Spanish Diplomatic and Parliamentary Practice in Public International Law, 1999 and 2000

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Except when otherwise indicated, the texts quoted in this Section come from the OID, and more specifically from the OID publication *Pol. Ext.* 1999 and 2000 (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 www.senado.es).

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

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

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

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

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

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

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

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

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I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis aud Purpose

The IX Ibero-American Summit of Heads of State and Government held in Havana (Cuba) on 15–16 November 1999 ratified a Final Document that stated as follows:

"2. At this Summit, we reiterated the firm commitment of each of our governments to strengthening and achieving the effective functioning of democratic institutions, political pluralism, the Rule of Law, and respect for human rights and basic freedoms, including the right to development.

With regard to international relations, all of the Ibero-American governments reaffirm their respect for the principles of sovereignty and non-intervention; of the self-determination of nations; of seeking peaceful solutions to conflicts, as opposed to the use or the threat of use of violence; and of the right of all nations to freely develop their own political system, in a climate of peace, stability and justice. We also reaffirm our commitment to contributing to the development of a just and participatory system of international relations, in accordance with the principles of international coexistence consecrated in the Charter of the United Nations, the Universal Declaration of Human Rights, and other international instruments.

3. On reaffirming that international coexistence demands respect for the principles of international law, the Charter of the United Nations, and the legal equality and national sovereignty of all States, we, the countries of Ibero-America, solemnly renew our commitment to these precepts.

As a consequence, we reiterate once again our firm opposition to the unilateral and extraterritorial application of national laws or measures that infringe on international law and attempt to impose upon the laws and ordinances of third countries, in that they violate the principles that should govern international coexistence, weaken multilateralism, and are contrary to the spirit of cooperation and friendship that should prevail among our peoples.

In this context, we place special emphasis on urging the government of the United States of America to put an end to the application of the Helms-Burton Act, in accordance with the resolutions adopted by the United Nations General Assembly in this regard.

(...)"

One year later at the X Ibero-American Summit, the Final Document approved by the Heads of State and Government read as follows:

"1. We, the Heads of State and Government of the 21 Ibero-American countries ..., convinced that in order to achieve sustainable human development, democratic consolidation, equity, and social justice, based on the principles of the universality, indivisibility, and interdependence of human

rights, it is essential that special attention be devoted to children and adolescents, have once again decided to consider together the situation of the children and adolescents of Ibero-America, with a view to formulating policies and promoting programmes and actions designed to ensure the respect of their rights, well-being and overall development.

(...)

We reaffirm our commitment to the promotion and defence of democracy and the State of Law; political pluralism and cultural identity; and human rights in their civil, political, economic, social and cultural aspects, including the right to development, respect for the principles of sovereignty and territorial integrity, non-intervention, the non-use of force, and of the threat to use force, in international relations, the peaceful resolution of disputes, and the right of all peoples to construct their political systems freely, under conditions of peace, stability and justice. These principles are part of our legacy to Ibero-American children and adolescents.

(...)

5. We vigorously reject any extraterritorial application of national laws or unilateral measures implemented in contravention of international law, the United Nations Charter, or the prevailing laws of international trade. We therefore reiterate the urgent need to abolish such measures and once more urge the United States of America to end its implementation of the Helms-Burton Act, in accordance with the pertinent resolutions of the United Nations General Assembly.

(...)".

And finally, at the I Summit of Heads of State and Government of the European Union, Ibero-America and the Caribbean held in Rio de Janeiro (Brazil) on 28–29 June 1999, a Final Statement was approved which affirmed the following:

"1. We, the Heads of State or Government of the European Union, Ibero-America and the Caribbean, have decided to promote and develop our relations towards a strategic bi-regional partnership, based upon the profound cultural heritage that unites us, and on the wealth and diversity of our respective cultural expressions.

(...)

3. This strategic partnership is based on full compliance with international law, and the purposes and principles contained in the Charter of the United Nations, the principles of non-intervention, respect for sovereignty, equality among States, and self-determination are bases for the relations between our regions.

4. This partnership is built upon and will contribute to the furthering of common objectives, such as strengthening representative and participatory democracy and individual freedom, the Rule of Law, good governance, pluralism, international peace and security, political stability and building confidence among nations.

5. We highlight the universality of all human rights; the need to reverse environmental degradation and foster sustainable development through the conservation and sustainable use of natural resources; cooperation for the recovery, preservation, diffusion and expansion of cultural heritages; the efficient incorporation of scientific knowledge and technological advances in educational systems at all levels and the fight against poverty, as well as against social inequalities and sexual discrimination.

6. We welcome the progress made in integration in Europe and Ibero-America and the Caribbean in the political and economic areas under the principle of open regionalism.

7. In this process we envisage providing new momentum and equal attention to the following three strategic dimensions: a fruitful political dialogue respectful of international law; solid economic and financial relations based on a comprehensive and balanced liberalisation of trade and capital flows; and more dynamic and creative cooperation in the educational, scientific, technological, cultural, human and social fields.

(...)".

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

a) Reservations

In his speech before the Sixth Committee of the General Assembly, in the year 2000 session, the Spanish representative, Mr. Pérez Giralda, made the following comments regarding Chapter VII of the International Law Commission Report focussing on the reservations to international treaties:

"The fifth report filed by the Special Rapporteur Professor Alain Pellet on reservations to treaties includes two clearly differentiated sections. The first refers to what he calls 'alternatives' to reservations and to interpretative declarations. My delegation has no objections to this important effort that the International Law Commission has been making to classify and conceptualise, basing its work on the detailed reports provided by the Special Rapporteur. I would simply like to make one observation on draft guideline no. 1.7.1: Given that the example proposed by the Special Rapporteur was not included it would be helpful, with a view to avoiding confusion, that the comment contain a reference to certain practices, especially those of European Community Law that are also known as 'opting out' and 'opting in'. So, we have the repealed Protocol on Social Policy that was cited as an example of opting out and the Protocols that refer to the participation of certain States in the third phase of economic and monetary union which depends upon the specific notification received by the Governments of their desire to participate

(opting in). With regard to the rest, we anxiously await the proposed guidelines on the validity and the effects of the reservations and objections to them and feel compelled to state that the analysis made to date is of great theoretical value and is extremely valuable in practice. Its usefulness has already been demonstrated in daily consultancy work especially with relation to the definition of interpretative declaration and its differentiation from reservations.

The second part of the fifth report deals with procedural matters regarding formulation, amendment and withdrawal of reservations and interpretative declarations, focussing, for the time being, on the problems relating to the moment of such formulation. We regret that the International Law Commission lacked the time to dwell on this interesting subject during the last period of sessions. In response, however, to the request made in paragraph 26 of the report, my delegation wishes to make some provisional comments while awaiting the debate that will certainly take place next year on this and other subjects that the Special Rapporteur should raise: The late formulation of reservations is a highly delicate issue given its effect on legal security and the safeguarding of conventional relations among States. It should not come as a surprise, therefore, the difficulty encountered in formulating a guideline like the proposed number 2.3.1(formulation of late reservations), which seeks to reflect the rule found in Art. 19 of the 1969 Vienna Convention on the Law of Treaties while at the same time taking into consideration the undeniable fact that States that are party to an international treaty are free to proceed with regard to the obligations acquired although always by mutual agreement. Although we do not deny this last principle, we feel that formulation with a double negative fails to reflect with the necessary transparency the clearly exceptional character that these late reservations should have in practice. The fact is that the two parts of the proposed article seem to be contradictory. If, as the first part affirms, a State 'may not formulate a reservation to a treaty once it has expressed its conformity to abide by the terms of that treaty', the only exception to this prohibition should be that of a late reservation filed by a State after having procured the unanimous consent of the other parties to the treaty and not before. Thus, the late reservation would, in practice, be a treaty amendment of sorts. We are aware that in practice in the UN as in other international organisations, and this is pointed out by Professor Pellet in his report, late reservations are made without prior consent and may subsist on the consent of the rest of the parties whether this be expressed or tacit. It is our view that this reality constitutes a veritable exception to the rule and therefore should not appear alongside the said rule on the same level in a guideline like the one being discussed.

In light of all of the above, in principle we agree with the opinion of the Special Rapporteur in the sense that this type of late reservation formulated without prior consent can only persist with unanimous support from all of the

States party to the treaty. If this is not the case one single State, even in its bilateral relations with countries that do not object to its reservation, could arbitrarily and at any time abandon the obligations that it has assumed.

In paragraphs 317 and subsequent of his fifth report, the Special Rapporteur points out a recent modification regarding the time limit set by the UN's General Secretariat for States to file any objections they may have to late reservations – increased from 90 days to 12 months. This modification, that we consider to be positive, was produced in the context of a broader discussion about the effects not only of late reservations but also of modifications to reservations. Concerning this latter issue, my delegation would like to briefly express its position. In contrast to the case of late reservations that will always involve the abandoning or modification of the obligations assumed by the State filing such reservation, the modification of a reservation could entail either the addition of new limitations or a partial withdrawal or modification in the sense of reducing the limitations initially contained in the reservation. In the first supposition, we would have no opposition to the unanimity principle as in the case of late reservations. However, an evaluation of the second type of modification, i.e. more in line with assuming the original obligations, should not be governed by the same principle. Objection to a reservation of this nature should only have an effect on the formulating State and the one that objects thus allowing the rest to continue with their conventional relations with the first in a broader and more favourable manner in line with the aims and objectives of the treaty. If this is not the case and as often happens in current practice, the interest in maintaining the most widespread fulfilment possible of the treaty would suffer due to the objection of only one of the Party States.

And finally, my delegation would like to insist on the incongruity that it continues to observe in the title of guideline number 1.5.1 which, although between inverted commas, continues to use the word 'reservations' in reference to certain unilateral statements that, according to the guideline itself, are not reservations at all".

2. Unilateral Acts

The Spanish representative to the Sixth GA Committee, Mr. Pérez Giralda, intervened in the year 2000 session and made the following statements on Chapter VI of the International Law Commission Report focussing on unilateral acts of States:

"We feel that it is important to reach a consensus on the regulation of unilateral acts especially with regard to the advisability, following a series of basic rules, for States, especially institutions responsible for international relations, to be made subject to certain minimum requirements, pronouncements and actions that could have relevant legal effects on their relations with other States.

