 1912 that divided the areas of the Spanish protectorate of Morocco makes no reference to Perejil Island but, subsequent to the conclusion of said protectorate, the island was placed under formal Spanish occupation and was occupied militarily until the beginning of the 60s, i.e. at least five years after the signing of the treaty that put an end to the Spanish protectorate. Spain has been carrying out regular and ongoing inspection visits with a view to controlling contraband and illegal immigration since 1960. Spanish presence on the island has never been the object of official protest from Morocco and on no occasion has there been any record of ongoing Moroccan presence on Perejil Island as the Moroccan authorities have been claiming over the last few days. The fact is that ever since the beginning of the 60s a status quo has been maintained that has implied abstaining from any acts relating to the island and from the establishment of any permanent settlement and of course from any permanently placed symbols of sovereignty. Moreover, in 1975 when Morocco implemented a delimitation of maritime areas that included the island within its domestic waters, Spain responded and filed the corresponding protests.

. . . How have we arrived at this situation for which Spain is not at all responsible. On 11 July, members of the Moroccan Royal Gendarmerie disembarked on Perejil Island and proceeded to set up two tents and raised two flags of the Kingdom of Morocco. From that day until this morning they stayed on the island. On the same day of 11 July the Spanish Government requested, via telephone calls at different levels, clarification from the Moroccan authorities but did not obtain any satisfactory answers. The Spanish Government immediately proceeded to send a verbal note to the Moroccan Embassy in Madrid denouncing the Moroccan action

and calling on the Moroccan Government to adopt the measures necessary to return to the situation as it stood before these events took place.

Spain considers the policy behind these acts perpetrated by Morocco to be unacceptable and has denounced this departure from the status quo in force because it takes the view that this is contrary to the principles that govern relations between neighbouring states and friends. It is in fact inadmissible for Morocco to seek to impose its will by taking initiatives of this sort and this is not in keeping with either the letter or the spirit of the friendship, neighbourly relations and cooperation Treaty signed by the two countries on 4 July 1991. Actions of this nature do not comply with international law or specifically with a fundamental rule of this legal system, considered *ius cogens* under Article 2 of the United Nations Charter calling on States to settle their controversies by pacific means and prohibiting resorting to threat or to the use of force against the territorial integrity or the political independence of any State.

From the very outset, in light of the events unfolding, I initiated numerous diplomatic actions with the Moroccan authorities, pointing out everything explained above and explaining and arguing our view from a legal standpoint. The Moroccan Government, as everyone is aware, instead of responding claimed sovereignty over the island and affirmed that it would not withdraw stating that this action was part of its fight – theoretically – against drug trafficking and illegal immigration. Yesterday the nature of the Moroccan presence on the island changed with the replacement of the royal gendarmes with marine reinforcements who began to set up fixed structures instead of tents. At the same time, the Moroccan Government invited the most important international and domestic press in Rabat to visit the island. These acts represent an escalation of events and were a sign of Morocco's intention to stay and were a clear provocation. In light of the failure met with in the steps taken, the Spanish Government took the decision to call in Defence for consultation – the intervention was a success without any deaths or causalities.

I would like to point out that from the very outset of this crisis provoked by the Moroccan Government, the Spanish Government has had the understanding and has received the spontaneous solidarity of the international community. Based on these facts and subsequent to intense diplomatic efforts, unequivocal statements have been issued by the European Union institutions, i.e. the Council Presidency and the European Commission, as well as by the NATO Secretary-General calling for an immediate Moroccan withdrawal and a return to the former status quo. As can be expected, a number of bilateral contacts have been made through which we have received nothing but support for our argument. These contacts continue to be made today with the European Commission, the European Council, the United States of America and very especially with the Secretary-General of the Arab League with whom I am planning to meet within a few days.

(. . .)".

(*DSC-C*, VII Leg., n. 543, pp. 17348–17349).

With respect to developments in the above-mentioned incident of Perejil Island, Mrs. Palacio Vallelersundi, in an appearance before the Foreign Affairs Commission of the

Congress to report on conversations with the Minister of Foreign Affairs of Morocco and Spanish-Moroccan relations, stated:

"It was never the Government's intention to impose any forceful solution or to gain any advantage based on the developments of the situation. There was no interest whatsoever in staying on the island any longer than necessary. Therefore, the Government continued, as it had from the very beginning, with diplomatic steps to make the international community understand and of course especially to make Morocco understand our unequivocal will to see the island's former status quo re-established. We stated our intention to commence with the withdrawal of our forces once we are given due guarantee that this status quo shall be respected. Re-establishment of the status quo means a return to the situation that existed prior to the month of July, i.e. the absence of permanent military or government personnel on the island, the absence of symbols of sovereignty and abstention from any related acts. The Spanish Civil Guard units should continue to carry out control and pursuit missions against contraband, drug trafficking and, if need be, illegal immigration just as they had been doing up until 11 July. This was the only acceptable solution for Spain which made a concerted effort to achieve its objectives. Contacts were made in all directions and at all levels to achieve this objective and I would like to make special mention here of the action taken by the crisis cabinet that has been meeting at the Presidential Government level.

From the very beginning the European Union expressed its solidarity with Spain. The European Union backed us from the very outset because Spain is an integral part thereof. I would like to express by gratitude for the support received from the High Representative, Mr. Javier Solana. We would not be where we are today if we had not had the backing of the European Union. An especially relevant role was played by the Secretary of State of the United States, Mr. Colin Powell, who acted as facilitator of the agreement in light of the difficulties that existed in communicating our position to the Moroccans. The Government recognises Mr. Powell's support as fundamental. An agreement was reached on the 20th and the Moroccan authorities expressed their consent through Secretary of State Colin Powell. The State Department of the United States issued a public statement expressing its satisfaction with the understanding reached between Spain and Morocco with respect to the island following the consultations that the United States had with each of the parties. According to this understanding and with respect to the island, the two parties decided to re-establish the situation that existed prior to July 2002. Once the agreement was finalised and after a period of time even shorter than originally envisioned – the agreement called for a twenty-four hour period without any official statements – the Spanish contingent withdrew and left the island. The island had been occupied for barely four days; clear proof, if such proof was actually needed, that what we had said were the Spanish Government's true intentions and that the Government had not confused anyone nor had it intended to do so. The elements of the agreement were contained in identical letters that Secretary of State Powell delivered to the Ministers of Foreign Affairs of Spain and Morocco in very clear terms so as to not give rise to any confusion. First of all the two parties agree to

re-establish and maintain the situation as it existed on the island prior to July 2002. This includes, and is specifically spelled out in the agreement, the withdrawal and the absence of elements and flags or other symbols of sovereignty.

The use of the island as well as its air space and surrounding waters shall be in consonance with the activities carried out prior to the month of July. The two parties will have ministerial level talks, they had ministerial level talks in Rabat on 22 July on the implementation of this agreement; in other words, 'will have' is the plan for the future and 'had' is the reality that came out of the agreement. The two parties shall also decide upon – in the words of the agreement – the future steps to be taken in order to improve bilateral relations. This is all with the understanding that the Government of Spain and the Government of Morocco agree that acts implemented by either of the parties on this subject shall not prejudice their position on the status of the island. It was also reflected in the agreement that any differences shall be resolved exclusively through peaceful means. The agreement reflects the position that Spain has always maintained both with respect to the status quo of the island as well as to the future of our relations with Morocco.

Having concluded this initial part of the agreement, that is to say the withdrawal, I travelled to Rabat as planned to commence talks with my Moroccan colleague on the practical implementation of the agreement. . . . The Minister of Foreign Affairs, Mr. Benaissa, highlighted Morocco's commitment to respect this agreement and, as I am happy to note, this is evident, and also stated his desire to re-establish bilateral relations. . . . It is clear that we find ourselves at a crucial crossroads for the future of our relations with Morocco and we must proceed with serenity, frankness, with a sense of state and also with generosity. Relations with Morocco continue to be one of the most important and delicate issues of our foreign policy. We have made a concerted effort to build a strategic association upon a tight-knit and varied network of interests; this and none other is the spirit of the 1991 friendship, good neighbour and cooperation agreement that covers investment, cultural and educational policy, and financial and technical cooperation. A privileged consultation and political dialogue mechanism has also been set up. Today, the will of the Government is to strengthen the strategic nature of our relations with Morocco. This requires acceptance of this approach by both parties and that this bilateral relation reach higher levels of understanding, consensus and depth that make it a privileged link with the Mediterranean and European environments. In other words, this goes beyond what could be considered purely Spanish-Moroccan relations. For that reason we request and expect from Morocco a clear political will and orientation in our bilateral relations without intermediaries to reformulate the nature of the link as concerns specific aspects of this relation.

I would like to state, on behalf of the Goverument of Spain, that the Government of Spain welcomes the reforms undertaken by His Majesty King Mohamed VI to modernise the country, to strengthen institutions, to consolidate democracy and to deepen relations with neighbours in the Maghreb. Unequivocally expressed with full conviction and strength is the desire of the Spanish Government to contribute where most useful to the development of these lines of action, of these wide-rang-

ing political lines established by His Majesty King Mohamed VI and his Government. The present situation first of all calls for recuperation of political dialogue, the necessary dose of trust and the implementation, as soon as possible, of the cooperation mechanisms that have been out of operation since last year. All of this must be discussed at the next meeting to be held in September with the Minister of Foreign Affairs, Mr. Benaissa. Tbe return of the respective ambassadors and the discussion of complex issues such as illegal emigration or the fight against drug trafficking, regarding which Spain does not plan to evade any dialogue, any responsibility, should form part of a shared agenda. We maintain our aim of once again putting Spanish-Moroccan relations at the level where they belong. Ladies and Gentlemen – and I am not being rhetorical –, this is what the history and the responsibility that we have to our two peoples demands of us".

(*DSC-C*, VII Leg., n. 544, pp. 17367–17368).

2. *Territorial Jurisdiction*

Note: See VII.3.a) *Gibraltar*

3. *Colonies*

a) Gibraltar

Within the framework of the Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on its work during 2001 (Fourth Committee of the UN General Assembly), the Representative of Spain reiterated the Government's position in that:

". . . any solution to the question of Gibraltar should be based upon the principle of territorial integrity in accordance with an unequivocal and well-established doctrine of the United Nations. He reaffirmed the commitment of his Government to the Brussels process and the continuation of the Anglo-Spanish talks regarding Gibraltar aimed at the restoration of Spanish sovereignty over the Territory. He stated taht Spain was prepared to take into account all legitimate interests of the territorial population in a definitive negotiated solution to the question of Gibraltar".

(UN Doc. A/56/23 [Part I]).

On 14 March 2001, the Minister of Foreign Affairs, Mr. Piqué i Camps, in an appearance before the Foreign Affairs Commission of the Congress to report on the dispute over Gibraltar stated:

"For a democratic, modern and dynamic Spain that has recuperated its role in the history of Europe and that is playing an increasingly important international role, the continuance of the colony of Gibraltar in our territory, in addition to the territorial dispute, makes for a situation that nowadays is very difficult to continue to harmonise with the maintenance of our national interest and the political logic

of security and economic policy of our common area, both in the European Union and in the Atlantic Alliance. For 289 years now we have endured a British colony in our territory and during the course of this legislative period, the 300th anniversary of the forceful occupation of the Rock will be celebrated. Today we do not want to put Gibraltar back at the centre of a foreign policy characteristic of a politically isolated country. The idea is quite the opposite and should focus on putting it in the terms in which it should be confronted at the beginning of this 21st century; as an anachronism that is becoming difficult to bear and for which it is becoming increasingly urgent to find a formula for solution following the mandates established by the international community for that purpose. Gibraltar is one of the last surviving colonial disputes in the international arena now that Hong Kong, Macao or Boa have disappeared. Furthermore, this colony subsists precisely in one of the most civilised and advanced regions and at a time of growing integration and, more specifically, in a Member State of the European Union such as Spain.

(. . .)".

(*DSC-C*, VII Leg., n. 184, p. 5411).

The Minister also reported on the content and consequences of the agreement reached on 19 April between the Government of Spain and the Government of the United Kingdom:

"On this date the Spanish and British permanent representatives at the European Union signed a series of pragmatic agreements that resolve the technical sort of problems but that fail to touch upon sovereignty issues at all. These agreements focus, first of all, on Gibraltarian authorities, the most important of those reached. The main element of that agreement is the creation of a liaison office with the Gibraltarian authorities that will soon become operable in the British Foreign Affairs Ministry in London and will take responsibility for assuming and channelling communications or decisions originating from or directed to such office. This agreement points to the fact that the Gibraltarian authorities on their own lack competence for external relations and that it is the United Kingdom that plays this role and that is ultimately responsible for the action of said authorities. Thanks to this agreement a series of community directives, mostly in the areas of justice and the internal market, have been unblocked. Second of all, an agreement was reached on the Gibraltarian identification document. The format of this document will be modified to meet Spanish requirements making it valid for travel. The name United Kingdom must appear above Gibraltar on the front and back sides of the document as the issuing office; instead of the term 'Government of Gibraltar', the term 'civil registry office of Gibraltar' must appear thus giving the identification card validity for travel in the European Union under the authority of the Government of the United Kingdom.

These agreements were further complemented by the bilateral agreement on police cooperation that was signed on 29 May of last year by the Spanish and British Home Ministries at the European Union Council of Justice and Home

Ministers approving the partial entry of the United Kingdom in Schengen. This is a local-level trans-border agreement between the National Police and the Civil Guard on the Spanish side and the Royal Gibraltar Police under the auspices of the Governor or the British side. The agreement provides for the designation of liaison officials and permanently open telephone, radio and telex lines. Collaboration could cover all sorts of criminality. These agreements have little affect on the actual gate controls because they deal more with customs and because the United Kingdom excluded itself (and therefore Gibraltar) from the single control-free Schengen area.

(. . .)".

(*DSC-C*, VII Leg., n. 184, p. 5414).

Likewise, in the Report of the Special Political and Decolonisation Committee (Fourth Committee), in reference to the question of Gibraltar, it was stated:

"The General Assembly, recalling its decision 55/427 of 8 December 2000, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following: 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution', takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London on 26 July 2001, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations".

(UN Doc. A/56/557).

On 30 April 2002, in an appearance before the Senate Foreign Affairs Commission, the Minister of Foreign Affairs, Mr. Piqué i Camps, explained the terms of agreement which the Governments of Spain and the United Kingdom may reach with respect to the issue of the sovereignty over Gibraltar:

"I would like, first of all, to underscore the completely novel and encouraging phase of the Spanish-British talks in search of a solution to the dispute. We have been at a standstill for years now but 26 July saw not only the resumption of the ministerial meetings of the Brussels process, interrupted since 1987, but also for the first time we can speak of a true relaunching of the process with expression of a political will – I reiterate, for the first time – on the part of the British Government to negotiate sovereignty issues together with subjects of cooperation.

Both parties thus initiated talks that included the subject of sovereignty in compliance with what had been agreed to no less than fourteen years earlier. July thus marked the beginning of a new phase of the so-called Brussels process instituted via a joint communiqué agreed to in the Belgian capital in November of the year 1984 in application of the joint Lisbon statement of April 1980. All of the democratic governments of Spain since the transition have been, in one way or another, involved in this lengthy process. A process that – as all of your Excellencies are well aware – paves the way to fulfilment of the mandate issued annually for decades now by the United Nations General Assembly to both countries to hold bilateral talks with a view to resolving the dispute while safeguarding the interests of the population.

Both governments base our talks on full respect for the commitment set out in Article 10 of the Treaty of Utrecht and for the rights contained therein that also prohibit any change to the status of Gibraltar without the backing of Spain.

In tandem with solving the issues of sovereignty – as was already mentioned – the aim of the Brussels process is also, in compliance with the joint communiqué of 1984 – I quote –, to foster, in benefit of the two parties, cooperation in the areas of economics, culture, tourism, air transport, the military and the environment.

From my point of view, the current relaunching of the process stems from a series of fundamental premises. The first is that we have already entered the 21st century and the continuance of this conflict has no place within the scope of the European Union especially given that it affects two large countries with a shared friendship, two Member States of the European Union and two NATO allies. Resolution of this problem is not only a responsibility but is also an obligation from which neither the United Kingdom nor Spain can hide any longer.

Both governments have re-embarked on the Brussels process fully aware that refusing to enter into dialogue and search for a negotiated solution to the conflict is no longer, nor would be in the future, easy to justify in the unified Europe to which we belong.

The second premise that is gaining more momentum is the view shared by both governments that the current status quo of Gibraltar is unsustainable in the future. It is not satisfactory to anyone and is the cause of numerous difficulties for everyone, including our partners and allies in the development of the daily activities of the European Union and NATO and of other international organisations.

(. . .)

The third premise is that the lack of a solution to this conflict is a stumbling block to the full development of bilateral relations between Spain and the United Kingdom; relations that have a tremendous potential for the future as can be seen by their development over the last several years with joint initiatives in the European Union, important business aud investment projects and growing human relations as well that boast the figure of close to 400,000 British citizens now residing in Spain.

The time has come to apply the very best spirit of bilateral understanding reached in other areas to the solution of this conflict . . .

Thus, on 26 July of last year both Ministries agreed in London to restart the Gibraltar talks and we highlighted our political intention and will to overcome all of our differences regarding Gibraltar and to make a concerted effort to conclude these talks successfully and expediently in benefit of all parties and to jointly and formally transfer the text of our joint communiqué to the Secretaries General of the United Nations and the Atlantic Alliance as well as to the then President of the European Union Council and to the European Commission as the most solid proof of the seriousness of our commitment.

The President of the Government and the British Prime Minister, Mr. Blair, publicly ratified and endorsed the scope of that commitment upon conclusion of the bilateral meeting held in London on 9 November of that same year. A short time later a new ministerial meeting was held in Barcelona on 20 November 2001 at which we confirmed our common objective of continuing the conversations under way in an atmosphere of mutual trust and cooperation and our shared objective of concluding a global agreement that would cover all of the important subjects including those of cooperation and sovereignty by approximately the summer of this year.

We also agreed, as an aim of the upcoming global agreement, to work towards a future in which Gibraltar would benefit from greater self-government and the opportunity to take full advantage of the benefits derived from normalised co-existence with the neighbouring region. The overarching principle – as we affirmed in that communiqué – is to construct a safe, stable and prosperous future for Gibraltar by providing it with a modern and sustainable standing in harmony with our common membership in the European Union and NATO.

A few months later, on 4 February to be exact, my British colleague and I met again in London to take stock of the talks and to ratify our will to persevere in our joint objective. In the joint press communiqué that we then made public, we reiterated our invitation to the Chief Minister of Gibraltar to attend future meetings of the Brussels process offering him a new formula for participation under the principle of two flags, three voices; i.e. to speak with his own differentiated voice but as part of the British delegation. Despite this offer, Mr. Caruana has chosen to continue to remain absent from our meetings, a fact that I regret.

And finally I wanted to mention . . . that the current relaunching of the Brussels process has received the explicit backing of the Heads of State and Government of the European Union. Thus, the European Council at its last meeting in Barcelona in March, also expressed its full backing for the negotiations under way and the reaching of an agreement by the summer, calling on the Commission to seek out a way to support the future agreement. These expressions of support were endorsed by the plenary of the European Parliament just a week later.

In light of these developments in the Spanish-British talks on Gibraltar, I think that I can authoritatively state that the developments during these last nine months of negotiations have been satisfactory . . .

(. . .)

. . . Both governments are fully aware of the responsibility and the risks that

we are taking. The negotiations are continuing forward. Our objective of reaching a global agreement and our timetable have not changed and are public knowledge. We have not concluded yet, however, and therefore we cannot yet reveal the outline of the final agreement.

Furthermore, revealing partial aspects of a negotiation of these characteristics is always risky and not very responsible: risky because the final arrangement of each element of the global agreement cannot and should not be separated from the whole and irresponsible because in a diplomatic negotiation of such proportions and undeniable political sensitivity such as this one, success is only achieved through prudence and discretion.

It is our will to reach a timely agreement between our two governments with firm commitments that we will present – as is logically the case – to our respective parliaments. This agreement shall grant the greatest consideration to the interests of the Gibraltarians, who as people, as Community citizens of a city that was once Spanish and that we hope is ever more friendly and close to us, merit our highest respect.

(. . .)".

(*DSS-C*, VII Leg., n. 271, pp. 9–11).

In an appearance before the Senate Foreign Affairs Commission on 4 December 2002, the Secretary of State for European Affairs, Mr. Miguel y Egea, in response to a question posed by a Member of Parliament regarding the subject of shared sovereignty of Gibraltar, responded that:

"(. . .)

In the middle of last July both goverments stated that they had made substantial progress in the negotiation while at the same time recognising that a small number of difficulties subsisted but they affected the so called red lines of the respective positions taken. In light of these circumstances, it was evident that the agreement could not yet be finalised and that negotiating efforts would have to continue until which time formulas were reached that were capable of overcoming the pending difficulties in a way satisfactory to both parties. These pending difficulties are the above mentioned red lines and account for two or at most three points of the final negotiation.