The difficulties encountered in this area are both theoretical as well as practical in nature. On the one hand it is clear that the concept of unilateral act is a doctrinal abstraction that covers a range of varied acts that, beyond classical conventional relations, exert an influence on international relations. A single regulation of this nature would be practically impossible and we therefore support the idea that was suggested in paragraph 621 of the ILC Report (section b) of making a distinction between a set of minimum rules applicable to all unilateral acts and a separate definition of the differentiated rules that should be applied to each type of act.

Here we must acknowledge the difficulty of making the Commission's work dependent upon gaining precise knowledge of the practice of States. First of all, that practice is anything but abundant and the majority of it refers to acts the legal binding character of which is controversial and is only made clear when a complaint is filed by a State that considers itself to be the beneficiary of a right derived from a unilateral act. Furthermore, in light of the fact that the development of the concept of unilateral act is subsequent to the drafting of the first written Constitutions, the majority of the latter make no reference to the demands of national law regarding the unilateral assumption of legal obligations; quite the opposite of what occurs with the detailed regulation of the distribution of competencies when commitments are made through international treaties. Cases such as the one referred to by the Special Rapporteur in paragraph 43 of his Report in relation to debt write-off are exceptions to the rule and are derived from a specific legal authorisation granted to the Government.

My delegation is aware of the difficulties arising from the treatment of the articles proposed by the Special Rapporteur in the five projects that have been dealt with to date. For that reason I would like to clarify its position on some of the most controversial points:

In relation to the use of the Vienna Convention on the Law of Treaties as a point of reference in the regulation of unilateral acts, which is still an issue of discussion, we agree with the 'flexible' approach adopted by the Special Rapporteur because, even though all of the Convention's regulations cannot be applied to unilateral acts or at least not to all of the varieties of unilateral acts, it cannot be denied that the regulation of unilateral acts and treaties is rooted in a common body of case law, i.e. in the theory of the legal relationship, many categories of which have been adopted in the Vienna Conventions and are applicable to unilateral acts.

With regard to Art. 1 and as a result of discussions on the three reports of the Special Rapporteur, my delegation is of the opinion that the definition of the unilateral act has been undergoing improvements. However, the omission in the text of the 'autonomous' character of the acts should not make us lose sight of the fact that in light of the difficulty of the subject, it is preferable in this initial phase that we are currently in to restrict its scope as much as possible ignoring for the time being the study of

acts derived from Treaties or from customary law as well as from silence, acquiescence or estoppel.

Still with reference to Art. 1, the expression 'unequivocal' as a qualifier of the 'expression of will' continues to pose problems for my delegation. There can be no doubt that any act with legal ramifications whether unilateral o bilateral, should be expressed in clear terms with a view to preventing controversies in interpretation. But, on the other hand, the nucleus of the concept of a unilateral act as it is being shaped by the draft articles, is the 'intention' of producing legal effects and it would seem more appropriate to move towards a desideratum of an 'unequivocal' nature with regard to this element. The International Court of Justice, however, has highlighted the fact that even the intention of making a commitment 'should be determined upon interpretation of the act' (ICJ Nuclear Tests Case, judgement of 20 December 1974).

We concur with the suppression of the 'publicity' requirement attached to the umlateral act's definitive article although we prefer the former wording that required that the act be not only known by the State to which it is addressed but also that it be known through direct notification or communication by the author of the unilateral act.

In relation to Art. 5, my delegation feels that it constitutes a good provisional base for the regulation of the causes of nullity that should be outlined in conjunction with the rules that define the validity requirements corresponding to unilateral acts. We support the validity of the viewpoint expressed by the Commission that the draft article should differentiate between the cases of voidability or relative nullity and those in which nullity is absolute and imposed by law.

And finally, with respect to the much discussed paragraph 7, my delegation is of the opinion that its contents should be broadened thus making the rule established under Art. 103 of the UN Charter applicable to unilateral acts so that the obligations undertaken by virtue of the Charter prevail over any others regardless of whether they are derived from other Treaties or from commitments made unilaterally".

3. Codification and Progressive Development

Note: See II.1.*a) Reservations;* II.2. Unilateral Acts

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-determination

a) Western Sahara

The position taken by Spain regarding the proposition to re-launch the Sahara referendum was the object of a question posed in the Senate and answered on 4 May 1999 by the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea:

"The application process of the United Nations Settlement Plan entered into a new phase subsequent to the visit by the Deputy Secretary General for Peace-Keeping Operations that took place in October 1998 and the visit of the UN Secretary General Mr. Kofi Annan, who was there from 7 to 16 November and from 29 November to 2 December 1998.

On both occasions a set of proposals was made to the parties the purpose of which was to make progress on the application of the Settlement Plan and to end the current situation of stalemate arising from differences that the parties continue to have regarding the identification of the applicants to figure in the referendum census. The proposals, mostly related to the identification of the so-called controversial tribes and the appeal process on their inclusion or not in the census, include a new calendar that considers holding a referendum in December of this year.

The situation has evolved since then. The Polisario Front accepted all of the UN proposals. For its part, Morocco, in principle, accepted the proposals on the condition that certain modifications be added and the calendar be revised.

Recently the UN Secretary General provided both parties with draft versions of the revised texts of the protocols on the identification of controversial tribes and of appeals. These texts have already been accepted by Morocco.

Furthermore, on 28 April the Secretary General issued his last report which, in accordance with the new provisional calendar, envisions a referendum in July of 2000 and proposes that the Security Council extend the MINURSO mandate for a period of six months. This mandate has been renewed for two weeks.

(...)

The Government realises that the Settlement Plan is at a decisive crossroads which, despite delays, keeps the perspective of a breakthrough alive based on the proposals of the UN Secretary General. The Government considers of special importance the efforts made by the parties which it invites – as has always been the case – to participate with a constructive mindset and with the same enthusiasm that made the Houston accords possible.

Our position continues to be that of unmitigated support for the Settlement

Plan; the framework within which the measures submitted to the parties by the Secretary General of the United Nations are found. In accordance with this position, and by virtue of the non-legislative motion unanimously approved by the Parliamentary Foreign Affairs Commission on 22 December 1997 and the motion approved by the Parliamentary Plan on 19 May 1998, Spain is willing to continue providing all of the help that is within its power and that the UN deems appropriate and that the parties to the conflict agree on.

We therefore find ourselves once again involved in a situation that is making slow progress; the MINURSO mandate has been extended, the referendum date has been reset and the base documents have been submitted to the parties: one of the parties has approved them while approval by the other is still pending. I therefore once again believe that the perspectives are good for the celebration of this famous referendum once and for all.

I would like to highlight that concern on the part of the Spanish Government for what could have been a solution within the framework of the proposal by the Secretary General of the United Nations was communicated to the Moroccan Government, to its President and to the rest of its members last Thursday on the occasion of the Spanish-Moroccan Summit that was held in Madrid".

(*DSS-C*, VI Leg., n. 429, pp. 19–20).

Also, in response to a question posed in Congress with regard to the measures that the Government plans to adopt to promote the holding of the referendum on self-determination for Sahara, in his appearance of 14 September 2000 he stated:

"United Nations Security Council Resolutions 658 and 690 of 1990 and 1991 set up a framework for the pacific settlement of a dispute involving the Western Sahara that, since the second half of the 70's, has seen Morocco and the Polisario Front in conflict:

The plan was structured on a series of successive phases that were meant to lead to a referendum allowing the Western Saharan people to decide between the independence of their territory or their integration into Morocco. The plan included the drawing up of an electoral census that, based on the one done by Spain in 1974, would include the Western Saharan people who are recognised by the Identification Commission of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

(...)

To date the UN plan has been unable to overcome the difficulties that are inherent to the identification process due to the wide gap separating Morocco and the Polisario Front regarding the identification of large groups of individuals who aspire to figure in the referendum census as Western Saharans. Following MINURSO's drafting and publication last January of a provisional list of voters, the presentation of a very large number of appeals against that list has led to the permanent blockage of the plan.

(...)

Spain's position, that has remained constant throughout the entire decade of the existence of the settlement plan, has been characterised by the political and material defence and support of the solution framework provided by Security Council Resolutions 658 and 690 and encouragement of the parties to cooperate with the UN in the execution of the plan. This position taken by our country was expressed by Parliament through the unanimous adoption of the non-legislative motion of 22 December 1997 at the Committee on Foreign Affairs meeting of the Congress of Deputies expressing unequivocal support for the settlement plan and for the mission deployed in the territory.

The Government has continued to collaborate with and support the efforts of the UN Secretary General. The Government's plan is to remain loyal to this commitment and to work alongside the parties involved in the conflict and the countries most directly supporting a definitive resolution to the dispute".

(*BOCG-Congreso.D*, VII Leg., n. 55, pp. 394–395).

b) East Timor

The Minister for Foreign Affairs, Mr. Matutes Juan, appeared before Congress on 14 September 1999 to report on the initiatives taken by the Spanish Government to guarantee that Indonesia respect the results of the referendum on the self-determination of East Timor. In this appearance the Minister made the following statement:

"Spain never recognised the annexation of Timor by Indonesia. Our country has always been in line with the UN resolutions on the territory and has adopted a moderate stance, fostering dialogue both individually and within the European Union, and has encouraged compromise and political dialogue between the two parties.

Both Portugal as well as Indonesia have appreciated our balanced position over the course of time. Spain reacted positively to the signing of the New York Accords and a result of our support for these tripartite agreements and the firm interest of the Government in collaborating was the involvement of six Spaniards in the civil police contingent of Unamet that currently had to be evacuated. Three Spaniards also formed part of the group of observers on the panel of international lawyers.

The international community and logically Spain as well was pleasantly surprised by the high voter turnout of 97 per cent. Seventy-eight point five per cent voted against the statute of autonomy and in favour of independence.

(...)

Once the voting had concluded, the international community bore witness to widespread outrage and violations committed by Indonesia's militias supporting integration while the Indonesian troops stood passively by failing to support the decision taken by popular vote.

As everyone is well aware, the territory was thrown into a spiral of violence that shocked the world. The condemnation expressed by the Spanish Government and the European Union to the outrage and disorder was clear.

Today it is Indonesia that has the main responsibility over Timor. Spain called on the Government to assume its responsibilities and, if unable to do this, Indonesia should accept the direct involvement of the international community, acting in consonance with a Security Council mandate. Furthermore, the Government believes that the UN and its Security Council also have a fundamental role to play in this crisis; it is up to the Security Council to urgently take the necessary measures to re-establish peace in the event that the army and the Indonesian authorities fail to meet their responsibilities to the international community. Spain, like many of our allied partners, from the very outset supported the idea that if the Indonesian Government was not capable of maintaining order, it should request or tolerate the presence of international forces. We have remained in close contact with our European Union partners, especially Portugal, as well as with our allies and friends.

(...)

The General Affairs Council of the European Union also imposed an embargo on the export of arms, munitions and military equipment to Indonesia as well as a prohibition on the storage of equipment that eould be used for purposes of internal repression or terrorism. It also ordered the suspension of military cooperation with Jakarta; all of this for a period of four months after which time the situation will be assessed in light of the evolution of events. We also decided to request a Human Rights Commission investigation mission to East Timor to gather evidence and to determine responsibility for the campaign of terror unleashed there. At this time it is also important to adopt humanitarian aid actions.

In summary, Spain believes that stability in Southeast Asia must be promoted with special attention being paid to this giant of 200 million inhabitants that is Indonesia. This, however, should not be done at the expense of ignoring the results of a referendum organised by the UN with the consent of all of the parties involved in relation to a territory the annexation to Indonesia of which was never recognised by the UN or by the international community.

(...)

At any rate, the stance taken by the Spanish Government is that of absolute priority and the reestablishment of peace, order and security on the island; secondly, we must maintain international pressure and thirdly, once order is restored, all of the necessary measures and steps must be taken to insure that in the end the referendum results are respected".

(*DSC-C*, VI Leg., n. 743, pp. 21841–21842, 21846).

c) Palestine

On 26 January 1999 the Government responded to a question in Congress regarding its position to the possible proclamation of a Palestinian State. The Government responded as follows:

"1. Spain is of the opinion that the Palestine people, in line with numerous United Nations resolutions, has the right to self- determination. Thus, in the statements promoted and supported by Spain arising from the Amsterdam European Council (1997) and Cardiff Council (16 June 1998), it was recommended that Israel 'recognise the Palestinian people's right to self-determination, without excluding the option of an independent State.'

2. Spain has been firmly committed to the peace process from the very beginning as of the Madrid Conference in November 1991 and believes that a global, just and lasting peace in the region can only be achieved if it is based on the UN Security Council Resolutions, the Madrid principles, especially 'land for peace,' and the agreements signed by the parties.

3. The results of the Conference of Aid Donors held in Washington this past 30 November at which the international community as a whole promised 3.4 billion dollars over the next five years in support of the Palestinian economy are indicative of its firm commitment to the peace process. It is Spain's view that the priority objective of this aid should be to guarantee the economic viability of the Palestinian entity that arises out of the Palestine people's exercise of their right to self-determination including the creation of an independent Palestinian State that should take place within the framework of the peace process and be based on the accords reached between the parties and the Madrid principles.

Spain is confident that this firm commitment to the peace process on the part of the international community will continue.

(...)

4. It is within this context that Spain believes that it is only the loyal and timely application of the Wye River Memorandum that includes the re-initiation of negotiations on the Final Statute, that will be capable of energetically re-launching the peace process and allowing the parties to approach the final transition period (4 May 1999) with a solution that is satisfactory for both sides and that moves in the direction of achieving a global, just and lasting peace throughout the region".

(*BOCG-Congreso.D*, VI Leg., n. 370, p. 301).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protection

In his appearance before the Sixth Committee of the General Assembly at the

2000 session, the representative from Spain, Mr. Pérez Giralda, made the following comments regarding Chapter VI of the International Law Commission Report on diplomatic protection:

"My delegation enthusiastically received the excellent report marking the commencement of Professor Dugard's work on diplomatic protection. It continues to be our view, as we had the opportunity to express before this Commission at the time of the first report presented by Mr. Bennouna, that diplomatic protection is solidly rooted in customary international law and that the Commission has sufficient State practice to undertake the task of codification. Professor Dugard's first report has courageously presented a series of sometimes controversial options. It has had the positive effect of provoking a lively and clarifying discussion within the Commission that will undoubtedly facilitate the Governments' taking possession of the work.

In this sense, I would like to briefly state my delegation's stand on the following points:

First of all, we share the Special Rapporteur's view on the usefulness of the institution of diplomatic protection taken in its traditional sense. The fact that the concept of diplomatic protection as a State's right has the nature of legal fiction is not an obstacle, nor has it been up to now for its use as an instrument in the peaceful resolution of certain controversies between States as concerns infringement of international law by an individual. We also share the opinion of the Special Rapporteur on the complementary nature of diplomatic protection with respect to the rest of the international human rights protection mechanisms while at the same time keeping to the current decentralised structure of the international legal system.

Spain therefore supports the Commission's decision to strike Art. 4 from the project presented by the Special Rapporteur, which sought to establish, within certain limits, a legal obligation on the part of the State of the nationality of the injured party to exercise diplomatic protection on the latter's behalf. The view of my delegation in this respect was expressed in the commentaries formulated in 1998 before this Commission, although it seems that they were misunderstood by the Special Rapporteur judging from paragraphs 79 and 80 of his first report. In order to clear up any possible doubt, I would like to repeat what was said on that occasion:

'It is our view that the exercise of diplomatic protection should continue to be understood as a State right. This right clearly stems from a State's prior infraction of the rights or interests of individuals. However, the distinction should be maintained, whether artificial or fictitious, between the right of the State and that of the individual as is the case with States that, in their domestic legislation, have taken the concept of diplomatic protection further considering it a right of nationals. These States have always reserved the possibility of making up for the lack of diplomatic protection in the event that vital State interests are at stake. In these situations

nothing impedes the States from providing for other types of compensation, in keeping with their domestic law, to the degree to which they want to grant their nationals the right to demand that the State take responsibility for not exercising diplomatic protection. There is no contradiction between this possibility and the discretional nature of the State's right to exercise diplomatic protection on the international level'.

With regard to Art. 2 of the project presented by the Special Rapporteur, my delegation once again shares the Commission's decision to strike it from the project so that the latter is reduced to the regulation of diplomatic protection as the initiation of a specific proceeding to settle controversy. The rejection of threat or the use of force set out in Art. 2.4 of the United Nations Charter is categorical and, as was expressed by some Commission members during discussions on this topic, exceptions should not be formulated that could lead to the admission of doubts or mitigation concerning the basic principle of current international law. This is also in line with the Commission's work on the subject of international responsibility, which does not envision the permissible use of force not even when a situation of necessity could have the effect of eliminating the responsibility.

In relation to the articles on nationality, my delegation considers the work done by the Special Rapporteur on Arts. 5 and 7 valid with the nuances introduced by the informal group of consultations. We also feel that the proposal for the progressive development of Art. 8 is worthwhile with the understanding that the protection of stateless persons or refugees with legal residence figures, just as the diplomatic protection of nationals, as a discretional right of the State and not as an individual right. We also lend our support to the caution voiced that the said protection cannot be exercised against the State of the nationality of the refugee in relation to issues arising prior to the date on which the latter officially obtained his status in the State of residency.

On the other hand, the proposal contained in Art. 6 that gave rise to a lengthy debate in the Commission and that was maintained by the group of informal consultations, does not seem to be justified nor is it sufficiently rooted in the practice of States as the Special Rapporteur himself acknowledged in his report and as was stated during the course of the discussions. The regulation incorporated into Art. 4 of the 1930 Hague Convention on the conflict of nationality laws remains valid. It is our view that to break with the principle according to which a State may not grant diplomatic protection to one of its nationals against a State of which the former is a national as well, would cause greater problems than those that it could solve in bilateral relations between two sovereign States. We have not found sufficient cause for a development of this magnitude and we therefore feel that in future work the Commission should abide by the traditional rule".

2. Human Rights

a) Allegation of Respect for Human Rights as an Erga Omnes Obligation

In response to a parliamentary question on 10 March 1999, the Minister for Foreign Affairs expounded upon the measures that the Spanish Government was planning to take in order to contribute to a hearing for the Kurd leader Abdullah Ocalan with the legal guarantees that any person should be granted:

"On 21 and 22 February we had a meeting of European Union Ministers for Foreign Affairs in Luxembourg in the framework of the General Affairs Council to specifically focus on the issue that the question alludes to. At that meeting we approved a statement in which the European Union, in addition to reiterating its condemnation of all forms of terrorism, took note of guarantees, highlighted by the Turkish Government, indicating that Mr. Ocalan will have a fair trial.

It is the wish of the European Union, and this was communicated to the Turkish authorities, that this means fair and proper treatment and an open hearing in accordance with the full force of the law, before an independent court with Mr. Ocalan having aceess to a lawyer of his choice. It would also like to see the admittance of international observers. In this statement the EU once again underlines its uncompromising and radical opposition to the death penalty.

Germany, the country presiding over the Union, has filed a request with the Turkish authorities asking that a member of its Embassy in Ankara be permitted to attend the trial. Moreover, this attendance will be on behalf of all of the Member States, who will be informed in a timely fashion of developments in this process.

The members of the Union give particular importance to the role that the Council of Europe, of which Turkey is a member, can play throughout the trial. For its part the Government is firmly committed to the defence of human rights among which the basic and essential right to life is included. In conjunction with the rest of the European Union, Spain calls for the abolition of the death penalty and in those places where it exists and is in force it has called for a permanent moratorium on its application. We trust that, once a judgement is made, Mr. Ocalan will not be executed in light of the fact that Turkey has not carried out a death penalty since 1984 and it is our hope that this moratorium will not be broken".

(*DSS-P*, VI Leg., n. 122, p. 5720).

In response to a parliamentary question on 22 April 1999, the Government stated its position on the situation of the Kurd minority in Turkey.

"Just as the Honourable Member of Parliament has pointed out, in the response to written question file number 184/10119 of 13 October 1997, 'BOC', series D, number 195, the Government 'is keeping a close watch on the

domestic developments in Turkey and, within the framework of its bilateral relations as well as in the different European forums, has been promoting the development of the values of a pluralistic democracy and respect for human rights in that country'.

'Spain, while firmly condemning and repudiating terrorist violence perpetrated by the PKK, has been, in conjunction with its Community partners, insistently reminding the Turkish authorities that the anti-terrorist fight must be implemented with the utmost respect for the regulations of the Rule of Law and of the importance of seeking a solution to the conflict that goes beyond police action and includes economic, social and political measures in favour of the Kurd population'.