It is common practice in all negotiations, . . . to leave the most difficult issue to the very end and it should therefore come as no surprise to anyone – we were certainly not surprised – that, in light of the complexity of the subjects at stake, precisely due to these last few points of conflict, we have not been able to find a solution to these points within the time frame that we had originally set up. And as is the general norm in any negotiation – and this has been publicly stated by the Spanish side –, the Spanish Government has held from the very beginning that nothing is agreed until all is agreed and finalised. It is not enough to have 97 percent of the negotiation wrapped up if 3 percent is still left undone because nothing is actually agreed to yet.

The Minister of Foreign Affairs has already stated that the completion of an

agreement by the summer was the expression of a reference date the aim of which was to maintain negotiating momentum, serving as a clear indication of the will of the parties to make headway and conclude negotiations as soon as possible but it obviously was not – and I do not believe that Minister Piqué expressed it in those terms –, the setting of a deadline date the passing of which meant the end of all talks. In other words, the idea was not to remedy this subject in the month of July and if not the issue would be considered dead . . . There is a series of basic and essential arguments forming part of Spain's negotiating position that has the backing of Parliament, that the Government defends and that the British Government has been aware of from the very outset. These principles cannot be either ignored nor transgressed.

(. . .)

In a dispute that has lasted nearly three centuries and within the framework of a negotiation process that has made substantial progress, a difference of months is of little importance regardless of the undeniable fact that there is a certain degree of disappointment attached to having set July as a completion date and not meeting with success. For us the most important thing is to continue to strive towards a satisfactory agreement to resolve this conflict in our relationship with the United Kingdom and to overcome an unsustainable situation that is in no one's benefit including the Gibraltarians themselves, that also gives rise to problems among our partners in the principal international organisations and especially within the European Union.

(. . .)

To sum up, the negotiation continues forward and the situation is no worse than it was but is rather the same because we have not made progress since the month of July concerning the pending red lines but we have, however, made significant advances in the debate on these three points given our frequent talks. We therefore continue to work towards our objective of reaching an agreement and resolving these last remaining points within the framework of a joint declaration that we are negotiating with the British Government".

(*DSS-C*, VII Leg., n. 393, pp. 6–7).

With respect to the existing controversy on the sovereignty of the isthmus, Mr. Miguel y Egea stated the following:

"(. . .)

. . . The Gibraltar airport is not open to general traffic because in 1987 when the list of airports to enter in the traffic of the Union was drawn up and the United Kingdom claimed the Gibraltar airport as a Community airport, we raised an objection because that airport is not built on British soil but rather is built on Spanish soil. We subsequently arrived at an agreement in the 1987 accord to recognise this airport within the framework of the Community that was very simple. We did not get into the subject of the Gibraltar conflict, we did not get into who does or does not exercise sovereignty; we simply have an agreement by virtue of which we jointly manage the airport. This was the condition *sine qua non* for us to give the

green light for that airport to be fully recognised in the Union. The British shared this understanding and the Gibraltarians are also well aware of the situation but they do not want to comply with that condition".

(*DSS-C*, VII Leg., n. 393, p. 4).

VIII. SEAS, WATERWAYS, SHIPS

Note: See IV.I.c) *Western Sahara*; X. Environment

1. *Continental Shelf*

On 4 December 2002, the Secretary of State for Foreign Affairs, Mr. Gil-Casares Satrústegui, appearing before the Senate Foreign Affairs Commission to respond to parliamentary questions regarding the Government's stance on possible oil exploration in the continental shelf of Western Sahara stated:

"The Government does not share what it seems that your question was referring to, that a link existed between the stance taken by the United States in April 2002 with the concessions that it had made at the end of July 2001 for oil exploration in the waters of Western Sahara, basically in the north, given to the North American company. A concession has in fact been made by Morocco, as you are aware, to two firms, one French and the other American. The French company is in what is called the off shore of Villacisneros of Dajla and the American company in the off shore of Bojador. The Polisario Front has appealed the decisions taken by Morocco and a legal ruling has been delivered by the Deputy-Secretary of the United Nations that basically states that, in light of the legal status of Sahara as a non self-governing territory, Morocco – although not declaring it the administrating authority because this has not been recognised – may carry out or commission exploratory initiatives but may not actually drill for oil because that would have to be in benefit of the population of the non self-governing territory. Exploration, therefore, is being carried out in accordance with international legality and, once this ruling was delivered, what actually happened, . . . that in July 2000 the special envoy, the Secretary-General, reached the conclusion that the consensus regarding the referendum on Western Sahara had run into difficulties and proposed a political solution that consisted of a proposal for autonomy within the Kingdom of Morocco. At first this was not accepted by the Security Council and successive extensions were made by MINURSO (United Nations Mission for the Referendum in Western Sahara), one of them ending in April 2002. At that time, around the 23rd of April, the United States sent a proposal to the special envoy, the Secretary General, to make an offer of broadened autonomy to see if that could be taken forward. There was a certain tendency to relate that event with the oil exploration concessions and it is the view of the Government that these two events are completely unrelated. In the end the proposal was not accepted and we continue with the successive extensions of the MINURSO until which time, as you are aware, in Resolution

14/29 the reference to autonomy disappears explicitly as such and the Secretary General is called upon to table a new proposal prior to 31 January to subsequently be presented to the parties.

The stance of the Spanish Government regarding the conflict in Western Sahara is very well known. It is our understanding that there is basically an international legality accepted by all parties that was the settlement plan and that we must continue to strive towards a referendum if possible. The fact is, and I always reiterate this, MINURSO is the United Nations Mission for the Referendum in Western Sahara. It is true that there are difficulties, the Secretary General is seeking out solutions and it has been stated that any political solution accepted by Morocco and by the Polisario Front will also be accepted by Spain. Added to this basic position is Spain's petition for MINURSO to continue until a dead end is reached and it becomes necessary to seek solutions for humanitarian problems regarding Moroccan prisoners in Tinduf as well as Saharawi prisoners in Moroccan prisons and the missing on both sides".

(*DSC-C*, VII Leg., n. 393, pp. 12–13).

2. *Fisheries*

In the Government's appearance before the Plenary of the Congress to report on the European Council held on 23 and 24 March 2001 in Stockholm, the President of the Government, Mr. Aznar López, made the following declarations with respect to the negotiations for a fishery agreement between the European Union and Morocco:

"Moreover, Spain supports a European strategy for the Mediterranean, especially for the Maghreb, in which it plays a part and also plans to specifically support it during its Presidency.

As for the European Union and, in consequence, also for Spain, unfortunately a fishery agreement has not been reached with Morocco . . . We would have liked to have seen a positive conclusion to these long negotiations but I would like to recall a few events. The fishery chapter of Spain and Morocco accounts for 8 percent of the total volume of Spanish fishing throughout the world. We are talking about a volume of 30,000 to 40,000 million pesetas out of a total amount of 500,000 million pesetas. It currently affects 326 ships that are receiving assistance and a total of 2,600 workers that, together with the respective shipbuilders, are also receiving assistance. I would like to highlight that 20 years ago Spain had approximately 1,400 ships fishing in Moroccan waters.

The stance taken by the Commission during these months of negotiations has been correct and the attitude of Commissioner Fischler and his way of holding talks and negotiations seem to me to be substantially correct. I think that he did a good job and tried to overcome difficulties which was not possible not because of the stance taken by the European Union or Spain but rather due to the immobility of the positions adopted by the Kingdom of Morocco. The current negotiator was also held back by a point existing in the last agreement of 1995 that affirmed that it would be the last fishery agreement with Morocco and that, under

no circumstances, would it be subject to extension. As a result, this affirmation has restricted Spain's possibilities for negotiation. This means that all of the efforts needed to seek other types of agreements have unfortunately failed to bring positive results. The door must be left open, as the European Union has done, for the possibility of a change in the position adopted by the Kingdom of Morocco that could table a new offer for consideration by the European Union. However, from the standpoint of the European Union and from the standpoint of Spain, not just any price can be paid for any agreement and a poor agreement should not be accepted because it could mean a very high economic and political cost for both European and Spanish interests.

As for arrangements made for shipowners and fishermen, as a result of the conclusions of the Berlin European Council and the conclusions of the Nice European Council that envisioned the possibility of not reaching an agreement before year's end, funds have been provided for the economic assistance of fishermen and shipowners and funds will continue to be provided for this assistance in the terms outlined by the Council of Ministers and in the terms foreseen by the European Union. If in the end it is possible to reach an agreement it will be a satisfaction for all but let us not hold back information in this respect, nor should we try to sow discord in relations between Spain and Morocco that are so important.

(. . .)".

(*DSC-P*, VII Leg., n. 74, pp. 3688–3689).

On 4 April 2001 the Minister of Agriculture, Fishery and Food, in response to the urgent formal request made by the Socialist Parliamentary Group for details of the current situation and the future of the agreement between the European Union and Morocco on the subject of fishery, appeared before the Congress in Plenary to state:

". . . Many fishery agreements have been signed with Morocco, . . . 1983, the Agreement of 1 August, Article 16: At the end of the Agreement's period of application, the two parties shall meet to hold talks with a view to concluding a new fishery agreement. 1988, Article 12 of the agreement: this agreement shall remain in force for a period of four years and at least six months before the termination of that agreement, the contracting parties shall initiate the negotiations necessary for the conclusion of an agreement regulating cooperation in the fishery sector in the future. 1992, Article 15: this agreement shall remain in force for a period of four years and at least six months before the termination of that agreement, the contracting parties shall initiate the negotiations necessary for the possible conclusion of a new agreement. Agreement of 1995, Article 15 simply states: this agreement shall remain in force for four years, nothing more. They signed this agreement knowing that it was the last without a renewal clause and without a mandate of negotiation. And without any mandate of negotiation for a new agreement and without any obligation for a mandate. What situation do we find ourselves in now? With a Government, that of Morocco, that felt no obligation because it signed a commitment with you that this was the last agreement . . .

. . . The European Union had to be convinced to implement the negotiating

mandate. This Government did just that and the mandate was accepted in the month of October before the agreement expired. It could not be done six months before that date because there was no renewal clause nor any sort of obligation but before the agreement expired the Government obtained a negotiation mandate in the month of October 1999 . . .

This was achieved in the month of October and it was not by chance that this was subsequent to the King's visit to Spain and the contacts that the President of the Government had with the King of Morocco. A negotiation process then got under way. The Government met with the Morocco monitoring table and with the sector and the sector sent three messages to the Government: that it wanted an agreement affecting all segments of the fleet, that it wanted an agreement with technical conditions allowing for the viability of fleet activity and it wanted an agreement in which the financial compensation offered Morocco were commensurate with the fishery possibilities . . .

The Government, at all times, maintained permanent dialogue with Commissioner Fischler. Thirteen technical meetings and seven political meetings were held with the participation of the Commissioner and if the Commissioner was negotiating directly it is because the Government has been working with the Commissioner and therefore the Government is grateful to Commissioner Fischler for the special role he has played in the negotiation and for having been present. Never has a commissioner taken part in a fishery negotiation and this Commissioner has been permanently present during seven rounds. This means that the European Commission has supported the Spanish Government. The results remain to be seen but the Commission has been seated at the negotiating table and has been making proposals . . .

The latest proposal tabled is an agreement for a sufficient number of ships with technical conditions that make it impossible for the traditional fleet to fish calling for the compulsory unloading of all catches at Moroccan ports with a 50% increase in levies, with six-month biological prohibitions on cephalopoda, with fishing areas above three miles for the traditional fleet and fifteen miles for the shellfish fleet; in short, an unfeasible agreement. Was this agreement signed? The Government has said that it will not sign an agreement of this nature.

(. . .)

We are negotiating with a sovereign country and a developing country; with a country that has an important fishing fleet and with a country that has taken the political stance that it does not want a fishing agreement and that, throughout the entire negotiation, has made the appearance of negotiating when it really does not want to do so. In response to this there are two possible attitudes: realism or self-delusion.

During the course of the negotiation the European Union has not only implemented financial compensations linked to the fishing agreement but compensations have also been offered to Morocco within the framework of the Meda Programme and the Spanish Government has made parallel bilateral efforts. The problem is not a matter of supporting cooperation. The problem is that there is a

political will not to reach an agreement at this point in time and that is what we have on the table. There is no room here for colonialist attitudes. We can only continue with our dialogue or say: Gentlemen, you are just going to have to negotiate because we have come as far as we are going to go.

The European Union has been flexible in this process and has negotiated and shifted its position; blockage is from the Moroccan side. We are at a time in which we have to confront the situation. The fleet has remained in port since November; the ships are deteriorating; the sailors are demoralised and it is the will of the Government to initiate a process to reactivate economic activity within the fishing sector.

(. . .)".

(*DSC-P*, VII Leg., n. 74, pp. 3719–3721).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

Note: See VII.3.a) *Gibraltar*

The breakdown of the British nuclear submarine *Tireless* moored at Gibraltar was the object of a question posed to the Government in Congress. The Government responded to this question on 26 January 2001 in the following terms:

"1. The British nuclear propulsion submarine 'HMS Tireless' moored in Gibraltar on 19 May. Twenty-seven hours earlier the Naval Attaché of the British Embassy informed our Ministry of Defence that the vessel at that moment was found approximately 60 miles from the Spanish coastal city of Almería and was heading for Gibraltar being powered by its electric diesel motor and that its principal propulsion had been shut down.

From the very beginning maximum guarantees were called for and were granted by the British as concerns the absence of radiological risks to the population or the environment as a result of the presence of the 'HMS Tireless' in Algeciras Bay.

2. . . . The Spanish Navy then sent a *GOVRA* group to Algeciras Bay prior to the arrival of the submarine to monitor possible radiological variations.

3. . . The breakdown of the submarine and its mooring at Gibraltar are under the exclusive jurisdiction of the United Kingdom given that it is a British vessel and naval base.

4. The United Kingdom considers the repair of the submarine at Gibraltar to be feasible once having temporarily prepared the base for such operation. We have their assurance that such preparation is temporary and that the additional equipment sent will be removed once the repair work has been completed. The *in situ* repair plan met with the approval of the Nuclear Defence Security Council that is an independent British body comprised of high-level scientists who, subsequent

to a detailed analysis of the situation, determined that the repair work could be carried out in Gibraltar under maximum security conditions.

Although the breakdown is more serious than initially thought, the radiological circumstances have not changed given that the reactor is not affected. The repair work carried out at the Port of Gibraltar thus poses no danger to Spanish citizens residing in the surrounding areas.

5. The situation cannot be resolved at this point by forcing the premature departure of the submarine and a responsible Government cannot take a situation like this lightly but rather must carry out a rigorous analysis of the alternatives and their implications.

(. . .)

The Government's actions have at all times been based on guaranteeing the safety of the Spanish population and the environment of the areas near Gibraltar. If at any time the Government feels that there is or could be a danger it would be the first in demanding the removal of the submarine from our coast.

6. The British authorities have been transparent in keeping the Spanish Government and the Nuclear Safety Council (*CSN*) informed as to the nature of the breakdown.

(. . .)

7. The reactor will only be made operable once a check has been made of the integrity of each one of the ship's systems and the tests have proven to be completely satisfactory, including the hydrostatic tests that permit the monitoring of circuit integrity and therefore the absence of risk. At any rate, power surge trials will be done away from our coastline on the high seas.

8. The Government has at all times respected the independence of the *CSN* without meddling in its scope of jurisdiction.

(. . .)

9. One of the Government's constant concerns has been to keep the public opinion, entities and other groups duly informed in a spirit of rigour and seriousness.

The Action Plan drafted by the *CSN* and the Directorate-General for Civil Protection is public and has been made known to the local mayors as well as to ecological organisations, to the public opinion, to the different collectives in Gibraltar and is available to any private citizen upon request.

The *CSN* furnishes the daily results of the radiological monitoring and draws up a weekly report on repair activities. Both are publicly available.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 125, pp. 422–423).

On 17 April 2001 the Government responded before Congress to a question related with the assessment of the Conference on Climate Change (The Hague) and the stance to be taken on the Sixth Conference on Climate Change stating the following:

"The Hague Conference on Climate Change held in November was not a success. The Conference Chairman had to suspend the Conference that will be taken up again at the end of July of this year. An agreement was not reached although the chasm separating the different negotiating groups was lessened. At the United

Nations Conferences the Spanish Government held the agreed position taken by the European Union Member States. As to emission reductions, the final aim of the Protocol, Spain has committed to Annex B to reduce its emissions by 8% with respect to 1990 levels during the first stage of the commitment (2008–2012). The fact is that our emissions could actually increase by 15% and we would still be in compliance with Kyoto thanks to the Burden Sharing Agreement reached in the European Union; an instrument envisioned under Article 4 of the Protocol allowing the parties included in Annex 1, by means of an agreement, to jointly comply with emissions reduction objectives. This is known as the 'Community Bubble'.

(. . .)

The Spanish Government, as is the case with the rest of the European Union Governments, negotiates with one unified voice at the climate change conferences and positions are adopted at the Council of Ministers of the Environment meetings.

The latest conclusions underscore the EU negotiating positions in the continuance of the COP 6 to be held in Bonn on 16 to 27 July 2001.

The third evaluation report of the Intergovernmental Panel on Climate Change (IPCC) was recalled and it was affirmed that the first commitment stage (2008–2012) is only the first step in the fight against climate change.

The Council of Ministers of the Environment of the EU highlights the need to safeguard the environmental integrity of the Kyoto Protocol; integrity that must translate into a real reduction in greenhouse gas emissions and the existence of a strict compliance and responsibility regime.

The Council expresses its support of the President of the COP 6 reiterating its firm will to dialogue and calls for a constructive attitude from the other negotiating parties in this process.

(. . .)

. . . The Council emphasizes its support of developing countries and makes specific mention of the inclusion of climate change on the agenda of EU development cooperation.

The Council urges the Commission and the Member States to adopt the proper measures to guarantee that the Protocol ratification process allows it to enter into force in 2002.

(. . .)

The Council underlines the importance of the 6th Action Programme, the need to integrate climate change into the different sectors and the relationship that exists between climate change and sustainable development.

(. . .)

The Spanish Government, together with the European Union, has a clear political commitment to achieve the entry into force of the Kyoto Protocol in the year 2002 (Rio + 19) . . .".

(*BOCG-Congreso.D*, VII Leg., n. 164, pp. 482–483).

Subsequently, on 22 March 2002, the Government made reference in Congress to the agreements reached at the Conference on Climate Change held in Marrakech (Morocco) in the following terms:

"The 7th Conference of the Parties to the United Nations Framework Convention on Climate Change was held in Marrakech from 29 October to 9 November 2001. The priority objective reached at this summit (COP 7), was to manage to transfer the political agreement adopted in Bonn in the second part of the 6th Conference of the Parties (COP 6 bis) during the month of July 2001 to legally binding decisions.

(. . .)

The decisions adopted at the COP 7 have translated the political agreements taken at Bonn into legal terms so that the countries that are party to the Framework Convention on Climate Change can commence their respective ratification processes in order that the Kyoto Protocol finally enter into force in the year 2002.

The decisions approved in Marrakech refer to the four chapters of the political Agreement adopted in Bonn, i.e. funding and development; flexibility mechanisms; compliance and sinks. A new one regarding methodologies was added to these.

a) Funding and development . . . the COP 7 focused on approaching the specific needs of the less developed countries.

(. . .)

b) Flexibility mechanisms: once the general application framework of these mechanisms was establisbed at Bonn . . . specific aspects of each one of the mechanisms have been developed. Aspects such as:

- The composition and operation of the J1 government body (Supervisory Committee) and of the Executive Board of the CDM.
- The eligibility criteria for gaining access to the mechanisms.
- The conditions to be met for immediate commencement of CDM projects.
- Prohibition of the sale of credits to parties that fail to comply with the commitment period reservation set at 90% of the assigned amount.

The bases have thus been establisbed allowing for commencement of enforcement, at least on an experimental basis, of the above mentioned mechanisms that will not be fully operational until the year 2008.

c) Sinks (LULUCF): in Marrakech absolute priority was put on methodological issues and information requirements that parties should furnish so as to be able to take stock of sink activities.

(. . .)

d) Compliance regime:

(. . .)

In the decisions approved at Marrakech, considerable progress was made in defining issues such as:

- The type of information that tbe parties should furnish and public access to such information as well as Committee meetings.
- The legitimation of the Parties to file infraction proceedings against another party, admitting such legitimation.
- The provisional execution or suspension of the Committee decision in the

event of a remedy of appeal opting in the end for provisional enforcement of the decision.
- The link between access to the mechanisms and subjection to the compliance system.

(. . .)

Methodologies: Articles 5, 7 and 8. . . these Articles refer to issues that are very important for Protocol enforcement and in the assessment of whether Parties are complying or not.

(. . .)

Subsequent to the Bonn and Marrakech agreements, the first measure adopted by the Spanish Government was the ratification of the Kyoto Protocol in 2002. The legal process for Spanish ratification is already under way with the objective of Parliamentary approval of the ratification instrument during the first semester of 2002.

(. . .)

Over the last several months important initiatives have been taken such as:

- The creation by the Council of Ministers of the Spanish Office for Climate Change under the auspices of the Ministry of the Environment.
- . . . The Council of Ministers has recently approved Royal Decree 1188/2001 of 2 November restructuring the National Climate Council.
- . . . During the month of October the Office formed an inter-departmental working group with the mandate of coming up with a diagnosis of the situation and proposing pertinent action to be taken.
- With a view to approaching the practical aspects of implementing the Kyoto Protocol, . . . the Office is constituting monographic groups in collaboration with the *CEOE* (business association) and the competent ministerial departments".

(*BOCG-Congreso.D*, VII Leg., n. 328, pp. 130–132).

On 10 December 2002 the Secretary General of the Spanish Cooperation Agency, Mr. Rodríguez-Ponga y Salamanca, appeared before the Congressional International Development Cooperation Commission of the Congress to respond to a question regarding the assessment of the results of the Summit on Sustainable Development held in Johannesburg and to report on action to be implemented to promote the objectives established at this Summit:

"The Johannesburg Summit ended with a global agreement, an international agreement taking stock of the three axes of development. Sustainable development is comprised of one part environmental, one part social and one part economic. It is our view that this approach to sustainable development is positive and it must be made clear in a United Nations text that the eradication of poverty is the greatest challenge facing international society. We believe that the United Nations system has been made stronger as a result; that multilateralism has been strengthened.

(. . .)

Many positive things took place. Far-reaching international initiatives were approved on the subjects of water, sanitation and energy backed fundamentally by the European Union and on one occasion by the United States; important political commitments were made on subjects of trade, the link between trade and the environment; the sustainability of consumption and production was discussed as was putting a stop to the degradation of biodiversity.

(. . .)

Globalisation, together with the eradication of poverty, attracted the interest of summit negotiations while issues relating to natural resource management and biodiversity, in the limelight at Rio, were given less relative importance.

(. . .)

Tbe final text also made room, at the request to the European Union, for some agreements at the national level specifically referring to the responsibility of states, the responsibility of each one of the countries in the course of its development process, to fight against poverty by setting up solid and stable democratic institutions, protect human rights, strive for equality between men and women, fight against corruption and foster the implementation of sustainable development strategies that integrate their three dimensions, etc.

On the international level the agreement was taken to deepen the United Nations system reform to assure its coherency and effectiveness, highlighting the future role of ECOSOC and make headway in coordination with international financial institutions and the World Trade Organisation.

(. . .)

During the Spanish Presidency, Spain has played a vital role in the preparation of the Johannesburg Summit by participating in preparatory meetings in New York and Bali as well as in the European Union's Development and Underdevelopment Council and in the Seville European Council. It was also suggested that some initiatives such as those referring to water and sanitation proposed by the European Union could be extended in the future to Latin America; something we consider enormously important.

(. . .)

In relation with the Johannesburg Summit and following the sustainable development approach, the *Azahar* Programme has been implemented for sustainable development in the Mediterranean with the participation of a number of ministries and Autonomous Communities as well. This is a sustainable development programme through which Spain offers the Mediterranean coastal countries, mostly Arab countries from the North of Africa and the Middle East but also including the Balkans, cooperation in the area of natural resources, biodiversity, agriculture and soil conservation, etc. . . .

The *Araucaria* Programme, which has been in operation for a number of years in Latin America, has acquired some nuances as a result of the Johannesburg Summit and the commitments acquired. In a similar fashion, the *Nauta* Programme for the development of fishing in Africa, taking on the sustainable development approach, is in complete harmony with the Johannesburg plans. At the joint com-

mittees being held with these countries, we are by and large basing our discussions on the Johannesburg commitments in light of the fact that we, the signing countries of the joint commission, have participated in Johannesburg and all together, we as donors and the others as beneficiaries, accept these commitments.

(. . .)".

(*DSC-C*, VII Leg., n. 658, pp. 21372–21379).

Finally, the catastrophe caused by the accident of the oil tanker *Prestige* that occurred on 13 November 2002 adjacent to the coast of Galicia led to the appearance of the Minister of Foreign Affairs, Mrs. Palacio Vallelersundi, before the Foreign Affairs Commission of the Congress on 16 December to report on the accident. In her appearance the Minister affirmed:

"(. . .)

I would segment our work during the course of this period in four large areas of action. The first is the coordination of international resources that have been supplied by other States . . . The second concerns the compensation payments that those affected should receive. The third is the impetus given, both in a bilateral and multilateral framework, to initiatives needed to avoid future disasters of the sort caused by the sinking of the *Prestige*; and the fourth is the mobilisation of Community financial resources that can be used to attenuate the effects of this catastrophe.

(. . .)

I will begin by focusing on coordination of international resources. I would like to point out that at the Ministry we have placed maximum priority on the efforts aimed at palliating, to the degree possible and in accordance with means hired from different countries throughout the world, the disastrous ecological consequences of the oil spills before and after the shipwreck. A total of fifteen ships from eight different countries have been operating off the coast of Galicia as a result of this crisis. The countries are France, Holland, Italy, Germany, United Kingdom, Norway, Denmark and Belgium, all specialised in fuel extraction and oil spill monitoring work. To this fleet we must add six aircraft from France, Portugal and United Kingdom plus terrestrial deployment that includes a large number of technicians and experts from practically all of the States of the European Union and from other friendly countries.

(. . .)

As regards the second point that I mentioned on management of the right to compensation, this aspect focuses on the steps taken by the Ministry of Foreign Affairs in relation to the payment of compensation to those who may be eligible due to their being affected by the oil spill.

(. . .)

For the time being we have been able to define the international legal framework within which we can file our claims basically consisting of the following international conventions subscribed to by Spain: the International Convention on Civil Liability for Oil Pollution Damage of 1992 and the International Convention

on the Establishment of an International Fund for Compensation for Oil Pollution Damage also of 1992.

(. . .)

The third area that the Ministry is working in is in relation to initiatives developed with a view to avoiding similar disasters in the future . . . I would like to remind you that Spain is party to the 1982 United Nations Convention on the Law of the Sea, the 1978 Convention for the Prevention of Pollution from Ships and the two 1992 Conventions just referred to . . . From this viewpoint we have taken stock of the need to promote the progressive development of the international law of the sea and with this purpose in mind a group of experts has been formed in the Ministry of Foreign Affairs to study steps that could be taken to fill in possible gaps that may exist in that international legal system as well as to enforce, to the fullest extent of the law, the regulations in force concerning the fight against marine environment and coastal pollution. Moreover, tbe Government . . . has designed a strategy in which the Ministry of Foreign Affairs has played an active role. I would like to remind you that the initiative was taken by the President of the Government when, on 21 November, he sent a letter to the President of the European Union and to the President of the Commission proposing the urgent adoption of the following measures: the immediate implementation of the marine security agency; the establishment of a European fund to guarantee compensation for damages produced by these types of accidents, the introduction of new regulations as concerns double hulls or similar designs for single hull oil tankers that sail under the flag or dock at a Member State port; new measures to augment the effectiveness of ship inspections; strengthening marine traffic control mechanisms . . ., verification at all Member State ports of the enforcement of controls set up under ship safety regulations and the drafting of proposals within the scope of international maritime law allowing Member States to control and, if necessary, limit ship traffic transporting dangerous cargo within the 200 mile exclusive economic zone. Bearing in mind that nothing can be accomplished in the international arena by solitary action, the Ministry of Foreign Affairs has rallied support from third countries for the application of this set of measures . . .

(. . .)

1 would like to draw your attention to the results of this diplomatic strategy the first echelon of which is the European Union and the second being international maritime law. On 26 November at the close of the Spanish-French summit held in Málaga, the Spanish Minister of Development and the French Minister of Infrastructures, Transport and Housing issued a joint declaration that included, on a bilateral level, the same proposals and approaches that I have just referred to and that now have become objectives that are fully assumed and backed by France.

(. . .)

During the course of the Spanish-Italian summit the Italian Government approved an agreement to foster the proposals formulated by Spain. Similar action was taken in Portugal, a country that also raised the possibility of setting up bilateral rapid

alert mechanisms similar to those that we already have in place for our inland waterways.

(. . .)

The European Union is the stage upon which we have been most pleased to find the degree of support given to our proposals. Thanks to this majority backing, decisive headway is being made in the area of maritime security and the fight against oil pollution.

(. . .)

By way of detail, the Council of Ministers of Transport held on the 6th was particularly important.

(. . .)

I would also like to mention and go on record in reporting that the Environmental Council held on the 9th of this month, as well as the General Affairs and External Relations Council of the 9th and 10th, concluded with results favourable to our pretensions.

(. . .)

The fourth area that I referred to relates to the mobilisation of Community financial resources . . . Our main concern has been that of being able to apply, as effectively as possible, the different community instruments available to us both at the European and national levels . . .

At the different ministries we have been working with the clear objective of highlighting for the Copenhagen European Council the actions already taken to deal with the economic, social and environmental consequences stemming from the *Prestige* shipwreck and urging the Council to announce its intention of examining the need to adopt as many additional specific measures as deemed necessary without any other limitation than that imposed by financial perspectives.

(. . .)

I would like to wrap up my presentation by underscoring the importance of the conclusions of the Copenhagen Council as regards the *Prestige* . . . I think that the incorporation of these conclusions is significant; conclusions that are absolutely clear and forthright, without prejudice to the declarations made by the European Council itself, by the Commission but also by the different Member States, particularly France. I reiterate that the specific additional measures are on the table and the European Council has made plans to examine these issues during the month of March based on a Commission report. The Ministry of Foreign Affairs, the entire department, is working and will continue to work along these lines so that the Commission's response is as thorough, expedient and satisfactory as possible.

(. . .)".

(*DSC-C*, VII Leg., n. 652, pp. 21196–21202).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. *Development Cooperation*

a) The Master Plan for International Cooperation

The Secretary of State for International Cooperation and for Latin America, Mr. Cortés Martín, in an appearance on 13 Febrnary 2001 before the International Development Cooperation Commission of the Congress to introduce the Master Plan for International Cooperation stated:

> "Spanish cooperation policy undoubtedly forms part of Spain's foreign policy and therefore is subject to its directives. It is based on the principle sustainable, fair and participatory human and social development. The fostering of human rights, democracy, Rule of Law and proper management of public affairs are all an integral and essential part of said policy. The overarching principle of cooperation policy is clearly the fight against poverty. Articles 1, 3 and 7 of the Cooperation Law designate the fight against poverty as the ultimate objective of Spanish cooperation. This priority coincides with the strategies of the European Union, those of the Bretton Woods organisations and those of the international community as a whole set out in the development objectives established on an international level by the Organisation for Economic Cooperation and Development (OECD) that represent another number of indicators the objective of which is poverty reduction; the reduction of the proportion of persons living in conditions of extreme poverty by 50 percent by the year 2015; universal basic education by the year 2015; the eradication of all forms of discrimination, especially due to reasons of sex, in the right to equal access to quality primary and secondary education by the year 2005; reduction in the infant mortality rate by two thirds and maternal mortality by three quarters by the year 2015; a turnaround in the existing trend of degradation of the environment, forests, potahle water, climate, soil, biodiversity and ozone layer hy the year 2015.
>
> Together with the fight against poverty (and I would venture to say as a *sine qua non* element in the fight against poverty), the defence of the Rule of Law and democratic principles, the promotion and protection of human rights, the promotion of equality between men and women, environmental conservation and the fostering of cultural dialogue are other basic principles of Spanish cooperation. Taken together they all form part of a policy that defends the market economy, free trade, private sector development, the liberalisation of economic activity and a fairer distribution of wealth. These principles that represent so many other general objectives are the bottom line of the solidarity of Spanish society; a solidarity that pursues the values of freedom, democracy and progress for other States just as we want for ourselves. In the same manner that the same principles of diligence, fiscal responsibility and macroeconomic stability that we ourselves practice, we also preach for third countries.
>
> (. . .)

. . . The path towards development is basically comprised of three elements: public and private investment both on the national and international levels, free trade and official development assistance . . .

When this official development assistance is transformed into specific action it should be interpreted in light of the principles on which this policy is built that are found in Article 2 of the law: the responsibility and leading role in the development process should be played by the members of each country; the existence of a basic commitment between each donor and beneficiary; the advancement of social participation both in the beneficiary country as well as in the donor country; cooperation must foster the autonomy of the beneficiary country; the fostering of lasting and sustainable economic growth of countries should go hand in hand with the means with which to foster a redistribution of wealth to favour improvements in standards of living and access to health, educational and cultural services for local populations; respect for commitments made in international organisations.

1 will now focus on the geographical priorities of Spanish cooperation. Article 6 of the cooperation law, as Your Honours are well aware, sets out the priority geographical areas for cooperation . . .

The preferential orientation of our cooperation towards the Community of Latin American Nations and towards other Spanish and Portuguese speaking countries is based on the coordination and complementarity criteria preached with regard to the action of the donor community, especially in the European Union programmes. To state this in another way, Spain must focus its resources where the impact of our official development assistance can be most effective and beneficial bearing in mind that our responsibility as a donor country increases in harmony with the importance of our historic and cultural ties with certain areas.

For these reasons, when it comes to geographical distribution, the Master Plan draws a distinction between Spanish cooperation priority countries or programme countries; countries in conflict, in reconstruction or post conflict, with two major axes formed by Colombia and the Balkans; the priority regions named in the cooperation law and the rest of the developing countries, especially the least advanced among them. The aim is to make the principle assistance target countries the beneficiaries of more than 125,119 million pesetas in bilateral assistance alone in the year 2004.

In consonance with the above, the following geographical areas have been formulated: Latin America which is the main target of our cooperation, further aided by the prior existence of a regional cooperation framework, the Bariloche Convention, in the context of the Latin American Conference calling for preferential attention and specific resources . . .

Within Latin America, however, the different levels of development determine the different degrees of priority for Spanish cooperation action. Nations with programme country status in Central America are: El Salvador, Guatemala, Honduras and Nicaragua, which represent the principal nucleus of the regional cooperation strategy for Central America. In the Caribbean: the Dominican Republic. As for South America, the programme countries are Bolivia, Ecuador, Peru and Paraguay. In

addition to this set of countries, special mention must be made of Colombia and Cuba. Colombia will be the focus of a programme especially designed to accompany the conflict settlement process the bases of which are now being set up. As concerns Spanish cooperation policy in Cuba, priority will be placed on facilitating the internal evolution of the country and support for the improvement of living standards for the Cuban people both through bilateral cooperation as well as through cooperation on the European Union level always subject to fully accepted European regulations, promoted by Spain, regarding the democratic clause in cooperation.

Second of all is the Maghreb, Spanish cooperation's area of greatest interest in the Mediterranean and the Arab world given that it is with this area in the north of Africa closest to Spain that we share wide-ranging and intensive political, economic and socio-cultural interests. The stability of this region is vital for both Spain and Europe and a joint development strategy that also addresses the worrisome phenomenon of migration is therefore essential in the area . . .

The Middle East is one of the focal points of greatest potential instability in the Mediterranean in light of the existing regional conflicts and political, economic and social imbalances. In order to establish stability throughout the region it is necessary to actively collaborate in the peace process in which Spain is very much involved. For Spain this means that the Palestinian Territories comprise the only programme country in the region. Consolidation of the peace process will also entail a policy of cooperation with neighbouring countries and especially with Jordan, Lebanon and Egypt . . . Sub-Saharan Africa is the fourth area.

The selection based on two regional divisions is as follows: in Central Africa the programme countries will be Senegal, Cape Verde, Guinea Bissau, Equatorial Guinea and Sao Tome; in southern Africa the programme countries and principal recipients of our assistance are Mozambique, Angola, Namibia and South Africa; the latter being considered a transitional country with the aim of consolidating its democracy and contributing to regional stability.

Asia represent the new challenge for Spanish foreign policy. Cooperation will collaborate in this effort concentrating its programmes on the Philippines, China and Vietnam . . .

In the rest of the countries a series of horizontal training and technical assistance programmes will be implemented with special attention to Southeast Asia in which a microcredit programme has also been set up in Bangladesh.

Central and Eastern Europe. Spanish cooperation has a dual objective in Central and Eastern Europe: on the one hand the maintenance of our commitment with the Balkan peace process and, on the other, support for the transition processes under way in the rest of Europe . . . In the rest of Central and Eastern Europe our action focuses on training and technical assistance programmes paying special attention to reform and modernisation processes. As for the European Union candidate countries, cooperation shall concentrate on supporting their adaptation efforts, especially through the European Union twinning programme.

(. . .)".

(*DSC-C*, VII Leg., n. 147, pp. 4201–4203).

b) Defence of human rights, democracy and fundamental freedoms

On 25 November 2002 the Minister of Foreign Affairs, Mrs. Palacio Vallelersundi, appearing before the International Development Cooperation Commission of the Congress to report on the general lines of action taken by her Ministry in the area of international cooperation, stated:

"Cooperation policy forms part of Spanish foreign policy and is based on the same principles and values and also defends the same interests. First of all we seek international relations based on Rule of Law and we firmly believe in the universality of principles among which special mention should be made of the defence and advancement of human rights but also the defence and advancement of democracy, Rule of Law, equality between men and women and the market economy. Now, if we intend to be true to this conviction, these principles and fundamental rights that figure in our Constitution must form an integral part of our external action making their universality compatible with respect for and understanding of cultural diversity. Spain, as part of its cooperation policy, wants to see the same principles and values develop in the countries with which we cooperate. To state this in another way, Spain wishes for others the same that we have fought for ourselves, i.e. freedom, respect for human rights, democracy, Rule of Law, separation of Church and State, equality among men and women, a market economy, free trade; everything that defines the flag that we share with our European Union partners. The Government is of the view that claiming the universal applicability of these principles is not only an ethical demand stemming from the radical equality among all men, but is also a requirement for development. Experience teaches us that there is not an example to be found of a developed country – although an example may be found of one with a high per capita income – that fails to respect these principles. In other words, from a selfish point of view if you permit me that term – I have mentioned the ethical and values issues that are fundamental –, there is no better investment than investing in democracy, in the organisation of a society, in strengthening institutions. The Government, in consonance with this concept, considers that the defence of human rights is one of the sectoral priorities established in the Law of cooperation as well as in the Master Plan for Cooperation 2001–2004 approved and given a vote of confidence by this House. There is no doubt that the aim of development assistance is poverty reduction but we are all aware that poverty is not rooted solely in a lack of growth, in low income levels. Fortunately, during the course of the last several years, a new concept of international cooperation has been spreading and has been confirmed in the Monterrey and Johannesburg summits that takes the view that poverty is not fought with the mere transfer of assets, with the mere transfer of capital. To rise out of under-development one needs democracy and respect for human rights as I stated earlier.

(. . .)".

(*DSC-C,* VII Leg., n. 628, pp. 20548–20549).

On 10 December 2002, in its appearance before the same Commission of the Congress, the Government reported on the stance held by Spain with respect to the importance of human rights in its cooperation relations with third States:

"The issue of human rights is an absolute priority in Spanish cooperation. This is a point on which we all agree, not only as regards Spanish cooperation but also in all of European Union cooperation that is mostly rooted in respect for and compliance with human rights.

This is also stipulated in our Law of Cooperation, our Master Plan, not only in the annual plan. In other words, human rights form an essential part of development cooperation; they are a political imperative, a moral obligation and are also an effective instrument for the defence of personal dignity and are therefore effective in the eradication of poverty, of injustice and of inequality.

When we speak of human rights we are speaking of political freedoms, of individual freedoms; we are speaking of syndicated freedom, of freedom of education, of freedom of religion, of freedom of opinion, freedom of choice. We are speaking of all of the freedoms that we know and of those that we fortunately enjoy but we are also talking about an independent judiciary, a free market, of the possibility of changing a government with our vote; things that are possible in our countries but that in others are not yet a reality.

We are of the view that these principles are universal values, an opinion supported by the United Nations in its Universal Declaration of Human Rights and also by other declarations made at the United Nations on civil rights, the international pacts on civil and political rights and economic, social and cultural rights.

A large proportion of cooperation development could always be included as human rights. The right to education, everything that we do in education, is a human right; the right to health, the right to a home, in a broad sense, with those international pacts. A large proportion of what we are doing in cooperation, if not all, fits within this general approach of personal dignity and, therefore, respect for human rights.

Specifically, Spanish cooperation is preparing a strategy in the area of Rule of Law and the strengthening of democracy. We have already developed a strategy in the area of the environment, as we are all aware, and we are now proposing this other strategy of Spanish Cooperation in the area of human rights and Rule of Law that entails sending coherent and reiterated messages with respect to the community of beneficiary countries. In Latin America, of course, we are very active in this area. In Latin America we are doing a lot of work in the area of public administration reform and political commitment with respect to human rights. At the May 2002 summit held in Madrid, the European Union-Latin American Summit, specific mention was made of strengthening democratic institutions and Rule of Law, of protecting respect for human rights, of fighting terrorism, of eliminating racial discrimination and intolerance and of promoting equality among men and women as a means of combating poverty and achieving development.