More recently, on the 11th and 12th of December 1998, the Vienna European Council ratified a set of Conclusions reached at the European Union General Affairs Council that indicated 'the need for (Turkey) to make a concerted effort to guarantee the Rule of Law within a democratic society as required by the Copenhagen criteria and the pertinent conclusions of the European Councils. The Council makes mention of the importance that it attributes to the treatment of minorities, an issue that requires permanent attention'.

On 21 and 22 February a meeting was held of the European Union Ministers for Foreign Affairs in Luxembourg in the framework of the General Affairs Council.

Moreover, in this statement the European Union fully supported Turkey's territorial integrity. At the same time the European Union expressed its trust that Turkey would resolve its problems by political means with full respect for human rights, for the law in a democratic society and in total harmony with Turkey's commitments as a member of the Council of Europe. In this context, the Union looks favourably upon any genuine efforts made to separate the struggle against terrorism from the search for political solutions and the fostering of conciliation. With a view to favouring the fulfilment of this objective, the European Union and Spain as a Member thereof, considers the issue of minorities' rights within a broader framework: that of respect for human rights and the fostering of democracy in Turkey. It is an accepted notion that the recognition of minorities' rights is a value that is perfectly compatible with the territorial integrity of States and that it contributes to the enrichment of societies.

Spain along with the rest of the Union partners has passed these messages along to Turkey, highlighting the importance that they give to these issues in the development of relations between the Union and Turkey. It is their view that in a democracy political options can be expressed and compete freely in electoral processes".

(*BOCG-Congreso.D*, VI Leg., n. 414, p. 61).

In response to a parliamentary question on 11 March 1999, the Spanish Government provided information concerning joint European Union actions aimed at promoting respect for human rights in Algeria:

"Both from within the European Union as well as through its bilateral relations with Algeria, the Government has always emphasized the need to fight violence within the most strict respect of the law, the Rule of Law and human rights. On a number of occasions, the Algerian authorities themselves have indicated that these are the parameters that guide the new political-institutional framework that Algeria has adopted during the course of the last several years. The Government has never ceased to encourage Algeria to consolidate this new framework of political pluralism and tolerance.

Human rights are an essential component of the ongoing political dialogue that the EU maintains with Algeria. Spain, as a member of the EU, supported the trip to Algiers, in February of 1998 under the British Presidency, of a representation of the Troika that was followed shortly after by a delegation from the European Parliament. Moreover, Spain took part in and fully endorses the EU Memorandum distributed on the occasion of the 53rd UN General Assembly. Section 1.2 of the said Memorandum, in light of the special concern caused by the situation in Algeria, expressed the hope that the Government of that North African country continue to strive towards full cooperation with the UN and its calls for attention to human rights. On October 20 the Minister for Foreign Affairs, Mr. Attaf, travelled to Vienna which was then the capital of the European Union Presidency where he met with the Troika representatives. At that meeting the EU reiterated its message that terrorist violence should only be dealt with from a perspective of respect for the Law and human rights.

And finally, the Spanish Government accepts the conclusions reached by the group of eminent personalities headed by Mario Soares subsequent to their visit to Algeria between July and August 1998 acting on the initiative of the UN Secretary General. It is the Government's view that this visit marked an important step forward in providing greater informative transparency to the situation in Algeria, one of the objectives that Spain and the EU as a whole have been pushing for with the Algerian Government".

(*BOCG-Congreso.D*, VI Leg., n. 393, p. 103).

In response to a parliamentary query on 14 September 2000, the Spanish Government provided information on the adoption of measures aimed at promoting respect for human rights in Chechnya:

"Protection of and respect for human rights is one of the basic objectives of Spanish foreign policy.

This interest in respect for human rights provides the inspiration for our diplomatic relations throughout all parts of the world.

Russian military intervention in Chechnya has caused grave concern within the EU and its Member States, who have condemned its disproportionate use of force that has had serious consequences for the civilian population. This has been done, however, without prejudice to full recognition of the territorial integrity of the Russian Federation and its right to combat terrorism.

On a number of occasions the EU, and therefore Spain, has called on Russia to put an end to the hostilities and seek a political solution to the conflict. It has also encouraged the Russian Federation to give NGOs access to Chechenian territory to facilitate the efficient distribution of humanitarian aid and to permit an independent investigation of human rights violations. These requests are still being made to the Russian Federation despite their having taken some positive steps.

In the international arena and in addition to the policy jointly implemented with the rest of the EU partners in defence of human rights in Chechnya, Spain has participated with the rest of the Union countries with this same aim in mind in two areas: acting on the initiative of the EU, the NATO Human Rights Commission adopted Resolution 2000/58 calling on the Russian Federation to effectively protect human rights in Chechnya and to seek a negotiated solution to the conflict and encouraging coordination among the EU countries acting within the Council of Europe.

On 27 June the Committee of Ministers of the Council of Europe, in recognition of progress made on the Russian side in favour of resolving the Chechnya conflict and protecting human rights in that Russian Federation Republic, unanimously adopted a Resolution by virtue of which an action aimed at suspending Russia from the said Council is considered unnecessary. This was in response to the recommendation made in April by the Parliamentary Assembly of the Council of Europe in the event that progress was not made in this field. Spain fully shares the terms of this Resolution that was voted by the 41 countries that comprise the Council of Europe.

Spain, like the rest of the EU countries, considers a series of measures adopted recently by the Russian Federation as positive steps that undoubtedly favour the human rights situation in Chechnya. These steps can be summarised as the resumption of the OSCE mission in Chechnya. To this end Spain, through our permanent representation in the OSCE is actively working in order that this mission may fulfil its mandate. Examples are the recent incorporation on 20 June of three experts from the Council of Europe to the Russian Office for the Protection of Human Rights in Chechnya for which Spain has made a voluntary contribution; the organisation of several seminars throughout the region under the auspices of the Council of Europe with a view to heightening the awareness of the authorities present in the region on the importance of respecting human rights (these seminars are rooted in an initiative by the Council of Europe's Human Rights Commissioner, the Spaniard Mr. Gil Robles); the creation and implementation of an independent commission for the investigation of human rights violations. Notice should be taken of the Russian authorities' stated intention of not allowing human rights violations and of punishing the perpetrators of any such violations regardless of who they may be.

Moreover, it is important for the EU to continue encouraging the Russian authorities to seek a political solution to the conflict; to permit an

independent investigation of the human rights violations and cooperate with international humanitarian organisations allowing the latter to carry out effective initiatives in Chechnya. At the same time that it was reiterating these requests to Russia on the 10th of this month, the EU also decided to unfreeze part of an aid package to Russia forming part of the TACIS Programme that had been frozen as of December as a result of the Chechnya conflict. The EU would like its aid to Russia to basically reinforce the Rule of Law and the democratic institutions of that country.

Both within the scope of the EU and other organisations – the Council of Europe, the UN Human Rights Commission and the OSCE – as well as bilaterally addressing the Russian authorities directly, Spain has come out in favour of a political solution to the conflict in Chechnya and the application of measures commensurate with the Rule of Law as the way to effectively safeguard human rights. The reiterated objective of Russia to become fully integrated into the European institutions defending human rights, as is the case of the Council of Europe, gives us a ray of hope that its conduct will come into line with the democratic values that we share.

At any rate Spain, like the rest of the EU countries, will continue to closely monitor the situation in Chechnya paying special attention to respect for human rights in that Republic of the Russian Federation. Respect for democratic principles is the cornerstone of cooperation between the EU and the Russian Federation"

(*BOCG-Congreso.D*, VII Leg., n. 55, p. 249).

b) Human Rights Violations in Argentina and Chile

In his appearance before Parliament on 25 November 1999, the Minister for Foreign Affairs, Mr. Abel Matutes Juan, provided information regarding the exchange of letters between his Ministry and the Chilean Chancery regarding the so called "Pinochet Case":

"The fact is that at the end of April the Chilean side took the decision to turn its controversy with Spain over to the conflict resolution mechanism foreseen in Art. 30 of the Convention Against Torture thus giving preference to negotiation and arbitration. Art. 30 provides for three phases: negotiation, arbitration in the event that negotiation were insufficient and the third phase, in the event that arbitration was not considered acceptable, appeal to the International Court of Justice which is binding to all parties.

The Government carried out a rigorous study in good faith – because the petition was issued from Chile, a nation that is a friend to Spain – of the Chilean proposition and proceeded to request the pertinent legal opinions. These opinions pointed to the significant difficulties that exist from a legal point of view in proceeding down the path of arbitration.

Therefore, at the Rio de Janeiro Summit on 28–29 June, the Government informed the Chilean representatives present at that Summit of the serious

difficulties making it impossible to resort to arbitration. The reason is plain to see: given that the subject is in the hands of the Spanish judicial authorities, the Government cannot negotiate agreements with another Government on this issue because it is simply not in its hands. For the same reason it is unable to delegate this negotiation to a group of arbitrators to decide on behalf of the Spanish Courts. It would, however, be compelled, as was stated on a number of occasions, to respond to a request formulated by Chile and filed before the International Court in the Hague because that is the highest international jurisdiction established by the United Nations and its decisions would naturally be binding on us. But – I repeat – it cannot enter into negotiations nor can it prolong what would be a negotiated solution such as arbitration.

As I said, this negative response to the consultation that they formulated was communicated to them on 28 and 29 June. One month later, on 23 July, Chancellor Valdés sent me a letter that was made public explaining the Chilean position and petitioning for arbitration regarding 'the issue that divides us' between inverted commas. On 3 September, following the holidays in August, it was still no more than a petition, but not a formal petition and, furthermore, the very Government of Chile had a reservation on file with regard to the Convention Against Torture. It was then that Chancellor Valdés sent me a signed note announcing that Chile had withdrawn its reservation to Art. 30 of the Convention Against Torture and formally invited the Spanish Government to initiate immediate discussions with a view to implementing the steps foreseen in paragraph 1 of Art. 30 of the Convention: negotiation, arbitration, International Court of Justice, in that order.

As I have already explained I sent a signed diplomatic note to my Chilean colleague accepting to hold discussions because we are bound to do this in accordance with the Convention Against Torture itself, while pointing out ahead of time, so that no one could say that they were not warned and in good faith, that the Spanish Government did not have any room for manoeuvrability insofar as jurisdiction is concerned nor in terms of the substance of the issue and that meant, to state things very clearly, that it was not possible to resolve a controversy concerning a case subject to a judicial proceeding under way in Spain through diplomatic negotiation or arbitration.