... The specific issue of what happens in the case of those countries that do

not comply with respect for human rights was approached. We found that, of the 29 countries that are a priority for Spanish cooperation, four are not free according to the classification done by *Freedom House*. These four are Algeria, China, Equatorial Guinea and Vietnam. Cuba, given special consideration in our Master Plan, would have to be added to this list. It is not a priority country *per se* but it is a country that receives special attention from Spanish Cooperation despite its lack of freedom . . .

If we speak of DAF funds we find that of the ten principle beneficiary countries, only three are not free; the two already mentioned, China and Algeria and the other is Kenya. Discussions have focused within the donor community, and I have attended very thorough debates at European Union meetings, on the degree to which assistance can be tied to strict compliance with human rights. This is a debate in which there are a great many interpretations and I understand that there are disagreements. The conclusion reached by many is that making assistance conditional contributes to doubly punishing the population because they already have a burden to bear with disrespect for human rights and the government that they have to bear without also having an international community holding back any sort of assistance. This would be tantamount to a double punishment for that population group. It is true that cooperation has oftentimes been used as an instrument of change, as a pressure instrument and the results have been meagre. The former government in Spain under the Socialist party wanted to use cooperation as an element of pressure in Equatorial Guinea. What was the result? A large portion of Spanish cooperation was withdrawn and no significant advances were registered in the area of human rights in Equatorial Guinea. In other words, using cooperation as an element of pressure might work in some cases but in many it does not. There is no direct link and therefore assistance cannot be strictly tied to human rights. One can, however, work in support of human rights in many ways and over the long term. This is what we are doing in all of the countries we are working in. In some we are more effective such as in Latin America, for example, while in others the case is different as in China where our capacity for social or cultural penetration is much more reduced but the approach is the same and I believe that it is important to maintain this same approach. In this area we are doing a lot of work in different sectors. I believe that it should be highlighted that in the area of human rights it is important to work in a broad-based fashion in many sectors.

First of all in the consolidation of peace subsequent to war. In this sense Spain, as a country, under this Government and its predecessor, has clearly carried out commendable work in Central America that has been recognised by all of the Central American countries and by the entire international community. Second of all, human rights in the strict sense have been fostered and defended through conferences, meetings and awareness heightening sessions. Third of all, we are working on the modernisation and reform of the public administrations because the training of public officials is vital in all senses if human rights violations are to be avoided: police training, military training, customs and tax officers training, etc.

and also municipal officials. This is an area in which Spanish Cooperation in some countries, especially in Latin America, is particularly important. Fourth of all, through the strengthening of non-governmental organisations in these countries and participation in civil society, an area in which we are also actively participating. In fifth place, we are working in the reform and modernisation of the justice administration which is a challenge for many countries. From Spain we are working on the modernisation of the justice systems in Nicaragua, Honduras and in Bolivia. We believe that it is essential for the justice system to operate properly if corruption and human rights violations are to be avoided.

And finally, we are involved in a variety of other issues including the strengthening of political parties, support for electoral processes, support for indigenous communities, decentralisation processes, support for two trade union programmes being funded by the *AECI* together with the two main Spanish trade unions for trade union strengthening programmes throughout all of Latin America and in other areas such as Palestine, for example. You ask me for my assessment of what we are doing. I think that this is the priority area in which we are operating, in which we are completely committed. We are aware of the limitations that exist due to the political regimes in certain countries but we are working over the long term in benefit of individuals".

(*DSC-C*, VII Leg., n. 658, pp. 21381–21383).

c) Control of illegal immigration

The Secretary General of the Spanish International Cooperation Agency, Mr. Rodríguez-Ponga y Salamanca, in his 15 October 2002 appearance before the International Development Cooperation Commission of the Congress to respond to a question on the consequences that the proposal announced by the President of the Government to restrict cooperation with countries that failed to control illegal immigration was going to have on Spanish development cooperation policy, stated:

"This is an important subject forming part of a wide-ranging reflection that includes input from the President of the Government himself on illegal immigration, the situations it causes and the responsibility of the governments of the countries that these people are coming from. They are in a desperate situation that, unfortunately, only too frequently leads them to their death. There is, therefore, an initial assumption of responsibility that should be assumed by the officials of those countries from which illegal immigrants come . . . Second of all, part of the responsibility is obviously ours and there is now doubt that the Government assumes its responsibility and raises these issues both with respect to immigration as well as to development cooperation. There is an issue yet to be resolved, however, that forms part of the debate confronted with increased frequency by our society and that is legal or illegal immigration and its link to development. It is true that immigration contributes to development. We Spaniards know this very well because our emigration abroad contributed significantly to the development of Spain. This is true not only due to the frequently commented remittances sent by emigrants back to their

home countries but also thanks to the acquisition of new technical training, ways of working, etc.

. . . Morocco. Here I must make a distinction regarding what is considered cooperation with governments and what is cooperation through other channels because if the Government of a country, whether that be Morocco or any other, maintains a certain attitude it could be very difficult to establish cooperation. Let's look at the specific case of Morocco. In the year 2001, for example, the inter-university cooperation programme could not be executed for the simple reason that the Moroccan authorities did not want to call a meeting of the commission specifically set up for that programme. It is very difficult to hold a meeting on a bilateral cooperation programme with a government if that government refuses to even sit down at the table. I am afraid that in 2002 some of the government to government bilateral cooperation programmes with Morocco are going to meet with the same fate making them impossible to execute. The case is different with other types of cooperation that can directly benefit a significant proportion of the Moroccan population. In the specific case of Morocco we have opted to uphold, in 'business as usual' mode, the subsidies for Spanish NGOs working there. What I am saying is that the government to government policy does not necessarily have to affect the *AECI* subsidies granted to Spanish NGOs working in Morocco in benefit of the Moroccan population . . .

Another issue is the existence of difficulties on the government to government level, one of which could be illegal immigration. The result of this could be that some of the bilateral programmes agreed to, set up and budgeted may not be implemented. It is also true that when we hear the President of the Government or other institutions talk about the link between cooperation and immigration, they are not necessarily speaking about development cooperation. There are many other channels of cooperation between governments, of cooperation in the United Nations system, bilateral cooperation, economic cooperation; channels that are not necessarily development cooperation. This means that political signals can be sent to the government in question communicating the need to approach a certain problem, a problem that is ours but that first and foremost is a problem of theirs because, for whatever the reason, there are citizens from that country that have to abandon the country under terrible conditions and, in many cases, only to ultimately lose their lives which makes for a sad state of affairs".

(*DSC-C,* VII Leg., n. 586, p. 19125).

2. *Assistance to Developing Countries*

a) Latin America

On 3 June 2002 the Secretary of State for International Cooperation and Latin America, Mr. Cortés Martín, appearing before the Senate Latin American Affairs Commission to report on the Summit held in Madrid between the European Union, Latin America and the Caribbean, stated:

"First of all, two important results have clearly been achieved on the political front. On the one hand the firm commitment to combat terrorism and narcotics trafficking by strengthening cooperation mechanisms among governments and, on the other hand, the strengthening of bi-regional dialogue through the mediation of international fora, especially the United Nations.

Second of all, the economic and commercial front is where the most significant advances have been made in comparison with the situation as it stood in June of 1999 when the first Summit was held in Rio de Janeiro. On the one hand, the entry into force of the agreement with Mexico that has had a very positive impact on the trade flows between this country and the European Union and, on the other hand – and this is undoubtedly a very relevant issue –, the conclusion of the Association Agreement with Chile . . .

As concerns Mercosur, we have witnessed advances in the negotiations to the point at which the political and cooperation chapters as well as trade facilitation are practically concluded. Moreover, it was agreed to continue trade negotiations with a ministerial level meeting in July which translates into strong support for negotiation despite the adverse circumstances caused by the situation in Argentina.

With respect to Central America and the Andean Community of Nations, a window to the eventual negotiation of association agreements with these regions has been opened. In the meantime, political and cooperation dialogue agreements are being negotiated but cooperation in the area of trade, investment and economic relations has been deepened.

(. . .)

To finish with a review of the different geographical areas in this economic aspect, special mention should be made of the decision taken by the Caribbean countries together with those of Pacific Asia and the Caribbean, of initiating in September negotiations for economic association with the European Union within the Cotonou framework.

(. . .)

And finally, in the third area, that of cooperation, new elements of interest were also featured. First of all the ALIS Programme for the development of the information society . . .

In the area of education that was paid particular attention at the summit, special mention should be made of the new scholarship programme known as ALBAN. This programme was tabled by the External Affairs Commissioner Mr. Patten within the framework of the cultural forum held simultaneously with the summit that brought together foundations and cultural entities from a number of European and American countries. The programme included the funding of 3,900 scholarships for post graduate studies 75 million euros of which would be paid for by the Commission and 38 million euros by the European universities participating in the programme.

In my view this is a milestone that should be underscored because it is going to provide significant impetus to cooperation in the area of education between Europe and American and is going to permit high level training of post-graduate

Latin American students thus providing a boost to development assistance in those countries and helping to overcome a practically exclusive relationship in this area with the United States.

(. . .)

It is also important to mention the support that the summit lent to the 2002–2004 action plan as regards higher education with the aim of improving the quality of instruction and facilitating mobility on the part of students.

The meeting concluded by stating that the II European Union – Latin American and Caribbean Summit was held at a time when the international environment was not the most favourable. On both sides of the Atlantic subsequent to the economic crisis that has spread as a result of the September 11th attacks has led to hard times in several Latin American countries . . . an example being the situation in Venezuela suffering a grave crisis in April, the interruption of the peace process and an electoral climate very much affected by the terrorist violence in Colombia or the deep crisis suffered by Argentina, all added to Europe's concern for enlargement and the elections that will be held over the next few months in several European Union countries.

This general panorama did not paint a very favourable picture for the celebration of the Summit. The Madrid Summit did, however, feature a very high level of participation and produced concrete appreciable results and was assessed very highly by both the participants and, in general terms, by the media and the results obtained.

(. . .)

The scheduling of the next meeting to be held in Mexico in 2004 is a guarantee of the continuance of this process of establishing and consolidating the biregional association.

(. . .)".

(*DSS-C*, VII Leg., n. 295, pp. 3–5).

b) The Mediterranean

On 5 December 2001 the Minister of Foreign Affairs Mr. Piqué i Camps, appearing before the Senate Foreign Affairs Commission to respond to a parliamentary question on measures to be taken to foster better relations and collaboration with Morocco stated:

" . . . Morocco is the number one country in the world when it comes to Spanish cooperation funds, over and above any Latin American country including Peru. It was not in vain that Morocco signed with Spain – in 1997 if my memory serves me correctly – a financial protocol the total of which is the highest of all financial protocols that Spain has ever signed with any other country in the world, including China.

For Morocco, Spain is its number two trading partner. We are currently, together with France, the top investors in the area. Nearly one thousand Spanish firms are operating in Morocco. We have presented very ambitious gas projects off the

Moroccan coast that the Moroccan government has yet to respond to. We have offered a specific development plan for the northern districts that are starting to develop with some specific projects. From a cultural perspective, no other country in the world has as many Cervantes Institute Centres as Morocco; five are currently in operation. There are approximately 12 Spanish-run educational centres providing an education for thousands of Moroccan boys and girls. And I could go on citing many further examples.

There is no other country in the world – outside of the European Union, of course – that has such a close and deep relationship with Spain as Morocco . . .

I am not going to deny that there are problems. We have a problem with illegal immigration that we have laid out on the table, especially in the most crucial moments. We have problems with narcotic drug trafficking. We had a problem with an impasse in reaching a fishing agreement between the European Union and Morocco. I am not going to deny that there are problems".

(*DSS-C*, VI Leg., n. 219, p. 20).

On 4 February 2002 the Government, in reply to a Parliamentary question on humanitarian assistance provisions in light of the precarious situation facing the Saharawi people, reported the following:

"Spanish Government assistance for the Saharawi people, the beneficiaries of which are almost exclusively the Saharawi refugees living in the Tinduf camps (Algeria) are channelled via the Spanish International Cooperation Agency (AECI) carrying out a number of different initiatives:

- Emergency food and humanitarian assistance.
- Subsidies and assistance for study scholarships through Non Governmental Organisations.
- Development (NGDO) awarded within the framework of *AECI* calls for projects.

It is also important to highlight the contributions made to the UNHCR mostly earmarked for its refugee repatriation programme.

In addition to this assistance, over the last several years and specifically since 1995, there has been a significant increase in decentralised cooperation initiatives with Saharawi refugees by the autonomous communities, regional councils and town halls.

(. . .)

Government previsions for the year 2002 are to continue with this assistance at the same level as previous years although with respect to NGDO subsidies, we will have to wait until the presentation of their projects in next year's call for projects".

(*BOCG-Congreso.D*, VII Leg., n. 298, p. 579).

c) Sub-Saharan Africa

On 18 December 2001 the Secretary of State for Foreign Affairs Mr. Nadal Segala, appearing before the Foreign Affairs Commission of the Congress to report on Spain's support for the democratic transition in Equatorial Guinea, stated:

"The Government has been keeping very close watch on the recent developments in Equatorial Guinea and, at the same time, has made a concerted diplomatic effort to promote democracy and human rights in that country that is considered to be of strategic interest for foreign policy in Sub-Saharan Africa. The advancement of democracy and human rights has become, in and of itself, one of the main axes of Spanish cooperation policy in Equatorial Guinea. Despite the fact that the discovery and drilling of ricb Guinean oil and gas wells has once again sbifted Equatorial Guinea's traditional dependence on the outside world, the Spanish Government's commitment to the advancement of democracy and human rights has only grown. Today Equatorial Guinea is, in fact, the number four producer of oil in Sub-Saharan Africa. Its per capita income has increase five-fold over the last four years from approximately 270 dollars in 1998 to 1,400 dollars in 2001. Thus, Equatorial Guinea is no longer considered a member of the group of least developed countries and now forms part of the middle income countries with a developing economy. Many serious political, economic and social problems do persist, however, and if they are not resolved they could very likely be a stumbling block to the integrated and sustainable development of Equatorial Guinea.

(. . .)

During the course of the last two years the Government maintained a fluid, critical but constructive dialogue with the Government of Equatorial Guinea in the area of democracy and human rights. High level bilateral contacts have been intensified during this period, increasing the number of visits from representatives of both governments. During these meetings the Spanish Government has always shown its willingness to collaborate with the Guinean Government in the new context of the bilateral relationship. Conversations have indicated that there are three fundamental objectives shared by the two governments: the first is to foster Equatorial Guinea's full membership in the international community. The second is to strengthen the institutional framework as the fundamental tool by which to bolster legal security and guarantee respect for human rights making headway in the democratic process. The third is to work so that oil revenues really help with the modernisation of the country and filter down to tbe citizens improving their level of well being and income. The Spanish Government is willing to lend Equatorial Guinea the necessary assistance to achieve these objectives.

(. . .)".

(*DSC-C*, VII Leg., n. 405, pp. 13196–13197).

d) Middle East

On 10 October 2002 the Government, in response to a parliamentary question on provisions made for increased cooperation in the development of the Palestinian ter-

ritories to palliate the destruction caused during the military occupation of such territories by the Israeli army, reported:

"The Palestinian Territories are a Middle East priority country in the Master Plan of Spanish Cooperation 2001–2004. Since 1994 cooperation with the Palestinian Territories has been based on the Memorandum of Understanding on Scientific, Technical, Cultural and Educational Cooperation (Tunisia, 29 July 1994). The III Spanish-Palestinian Joint Cooperation Committee was held in Gaza on 5 February 1997. The Monitoring Committee was held in Madrid in July 1999 and preparations for the IV Joint Committee have been under way for more than a year now and will be held as soon as circumstances permit.

In the meantime, funding is still being provided (2001 budget) to projects that are the extension of programmes approved at the III Joint Committee given the satisfactory progress of the execution. However, the grave worsening of the current situation, the humanitarian crisis and the destruction of infrastructures has called for a re-thinking of how to earmark funds budgeted for 2002.

The development over the short and middle term of events in the Palestinian Territories is affecting a number of complex factors: the domestic policy of the Israeli Government, the political stance taken by the Palestinian National Authority, the influence of the Goverument of the United States, the capacity for action by the European Union, etc. In short, this is an issue of national and international politics that extends beyond the scope of action and even the capacity of the Spanish International Cooperation Agency (*AECI*) and of Non Governmental Development Organisations (NGDOs) that are operating in the region. Moreover, the possibility of implementing cooperation activities in the Palestinian Territories and, more specifically, the reconstruction of destroyed infrastructures and houses is now totally conditioned by the above mentioned factors and by the action of the Government of Israel.

(. . .)".

(*BOCG-Congreso.D*, VII Leg., n. 419, pp. 74–75).

e) Asia

On 15 October 2002 the Secretary General of the Spanish International Cooperation Agency Mr. Rodríguez-Ponga y Salamanca, appearing before the International Development Cooperation Commission of the Congress to report on the activities carried out and envisioned to deal with the humanitarian crisis unfolding in Afghanistan and Pakistan, stated:

". . . The situation in Afghanistan and Pakistan was completely unexpected and was therefore not at all envisioned in our budget, in the Spanish cooperation master plan or in the annual plan. It was a completely unexpected situation that we had to react to in an urgent and expedient way. We were able to react and in a manner that was over and above initial previsions because, as I said, this is a geographical area in which Spanish cooperation has not traditionally been present; a region that has no particular historical, linguistic or political ties with Spain.

However, in light of a situation that required significant humanitarian attention, Spain responded. When 1 say Spain I am not referring only to the *AECI* but also to the NGOs, autonomous communities and individual donations that, through campaigns organised by some NGOs, contributed personally with their money".

(*DSC-C*, VII Leg., n. 586, pp. 19113–19114).

f) Oceania

The Government, in response to a question posed in the Senate regarding the reasons why it proposes to reduce the assistance that the European Union promised to East Timor at the Donors' Summit held in December 2001 in Oslo, as well as the steps taken by the Government at the Barcelona Summit to rectify the decision taken by the European Union to cut assistance in half, stated:

"The European Commission has recently approved its cooperation strategy for East Timor setting out the European Union's financial commitments for the next four years. The cooperation programme shall focus on two priority sectors: health and rural development. In February 2002 the Commission presented a cooperation strategy document on East Timor that significantly reduced funding for the 2002–2004 period. The initial total foreseen in the strategy for the next two-year period was 47 million euros. The annual distribution was 28 million euros for 2002, 7 million euros for 2003, 6 million euros for 2004, 5 million euros for 2005 and 4 million euros for 2006. The Spanish Presidency of the Council of the European Union repeatedly expressed its concern over the drastic reduction of assistance highlighting at a number of different Community meetings the enormous challenges that the new State would be facing. East Timor is one of the world's poorest nations: its income levels are extremely low and its dependence on the donor community is infinitely higher than that of other developing countries in the region. Moreover, it is an emerging State that must undertake an arduous process of reconstruction and faces enormous basic infrastructure needs and is in an extremely fragile economic, social and institutional situation. It therefore requires a very large financial commitment from the international community. And finally the European Commission, mostly at the initiative of Spain and Portugal, increased the volume of assistance by 5 million euros during the course of the period covered by the above mentioned strategy".

(*BOCG-Senado.I*, VII Leg., n. 473, pp. 6–7).

XII. INTERNATIONAL ORGANISATIONS

1. *United Nations*

In response to a parliamentary question on the financial situation of the United Nations, the Government, on 26 January 2002, reported to Congress about Spain's position alongside that of the other members of the European Union:

"(. . .)
The latest figures available (through 30 September) are alarming:

1. 3,094 million dollars in back and unpaid dues (consolidated from the three budgets: ordinary, peacekeeping operations and tribunals).
2. Some specialised agencies like UNRWA (UN Relief Works Agency) or INSTRAW (International Research and Training Institute for the Advancement of Women) suffer from a lack of funding endangering their operation past next 31 December. Urgent voluntary contributions are requested for these.
3. As for Peacekeeping Operations, the needs are on the rise (2,100 million dollars for the current fiscal year, 1,700 of which are earmarked for only four missions). Situations are in a constant state of change in this chapter and it is possible that final figures may be even higher than initial estimates.
4. Sixty-one percent of the unpaid dues, 1,887 million dollars, correspond to the United States. As regards the ordinary budget, that percentage is 81 percent.

To confront the financial crisis facing the Organisation, the EU has proposed a set of measures that, although simple, are important: first of all, the countries in arrears should present a plan by which to comply with their financial duties as soon as possible. Second of all, a new quota sharing system should be devised that reduces or eliminates the current distortions. Moreover, the permanent members of the Security Council should take on their special responsibilities by paying a greater share, especially as regards the Peacekeeping Missions.

Spain, together with the rest of the EU, defends the basic criteria of ability to pay in the determination of each state's quota including special reductions for developing States. At any rate, payment of dues is an elementary obligation of States and they should be paid fully, on time and should not be subject to any conditioning factors".

(*BOCG-Congreso.D*, VII Leg., n. 125, p. 275).

2. *North Atlantic Treaty Organisation*

a) Enlargement

In response to a parliamentary question, the Secretary of State for Foreign Affairs, Mr. Nadal Segala, referred in the Congress, on 23 May 2001, to the stance taken by the Government regarding the enlargement of the Atlantic Alliance:

"The Government's stance with respect to the enlargement of the Atlantic Alliance is based on a dual principle. On the one hand, on our firm commitment to the open door principle, i.e. saying yes to enlargement to the degree that candidate countries comply with established requirements and, on the other hand, the Government's position regarding this enlargement process is also rooted in the principle that this is a process based on the consensus of Alliance Member States and that this consensus process must therefore be supported. The development and

construction of that consensus is the task that we presently have before us. We find ourselves at the commencement of a reflection process. The Prague Summit, forum of debate on these issues, will be held in November of next year and I can tell you that for the time being all options are still open; ranging from denying entry to all candidates to admitting all nine and a number of intermediate positions as well . . .

Spain has taken the view that enlargement should contribute to increased security throughout the continent. I know that this is a very general principle but it is absolutely basic and shared by all.

(. . .)".

(*DSC-C*, VII Leg., n. 234, p. 7040).

b) Relations between the European Union and NATO

The Secretary of State for European Affairs Mr. de Miguel y Egea, in an appearance before the Senate Foreign Affairs Commission on 18 June 2001 to respond to several questions, referred to the stance taken by the Spanish Government regarding the development of a European defence system independent of the North Atlantic Treaty Organisation:

"(. . .)

The efforts being made by the Spanish Government and the rest of the European Union partners participating in the construction of the Common European Security and Defence Policy (ESDP) are not aimed at constructing a European defence independent of the North Atlantic Treaty Organisation. Collective defence shall remain under the auspices of the Alliance and crisis management and in those cases in which NATO as such does not feel committed, action could he taken by the European Union. The decisions adopted at the European Councils of Cologne, Helsinki, Feira and Nice focused on providing the European Union with the necessary resources to fully carry its weight in the international arena and assume its responsibilities as regards crises, adding to the instruments already available to it a decision taking capacity to react within the scope of civil management and military crisis. In response to any given crisis, therefore, the European Union's specialty lies in its ability to mobilise a wide array of hoth civilian and military resources giving it a global capacity for crisis management and conflict prevention at the service of Common Foreign and Security Policy.

With the development of this autonomous decision taking capacity when NATO decides not to intervene, the European Union shall be made capable of participating in a whole range of Petersburg Missions as defined in Article 17.2 of the European Union Treaty: humanitarian and rescue missions, peacekeeping missions and missions involving combat forces for crisis management and peace restoration initiatives.

Thus, the development of these capacities does not entail the creation of a European army. In the case of States that are members of both the Alliance and the European Union, NATO continues to be the cornerstone of collective defence

and will continue to play a vital role in crisis management. The European Union's military capacities will thus be made fully compatible with and complementary to the commitments made within the NATO framework. The development of a Common European Security and Defence Policy contributes to the vitality of a renewed transatlantic link. Said development translates into true strategic collaboration between NATO and the European Union in crisis management respecting the decision taking autonomy of both organisations.

With a view to assuring the coordination between NATO and the European Union regarding these issues, negotiations are under way between the two organisations regarding the terms and modes of access of the European Union to NATO military resources and capacities so as to avoid unnecessary duplication on the part of one or the other organisation of capacities that are both scarce and expensive.

The European Union will also be provided with modes of access to NATO approach capacities within the framework of the operations run by the EU to assure coherency between the defence approach review mechanisms of the two organisations. These agreements are vital if one expects to be able talk about the operability of the European Union's crisis management capacity.

Spain hopes to conclude this process as quickly as possible and we therefore contribute to the efforts being made in an attempt to dissipate the misgivings that Turkey still harbours towards the European Common Foreign Security and Defence Policy and to prompt the new United States government to give its wholehearted support to the conclusion of said agreements".

(*DSS-C*, VII Leg., n. 151, pp. 16–17).

3. *Western European Union*

a) Relations between the European Union and the Western European Union

In a 15 February 2001 appearance before the European Union Joint Committee to report on the situation of the institutions, operations and personnel of the Western European Union (WEU) in the European Union, the Minister of Foreign Affairs Mr. Piqué i Camps, stated:

> "On 13 November the Ministerial Council of the WEU, under the French Presidency of the Western European Union and the European Union, was held in Marseille to bring an end to the organisation as it had existed up to then. Steps were taken towards what will be, subsequent to a brief transitional phase, an organisation with a new structure that simply maintains what have been referred to as residual functions that will be the minimum level functions allowing the treaty amended in Brussels in 1955 to remain in force . . . Marseille marked the end of a 16-year process of the Western European Union coinciding with the transfer of its headquarters from London to Brussels, reactivating an organisation created 52 years ago and that had found itself in a lethargic state, with a view to making it the embryo of a future European defence organisation.

In light of the balance sheet of the allied intervention in Kosovo, it is clear that the reactivation and operational development efforts made with respect to the organisation in the middle of the 80's and beginning of the 90's failed to provide for the consolidation of the WEU as an effective European defence instrument. It is no less true, however, that the experience accumulated during the course of these last 16 years has been extremely useful for the development of a European common foreign security and defence policy, known as the ESDP within the European Union itself. The acquis that the WEU is going to provide to the Union is therefore very important.

. . . The WEU is transformed because the idea behind its revitalisation became outdated and was overtaken by other events.

(. . .)

During the course of all of these years, collective defence has continued to be firmly anchored in NATO as the principal defence instrument of its members . . . Another determining factor is the participation of 28 countries in the WEU with heterogeneous interests and different statutes.

Instead of developing the WEU's capacities, it was decided to foster them within the Union, incorporating in the European Union those functions of the Western European Union that would allow the Union to assume its responsibilities in what are known as Petersburg Missions.

(. . .)

In July 2000 the WEU functions that were to be transferred to the European Union were defined. What will remain are the so called residual functions as they were named at the Marseille Ministerial Council held in November 2000 by the ten Member States in the so called transition plan that brought to a close certain responsibilities and structures that were incumbent upon the Western European Union. Marseille bore witness to the end of the WEU's responsibilities in the area of crisis management that were conferred by the Treaty of Amsterdam. The residual organisation shall only manage, with minimum possible expenditure, the obligations derived from the Brussels Treaty specifically amending the mutual defence obligation provided for in Article 5, relations with the Parliamentary Assembly of the Western European Union which is found in Article 11 and attend to budgetary obligations, especially the payment of retirement pensions.

In Marseille the minimum structures provided for in the transition scheme were also approved. WEU personnel would be strictly reduced to 29 officials that would keep a secretariat afloat and would attend to the work of the Permanent Council that is represented at the Ambassador level and that will continue to meet with a frequency to be determined by each Presidency based on need.

(. . .)

The Western European Union Command will remain in operation until the new European Union Command is declared operational. The WEU will continue to play a role in the exchange of points of view and also in rapprochement in the area of European security through its Parliamentary Assembly comprised of 28 countries that, as 1 already mentioned, in one way or another and with differing

status belong to the organisation. The Assembly is the only institution at which the members of the national parliaments of these 28 countries meet on a regular basis.

European cooperation as regards armaments will develop within the scope of the WEU. This is the case of the Western European armaments organisation and the Western European armaments group but these are decisions that will be subject to periodic revisions due to the plans to revamp European armament organisations and fora bearing witness to the changes that, as we all know, are taking place in the European defence industry.

The Marseille Ministerial Council of the Western European Union echoed the same interest shown by the European Union in assuming certain functions of the organisation, an issue that was given the go-ahead. This desire voiced by the European Union was reiterated at the Nice Council where an agreement was reached on the creation of a satellite centre and a security studies institnte functioning as an agency and that incorporates the necessary elements of the current WEU structures. This refers to the WEU satellite centre in Torrejón de Ardoz and the Institute for Security Studies that the WEU has in Paris.

Over the next several months the nature and functions of the futnre agencies should be defined so that the General Affairs Council, made up of the Foreign Affairs Ministers, may adopt joint action. The definitive conversion of the two centres in an agency is foreseen by the end of this year once the current transition period has come to a close".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 77, pp. 579–581).

XIII. EUROPEAN UNION

1. *Enlargement*

Given that we are considerably behind in our relations with the majority of the candidate countries with which we only established diplomatic relations in 1977 due to world events and historic, geographical and social distance, Spain has drawn up an enlargement framework plan known as the "Framework plan for the European Union candidate countries, 2001–2004". The guidelines of this plan were outlined by the Secretary of State for European Affairs, Mr. de Miguel y Egea, before the Foreign Affairs Commission of the Congress on 12 February 2002:

> "The enlargement framework plan consists of an introduction and four chapters. The introduction essentially underscores the importance that Spain attributes to enlargement and Your Honours are well aware that this is one of the fundamental points of our Presidency of the Union. Mention is also made of the dimension of this new enlargement, of the status of our bilateral relations with the countries concerned as well as the opportunity that this entire process represents for Spain. In the main body of the framework plan there is a description of the objectives established and the instruments that Spain proposes to apply in this respect. These

two chapters also include an analysis of each one of the different sectors identified that are coordinated by the respective ministerial departments in order to give impetus to our relations with our future partners in an effective and expedient manner. These sectors are: political, security, defence, justice and interior, trade, transport and communication, science and technology, fishery, labour, free movement of the work force, environment, energy, culture, education and language.

... The framework plan pursues three main objcctives: the first is to support the Government's decided backing for the enlargement of the European Union putting strategic trust in the future of the candidate countries and for our country. The second is to seek to intensify our bilateral relations with the twelve future members of the European Union – I am referring to the ten that are already on the list to complete their negotiations plus Romania and Bulgaria that are candidate countries still immersed in the negotiation process –. We are seeking to foster the greatest possible mutual awareness and to take greater advantage of the future potential of our bilateral relations by making a concerted effort to disseminate the image of the reality of Spain today as a modern and dynamic country that wields international weight, encouraging the mutual benefits of our productive complementarity with the candidate countries and the investment possibilities they offer while at the same time taking full advantage of the interest expressed in Spanish culture and language and spreading as far and wide as possible the scope of our bilateral relations to new sectors such as transport, environment, agriculture, judicial and police cooperation or migration policy. The third goal is that of fostering convergence of opinion with the candidate countries as regards the important issues of the European Union in order to guarantee future agreement and defence of mutual interests. These are, as I mentioned, the three overarching objectives.

The more specific objectives are as follows: first the political objectives. Here we are seeking to create common networks of interest by intensifying the fabric of the political relations between Spain and each one of the enlargement candidate countries. The aim is also to work doubly hard to disseminate in the candidate countries the stance taken by Spain that, from a political standpoint, is one of the most firm when it comes to enlarging European construction and to finish updating and disseminating the image of Spain today in each and every one of the enlargement candidate countries. Another specific objective focuses on defence and security. In this sense it is particularly important to develop the relations that our country has in this areas with the future members of the European Union in consonance with the scheme developed by the Ministry of Defence, especially via the joint Defence Committees. Another specific objective in that of justice and home affairs, an area to which Spain gives particular importance. We are quite aware of the difficulties facing these countries in the area of justice and home affairs and the aim is to develop a common area of freedom, security and justice sharing priorities, regulations and cooperation instruments. There is also the area of trade relations and it was the State Secretariat for Commerce that was the first Government department to take note of the challenge posed by enlargement and draw up a first and second edition of a plan of action.

(. . .)

As concerns the rest of the Community policies, infrastructures, transport, telecommunications, science and technology, agriculture, fisheries, labour, free movement of workers, environment and nuclear energy, there are sections focusing on these specific objectives and on everything relating to socio-cultural, educational and linguistic affairs that are intimately related with the promotion of the Spanish language. In order to achieve these objectives, the framework plan enumerates a series of specific instruments and initiatives. First of all we have the political-institutional instruments. As I have already mentioned, the strengthening of bilateral relations and the establishment of an ongoing dialogue are the cornerstone of the framework plan. Concerted action is vital at all levels of the Government to visibly enhance our presence in the region through a series of actions such as the intensification of bilateral political dialogue via trips and official visits.

(. . .)

Another very important chapter with a view to intensifying this dialogue is the opening of embassies.

(. . .)

The opening of consular sections is also very important . . . The development of the institutional framework is also very important. Here I am referring to the culmination of the conventional bilateral frameworks such as reciprocal protection of investment, avoidance of double taxation, transport and technical and cultural cooperation that are being implemented in all of these countries as well as contacts between our civilian societies especially in university and commercial circles and among non-governmental organisations.

There is also a series of instruments in the area of defence. Based on the principles contained in the bilateral collaboration scheme designed by the Ministry of Defence, specific actions are being developed focusing on the establishment of joint committees with two countries, Cyprus and Malta, adding to others already set up. Another important point is support for the balanced enlargement of NATO throughout the region.

(. . .)

There are also instruments in the field of justice and home affairs. Here the aim is to highlight coordination and training with a view to closing the gap between candidate countries and the Union's judicial policy. Bilateral agreements in the area of justice are being promoted and efforts will be made to implement all appropriate actions to regulate migratory flows and to promote police cooperation with special emphasis on the fight against organised crime . . .

A series of mechanisms in the field of trade relations and tourism are also being implemented. The plan focuses on eliminating technical trade barriers as well as fostering exports and investment via Spanish, Community and world institutions. To this end special attention is being paid to the start-up and development of trade and tourism offices as well as to support for commercial missions. Practically all of the candidate countries with an embassy already have a commercial office as an instrument to promote all of these actions.

As regards the promotion of the Spanish language, one of the fundamental objectives of Spain's cultural linguistic policy is to open Cervantes Institutes in all of the candidate countries . . .

In those places where it has not possible to open a Cervantes Institute, associated virtual classrooms have been set up at the different universities. The last two chapters of the document that you have before you focus on the conclusions and the evaluation and follow-up of the plan respectively, reflecting the apparent obstacles that enlargement, delays in our relations with candidate countries vis-à-vis other Member Countries and relative geographical distance could entail for Spain. They also highlight the important opportunities of enlargement allowing for the establishment of all sorts of links with countries with which we will be sharing a common project very shortly.

(. . .)

The framework plan will be updated each semester with the contributions of our embassies throughout the region, by means of meetings with the inter-ministerial monitoring commission and with an annual session of this Congressional Foreign Affairs Commission of Members of Parliament".

(*DSC-C*, VII Leg., n. 413, pp. 13411–13413).

The President of the Government, Mr. Aznar López, in his 30 October 2002 appearance before the Plenary of Congress to report on the extraordinary Council held in Brussels on 24 and 25 October 2002, specifically referred to the subject of enlargement:

"(. . .)

First of all, the European Council has backed the conclusions and recommendations of the Commission affirming that ten new Member States comply with the political and economic criteria and can assume their obligations as members of the European Union as of the beginning of 2004. The Council also reiterated its commitment to continue in negotiations with those countries that were not able to form part of the first round of accession. It has expressed its support for Bulgaria and Romania for efforts made to fulfil the objective of becoming members of the European Union in 2007 and has also congratulated Turkey for the advances made by this country in complying with the Copenhagen criteria. Allow me to remind Your Honours that this is the same stance that the Spanish Government has defended. We have always taken a favourable view of Turkey's accession to the European Union based on the same political and economic criteria that are applied to the rest of the candidates.

Second of all, it was of vital importance to reach an agreement in Brussels on the financial aspects of enlargement. We needed a final offer to present to the candidates and we also needed a budgetary framework that would allow us to guarantee the normal development of Community policies in an enlarged Europe. In this sense the Council has taken three fundamental decisions. First, we decided that the spending ceilings established for enlargement for the years 2004–2006 at Berlin should be respected. In its previsions Berlin already includes sufficient resources to finance the ten-State enlargement of the European Union. Second, we

have assured that the enlargement negotiations will respect the Community acquis which means that farmers from the new Member States will receive direct payments. Europe will not, therefore, have a first and second division. Third, all of this will be carried out within a framework of budgetary discipline. Total expenditure derived from agricultural payments during the period 2006–2013 will be the same as agreed to in Berlin, growing at an annual rate of one percent.

The financing of agricultural payments to the new Member States will be made without detriment to the direct aid received by the farmers of the current fifteen Member States and a sufficient budget will be maintained for the agriculture of the entire Union until 2013. Furthermore I would like to highlight the importance of another commitment that we reached in Brussels; namely, that any future reform of the CAP, the Common Agricultural Policy, should strictly bear in mind the situation of the most disadvantaged areas that account for more than 75 percent of Spanish agricultural land.

(. . .)".

(*DSC-P*, VII Leg., n. 200, p. 9957).

Two months later the President of the Government referred once again to EU enlargement during his appearanee before the Plenary of the Congress and Standing Council to report on the Copenhagen European Council held on 12 and 13 December 2002:

"Copenhagen was the enlargement summit. This process has followed the principles that Spain has always defended. The financial framework of the Berlin agreements was respected, enlargement negotiations were not conditioned by future reform of the common policies, the Community acquis was respected and the timetables have been complied with".

(*DSC-P*, VII Leg., n. 215, p. 10855).

2. *Spanish Presidency*

In his 8 July 2002 appearance the Minister of Foreign Affairs, Mr. Piqué i Camps, presented the objectives of the Spanish Presidency of the European Union to the Joint Committee for the European Union:

"(. . .)

The aim of the Spanish Presidency is to consolidate and provide impetus to the ongoing European project under the slogan *Más Europa* (More Europe) and in so doing will call on the legacy of former presidencies and underscore the firm will to confront the challenge of terrorism. The six priorities that I pointed out at that time were: the fight against terrorism in an area of freedom, security and justice; the introduction of the euro; impetus for the Lisbon process; a more prosperous and dynamic Europe at the service of its citizens; European Union enlargement; external relations and the debate on the future of Europe. These priorities focus on a number of fundamental axes: the fight against terrorism as a joint response of the European Union to a threat affecting us all within a framework of freedom, security and justice; economic and social reforms and sustainable development

with a view to deepening economic modernisation in the European Union; impetus for enlargement negotiations with a view to meeting the itinerary that was established some time ago by the European Council; definition of the bases of the future European Union and finally, greater presence for Europe in the world within the framework of the European Union's external relations.

(. . .)".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 102, pp. 2505–2506).

Subsequently an assessment was made of the results obtained in each one of these areas:

a) Fight against terrorism

"As a result of the abominable attack of 11 September, condemned at the summit of heads of State and Government on the 14th of the same month, the fight against terrorism became the priority of the Spanish Presidency that proposed to deepen and concretise the action Plan against terrorism approved by the European Council barely a week after the attacks. With the decided support of Parliament and the Commission, approval was given for the framework decisions and others throughout the Spanish Presidency on the fight against terrorism and the arrest warrant with the aim of strengthening the instruments of Rule of Law. The result of this is to avoid within Europe the claiming of the category of political crime or claim the existence of suspicious democracies – in inverted commas – as excuses to avoid the arrest and prosecution of terrorists. Moreover, reinforced cooperation among Member States' security forces gave rise to a series of measures on the development of the Europol convention setting up points of contact between Eurojust and Europol to name only some of the activities designed to make it harder for terrorism to benefit from the diversity of those security forces and standardise the prevention of and fight against terrorism. The new forms and dimensions of this phenomenon, especially concerning material or financial support infrastructures made easier by the existence of loopholes that are the result of differences in Member States' legal systems, have also led to measures such as the freezing of assets, shared lists of terrorist elements, organisations and entities and reinforced security or exchange of visa data. There can be no doubt that without the dimension of international cooperation that the fight against terrorism must have, the European Union's efforts could fall short. It is with that reason in mind that during our Presidency we have put our weight behind the conclusion of a global agreement against international terrorism at the United Nations as well as antiterrorist cooperation in the Union's external relations with the candidate countries and with third countries, especially the United States, Canada and Russia".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 102, p. 2506).

b) Asylum and immigration

The President of the Government Mr. Aznar López, in his 24 June 2002 appearance before the Plenary of Congress to report on the European Council held in Seville on

21 and 22 June 2002, gave a summary of the measures tabled in the area of asylum and immigration during the Spanish Presidency:

"The set of measures that the Presidency has tabled concerning immigration and asylum is based on four pillars. The first pillar sets out a series of measures permitting the European Union to fight against illegal immigration. The Council has put a priority on implementing some of the measures contained in the global plan against illegal immigration approved under the Spanish Presidency. It is therefore necessary before year's end to take a close look at the list of third States whose nationals are subject to the visa requirement; to set up a unified visa identification system as soon as possible; to speed up the conclusion of the readmission agreements that are currently being negotiated and to negotiate new agreements; to adopt the elements of a repatriation programme and approve the framework decisions on trade in human beings and illegal trafficking in human beings.