(...)

Therefore, from the very outset, the Government's stance with regard to this process has always been the same, always very clear and uncompromising. First of all, the Government has always respected and continues to scrupulously respect the judgements made by our Courts; secondly, the Government has done everything in its power, within the limits of this strict respect for judicial judgements, to maintain cordial relations with Chile and with the whole of Ibero-America. It has not always been easy but today our position is better understood throughout all of Ibero-America where, let there be no mistake about this, all of the Governments or the vast majority would like to see Senator Pinochet tried in Chile: at any rate, I repeat that they have

now come to a better understanding of the Spanish Government's position especially in Chile. This is of the utmost importance in light of the highly regarded relations that we have with all of the countries comprising the Ibero-American community.

(...)

I have also stated on a number of occasions that no foreign policy, not even that of the world's greatest super power, could withstand the role of bringing the world to justice over the long term. The Government's political approach to these situations is clear, evident and cannot give rise to misinterpretations and for that reason I have always been in favour, and we have stated this repeatedly, of moving forward more quickly on the implementation of the International Criminal Court, which is the body that would be responsible for applying international legislation so that it does not fall politically on the shoulders of the foreign policy of an individual country, in this case Spain.

Having said this, our position has been one of full respect, implementation and support of judiciary decisions. This is true to such a degree that at the last Summit in Havana, when it came to discussing the rejection of extra-territorial laws and regulations we were very careful to safeguard, by use of a clause, the judgements delivered by Spanish Courts. In this case, unless the said judgments are delivered in application of international legislation, as is the case at hand, because there are times that extra-territorial legislation is unacceptable *a priori*, and here I am referring to Helms-Burton that we mention specifically because it is a clear and concrete example, when it is International Law itself that establishes the principle of extra-territoriality, as occurs with the Convention Against Torture, cannot be rejected and therefore we defend it.

Therefore, the Spanish Government can show that its position has been coherent at all times and that it has faithfully defended the judgments delivered by our Courts in respect of the Judiciary when these have been called into question by the Hague Court. Regardless of whether we feel these judgements are politically convenient or not, we respect and heed them.

The same applies to the decisions taken by the public prosecutors. The public prosecutors form part of the Justice Administration and institutionally are linked with the Government in their decisions but in terms of judicial processes they are completely autonomous. Therefore it cannot be said that the Government is manipulating the public prosecutors when they reject the jurisdiction of our courts to deal with this issue. I must state that the public prosecutors of the National High Court have come out against the jurisdiction of our courts regarding the Pinochet case and the case of the military officials accused of repression in Argentina because they received orders from the Prosecutor-General that I suppose were given by virtue of the autonomy that he had in defiance of the orders of the Government. I do not know for certain but I presume that this is the case.

(...)".

(*DSS-C*, VI Leg., n. 529, p. 14).

On 12 January 2000, the Minister for Foreign Affairs made the following communiqué public with regard to the extradition process of Senator Pinochet:

"The British Government represented by Minister Straw, has just announced that for humanitarian reasons it is considering calling a halt to the judicial extradition proceedings of Senator Pinochet to Spain that are currently under way, by virtue of the general discretion afforded him by British law.

Minister Straw has pointed out that the said decision would be fundamentally based, in his view, on the unanimous and unequivocal conclusion of the reports drawn up by the medical team that examined Senator Pinochet. According to these reports and in the opinion of Minister Straw, the Senator is not in any condition to be subjected to a trial and this situation is not expected to change.

As you will recall, the Spanish Government, from the very outset, has maintained an attitude of absolute respect for the judicial decisions that have been delivered with regard to this case. It is also the Government's intention to respect the decisions taken by the British Government".

On 17 January 2000, the Ministry of Foreign Affairs' Office of Diplomatic Information issued the following public communiqué with relation to the extradition process of Senator Pinochet:

"This morning the Minister for Foreign Affairs sent instructions to Spain's Ambassador in London to deliver to the British Crown Prosecution Service a copy of the documentation that the Judge of Trial Court number 5 of the National High Court sent to the Spanish Government in order that it be delivered officially to the British Government.

The Spanish Ambassador has also been instructed to reiterate to the Home Office the decision taken by Spain not to file any sort of appeal against the eventual decision taken by the Home Office in the extradition process of Senator Pinochet.

In the legal course of action that the Spanish Government has had to follow in these proceedings, it has pursued a dual objective from the very outset: first of all to meticulously meet its obligation of respect and support for decisions taken by the Spanish justice system in the terms of the constitutional obligation that it has; secondly, to maintain the bilateral relationship with the Republic of Chile that for Spain is and always has been a high priority.

With this decision the Spanish Government feels that it continues to coherently meet those two fundamental objectives".

On 26 January 2000, the Ministry of Foreign Affairs' Office of Diplomatic Information issued the following public communiqué with relation to the extradition process of Senator Pinochet:

"In light of the contradictory information appearing over the last several days in the media on the extradition process of Senator Pinochet in the United

Kingdom and the attitude of the Spanish Government in this respect, and considering the fact that this information could lead to confusion surrounding an issue of great importance to Spain, this Ministry of Foreign Affairs feels compelled to make the following clarifications:

1. This Ministry has processed, without exception, all of the documents that, coming from the British authorities, were registered in this Department through the Spanish Embassy in London sent to the Magistrate responsible for this case in Spain.
2. It is therefore false that this Ministry has held back documents that were meant for the Magistrate.
3. This Ministry, as is its obligation, has been requesting and obtaining over the last several months rulings from British and Spanish experts alike from the British Crown Prosecution Service as well as from external consultants in the United Kingdom, and from the different consultation services linked to the Ministry with the obvious and exclusive objective of informing itself with regard to the British legal system as far as extradition is concerned. These documents do not form part of the judicial file and correspond to a normal initiative taken by a legal consultant and its client.
4. This Ministry of Foreign Affairs, in processing the considerations and allegations that the Judge has formulated for delivery to the British Crown Prosecution Service representing the Kingdom of Spain in the extradition case under way in the United Kingdom, has simply reiterated on a number of occasions that it is the firm decision of the Spanish Government to abstain from appealing a possible government decision taken by the British Home Office that could bring a definitive halt to the extradition process of Senator Pinochet.

It is therefore not true that the Ministry of Foreign Affairs has instructed the British Crown Prosecution Service not to be present at the hearing of a certain trial initiated by third parties with which Spain has nothing to do whatsoever.

This morning the British Crown Prosecution Service informed this Ministry that a representative of the Crown Prosecution Service would in fact be present at that hearing.

At any rate, the Spanish Government has not placed any restrictions upon the British Crown Prosecution Service. It has simply formally reiterated its decision not to file an appeal".

On 26 January 2000, the Ministry of Foreign Affairs' Office of Diplomatic Information issued the following public communiqué with relation to the extradition process of Senator Pinochet:

1. The extradition process in which Senator Pinochet is involved in the United Kingdom has been interrupted in its judicial phase by a decision

taken by a member of the British Government. It has complete legislative power to take this decision with full discretion based on the elements that it deems important.

It should therefore be highlighted that the Spanish Government has not intervened in this process at any time.

2. The responsibility for this decision once it becomes final and independent of its content corresponds exclusively to the British Home Office and cannot be shared with anyone else. Spain is therefore committed to respect this decision regardless of its outcome.
3. The Spanish Government, through its Ministry of Foreign Affairs, has Spanish legal reports as well as others from the British Crown Prosecution Service itself and from independent consultants also from the United Kingdom that support the conclusion that the so-called judicial review of the judgement made by the Home Office of the United Kingdom would be a purely academic and theoretical exercise and would lack any practical effect against the decision to set Senator Pinochet free. It can also be deduced from these reports that the decision delivered by the United Kingdom's Home Office is a Government decision.
4. The Spanish Government has always remained meticulously within the bounds of absolute respect for the decisions taken by the Judiciary. The extradition process of Senator Pinochet has been interrupted strictly in its judicial development by virtue of a discretional governmental act based on reasons, whatever these may be, that the person responsible for the said decision deemed appropriate. The Spanish Government is of the view, and has a legal basis to support it, that regardless of the reason for that decision, the relevant point is that the said decision was taken by the Home Office of the United Kingdom. This explains why the Spanish Government will respect the decision regardless of its outcome which does not mean that it will not communicate to the British Ministry the considerations that the Spanish Judge has formulated upon being invited to do so by the Ministry itself subsequent to the announcement of the decision to interrupt the judicial process of extradition.
5. It is incumbent upon the Spanish Government, by Constitutional imperative, to exclusively orchestrate foreign policy. It is for that reason that for the last several months it has been explaining that it would not appeal any decision taken by the Home Office of the United Kingdom on this issue. The Government has made this commitment to Chile that would not understand any other stance that would have very serious negative consequences for our external relations.
6. In summary: because it is a decision taken by a member of a foreign government; because any appeal would lack any practical effects and given the repercussions that it would have on our relations with Chile, the Spanish Government is going to stand by its decision and fulfil its commitments".

VI. STATE ORGANS

1. Foreign Service

In response to a parliamentary query regarding the quality of service lent by the Spanish consular service in the Republic of Venezuela, on 2 December 1999 the Government affirmed before Congress:

"In Venezuela Spain has a Consulate General with headquarters in Caracas, the jurisdiction of which covers the whole of the Republic. The Consulate is well equipped as regards headquarters and facilities.

Furthermore, the Consulate General is supported by a network of 20 Honorary Vice-consulates distributed throughout the whole of the country that efficiently and altruistically collaborate in the lending of services to our nationals, facilitating communication between the main headquarters in Caracas and the communities of Spaniards disseminated throughout all of Venezuela.

The Consulate General of Spain in Venezuela meets the needs of a Spanish community that numbers approximately 500,000 offering a wide range of services. It also meets the needs of Venezuelan citizens that visit our facilities to request entry visas to our country for stays of over 90 days. From among a number of different activities carried out in 1998 this Consulate General issued 14,219 passports and 1,392 visas, it authorised 2,355 public instruments and made 14,896 entries in the Civil Registry. It also saw to 42 Spanish citizens imprisoned in the Republic of Venezuela.

(...)

The Spanish Government has permanent channels of communication set up with Spanish residents in Venezuela through the Resident Councils that represent our nationals and act as interlocutors between them and the Consulate General.

Furthermore, the General Council on Migration periodically reports to the Ministries of Foreign Affairs and Labour and Social Affairs on the situation of our citizens living abroad. Thus, the General State Administration has a second mechanism, direct in this case, with which to remain informed as to the needs, aspirations and suggestions of Spaniards residing abroad as well as the attention they are provided in our Consulates.

The Government, with a will to continuously improve the quality of services provided to citizens residing abroad, has made a concerted effort to improve the quality of consular services.

(...)".

(*BOCG-Congreso.D*, VI Leg., n. 514, p. 95).

2. Exterual Activities of Autonomous Communities

On 26 May 1999, the Minister for Foreign Affairs, Mr. Matutes Juan, appeared

before the Senate plenary to respond to an enquiry focusing on the Government's view regarding the participation of the Autonomous Communities in the State Delegation in the European Union's Council of Ministers. The Minister made the following statement:

"Reference has been made to the fulfilment of a non-legislative motion approved by the Joint Committee that gave rise to an agreement taken at the plenary of the Congress of Deputies on 4 March of last year and that indeed makes reference, in one of its points, to the participation of representatives of Autonomous Communities in European Union Council of Minister meetings at which discussions focus on issues concerning which the Autonomous Communities have exclusive competency.

(...)

The senator has raised the question of whether the Government is planning to endorse, during the course of this legislative period, the parliamentary mandate embodied in the non-legislative motion. In the very moment that this agreement was reached, the Government immediately initiated the process of dialogue and reflection with the Autonomous Communities that was suggested in the text of the non-legislative motion. And it was at the meeting of the Conference for European Community-related affairs held on the 10th of that same year that the Minister for the Public Administrations presented dual reports on two different but complementary issues. The first analysed the sharing of competencies in accordance with the Spanish constitutional system and the second studied the treatment given to Community affairs in the different sectoral conferences.

At the time that those documents were presented, a request was made for the formal stance taken by the Autonomous Communities on the definition of exclusive competencies in order to, based on the latter, delimit the scope of participation in the Council.

The Ministry of Foreign Affairs subsequently presented a report that studied the exercise of competency from the Community point of view, an extremely important perspective, in order to fulfil the parliamentary mandate.

To date we still have not received a response from the Autonomous Communities on this issue that was raised in June of last year. This is undoubtedly a fundamental issue that needs to be assessed beforehand if we are to proceed forward in this exercise... It is also a logical requirement in terms of coherence because in the event that we do not reach an agreement on this point, the participation of the Autonomous Communities in the European Union Council of Ministers will always be subject to a permanent demand and to a lack of definition incompatible with the legislative character and also with serious repercussions for the general interests of Spain and for each country in the Council of Ministers of the Union. In this case there would be a constant questioning of the legitimacy of the exercise of competency on the European level on the part of the State and the

Autonomous Communities. Such instability would be very damaging to the general interests of the Autonomous Communities.

(...)".

(*DSS-P*, VI Leg., n. 132, pp. 6242–6243).

VII. TERRITORY

1. Colonies

a) Gibraltar

Note: See VIII.2. Fisheries, X. Environment

The Minister for Foreign Affairs, Mr. Piqué i Camps, appeared before the Congress Foreign Affairs Commission to report on the major aspects of his Department's policy with respect to relations with the United Kingdom and especially on the Gibraltar dispute:

"Our relationship with the United Kingdom has progressed significantly over the last several years. Advances made in mutual understanding are based on a similar geo-strategical position in Europe as well as the pro-European slant that the Government of London is giving to the United Kingdom's foreign policy. This common ground is further supported by the shared will to maintain and renew the social security systems with the ultimate goal of increasing employment. However, despite today's excellent Spanish-British relations, the Gibraltar dispute continues to be a stumbling block standing in the way of a more fruitful relationship. It is my intention to pursue dialogue with the United Kingdom within the framework of the existing negotiation process with the ultimate aim of regaining sovereignty.

(...)".

(*DSC-C*, VI Leg., n. 55, p. 1235).

On 26 September 2000, the Minister for Foreign Affairs, Mr. Piqué i Camps, appeared before the Congress Foreign Affairs Commission to report on the mooring of the British nuclear propulsion submarine *Tireless* as of 19 May 2000 in the colony of Gibraltar subsequent to a breakdown when it was sailing to the southwest of Sicily:

"Situations like the one caused by the *Tireless* bear witness to the anachronism of the existence of a British colony in Gibraltar. Gibraltar is, first and foremost, a problem of sovereignty of a country that is an ally of the United Kingdom in NATO and a fellow European Union partner. It is also a security problem in light of the fact that this colony is equipped with a military base located very close to Spanish cities and to which Spain has no access whatsoever. The United Kingdom can no longer use the wishes of the

local population as an excuse to refuse to initiate dialogue with Spain; dialogue that it committed to fifteen years ago through the Brussels Declaration. This attitude on the part of Britain is out of place in 21st century Europe and certainly does not contribute to, and may indeed take away from, a fruitful relationship between the United Kingdom and Spain that has great potential and that is our desire to develop".

Also with respect to the issue of the British submarine *Tireless*, in response to a question from the Socialist parliamentary group on the mooring of that submarine in Gibraltar the Government stated that:

"The Spanish Ministries of Foreign Affairs and Defence were informed in a timely fashion about the breakdown of the nuclear submarine *Tireless* and of its intention to enter Gibraltar. They were also informed that there were no outside risks as a result of the breakdown suffered, a leak in the primary cooling circuit.

(...)

Spain is an innocent bystander of this situation the exclusive responsibility of which falls on the United Kingdom. For our part we have begun to take permanent measurements of radiation levels both in the atmosphere as well as in the waters of the bay. To date, no change whatsoever in the environmental conditions has been detected and the radiology readings obtained are considered normal.

With regard to possible initiatives to prevent or limit a vessel putting in at Gibraltar, it should not be forgotten that the entry of any damaged British ship in Gibraltar is part and parcel of the British presence on the Rock the port of which was given up in the Treaty of Utrecht. The efforts made by this and former Spanish Governments to resolve this anachronistic situation are well known"

(*BOCG-Congreso.D*, VII Leg., n. 55, p. 313).

The Secretary of State for European Affairs, Mr. de Miguel y Egea in an appearance before the Congress Foreign Affairs Commission on 20 December 2000, made the following statement in response to a question posed by the Socialist parliamentary group on the status of the issues surrounding the joint use by Spain and Great Britain of the Gibraltar Airport:

"The former Government negotiated, with a considerable degree of skill, the agreement with the British Government on the joint use of the Gibraltar Airport.

This in an international agreement duly ratified by parliament on both sides, the Spanish *Cortes* as well as the British Parliament. This was done without any sort of attenuating factors. It was freely drafted by the two parties and they achieved an agreement that was not only fully satisfactory for the liberalisation of flights and air traffic, in accordance with the directives of the European Union's second and third air package but also was instrumental in unblocking

what was an absurd situation: the existence of an airport that is an infrastructure that could be providing a service to the area and to the prosperity of the Campo de Gibraltar and surrounding areas and is not doing so exclusively due to the close-mindedness of the British authorities that do not want to permit a situation that, by the way, is now commonplace in Europe. There are airports of this type such as, for example, that of Basle-Mulhouse that is in Swiss territory and has departures to Basle and to France. We were doing nothing out of the ordinary as Mr. Encina is aware. We were simply seeking a pragmatic solution to the use of the airport in line with common European practice.

Naturally, the airport does present some problems for us due to the fact that we cannot accept full liberalisation of air traffic there because it is built in a non-transferred area because of the Treaty of Utrecht. The isthmus of Gibraltar has been the object of a *de facto* occupation and this present Government as well as former Spanish Governments have always been particularly careful in making sure that this illegal occupation is not legitimised either by an agreement or Community legislation.

The solution was a bilateral agreement. This agreement was made and everything was prepared to get under way under a joint use regime with departures for Spain and the United Kingdom. Just when everything was about to be put into operation we were surprised when the British Government decided not to implement the agreement due to pressure from the Gibraltar people and their Government ...

As I said, this decision surprised us because the agreement was binding on the two Governments and the fact that a segment of the population voices its displeasure is not reason enough not to respect it although it is also true that it never entered into force, ... and not due to a lack of will on the part of the Spanish Government –the former Government as well as this one–, that negotiated it. Nor because the United Kingdom considered the agreement to be detrimental given that it ratified it. It did not enter into force because the United Kingdom lacked the courage to implement it against the will of the people of Gibraltar.

This means that the Gibraltar airport issue is paralysed because we cannot accept that Gibraltar be made a fully approved airport with European traffic operating under the guidelines of the European Union until this problem or the problem of sovereignty is resolved. If tomorrow they were to tell us that the isthmus is Spanish then we could accept this. The stance of the Spanish Government is perfectly flexible: we can leave the issue of sovereignty pending for the time being and use the airport jointly. The people of Gibraltar do not want this, however.

(...)".

(*DSC-C*, VII Leg., n. 129, pp. 3763–3764).

In response to a question posed by the Socialist Parliamentary group concerning the Community Directives on money laundering that Gibraltar does not abide by, the Government stated that:

"At the present moment, money laundering is one of the subjects that has attracted the most attention in discussions in the European Union and was addressed at the Tampere European Council on 15 and 16 October 1999 and has been monitored by the Council throughout this year.

The Government has stated on a number of occasions that the lack of transparency of Gibraltar's financial system is one of the aspects causing greatest concern with regard to Gibraltar and has given rise to the need for constant monitoring of the situation in which Community legislation is applied in the Colony of Gibraltar.

With regard to money laundering, the only existing Community regulation specifically applicable to this subject is Directive 91/308 EC, of 10 June 1991, on the prevention of the use of the financial system for money laundering. The purpose of this Directive is to keep the liberalisation of financial services from putting financial stability in danger and to keep the freedom of capital movements from being used for non-desirable purposes such as money laundering.

This Directive has been transcribed in Gibraltar through the 'Criminal Justice Ordinance' of 1995 (First Supplement to the Gibraltar Gazette n. 2.876, of 7 November 1995).

(...)

Although it is true that the 1991 Directive has been transcribed in Gibraltar and this is a necessary condition, it is not sufficient to bring about the effective and transparent fulfilment of this regulation in the Colony.

(...)