The second pillar is the implementation of the coordinated and integrated management of the Union's external borders. It is of vital importance that all States begin to manage our borders as territorial limits of the Union in a coordinated manner as the best way to guarantee our effectiveness. This is the first step towards a European Union border police patrol.

The European Union's plan for the management of Member States' external borders was recently approved. The purpose of this plan is to better control migratory flows. In order to achieve this objective the Council has decided to create a common body of experts on external borders as soon as possible. This measure will be supplemented with others that should be in force before the end of 2002 such as the implementation of joint external border operations; the creation of Member States' immigration liaison experts or the implementation of pilot projects on border administration. Prior to June of 2003 the Union should also define a common curriculum for the training of border police; determine burden sharing quotas between the Union and Member States for the administration of external borders and adopt a methodology that allows us to assess the risks involved in the control of these borders.

The third pillar is the integration of immigration policy in the Union's relations with third countries. The Union believes that the intensification of economic cooperation, the development of commercial activity, development assistance and conflict prevention are the means by which to reduce the causes of migratory flows. The Union has thus sought the cooperation of third countries at this Council. It is the Union's intention to reinforce the collaboration of all of the immigration countries of origin and transit and to jointly manage border control and readmission. For that reason the Council has decided to include a clause on the everyday management of migratory flows and compulsory readmission in the event of illegal immigration in all agreements signed from now on with any country. Moreover, to give credibility to its support for an approach based upon cooperation with third countries, the Council has declared that the Union is willing to provide technical and financial assistance to those countries to help them combat illegal immigration. As is the case with all of the policies that it develops, the Union will subsequently

assess the effectiveness of the cooperation with third countries to slow down illegal immigration. In the event of a clear lack of cooperation on the part of third countries to halt illegal immigration, the Union will have the prerogative of adopting measures or positions provided for within the framework of external policy and of common security and through the rest of the Union's policies while respecting the commitments adopted by the Union and without prejudice to the objectives of development cooperation.

The fourth and final pillar of the set of measures that the Presidency presented to the Council is that of speeding up the legislative efforts under way on the definition of a common asylum and immigration policy. In Seville we also decided on a timetable of measures in this area. Before December of this year approval will be given to the conditions determining what countries are responsible for processing asylum requests; before June 2003 a regulation will be adopted on the requirements necessary to be granted refugee status as well as the content of said status, the provision providing for family reunification and the status of long-term permanent residents; and before December 2003 common regulations will be adopted on the asylum procedure".

(*DSC-P*, VII Leg., n. 175, pp. 8755–8756).

c) Economic and social development

With respect to the process of economic and social modernisation of the EU, the Minister of Foreign Affairs, Mr. Piqué i Camps, stated:

"(. . .)

The introduction of the euro represents a fundamental milestone that has also coincided in time with the commencement of the Spanish Presidency.

(. . .)

Aside from the introduction of the euro, the process initiated at Lisbon to make the European Union an area of excellence as far as economic and technological development are concerned, was given impetus at the Barcelona European Council on 15–16 March with further details set out at the Seville European Council. Our Presidency has borne witness to aspects of fundamental importance such as the liberalisation and opening of the single energy market; the constitution of a European area of transport and communications with the initiation of the single sky and the launching of the Galileo Programme; the single financial market, full employment and education; boosting of research and technology with the passing for the first time without have to turn to the European Parliament for conciliation of the VI Framework Programme for Research; greater stringency in the enforcement of the transposition of Community law; public hiring within the framework of the internal market as well as recognition for the fiscal system of the Canary Islands or the approval of the broad approaches to economic policy gives but a brief overview of some of the results reached in this chapter during the course of the Spanish Presidency".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 102, pp. 2056–2057).

d) Debate on the future of Europe

The Spanish Presidency had to simultaneously deal with the deepening and enlargement of the EU. The main aspects of that debate are the Convention on the future of Europe and the reform of the Council. As concerns the former, the Minister of Foreign Affairs Mr. Piqué i Camps, in his 8 July 2002 appearance before the Joint Committee for the European Union, affirmed:

> "The Convention on the Future of Europe is a reflection process without historical precedent and is also a new working method based on the one used to draft the European Union's Charter of Fundamental Rights. All of Europe's Community and national institutions are participating in this process and the civil society is involved through the civic forum and the corresponding national debates. In accordance with the mandate of the Laeken European Council, the Spanish Presidency took responsibility for initiating the Convention in collaboration with its President and Vice-Presidents. The aim of the Convention is to offer options and make recommendations with the greatest possible degree of consensus as it looks forward to the Intergovernmental Conference to be held at the beginning of 2004".
>
> (*DSCG-Comisiones Mixtas*, VII Leg., n. 102, p. 2507).

The President of the Government Mr. Aznar López, in his 24 June 2002 appearance before the Plenary of Congress made a specific reference to Council reform:

> "The Presidency has followed three principles in the drafting of its proposals. The first was to foster the coordination of the Council's work. To do this a proposal was made for the reinforcement of the horizontal coordination function of the new General Affairs Council and External Relations Council. The second principle was to simplify Council proceedings. In the future the Councils will last one day and the sectoral councils will be shortened from sixteen to nine days. And thirdly, greater impetus was given to transparency in Council work. From now on when the Council must decide on legislative acts, in accordance with the co-decision procedure, deliberation will be open to the public in accordance with pre-established conditions.
>
> The set of Presidency report proposals involving treaty reform is the one focusing on the Presidency of the European Council. In our view the semester-long system of presidencies has clearly reached its limit. This must be reformed within the perspective of an enlarged European Union".
>
> (*DSC-P*, VII Leg., n. 175, p. 8757).

e) External relations

During this same intervention the President of the Government alluded to the summits between the EU and the United States, Canada and Russia as well as the V Euro-Mediterranean Conference held in Valencia and the II Conference with Latin America and the Caribbean:

"The summit between the European Union and the United States has served to reaffirm the set of shared identity and values existing on both sides of the Atlantic. In addition to reinforcing this identity of values, the summit underscored the unequivocal mutual commitment shared by the European Union and the United States to fight terrorism without distinction wherever it may occur. We agreed to make headway on the progressive convergence of the terrorist lists of the United States and the Union; to negotiate an agreement on judicial cooperation in criminal matters, extradition and mutual assistance and to remain coordinated as concerns the policies of the United States and the European Union from an international perspective paying particular attention to the Middle East. The European Union held a summit with Russia that consolidated a strategic relationship that recognises and backs European support for Russia's efforts in the defence of freedom and democracy. The principle results were the inclusion of the fight against terrorism as a new area of cooperation between the European Union and Russia; the reinforcement of political dialogue and cooperation on issues of security and crisis management; recognition of market economy status for Russia which means European support for future Russian membership in the World Trade Organisation and definition of the bases for a future agreement on the Kaliningrad enclave.

The third bilateral summit held by the European Union under the Spanish Presidency was the summit with Canada. This summit bore witness to the solidness of the Union's transatlantic policy as regards political aspects as well as those aspects focusing on cooperation and research, science and technology, the environment and sustainable development. Two regional summits were also held under the Spanish Presidency that are of particular significance for the Union. To a large extent, Europe's future opportunities lie in these regions. I am referring to the summits that the Union held with the Latin American and Caribbean countries and the V Euro-Mediterranean Ministerial summit. In the middle of May, Madrid played host to the II Summit between the European Union and the Latin American and Caribbean countries where a clear emphasis was put on the true objective of the strategic alliance between Latin America and the European Union. The Madrid Declaration, the assessment report and the common values and positions document especially show a common identity of values and objectives shared by the two continents. This identity covers issues such as the defence of human rights, the fight against drugs, the fight against terrorism and trade.

The Union also wishes to contribute to the regional integration in the area and therefore a commitment was reached to negotiate political and cooperation agreements with Central America and with the Andean Community. The formal minutes and conclusions of the agreement between the European Union and Chile were also signed. As a priority objective of the Union Presidency Spain proposed fostering the Barcelona process. While immersed in a process of European construction and reunification, one must take special stock of the Union's Mediterranean dimension. The Barcelona process is the only forum allowing for direct contact between Israelis and Palestinians and therefore has a direct influence on the development of the conflict in the Middle East. All of the participating states have recog-

nised the appropriateness of holding this conference during which the association agreement between the European Union and Algeria was signed; an action plan aimed to renew impetus to the political, economic and cultural dimension of the Barcelona process was approved; the framework programme for Euro-Mediterranean Justice and Home Affairs was approved that, for the first time, includes cooperation against terrorism; a reinforced European Investment Bank facility was created; approval was given for the action programme for dialogue between cultures and civilisations and the Euro Mediterranean foundation was created for this dialogue".

(*DSC-P*, VII Leg., n. 175, pp. 8754–8755).

3. *Area of Freedom, Security and Justice*

a) Asylum

The Secretary of State for European Affairs, Mr. de Miguel y Egea, in his 30 May 2001 appearance before the Joint Committee for the European Union to respond to a parliamentary question, explained the Government's stance on a possible reform of the right to asylum in the European Union:

"The Community asylum policy is found in current Article 63 of the Treaty on European Union subsequent to the amendment made as a result of the Amsterdam Treaty and it needs to be completed with that which is set out in the Vienna Action Plan and in the Conclusions of the Tampere Summit, both in relation to the subject of the development of an area of security, justice and freedom and therefore the right to asylum as an essential part of that Tampere package.

Neither in the Treaty of Amsterdam nor at Vienna or Tampere has the European Union approached the subject of right to asylum because all of these are based on the 1951 Geneva Convention on Refugee Status as the cornerstone of all Community construction; a situation reiterated by the Heads of State and Government at Tampere proclaiming absolute respect for the right to seek asylum. It should be pointed out that the European Union does not foresee a reform of the right to asylum as such, i.e. the foundation, the basis, the underlying philosophy of the right to asylum that we all agree to and that is contained in the 1951 Geneva Convention. What the European Union is attempting to do is to develop common policies in this area with a view to first of all harmonising the different legislations on the right to asylum that feature some differences and, second of all, to achieving an open and secure European Union fully committed to the obligations stemming from the Geneva Convention on the Status of Refugees and other instruments in the area of human rights; a Union that is in a position to respond in solidarity to humanitarian needs and to guarantee the integration of refugees in our societies while at the same time bearing in mind the need to carry out coherent control – because this has not been discussed with the others – of the external borders to put an end to illegal immigration, to fight against those who take advantage of illegal immigration, organise it and commit international crimes in the process, or against those that use asylum as a cover to justify illegal situations.

(. . .)

Spain's position in the development of these common policies of asylum is to reiterate the validity and applicability of the Geneva Convention on the Status of Refugees that is the basis and foundation of the system of asylum shared by the rest of the Member States".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 42, p. 953).

4. *Economic and Social Development*

a) Sustainable development

Sustainable development is one of the objectives of the founding Treaties that calls for the coherent organisation of economic, social and environmental policies. With regard to this subject the Swedish Presidency tabled a draft report on the integration of the environmental dimension in the sectoral policies and on 16 May 2001 the Commission presented a Communication on an EU strategy for sustainable development.

The Secretary of State for European Affairs, Mr. de Miguel y Egea, spoke out on this point on 5 June 2001 before the Joint Committee for the European Union to report on the Gothenburg European Council held on 15 and 16 June:

"The Spanish position on this issue is naturally one of 'wait and see' at least with respect to some aspects of proposals of the Presidency and the Commission and not with respect to the concept of sustainable development that we wholeheartedly support. In this sense it cannot be denied that among the Commission's proposals there are some subjects that have a very serious impact on Spain. For example, as concerns energy taxes Spain is opposed to the commitment currently in force from 2002 and to indexing. It is our view that the subject is not sufficiently mature nor has it been proven that taxation is a fundamental element in influencing the elimination of CO2. Moreover, the elimination of subsidies for the production and consumption of fossil fuels would affect the Spanish coal sector for whicb the upkeep of restructuring and reactivation assistance is vital. The aid earmarked for the joint organisation of the agricultural market of tobacco is important as well for a country such as Spain that is the number three producer of tobacco in the Union and this is especially the case for poor regions like Extremadura where tobacco accounts for 25 percent of the final agrarian production.

In short it is our view, as we await the outcome of the debates to be held at the environmental councils, of Ecofin, of social affairs and of general affairs, that the subject of sustainable development is an essential dimension of economic development but it should not replace the Lisbon process but should rather be one more element of such process. It should be remembered that the Lisbon Process has three pillars: employment, progression towards the information society and liberalisation, the opening of markets and the improvement of macroeconomic conditions. It is our view that sustainable development should be added as a fourth pillar to the existing tripod conditioning and affecting all the rest.

(. . .)

The proposal of converting the Spring Councils into sustainable development Councils would be tantamount to denaturalising the strategy and the objectives agreed to at Lisbon in relation with a much broader subject focusing on economic growth, employment, economic reform and innovation. I therefore reiterate that this subject should be added as one more pillar rather than reducing the whole Lisbon process to the subject of sustainable development".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 44, p. 981).

Subsequent to the Gothenburg Council the President of the Government, Mr. Aznar López, presented the agreements reached before the Plenary of Congress on 20 June 2001:

"The strategy that we have just approved rounds out the Union's political commitment with the economic and social modernisation of the Lisbon process.

(. . .)

. . . The strategy points to four priority areas that represent the greatest challenges for sustainable development in Europe: climate change, transport, public health and natural resources. As regards climate change, we reiterated our commitment to the Kyoto Protocol and its ratification. The Protocol is currently the most reasonable solution with which to fight climate change. Moreover, the Commission will prepare a proposal for its ratification before the end of this year. The Union will also work to assure the broadest possible participation of industrialised countries with a view to bringing the Kyoto Protocol into force in 2002.

As regards transport, we made contributions to the sustainable development strategy by including an element that is of special interest to us, namely transport network hubs that will be given priority status at the next review of transeuropean network directives. Developing these elements of interconnection over the middle and long term would undoubtedly lead to a more rational and sustainable use of the transport networks given that an interconnected European network will always be more efficient than fifteen fragmented national networks.

Moreover, the strategy decidedly opts for the sustainable use of natural resources with a view to maintaining biological diversity, conserving ecosystems and preventing desertification. Spain is the most bio-diverse nation in the European Union and unfortunately also suffers from desertification problems. I have been insisting over the past several weeks that the preservation of biodiversity and the problems of soil degradation should be given the necessary notoriety within this strategy and this was accomplished.

In order to improve the political coordination of the Member States it is also necessary for all of them to draft their own national sustainable development strategies. In this sense I am happy to announce to Your Honours that tomorrow the Government will present a draft national sustainable development strategy that we hope will be concluded during the first semester of next year.

(. . .)

Our strategy will be presented at the Environmental Council during our European

Presidency and the Spanish strategy, together with the position of the European Union, will be our contribution to the world summit on sustainable development, the so-called Rio + 10 to be held in Johannesburg in September 2002".

(*DSC-P*, VII Leg., n. 93, p. 4529).

5. *Convention on the Future of Europe*

The Secretary of State for European Affairs Mr. de Miguel y Egea, in his 5 December 2001 appearance before the Joint Committee for the European Union to report on the Laeken European Council, referred to the work of what was then the future Convention on the Future of Europe:

"From our point of view the future convention, this new declaration, should respect that of Nice and should leave sufficient room for manoeuvrability for convention members. It does not appear to be useful for the time being to set out a very detailed framework of reflection for the convention before waging a substantial debate that is precisely what is now being implemented. At any rate, I feel that the entire exercise should be governed by the following principles. First of all, preservation of the Community acquis which means not undoing what has already been accomplished but rather consolidating and reinforcing the integration process; second of all, respect for the Community method and balance of the constitutional triangle Council-Commission-Parliament; third of all, development of the Union in those areas in which there is currently a lesser degree of integration, specifically in justice and home affairs and in exterior security and defence policy and lastly, the construction of a Europe that is closer, more transparent and more accessible to European citizens.

At the Laeken European Council the decision will be taken to call a convention as the best way to continue forward with the preparatory process of the 2004 Intergovernmental Conference. Both with regard to its nature and composition the convention will be similar to that organised by the Charter of Fundamental Rights with representatives from the governments of national parliaments, the European Parliament and the Commission and also with the presence of representatives of the candidate countries and, as observers, the Economic and Social Committee and the Committee of the Regions. Work is envisioned to begin in March under the Spanish Presidency and may be ready to present its conclusions by the middle of 2003. This schedule would allow for a pause for reflection before the beginning of the Intergovernmental Conference as such.

(. . .)".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 60, p. 1353).

Once the Spanish Presidency of the EU had drawn to a close the President of the Government Mr. Aznar López, in an appearance before the Plenary of Congress to report on the Brussels European Council meeting held on 24 and 25 October 2002, referred to the progress made at the Convention on the Future of Europe:

"The Convention on the Future of Europe, subsequent to the phase focusing on listening to the aspirations of the citizens on the future of the European Union, is now entering a phase focusing on determining how to express all of the comments and initiatives received in a future constitutional treaty that is simple and comprehensible . . . The Spanish Government can identify with the majority of the initiatives tabled by the chairman of the Convention. These principles imply more effective and efficient involvement on the part of national parliaments in the work of the Union; providing the latter with legal personality; integrating the Charter of Fundamental Rights in the constitutional treaty and defining a series of policies such as the single market or monetary union as essential elements of the European project.

I would also like to draw your attention to the emphasis that Chairman Giscard put on defending the call for a future constitutional treaty that is unequivocal in providing the Union with institutional balance and the need for all institutional efforts to rest on an independent European Commission that acts as the defender of Community interests and guardian of treaties. In the view of Chairman Giscard, the European Commission should operate as a collegiate body with the capacity to table proposals by means of its monopoly over legislative initiative and with competence to enforce and apply certain common policies".

(*DSC-P*, VII Leg., n. 200, p. 9958).

XIV. RESPONSIBILITY

1. *Responsibility of States*

In his appearance before the Sixth Committee of the United Nations General Assembly at its 56th session the Spanish representative, Mr. Aurelio Pérez Giralda, made the following assessment of the work carried out by the International Law Commission:

"Chapter IV of the International Law Commission contains the result of a long and arduous job done both by the Commission as well as by the Governments that have contributed to its successful completion on a subject that is crucial to International Law, the responsibility of States. The Commission had set as the deadline date the five year period ending this year 2001 to complete this work and it has been successful under the expert orchestration of Professor James Crawford. In his four reports the Special Rapporteur has offered solutions for the most serious problems affecting the project approved during the first reading in 1996 as well as an in-depth study of the structure and form of the articles that this year were approved at the second reading.

My delegation has made an effort to keep up with the work of Professor Crawford and the Commission by offering commentaries and suggestions both in writing and through interventions before the General Assembly. Now is not the time to insist on those commentaries given that we now have before us a finished draft, a clear will to conclude the work of the ILC on this subject and a balanced proposal

made by the Commission in recommending, in paragraph 67 of the report, that the General Assembly take note of the articles proposed annexing them to a Resolution and that it consider the possible future adoption of a Convention on this subject. The Spanish delegation has defended the appropriateness of International Law being provided with a binding instrument regarding the responsibility of States although it is aware, especially in light of the debates that took place at the VI Commission last year, of the absence of sufficient consensus for that. The Commission's proposal is realistic because it harbours the expectation that the practice of the States and international jurisdictions allows for evolution towards the regulations and a negotiation among States regarding its content so that further down the road it can be concretised in a legally binding fashion. The regulation approved at the second reading should only be understood as a means to obtaining this provisional solution and can be considered a success as a commitment to choose the least common denominator of the governments' positions. My delegation would like to make pubic its will to contribute to the consensus even though some of the preferences that it has expressed in terms of the progressive development of International Law are not reflected in the final text. I am specifically referring to the absence of an aggravated responsibility regime for the most serious violations of International Law and the absence as well of a conflict resolution system especially with relation to the countermeasures that can only be contemplated in a future Convention".

XV. PACIFIC SETTLEMENT OF DISPUTES

1. *Jurisdictional Modes of Settlement*

The following agreement was approved at the 22 March 2002 Council of Ministers:

"The Council of Ministers has authorised two declarations on the admission of the jurisdiction of the International Tribunal for the Law of the Sea.

The United Nations Convention on the Law of the Sea (UNCLOS) was the fruit of the work of the III Conference of the United Nations on the Law of the Sea with the aim of seeking a peaceful settlement to conflicts arising among signing countries.

To settle controversies arising among States with respect to the application of the Convention this organisation created the International Tribunal for the Law of the Sea as the jurisdictional body to take charge of such issues.

Notwithstanding the above, the Convention established that the States may select, via declaration, one or several of the following courts: the International Tribunal itself, the International Court of Justice (ICJ), a general arbitration court or a specialised arbitration court.