With regard to Gibraltar, the Organisation for Economic Cooperation and Development (OECD), in its fight against tax fraud and money laundering, has drawn up a list of territories that, in its view, apply harmful tax practices – a concept linked to the facilitation of money laundering. In the list drawn up by the OECD, Gibraltar is named along with other territories".

(*BOCG-Congreso.D*, VII Leg., n. 76, p. 123).

On 19 April 2000, three agreements were concluded between Spain and the United Kingdom on the subject of Gibraltar with a view to facilitating the application of a series of Community regulations in that territory. In an appearance before the Congress Plenary the Minister for Foreign Affairs, Mr. Piqué i Camps, assessed these agreements in the following terms:

"Our assessment is tentatively positive because what we have here are partial agreements that are positive and allow us to move ahead in the construction of Europe but that must be the springboard for further work.

(...)

The content of these articles is limited. Logically, the issue of sovereignty is not addressed. The free movement of persons was not addressed either because, as is well known, in its request to join Schengen the United Kingdom

excluded the articles relating to the elimination of controls for persons entering their territories.

Therefore, the agreements signed focus on a series of technical aspects. First of all and in light of the international status of Gibraltar, a proper system was set up to apply European Union regulations when the latter authorises local authorities to take decisions that have effects beyond their territory. The solution is a pragmatic one making London responsible for the exterior relations of the Gibraltar authorities. Secondly and in application of Schengen, an agreement that was signed by both Home Ministers was approved and allows for the formalisation of bilateral police cooperation for practical purposes in the Gibraltar region to combat delinquency on both sides of the gate. Moreover, Spain will accept the Gibraltar identity card for travel within the European Union instead of the passport as soon as some changes are made in its format that clearly show that the United Kingdom is behind these identity documents issued by the Gibraltar authorities.

As a result of these agreements, a series of EC directives and regulations have become unblocked and will therefore also be fully applicable in Gibraltar and this is in our best interests. Our European Union partners have welcomed these agreements in a very constructive way because the bilateral solutions found allow for further progress to be made in the complex process of European construction, especially within the scope of the Intergovernmental Conference.

The Government is of the view that the agreements are in the best interests of all of the parties involved and that they also provide the hope that all of these agreements create a better climate of dialogue regarding the Gibraltar issue and benefit all of the inhabitants of the area now and in the future".

(*DSC-P*, VII Leg., n. 11, p. 409).

VIII. SEAS, WATERWAYS, SHIPS

1. Exclusive Economic Zone

The Minister for Foreign Affairs, Mr. Matutes Juan, in an appearance before the Senate Plenary on 10 February 1999 to respond to a question posed by the Mixed Group on the development of the Spanish Law on the Exclusive Economic Zone on the occasion of the Agreement concluded with Morocco on 10 November 1998 opening the door to reciprocal investment in the economic zones stated the following:

"There is no ill will on the part of the Government. It is simply that, subsequent to the approval of this Law 15/1978, the 1982 Convention on the Law of the Sea recognised the possibility of measuring marine areas by drawing straight base lines joining the outermost points of the outermost islands of archipelagic States. The Canary Islands, however, are not an

archipelagic State but according to doctrine are known as a State Archipelago and the 1982 Convention does not give an archipelago of that nature the right to draw the archipelagic perimeter recognised for States considered as such. Since the time of the signing of that Convention in 1982, the legal opinion of the international community was solidly rooted in the Convention despite the fact that it did not enter into force until 1994. Therefore, it was not clear as to whether the provisions of Law 15/1978 to which Your Honour is referring were compatible with International Law. Today they are compatible with International Law in force. It is for that reason that it is now possible to proceed, as I have just explained, with the development of that Law".

(*DSS-P*, VI Leg., n. 118 p. 5569).

2. Fisheries

Note: See XV.1. Jurisdictional Modes of Settlement

In response to a question posed by the Socialist parliamentary group on 15 November 1999 with reference to Canada's new Fisheries Law, the Government informed Congress that:

"The Spanish Government has very closely monitored Bill C-27 of the Canadian Parliament the essential object of which is to transpose the provisions of the Application Agreement of the provisions of the United Nations Convention on the Law of the Sea relative to the conservation and administration of Straddling and Highly Migratory Fish Species (referred to as the New York Agreement). This switch over to national legislation is necessary in Canada because its constitutional system does not envision the automatic application of the provisions of treaties ratified by Canada but these must first be made part of domestic legislation.

... Government action was taken ever since the issue was made to guarantee fulfilment of these three principles:

– That Canada recognise that the terms of the so-called 'Greenland Halibut Agreement' of 1995, by virtue of which Canada promised not to capture fishing vessels sailing under European Union Member State flags outside of its Exclusive Economic Zone, remain in force.

That, in light of the fact that neither Spain nor the rest of the European Union Member States are yet party to the New York Agreement, neither the latter nor Canadian legislation in application of such Agreement can be applied to ships flying the flag of a European Union Member State.

That, given that Spain and the rest of the European Union Member States will eventually ratify the New York Agreement, Canada will amend those aspects of Canadian Law C-27 that clearly go beyond the provisions of the New York Agreement and International Law of the Sea legislation, especially those that permit the exercise of jurisdiction outside of the exclusive economic zone over non-Canadian ships.

Action taken by the Spanish Government has been mostly through the European Commission which has jurisdiction over fishery relations.

(...)

As a result of all of these consultations, weeks later the Commission received a letter from the Canadian ambassador in Brussels through which advance notice was given of a series of positions in which the Canadian Government endorsed the guarantees contained in the so-called 1995 'Greenland Halibut Agreement' between Canada and the European Union and made particular mention that it would not apply Canadian extra-territorial legislation against Spanish or Portuguese vessels.

To formalise this commitment in a way that is legally binding for Canada, Spain insists that it be reiterated by Canada by means of a Note Verbale from the Canadian embassy in Helsinki, capital of the Member State that currently holds the Presidency of the European Union, at the end of July. This note would not only ratify the content of the former letter from the Canadian Ambassador in Brussels but would also clarify and definitively confirm all of the guarantees that Spain calls for so that the Spanish ships fishing outside of Canada's exclusive economic zone will not be subject to Canadian law.

On 30 September a response was sent in the form of a note verbale by the competent institutions of the European Union (Commission Council) as acknowledgement of receipt and to formally show their agreement with the guarantees offered by Canada without prejudice to the legal opinion of the European Union on certain extra-territorial aspects not respectful of the New York Agreement and of the Law of the Sea in force that would be dealt with in due time with the Canadian authorities".

(*BOCG-Congreso.D*, VI Leg., n. 502, pp. 34–35).

The Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, in an appearance before the Congress Foreign Affairs Commission to respond to a question posed by the Socialist parliamentary group regarding guarantees procured by the Spanish Government with respect to the application of the fishery agreements in force, stated that:

"On 5 October 1998 in Luxembourg the Ministers for Foreign Affairs ratified an agreement on fishing in waters near the colony that was subsequently confirmed by the President of the Government and by the British Prime Minister, Mr. Blair, in the meeting that took place in London on 2 November.

On a number of occasions we have called on the United Kingdom to respect this agreement. The last time that we asked for those guarantees was on 29 January, two days after the capture of the *Piraña*. That day the Minister for Foreign Affairs called Minister Cook to urge him to publicly and unequivocally recognise the existence of a Spanish-British agreement and to state his determination to fulfil it. The British communiqué arrived the following day as the honourable members will recall but in terms that were

quite different from those requested by Spain. In short, it simply requested the return to a harmonious situation on the Rock and respect for the October agreement and was quite ambiguous and not at all satisfactory. In summary, the behaviour of the British authorities throughout the entire fishing crisis has been unsatisfactory not only due to the ambiguity of its messages sent to the colony of Gibraltar but also its lack of good will to enforce there the agreement reached with Spain on 5 October.

In this sense and as we are all aware, Mr. Caruana has done just as he has pleased. He ignored the Spanish-British agreement, he proceeded with the policy of harassment of our fishery sector and, when it was in his best interests, he did not think twice about personally negotiating and subscribing to an understanding with our fishermen. He refused to allow London to impose an agreement in which he had not participated but never once doubted suspending application of the Gibraltar law, the 1991 protection of nature law, in the agreement that he reached with our fishermen on 1 February.

The Spanish Government is not able to officially recognise the agreement between Caruana and the fishermen because it affects issues of sovereignty between the United Kingdom and Spain in waters under dispute over which we do not recognise the jurisdiction of the United Kingdom much less Gibraltar that is not a separate identity.

The chief minister of the colony cannot present himself as the mediator with the Spanish Government on sovereignty issues because he lacks authority to do so. At any rate and as I have already stated on a number of occasions, the Government will not stand in the way of the application of this arrangement if it allows our fishermen to work and put an end to the harassment policy to which the ships that traditionally fish in the area have been subject".

(*DSC-C*, VI Leg., n. 645, p. 18812).

In response to the question posed on 20 November 2000 by the mixed parliamentary group on negotiations for a new fishery agreement between the European Union and Morocco the Government stated that:

"Subsequent to the visit by Commissioner Fischler to Morocco on 16 October past, the high Moroccan authorities promised to analyse the Commission proposals to achieve a new cooperation and collaboration framework between the EU and Morocco next October 30 in Brussels that seeks to contribute to the socio-economic development of the Kingdom of Morocco and provide for cooperation among the fishery sectors of both parties.

The Spanish Government will continue to wholeheartedly collaborate with and support the European Commission in this round of negotiations.

Moreover, the Government has earmarked a section of the budget to deal with the processes of economic diversification of the areas dependent upon these fishing grounds in the event that the negotiations meet with delays".

(*BOCG-Congreso.D*, VI Leg., n. 95, p. 242).

The Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, in an appearance before the Senate Foreign Affairs Commission to respond to a question posed by the Socialist parliamentary group regarding the position of Namibia in relation to the fishery agreement with the European Union, made the following statement:

"Spanish fishery activity in the waters of Namibia before the time of independence was under the control of an ICSEAF commission. We were in possession of a large fleet of deep-sea freezer trawlers that fished in excess of one hundred thousand tons of hake in that area. Subsequent to independence these waters logically returned to Namibian sovereignty and as of that moment a phenomenon was produced that I feel should be highlighted here. In just a few short years Spain became the number one investor in Namibia and the number one trading partner, ahead of other more powerful countries such as Germany, the United States or the United Kingdom that traditionally have had economic relations with Namibia. What accounts for this? The reason is that in this country favourable conditions were created for Spanish fishermen, Spanish businessmen in the fishery sector, to invest – and invest they did. At the same time the result of these investments was a very important trade flow of fishery products to Spain which gave rise to that result: Spain, over a very short period of time, became the number one investor and the most important trading partner.