The purpose of this Agreement is to substitute the declaration made by Spain at the time of the ratification of the Convention on the Law of the Sea of 15 January 1997 by virtue of which it selected the International Court of Justice as

the means by which to resolve controversies regarding the interpretation or enforcement of the Convention. In another declaration Spain also accepted the jurisdiction of mentioned Tribunal, the International Tribunal for the Law of the Sea. In other words, it selected both Tribunals as fora competent to judge controversies stemming from enforcement of the Convention.

Moreover, to prevent a situation in which a suit filed against Spain for the delimitation of maritime areas would be automatically heard in one or the other of the two courts without the consent of Spain, it is convenient to make another declaration by virtue of which, in accordance with the Convention itself, controversies on delimitations are excluded.

A declaration of this sort has been made by three neighbouring States with which Spain has signed delimitation conventions: France, Italy and Portugal".

On 30 October 2001, in his appearance before the General Assembly, Spain's representative, Mr. Pérez Giralda, referred to the role that could be played by the International Court of Justice:

"(. . .)

. . . In the context of concern expressed by the President of the Court about the proliferation of international tribunals and the dangers of legal overlap or contradiction that that might entail. It should be recalled that on previous occasions, the President of the Court highlighted the need for a dialogue among jurisdictions in order to try to avoid the potentially harmful effects of the fragmentation of international law. Spain believes that the International Court of Justice is the most appropriate institution to channel such a dialogue, as lon as the international community puts its trust in the Court and endows it with the means of discharging that function. We should also remember that both the current president of the International Court of Justice and his predecessor referred to advisory opinions as representing a possible means of establishing such a dialogue and thereby of ensuring that the International Court of Justice speaks with an authoritative voice.

(. . .)".

(UN Doc. A/56/PV.32).

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. *Unilateral Measures*

a) Cuba

On 25 February 2002, in response to a Parliamentary question, the Government reported on measures adopted by Spain to defend the interests of Spanish entrepreneurs affected by the United States legislation known as the Helms-Burton Act:

"Spain and the European Union (EU) have repeatedly communicated to the United States (US) authorities that certain provisions of titles III and IV of the Helms-

Burton Act go against international law due to their extraterritorial and retroactive nature, violate the rules of the World Trade Organisation (WTO) and also seriously damage their legitimate interests.

In order to compensate the application of said law to European companies, the EU provided itself with a 'blocking regulation' (Regulation EC 2271/96) that, among other things, prohibited European companies from collaborating with the judicial and administrative authorities of the United States in the enforcement of this Law.

In compliance with this Community Regulation Spain adopted Law 27/98 that establishes the amount of sanctions applicable to private individuals and companies that fail to observe said Regulation. The purpose of this rule is to clearly prevent the possible extraterritorial enforcement of the rule established by a third country and also seeks to fend for the legitimate interests of Spaniards.

Moreover, the Council of the European Union adopted Joint Action 96/668/CFSP of 22 November 1996 in order to ensure that the Member States take the necessary measures to protect those natural and legal persons whose interests are affected by the aforementioned laws and actions based thereon, insofar as those interests are not protected by Regulation EC 2271/96.

At all of the bilateral meetings between Spain and the United States and at the multilateral ones within the framework of EU-US transatlantic relations, efforts have been made to get the United States representatives to see that the Helms-Burton Act goes against international law and the rules of the WTO. In this sense in 1996 the European Union even envisioned the possibility of appealing to the WTO mechanism for the resolution of trade disputes.

On 14 April 1997 and subsequently at the EU-US Transatlantic Summit in London on 18 May 1998, both parties arrived at some agreements in a Memorandum of Understanding that, in last instance, were confirmed at the last EU-US Transatlantic Summit held at Gothenburg on 14 June 2001.

By virtue of these agreements the United States committed to not sanction European companies by enforcing this Law and to amend Title IV introducing the possibility of a presidential waiver that could be applied if necessary. In turn the EU agreed to not call for the formation of a WTO panel against the United States with relation to the Helms-Burton Act as long as the United States adhered to the commitments made in those Memorandums.

The fact is that the United States has not imposed any sanctions related to the enforcement of Helms-Burton. At any rate, the Spanish Government continues to monitor this issue closely given that the continuation of the Memoranda is possible only to the degree that the US Government continues to suspend the enforcement of title III of the Helms-Burton Act as it has been doing via the successive renovation of the waiver and by not enforcing Title IV".

(*BOCG-Senado.I*, VII Leg., n. 310, pp. 62–63).

2. *Collective Measures. Regime of the United Nations*

a) Iraq

On 26 January 2001, in response to a parliamentary question, the Government made the following assessment of the United Nations Humanitarian Programme for Iraq:

"On 14 April 1995 the UN Security Council passed Resolution 986. The purpose of this was to slow down the extremely serious deterioration of the humanitarian situation of the Iraqi people as a result of the sanctions imposed on Iraq after the Kuwait invasion in August 1990.

The humanitarian Programme set up by Resolution 986 and named 'Oil for Food', went into operation on 10 December 1996 with the first sale of Iraqi crude oil controlled by the Sanctions Committee.

The Oil for Food Programme has been helping ever since to palliate the suffering of the Iraqi people and to reduce the negative effects of the sanctions. The situation in the country is significantly better than when the Programme entered into force and has accounted for 15,700 million dollars.

The implementation of the Programme has, however, borne witness to the different internal functional, economic and organisational shortcomings that have had varying degrees of influence – depending on the sector and region of the country –, but clearly having a particularly intense effect on the most vulnerable sectors of the population. A number of reports from different interuational organisations (UNICEF, FAO, RED CROSS, WHO, UNESCO, MAP and others) show that, despite everything, the situation continues to be dramatic (growing infant mortality rates, widespread malnutrition, notahle deterioration of the educational system, alarming decrease in the quality of water for human consumption, progressive destruction of the waste water network, reappearance of formerly eradicated diseases, etc.). The following shortcomings stand out above the rest:

- The slowness of the Sanctions Committee in approving contracts proposed by the Iraqi Government and the keeping of many of them 'in quarantine' during a significantly long period of time.
- Technical difficulties encountered by the Iraqi oil sector in the extraction of the necessary crude to obtain the levels of authorised income at each phase made more complicated still by the complexity of the authorisation process for the purchase of spare parts and drilling equipment.
- The deficient internal organisation as regards the distribution of food, medicines and other essential products and the lack of infrastructure.

During the three and a half years that the humanitarian Programme has been in operation, the Security Council has responded to these shortcomings by approving different resolutions (Res. 1129/97, Res. 1153/98, Res. 1175/98, Res. 1284/99 and Res. 1302/00) that have improved operation and effectiveness.

The humanitarian Programme received a considerable boost in December 1999 with the approval of Resolution 1284 that, in addition to doing away with the

upper limit set on the sales of Iraqi oil, also partially resolved the problem of the contracts 'in quarantine' with the adoption of a series of measures of which special mention should be made of the following: 1) replacing authorisation with a simple notification sent to the Sanctions Committee when the contracts refer to products from the agricultural, food, nutrition, medical and educational sectors and 2) expedient approval by the Sanctions Committee for another series of products – with the exception of those with a dual use –, and of spare parts for use in the petroleum industry.

The contracts 'in quarantine' continue to curtail, however, Iraq's humanitarian Programme. 13.8% of all of the contracts presented to the Sanctions Committee since the commencement of the Programme remain in that situation (at a dollar value of 2,260 million). On a number of different occasions Spain has taken steps to unblock these quarantined contracts.

Phase VIII of the Oil for Food Programme that ended on 5 December has benefited from the new notification practices – introduced into the operation of the Sanctions Committee by virtue of Resolution 1284/99 and extended to the sectors of potable water and sanitation thanks to Resolution 1302/00 –. The UN Secretary-General requested the broadening of the new notification practices to all sectors in the report filed on 8 September. Moreover, the VIII phase introduces improvements in the food sector (1,216 million dollars), with a view to reaching the goal of 2,472 kilocalories per person per day, and in the health sector (498 million dollars) with 63.3% more than in the previous phase. New elements were also introduced in the so-called incorporation phase of the housing sector (757 million dollars) and the injection of 600 million dollars into the general budget for spare parts and oil drilling equipment in compliance with Resolution 1293/00.

At any rate the UN humanitarian Programme, although very important, only envisions improving the lot of the Iraqi population and does not focus on resolving all of their humanitarian needs nor does it look to employing local inhabitants in habitual economic activities.

For this reason the economic recuperation of the country will only be possible through a global solution of the Iraqi issue which would entail the removal of sanctions within the framework of international legality the basis of which is Resolution 1284, the collaboration of Iraq with the UN and this country's compliance with the obligations imposed by Security Council resolutions".

(*BOCG-Congreso.D*, VII Leg., n. 125, pp. 273–274).

On 27 April 2001, in response to a parliamentary question, the Government offered the following assessment of the United States air attack of Iraq:

"It should be pointed out that Moron de la Frontera and Rota are not 'bases located in Spanish territory' that could be interpreted as being American bases in Spain. Both bases are under full Spanish tutelage and the United States Armed Forces have been authorised to use some support facilities by virtue of the current Defence Cooperation Agreement signed between the Kingdom of Spain and the United States of America.

At the conclusion of Operation 'Desert Storm' in March of 1991, Operation 'Desert Calm' commenced and was in turn replaced by 'Southern Watch' to monitor the area south of the Iraqi 33rd parallel.

The Spanish Government has authorised logistical support for this operation in so much as allowing the landing and refuelling of aircraft in transit to the operations zone.

Since 1990 support has also been provided for Operation 'Northern Watch', a continuation of Operation 'Provide Comfort' to support the Kurdish people.

Both operations have the backing of UN Security Council Resolution 688 that demands an end to the Iraqi repression of its own people and especially against the population of Kurdish origin".

(*BOCG-Congreso.D*, VII Leg., n. 169, pp. 164–165).

On 7 June 2001, in response to a parliamentary question, the Government made the following assessment:

"The English-American bombings of 16 February of the outskirts of Baghdad was a unilateral action and neither Spain nor the EU was informed ahead of time.

The Government holds the view that efforts to resolve the Iraqi crisis should be channelled through the United Nations with a view to achieving a global political and diplomatic solution permitting the reintroduction of Iraq into the international community and the lifting of sanctions based on respect for international legality, compliance of Iraq with the obligations imposed by said international community and respect for the territorial integrity and political independence of this country.

The conversations that were held in New York at the end of February between Iraq and the United Nations and that will recommence in the near future, have provided an opportunity to make headway down this path and the opportunity should be taken advantage of.

The Government therefore considers that it is vital to create the necessary conditions allowing for the achievement of a political solution to which the mentioned bombings do not contribute".

(*BOCG-Congreso.D*, VII Leg., n. 192, p. 77).

One year later, on 7 May 2002, in a parliamentary appearance the Government reported on Spain's stance on Iraq:

"The Spanish Government is monitoring with great concern and attention the development of events in the Middle East and is actively participating in the search for a political solution to the region's different conflicts. In this regional, dramatic and difficult context, the Iraq situation is the cause of special concern. Iraq, at a particularly complex juncture in time from an international perspective, is the only country in the region that has failed to condemn the attack of 11 September and it also continues to show disregard for the United Nations' resolutions and refuses to admit inspectors into its territory which has led to the continuance of the sanctions. Spain, holding the Presidency of the European Union and being an active

member thereof, supports the European stance with relation to Iraq as has been reiterated on a number of different occasions by the Government.

First of all, the European Union reiterates that Iraq should fully comply with the applicable Security Council resolutions and especially with United Nations resolutions 687 and 1284. The European Union has also expressed its concern over the humanitarian situation in Iraq and sees the need to palliate the suffering of the Iraqi population and therefore the European Union continues committed to the efforts to review the present provisions of the Oil for Food Programme with a view to improving the effectiveness of the sanctions.

In November 2001 the United Nations Security Council unanimously approved resolution 1382 thus generating expectations for a reorganisation of the sanctions via the introduction of new mechanisms opening the door to an eventual revision of resolution 1284. This resolution, adopted in December 1999, was the outcome of attempts to arrive at a consensus on the United Nations' global treatment of the Iraqi issue and it passed with the abstention of three of the permanent members of the Security Council: Russia, France and China. This resolution calls for changes in the inspection and sanction regimes. The so-called UNSCOM would give way to the newly created UNMOVIC as the inspection mechanism; previsions are made for a series of new controls on Iraqi foreign trade and provisions are introduced the purpose of which is to expedite the awarding of contracts related to basic civilian and humanitarian needs. As a result of resolution 1382, needed efforts are being deployed to improve the legal framework of resolution 1284 and to overcome the deficiencies in the current sanction system.

Furthermore, it is very important to point out that as of the 7th of March of this year the Iraqi Government has initiated talks with the Secretary-General of the United Nations aimed at encouraging Iraq to fully collaborate in the enforcement of international legality. As is our duty, Spain and the European Union support the development of these events and the work that the Secretary-General of the United Nations, Mr. Kofi Annan, is doing to foster international peace and security. In this sense I can say that talks were held during this month of May and the decision was taken to continue such talks throughout the month and before the end of the month further exploratory talks will be held between Iraq and the Secretary-General of the United Nations.

Another relevant point concerning the policy of the European Union is that it continues to be the number one contributor of humanitarian assistance and aid to Iraq. Over the last several months the European Union has continued with its ECHO activities (the Community's humanitarian office) and within this framework a delegation visited the country from 25 January to 6 February to verify the impact of the Agency's action in Iraq, gather information on the situation of the country and begin drafting an action strategy for the future.

Another important issue forming part of the European Union's position is that of preventing any new acquisition of arms of mass destruction on the part of the Iraqi Government because it is convinced that this is a key aspect contributing to regional security and stability. All of the European Union countries share a com-

mon will to collaborate in preventing the proliferation of these types of arms and to prevent their falling into the hands of terrorist groups. As you are aware some of these arms, particularly the chemical and biological ones, are relatively inexpensive and do not require very sophisticated technology and are thus considered to be the arms of choice for terrorist groups. There are, in fact, a number of international institutions that are the focus of efforts against the proliferation and in favour of the control of exports, namely organisations such as the international atomic energy organisation, the organisation for the prohibition of chemical arms, the Convention on biological arms or the missile technology control regime. Within the European Union there is close coordination among all non-proliferation issues and export control among the fifteen Member States.

As for the last point of its policy, the European Union reiterates its support for the independence, territorial integrity and sovereignty of all of the region's countries.

(. . .)

To finish up I would also like to make mention of two specific issues that have been brought up; one referring to the possibility of military attacks on Iraq and the other in relation to the action taken by the United States and the United Kingdom on 16 February 2001. As regards the possibility of a military attack against Iraq I would like to point out the following. First of all the Government of Spain has no knowledge that the Government of the United States or that of any other country has specific plans in that respect. It is in fact important to point out that the Secretary of State himself, Colin Powell, when he was in Madrid on April 10th for the meeting of the Quartet stated his view on this point publicly during the press conference that followed the meeting.

Second of all, I would like to say that the position taken by Spain and the European Union is such that to consider the possibility of military action in Iraq the following circumstances would have to concur: first of all, non-compliance with the resolution of the United Nations on the part of Iraq; second of all, evidence pointing to support for terrorist organisations or the development and storage of arms of mass destruction by the Government of Iraq and third, any action taken would have to be within a framework agreed to at the international level, basically within the framework of the United Nations.

As concerns the action taken by the United States and the United Kingdom in Iraq on 16 February 2001, I am going to refer to the declarations made at that time by the Minister before this very Foreign Affairs Commission on February 28th. At that time the Minister stated, and I quote: It would probably have been better if these operations had not been carried out but to prevent a reoccurrence of such operations what is needed is that the Government of Iraq, the Government of Saddam Hussein, that has been outside of international legality and that is still failing to comply with many points of the United Nations resolutions, comply with those resolutions and with international legality. In short, the treatment and the solution of the Iraqi issue entails the enforcement of and compliance with the international legality found in the different Security Council resolutions. Moreover, and as a logical corollary to the above, any measure adopted by the international com-

munity, including the United States, with regard to this affair, should be done, as I have already pointed out, within that same framework of scrupulous respect for international legality and in this context Spain has always supported a political and diplomatic approach to this issue bearing all its aspects in mind".

(*DSC-C*, VII Leg., n. 486, pp. 15687–15688).

Finally, on 31 October 2002, in response to a parliamentary question, the Government reported on Spain's position in the event of a military intervention in Iraq by the United States:

"Iraq today represents a threat to international peace and security because for more than a decade it has systematically violated international legality. Iraq still has a large proportion of its arms of mass destruction and there are founded indications that it is attempting to increase its military might. In the past Iraq has never thought twice of initiating wars of aggression using said arms both within and outside of its territory. Moreover, Iraq has repeatedly and seriously violated human rights and the protection of minorities.

The Government assigns a positive assessment to the attitude change on the part of the Iraqi government with respect to the readmission of the UN inspectors given the strong political and diplomatic pressure that the international community has applied against the regime of Saddam Hussein. Although encouraging, this change of attitude is not enough and should be backed by concrete action. The Government would be seriously concerned about any lack of willingness on the part of Iraq to accept future Security Council resolutions designed to achieve full compliance with all of the others that have been ignored over the last several years. Therefore, the diplomatic, political and legal pressure exerted by the international community continues to be appropriate and necessary. In this context a new UN resolution would be desirable.

With this, the Government simply places its position within the parameters of action of its European Union partners that can be summarised as follows:

- Respect for international order and rejection of the Iraqi policy of arms of mass destruction.
- Support for UN intervention.
- Maintenance of the international alliance in the fight against terrorism that emerged in the aftermath of the 11 September 2001 attacks.
- Close consensus with the United States.

No State or international forum has yet to decide on any sort of attack against Iraq and it is necessary to forge ahead with the diplomatic efforts, in tandem with political ones, to encourage Iraq to comply with international legality. The Spanish Government cannot base its position on mere hypotheses of possible attacks but rather on facts. The fact is that today Iraq has accepted the inspectors. This is the first step down a path that will not be easy but that must be attempted before contemplating other alternatives".

(*BOCG-Congreso.D*, VII Leg., n. 430, p. 174).

b) Afghanistan

On 5 June 2002, in response to a parliamentary question, the Government reported on the participation of the Spanish contingent in the reconstruction of Afghanistan:

"Spain currently has two contingents deployed in Afghanistan. As part of the anti terrorism Coalition led by the US there is the Deployment Support Medical Unit (UMAD) deployed at the Bagram Air Base. As part of the International Security Assistance Force (ISAF), in support of the Afghan Interim Administration (Resolution 1386 of the UNSC), there is a contingent made up of different units of the land and air armies and is deployed in Kabul.

The UMAD, comprised of 47 members of non-compulsory, support and security personnel, is a medical-surgical facility initially envisioned to provide primary care along with a number of specialities (surgery, orthopaedics, paediatrics, gynaecology, odontology and intensive care) for the Coalition forces at the Bagram base. In light of the Unit's capacities, only days after its deployment it was called upon and authorised to provide medical assistance to the local population setting up a medical office at which, to date, 4,500 people have been treated including men, women and children in addition to approximately 1,000 base personnel patients. The UMAD has also collaborated in an important way with other hospitals in the region both in terms of medical support as well as with medicines, blood and maintenance.

UMAD has set up its operations in tents (6) and containers (2) with electricity provided by autonomous means. Personnel reside nearby in tents (10). All sorts of supplies are received from Spain via three scheduled flights per month and specific support is received from the base (fuel, water, rations, construction machinery, etc.). Personnel is relieved every 45–60 days depending on the availability of means of transport.

The Spanish contingent at ISAF is comprised of three Units (engineers, EDE and EADA) integrated under the operational control of the ISAF and a National Support Element (NSE) for the logistical support of the former adding up to a total of 344 members. This figure includes Officials and Deputy Officials forming part of ISAF's headquarters.

The Company of Engineers forming part of ISAF carries out castrametation and communications work in support of ISAF and is involved in high-impact humanitarian assistance projects regarding needed local infrastructure. To date, in addition to the construction of arsenals, bunkers and all-purpose installations for diverse ISAF contingents, Spanish engineers have reconstructed a number of schools and local police stations and have rehabilitated roads that are vital for the local population.

The Spanish Explosive Deactivation Unit has three highly-qualified and experienced Explosive Deactivation Teams (EDE). Witness to their expertise is their being assigned sensitive reconnaissance and deactivation missions at Government facilities and the Royal Palace. The unfortunate loss of human lives suffered to date by other similar units attached to ISAF (German and Danish) assigned the

same sort of tasks also bears witness to the danger of the missions as well as the professionalism of the Spanish unit.

The 35 members of the Support Squadron to the Aerial Deployment Unit deployed at the Kabul Airport are a highly specialised and critical resource in the control and handling of both cargo and passengers at that terminal that caters to a weekly average of 500 passengers and more than a thousand tons of cargo.

In addition to providing support for the above-mentioned units for which it was designed, the NSE constantly provides specific support to other contingents in the form of specialists, means of transport and collaboration of the nuclear, biological and chemical detection team. The NSE also cooperates with the security and maintenance services of the area known as SAREHOUSE to the east of Kabul where the Spanish contingent is lodged (except the EADA residing at the airport) in old barracks that they rebuilt themselves together with other ISAF contingents.

The contingent is supplied from Spain in a fashion similar to that of the EADA, receiving specific support from ISAF for aspects such as fuel and food. EADA personnel (Air Force) has been relieved and the rest of the contingent (terrestrial army) will be relieved during the second half of May".

(*BOCG-Senado.I*, VII Leg., n. 444, pp. 72–73).

XVII. WAR AND NEUTRALITY

1. *Humanitarian Law*

On 14 March 2002, in response to a parliamentary question, the Government made the following statement regarding the application of the Geneva Convention of 1949 to the Afghan prisoners being held in Guantanamo:

"1. The situation of the detainees in Guantanamo gave rise to consternation on the part of the European Union from the very beginning as was clearly expressed by the declarations of the Spanish Minister of Justice on behalf of the EU Presidency and of the High Representative of the EU and the European Commissioner for External Relations. These concerns have been communicated to United States officials in a confidential manner with a view to clarifying the situation of the detainees and the above-mentioned officials have provided appropriate guarantees that the prisoners are rceceiving proper treatment. In fact, representatives of the International Committee of the Red Cross (ICRC) have been allowed to visit and have personal private conversations with each one of the detainees.

It should be pointed out that, independent of the legal status of the Guantanamo detainees, from the point of view of international humanitarian law (the Geneva Conventions) these detainees must be treated at all times in a humane manner respecting their fundamental rigbts. Tbe Spanish Government puts a high priority on the humanitarian treatment of any detainee and respect for their fundamental rights. The Government of the United States has always shown its willingness to guarantee all of the fundamental rights of any prisoner regardless of whether the

Geneva Convention is applied or not. The Spanish Government is convinced that this is how it will be and has no reason to believe otherwise.

2. The British Government has confirmed that the prisoners are being treated in a humane manner. Subsequent to receiving the report drafted *in situ* by the British officials, said Government affirmed in the House of Commons that the detainees waged no complaints and that they are being treated properly and that treatment is in line with international humanitarian regulations. It is therefore unjustified to qualify the treatment given prisoners as inhumane and the photographs of the Guantanamo prisoners so widely disseminated and talked about do not reflect the humane and reasonable treatment that they are receiving.

3. Furthermore, this conviction is backed by the declarations made by the President of the ICRC, Jacob Kellenberger, who said that he did not believe that the United States would attempt to evade its international responsibilities and that the Government of this country agrees with treating detainees as if they were prisoners of war. Mr. Kellenberger goes on to recognise that cooperation with the American authorities is good and that nearly all of the proposals that were made to improve the lot of the detainees were quickly accepted. In practice, said Authorities have shown not only their full collaboration with and support of the ICRC in their examination of the situation of the prisoners in question, but the lCRC has also been able to work in Guantanamo in accordance with the rnles that are applied to prisoners of war, therefore being able to provide assistance and speak with them alone, in the absence of any witnesses.

Cooperation with the International Committee of the Red Cross on the ground is, therefore, correct although the issue remains of the divergence from a legal standpoint given that the United States has not given all of the detainees prisoner of war status. In this sense the ICRC has issued a communiqué on the stance taken by the United States with regard to the Guantanamo detainees expressed by President Bush himself on 8 February. This communiqué recognises that there are discrepancies between the ICRC and the United States with respect to the procedure implemented in the determination of which detainees do not have the right to prisoner of war status but went on to mention that both sides continue with their dialogue on this issue.

Moreover, the President of the ICRC, immediately prior to his recent trip to Spain, stated that he noted 'with satisfaction that international humanitarian law is one of the Spanish Presidency's priorities'.

4. In conclusion and based on the above, it does not appear to be reasonable to take any additional measures before the authorities of the United States or the Presidency of the EU – apart from certain Member States – that has been in permanent contact with such authorities on this issue".

(*BOCG-Congreso.D*, VII Leg., n. 323, p. 150).

On 31 October 2002, in response to a parliamentary question, the Spanish Government reported on the situation faced by the Spanish subject Hamed Abderrahaman Ahmed at the Guantanamo military base:

"As soon as word was received of the detention of Mr. Hamed Abderrahaman Ahmed and his subsequent transferral on 11 February to the American naval base in Guantanamo, the Spanish Embassy in Washington contacted the United States' authorities regarding the situation of said Spanish subject and regarding respect for the rules, uses and customs of international humanitarian law in his detention.

Spain was one of the first countries allowed to visit their nationals at said detention centre after France, United Kingdom and Belgium, countries from which there were already citizens being held at the base prior to the arrival of the Spanish subject. Spanish diplomatic officials again visited the detainee in July.

The authorities of the United States have declared that they consider the Guantanamo detainees as 'illegal combatants' captured during the course of an armed conflict because they violate the laws and customs of war (lack of evidence of a basic organisation and responsible commander, operational administration outside of the bounds of the laws regulating armed conflicts, etc.). For those reasons they are of the opinion that said detainees fail to comply with the requirements set out in Article 40 of the 12 August 1949 Geneva Convention for concession of 'prisoner of war' status. They have, however, expressed their intention of treating them in a way commensurate with the Geneva Conventions.

As was discovered by Spanish diplomatic officials, nourishment and hygiene conditions are proper, they receive medical attention, they are free to practice their religion, to communicate by post and receive postal packages, etc. Detention conditions and security measures are, however, strict. At one point the American authorities declared that they were willing to transfer the detainees to their countries of origin if they were processed and consented to subsequent investigation by the United States. To date, however, none of them has been set free except for one case due to psychological instability.

In his conversations with Spanish officials, Mr. Abderrahaman Ahmed considered that the treatment that he is receiving is reasonable and he did not register any complaints. Representatives from the International Committee of the Red Cross present in Guantanamo have also had access to the Spanish detainee on a number of occasions.

The situation of the Guantanamo detainees has also been dealt with within the framework of the dialogue on human rights issues between the European Union and the United States. The EU has always underscored, especially at the Barcelona and Seville European Councils, that respect for human rights and Rule of Law must be the overarching principle of all effective strategies to eradicate terrorism.

The Spanish embassy in Washington remains in close contact with the diplomatic representations of the EU countries with nationals detained at Guantanamo (Belgium, Denmark, France, United Kingdom and Sweden) and is in constant contact with the representatives of the International Committee of the Red Cross to share information and remain informed on this issue".

(*BOCG-Congreso.D*, VII Leg., n. 430, pp. 190–191).

2. *Disarmament*

On 17 April 2001, the Government reported on Spain's stance on the US plan for an antimissile shield in reply to a parliamentary question:

"The Government recognises and shares the concern regarding the proliferation of missiles and arms of mass destruction, principally due to their destabilising effects in sensitive regions such as Asia and the Middle East. The Government feels that it is necessary to maintain a dialogue with our allies on the existing risk and to seek a solution that bears the whole set of factors in mind giving due importance to strategic balance.

The United States' National Missile Defence System initiative (NMD) gives rise to questions given the consequences that its eventual deployment could have on strategic balance, the proliferation of arms of mass destruction and their vectors, and the complex network of arms control agreements.

The United States (US) has been holding and intensifying regular talks with its European allies on the development of this initiative. Spain believes that a positive step was taken by the US in consulting with Russia and with all of its European allies and is actively participating in this reflection process.

Spain would also be in favour of significant reductions in strategic nuclear arsenals to go hand in hand with any deployment of NMD and would not like to see any negative effects on efforts made in favour of disarmament, non-proliferation and arms control.

For the time being, the United States has yet to define the final configuration of NMD and it is therefore not yet possible to determine its effects on strategic balance, existing initiatives in the area if disarmament or non-proliferation or on the European defence policy.

Once the scope and architecture of the system are defined, an in-depth study of its effects will be needed".

(*BOCG-Congreso.D*, VII Leg., n. 164, p. 292).

3. *Exportation of Arms*

On 9 August 2002, in response to a parliamentary question, the Government reported on the measures implemented by Spain during the Spanish Presidency of the European Union related to the sale of arms:

"The action taken by the Spanish Government during the course of its Presidency of the European Union with regard to the sale of arms has been carried out mostly within the COARM Working Group of the Common Foreign and Security Policy (CFSP). During the course of the Spanish Presidency the Group met on four occasions (one more than during the previous Presidency). Moreover, led by the Spanish Presidency, the COARM troika held consultation meetings and exchanged information with the EFTA countries within the European Economic Area (Iceland, Liechtenstein and Norway) on 28 February, with Associated Countries in Sofia on

9 April, with the Ukraine on 19 April, with the United States on 30 May and with Russia on 30 May as well.

The Spanish Presidency collaborated actively and chaired an Experts' Seminar on the Control of the Export of Defence Materiel with the Associated Countries in Sofia, Bulgaria on 10 April.

The Spanish Presidency also actively participated in the preparation and development of a Regional Conference that the United States, with Spanish authorisation, organised in Barcelona between the 20th and the 24th of May on the control of exports and borders with all of the EU Member States and with a group of Arab and Mediterrauean coastal countries: Saudi Arabia, Algeria, Egypt, United Arab Emirates, Jordan, Morocco, Oman, Qatar, Turkey and Yemen.

During the six months of the Spanish Presidency it also participated actively in two ad hoc meetings involving consultations between the EU and the US on the same subjects on 20 January in Madrid and on 7 June in Brussels.

And finally, the Spanish Presidency of the COARM met on several occasions with a number of NGOs selected due to their interest in these subjects such as Amnesty International (AI), Intermon-Oxfam, the UNESCO chair on the Culture of Peace of the *Universidad Autónomo de Barcelona*, and with Safer World. It was also one of the speakers at the Conference organised by AI and Intermon Oxfam in Madrid on 10 May. As regards the content of this action taken by the Spanish Presidency, Spanish priorities on this subject during the EU presidency have been:

1. As regards the specific measures that could be applied to preventing terrorism within the framework of COARM and other disarmament, non-proliferation and export control fora, a declarative document was drawn up that also outlines some operative recommendations that, once agreed to by Member States and the Commission, was adopted by the European Union Council of 15 April 2002 and figures in the Council Conclusions (7331/02). The most operative measures as regards COARM focus on initiating, together with the Commission, an exercise to examine the possible measures to improve the export control system for defence materiel, dual use materiel and technology and to study the refusal notification system to assure its efficient operation after more than three years in operation (points 6 and 7 of Chapter 11).

2. In the area of transparency in the export of arms, the Spanish Presidency encouraged, initiated and was able to finalise the following subjects:

2.1. Greater transparency in the presentation to COARM of national foreign trade data regarding defence materiel.

A new format was agreed to that spells a very important step forward in the degree of transparency of the information that Member States furnish for the COARM Annual Report and to their respective Parliaments. According to this new format, each of the Member States will furnish the statistics on licenses issued and, for those able to provide this information, on the exports actually made during each fiscal period. This shall also include the economic value of the products and a summary list in compliance with the common list of controlled products.

The value amounts attached to the country by country exports will be optional. The number of refusals issued by the Member States as a wbole will be provided to each one of the target countries along with a reference to the Code of Conduct criteria applied.

2.2. Standardisation of the EU Member States' certificate of final destination.

A common denominator was reached with identical elements for the certificates of final destination of the 15 Member States. This denominator was widened by getting the Group to request that all Member States adopt tbe mention of final use/user as a common element in all of the Certificates of Final Destination issued and required for each one of them, in addition to the final destination or addressee.

2.3. The creation of a page on the Network for each EU Member Country containing the most relevant national data on the foreign trade in this type of materiel.

This exercise is practically complete. All of the Union countries possess or are in the process of possessing this type of information on the Network where the public has access to practically the same information as Parliament.

3. In the area of the application of the Code of Conduct, efforts have been made to foster its application to new activities such as mediation in tbe arms trade, the establishment of factories in third countries or tbe transportation of arms through the territory of the Union as well as to new products such as the so-called 'civil goods' for use by police or security forces.

3.1. Control of brokerage practices in the foreign trade of defence materiel.

Possibly the greatest success of the Spanish Presidency was achieved in this field. The COARM Group agreed to call on the Presidency to draft a common position paper on this thorny subject. Subsequent to a series of necessary consultations – including legal services provided by the Council – the draft was circulated on 27 June 2002.

The Common Position draft proposes the establishment of a registry of intermediaries in defence materiel transactions and calls for a written license for each transaction. It also proposes tlie creation of an information sharing mechanism especially to control a possible record of illicit activities on the part of natural or corporate persons working as arms brokers within the territory of the EU. It also proposes the regular and detailed exchange of information on the criteria to be applied to the issuing of brokers' licenses and/or inscription in a special registry of intermediaries.

3.2. Regulate the control of arms production abroad under Union country license.

This exercise has finalised. It was the first subject that was closed under the Spanish Presidency. The European Council will adopt the conclusions of the COARM Groups tbat call for the strict application of the European Code of Conduct in these cases as well. In practice this means an addition to Criteria 7 of the Code of Conduct that will politically oblige Member States to consider the risks of re-exportation or diversion on the part of third countries producing under license before granting licenses to establish these branch offices.

These COARM conclusions will appear in the 4th Annual Group Report and

will then be adopted by the General Affairs Council (GAC) which means that they will have the same consideration as the Code of Conduct itself.

3.3. Initiate work to achieve the regulation of the transit control of arms through EU countries.

The Spanish Presidency launched the idea in January and was able to bring it to fruition in May. Transit or transfer is much more difficult to regulate than exportation (especially in large ports or airports such as London, Rotterdam, Barcelona, etc.). A notification mechanism of refusals like that which exists for the control of exports would paralyse commerce at many important ports. Moreover, the number of methods currently in use is practically equivalent to the number of Member States. The Presidency therefore decided to approach the problem with a generic text establishing the commitment to be taken on by each Member State to apply the principles and criteria of the European Code of Conduct to the concession of transit licenses but without its complex operational mechanism.

The text was adopted by the Group at the meeting of 29 May 2002 with some modifications that do not alter its substance and will be explicitly included in the upcoming 4th COARM Annual Report that, in turn, will be adopted by the GAC. An expression was also made of the Group's will to include this subject in the first formal revision of the Criteria and the Operational Provisions of the European Code of Conduct.

3.4. Propose to the European Commission to take a serious look at Community Regulations on the export of the so-called 'personal movement restriction devices' (shackles and waist chains).

The Commission announced that during the month of April it would table an initial proposal that would include an extended list of these products – that should be controlled – and a mechanism for their control similar to the one established for dual use materiel. The list would also include products that are used in the application of the death penalty and the control mechanism will be based on Article 133 of the EC Treaty. The Commission was not able to finalise the initial draft proposal although at the last meeting of COARM on 2 July 2002 under the Danish Presidency it presented a full report on the state of the work thus far. It is hoped that a Regulation proposal will be tabled before year's end".

(*BOCG-Congreso.D*, VII Leg., n. 396, pp. 313–315).

Prior to 17 January 2001, the Government reported, in response to a parliamentary question, on the controls applied in Spain to the export of arms:

"The Spanish Government took the lead over the rest of the European Union Member States by subjecting exports of defence and dual use materiel to control via Royal Decree 491/1998 of 27 March approving Foreign Trade Regulation on this type of materiel. Article 6 of that Royal Decree 491/1998 refers to the refusal, suspension and revoking of authorisations. Specifically, export authorisations relating to defence and dual use materiel may be refused, suspended or revoked by the Inter-ministerial Regulation Board for Foreign Trade in Defence and Dual Use Materiel (Spanish initials – *JIMDDU*), when:

a) There are rational indications that defence or dual use materiel may be used in actions that disturb the peace, stability or security on a world or regional scale or that their export/shipment may violate international commitments to which Spain is party.
b) The corresponding operations may have a negative effect on the State's general defence interests or foreign policy.

Consideration of the human rights situation in a country that is the potential recipient of defence or dual use materiel from Spain is full envisioned in the mentioned Article 6 of Royal Decree 491/1998. This is the case in the practical application of that Article.

On 8 June 1998 the European Union adopted its own Code of Conduct for arms export. Eight criteria are set out in this Code of Conduct and should be borne in mind when it comes to authorising arms export operations by European Union Member States. The second criteria of the Code of Conduct makes specific mention of 'respect for human rights in the final recipient country' of an arms export operation.

In the field of arms exports all of the European Union Member States, Spain among them, conform to that second criteria of the 8 June 1998 Code of Conduct. The COARM working group of the European Union is specifically charged with seeing that Member States apply this Code of Conduct.

Based on the above, the Spanish authorities have been paying particularly close attention to requests filed for export licenses for defence and dual use materiel by countries whose human rights situation is not optimal and have been acting in consequence. The objective is, therefore, to prevent Spanish defence and dual use materiel from being used for the purpose of internal repression so as not to contribute to the further deterioration of respect for human rights in countries that are potential recipients of an export operation involving this type of materiel".

(*BOCG-Senado.I*, VII Leg., n. 128, p. 43).

On 25 October 2002, the Government reported, in response to a parliamentary question, on the annual sales volume of all types of police and military materiel from Spain to Turkey during the decade of the 90s:

"The only export of paramilitary and security materiel to Turkey since 1998 was in 1999 and was anti-riot tear gas that was delivered to the Directorate-General of the Police. The export of paramilitary and security materiel is controlled since the entry into force of Royal Decree 491/1998 of 27 March approving the Regulation of Foreign Trade in Defence and Dual Use Materiel.
Export of defence materiel to Turkey from 1990 to 2001:

Year	Value (millions of euros)
1990	0.75
1991	0.73
1992	0.25
1993	0.15

(*cont.*)

Year	Value (millions of euros)
1994	0.45
1995	13.34
1996	29.23
1997	100.21
1998	51.99
1999	30.92
2000	12.49".

(*BOCG-Congreso.D*, VII Leg., n. 426, p. 304).

On 4 December 2002, in an appearance before Parliament, the Government reported on the sale of arms from Spain to Israel and to India and Pakistan:

"The fact is that, in line with a proposal made by the European Parliament, Belgium and Germany decided or announced that they were going to end their policy of arms sales to Israel. 1 would like to inform you that a formal or public announcement of a suspension of sales is tantamount, practically, to an embargo and it is likely that you have done the same. An arms embargo decision is a measure of such importance that in Europe it is normally taken by the European Council and, within the framework of the United Nations, by the Security Council or we would have to turn to a very specialised OSCE-type body for the go-ahead of an embargo. In the case of an individual country this is an exaggerated step. The European Union code of conduct, that you are very familiar with, does not foresee the application of any specific sort of embargo. What it does is establish a series of guiding and interpretable provisions containing a list of criteria referring to countries and their international obligations, the type of materiel, the country of destiny, the final user or the political situation in a number of countries. The countries of the European Union are obliged to bear this in mind and model their arms sales policies in accordance with this code. There are meetings among all of the countries to study the types of policies being implemented and their consequences.

First of all I am going to focus basically on the subject of Israel. I would like you to know that Spain provides only minimum levels of defence materiel to Israel. In the year 2000 arms exports to Israel accounted for 1.07 percent of the total exports of arms and in 2001 that percentage fell to 0.24. I am not giving this as an excuse but I would like to inform you – and this is outlined in the code of conduct – that there are different types of arms. The export of sport munitions or electronic navigation or air communication components is not the same as the export of lethal arms which is not what is being exported. Moreover, in 1999 in Spain more than 10 percent of the requests for export licenses to Israel were turned down. Trade is at a minimal level and is relatively controlled.

As regards India and Pakistan, during the Presidency of the European Union Spain called a meeting of the Council working group, COARM, on 29 May to take a look at how the code of conduct was being enforced in the different coun-

tries. Control of European exports to these countries began in 1999 given that the code of conduct is from 1998 and in the evaluation that was made in this group we saw that practically all of the states of the European Union were following the same procedures that also coincided with those followed by the United States and Russia. All of the countries agreed that, in the absence of significant increases or decreases of exports from the different countries, a large-scale imbalance in some countries undergoing tensions could be even more dangerous for the situation at hand as was the case in Kashmir and 1 again would like to reiterate that in the consultations within the European Union and in the troikas with the United States and the Russian Federation it was determined that the policy was basically the same and that it complies with the code of conduct just as it was being applied.

An embargo by the European Union against Israel, whether official or not, – and this issue was approached – would be entirely counter productive. First of all because the most extremist sectors of Israeli society would say that we are aligning ourselves – they who are the region's democracy – with the Palestinians who are going to procure arms on the black market and through neighbouring Arab countries. Second of all because that sort of embargo would never be approved in the United Nations Security Council and would lead to a stand-off with the United States as concerns the Middle East Issue which would not be in anyone's favour. And third of all, the war materiel employed by the Israeli army is not comprised of the small arms that can be bought in Spain but rather by the heavy arms that are sold and will continue to be sold by the United States. Therefore, Europe would put itself on bad terms with the majority of the Israeli political class, would have nothing to gain and would not solve the problem of arms arriving to the zone".

(*DSS-C*, VII Leg., n. 393, pp. 11–12).