(...)

Thanks to the Common Fisheries Policy, the responsibility of establishing a fisheries agreement is on the European Commission that wields the power in the Common Fisheries Policy and it is therefore the Commission, by mandate from the Council of Ministers, that carries out the negotiations.

(...)

Despite the interest expressed by both the European Union as well as Namibia in concluding an agreement, pressure exerted by the fishery sector of the latter, comprised mostly of Spanish businessmen who nationalised their ships, together with the lack of a provision assigning a share of the total allowable catch – the total TAC of the Namibian zone – to the Community fleet, led to a situation in which the negotiations were virtually paralysed.

(...)

The Spanish fishery administration is aware that our sector is not interested in the conclusion of an agreement unless access to fishery resources in the exclusive economic zone is achieved with a share of the total allowable catch of the most important species – basically hake – reserved to ships flying the Community flag and that allows, to a certain degree, for the use of the Member State flag at least temporarily. This does not seem to be the solution that the Namibian negotiators have in mind, however, and one must bear in mind, as I stated at the beginning, the specific weight of Spanish companies operating in that country.

(...)

... The days of fishing under a foreign flag in the exclusive economic zone of developing countries will soon be over because, understandably, in this activity that is not particularly sophisticated, there is a generalised aspiration on the part of all developing countries to take advantage of it themselves with ships flying their national flag.

What is taking place in Namibia, therefore, is a phenomenon that, I cannot say whether it is for the best or for the worst, is taking place in practically every country in the world and in all of the fishing areas to which Spanish ships had access. And Mr. González Laxe is also aware that it is ever more frequent for Spanish fishing companies to form companies sailing under the flag of the country controlling the fishing area; joint undertakings that guarantee the future activity of the fleet's ships and more importantly guarantee the supply of the Spanish fish market".

(*DSS-C*, VI Leg., n. 429, pp. 14–15).

The Secretary of State for International Cooperation and for Ibero-America, Mr. Villalonga Campos, in an appearance before the Senate Foreign Affairs Commission to respond to a question posed by the Socialist parliamentary group regarding the reasons for failure to reach a fishery agreement with Argentina, stated that:

"It is well known that the latest Euro-Argentina agreement was one of the so-called 'second generation' agreements. This means that instead of conceding fishing rights for a specific time period to Community vessels in exchange for economic compensation, it facilitated definitive European investment in the fishery sector through joint ventures of Argentine nationality.

... What is truly important today, more than concluding new agreements, is ensuring that fishery companies formed with Spanish capital, set up in Argentina under the auspices of this agreement like those that had been formed in earlier times, and there are still some, can carry out their activity without any sort of discrimination due to the origin of that capital. Unfortunately it does not seem that this will be the case.

(...)

In 1999 Buenos Aires limited the catch to half of 1998's catch and as a result it was considered necessary to keep the fleet docked for the whole of this year's second semester...

Now is not the time to send more ships to Argentinean fishing waters and the priority for us – and rest assured, your Excellencies, that the Government will do everything in its power to achieve this – must be to protect, with or without an agreement, the investments that have already been made.

(...)

The Government requested and was successful in getting the European Commission to put these issues on the agenda of the Joint Committee meetings provided for under the agreement in order to make it clear to the Argentinean side that these unilateral modifications of the rules of play upset

the general balance between services rendered and received by the parties to this agreement. Buenos Aires, however, remained inflexible during the entire period that the agreement was in force and this imbalance pointed to the inconvenience for the European side of extending the said agreement.

The experience of the past agreement has shown us that any new fishery agreement should have firm guarantees of respect for a set of minimum conditions applicable to the operation of companies formed within its framework. It must also be non-discriminatory, directly or indirectly, with regard to any measure that could affect business activity.

Within these conditions, and biological circumstances allowing, which is objectively verifiable –, the Government is willing to make an effort to work with the Community and the Argentinean Government to develop a conventional framework suited to fostering cooperation on fishery issues because, despite the difficulties encountered over these last few years, we remain convinced that the European and Argentinean fishery sectors can complement one another – which is the same as saying the Spanish and Argentinean sectors. Spain needs Argentina's wide-ranging fishing waters and Argentina needs the technical expertise and skilled labour that we have to offer, not to mention capital".

(*DSS-C*, VI Leg., n. 444, pp. 17–18).

3. Ships

The Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, in an appearance before the Senate Foreign Trade Commission on 4 May 1999 to respond to a question posed by the Socialist parliamentary group regarding steps taken by the Government to defend Spanish interests in joint fishery ventures with the United Kingdom, made the following statement:

"... The Spanish Foreign Affairs Minister responded to the President of the Commission on two occasions, in June and July 1997, and showed his deep concern for the possible infringement by the British of the regulations in force and insisted on limiting the real economic link that cannot go beyond the framework established by the Court of Justice. In January of 1998 the British authorities unveiled a new regulatory bill based on the letter sent by the President of the Commission to the British Prime Minister who received technical assistance from Directorate General XIV, the Commission's Directorate General for Fisheries. After that and on two occasions during the course of 1998, the British authorities amended their regulatory bill in order to comply, at least partially, with the observations made by the Commission upon request from Spain.

... At present ... the regulation adopted by the United Kingdom in the middle of 1998 was considered by the Commission to be in line with Community law. This regulation on the real economic link should be applied on an equal footing to ships sailing under the British flag regardless of the

existence of interests of other European Union Member States in the companies to which they belong... The British regulation that is now applied to ships sailing under the British flag, the length of which is over 10 metres and with assigned quotas, will enter into force on 1 January 2000. However, the reference period during which the ships must prove the existence of a real economic link began in June 1998 in order to have the right to licences issued as of the year 2000.

(...)

In light of this situation the Government, in the event that the British authorities act in a discriminatory manner or unfairly exclude other linkage formulas presented by joint venture companies, will take action as it has in the past to see that Community regulations and case law are applied and respected. The future of the Spanish-British joint venture company is therefore guaranteed. They must, however, comply with those conditions set out in Community case law and should demonstrate real economic link. This real economic link – which I could expound upon in greater detail but I do not believe that it is necessary – is the way of showing that the ship is a flagship. The purpose is to avoid situations in which some companies buy a ship in a port in the United Kingdom and that ship never returns to that port, has no crew from that port, spends nothing at that port and never unloads at that port. This is an example of taking freedom of establishment too far according to Court of Justice case law that indicates that the quotas, to a certain degree, are established so as to benefit, although minimally, the coastal and fishing populations that have a right to those quotas".

(*DSS-C*, VI Leg., n. 429, pp. 187–189).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

Note: See VII.1.*a) Gibraltar*

In his appearance before the Senate Plenary on 14 September 1999, the Minister for Foreign Affairs, Mr. Matutes Juan, answered a question on the position taken by the Government regarding the possible start up of a nuclear power plant in Morocco and the environmental risks involved. He stated the following:

"If in the end Morocco decides to include nuclear energy in its electrical supply development programme, the Government will take the necessary measures to put any project under the technical supervision established by the different international instruments on this subject especially focusing on the safeguard agreement of the International Atomic Energy Agency.

Spain, however, cannot change or ignore the regulations issued by the International Atomic Energy Agency nor can it alter international laws

subjecting Morocco or any other sovereign country to any sort of protectorate telling them what they can or cannot do.

At any rate what we do know is that for the time being the only project that Morocco envisions is the construction of a small reactor to desalinate sea water in the town of Tantän. That nuclear reactor will be built in cooperation with the People's Republic of China subsequent to an agreement signed with Morocco.

(...)

Today Spain has the infrastructure to monitor environmental radioactivity consisting of a surveillance network managed by the Nuclear Safety Council. In the Autonomous Community of the Canary Islands they have an automatic station in Santa Cruz de Tenerife and the University of La Laguna is included in the network of collaborating university laboratories. Naturally we will closely monitor the development of these events in strict adherence to international law and to the codes of conduct established by the Agency in conjunction with the International Atomic Energy Organisation".

(*DSS-P*, VI Leg., n. 127, pp. 5477–5478).

The presence of the British nuclear submarine *Tireless* in the port of Gibraltar since 19 May 2000, was the motive behind the appearance of the Minister for Foreign Affairs, Mr. Piqué i Camps, before the Congress Foreign Affairs Commission on 26 September 2000. In this appearance the Minister addressed the environmental risks that could arise from this situation:

"From the moment we became aware of the transfer of the submarine to Gibraltar, the Ministry of Defence increased the radiological protection measures by sending a Navy radiological surveillance group, the so-called Govra, that since then has been making environmental radiological analyses. Moreover, technical experts from the Ministry of the Environment through the CEDEX have been taking constant measurements as well. The absence of radiation in the area has been determined and to date no variation has been detected vis-à-vis the standard regional measurements either in the water or in the atmosphere.

The documentary information provided by the British authorities as well as further information supplied by British experts on site in Madrid, have been very useful for the Spanish Nuclear Safety Council and the Directorate-General for Civil Protection in their drafting of the so-called Spanish Action Plan. The measures adopted are in line with the very limited nature of the damage. The Spanish Nuclear Safety Council has not called for an emergency plan because the nuclear reactor has been shut down for several months and its residual potential is so low that it does not represent any significant risk. In this sense and according to the Nuclear Safety Council, the conditions under which the *Tireless* shall be repaired guarantee that the possibility of an accident is even lower than that incurred with the surfacing of a nuclear submarine under normal conditions. In accordance with the experts of our

Nuclear Safety Council, the only potential risk could come from a spill of the cooling liquid into the sea ... This, however, is very unlikely in light of the extensive security measures adopted.

(...)".

(*DSC-C*, VII Leg., n. 55, p. 1234).

Subsequently, on 21 December 2000, the Government responded in the following terms to a question on the emergency plan envisioned for the Campo de Gibraltar area due to the presence of the submarine *Tireless*:

"The main thrust of the fully operational Action Plan is the Environmental Radiological Surveillance Plan developed through the Civil Protection's Automatic Radioactivity Alert Network, the Spanish Navy's Radiological Surveillance operational groups, the Radiological Surveillance Programme of coastal waters managed by CEDEX of the Development Ministry, the network of automatic radiological marine monitoring stations (Tarifa Station) and other means and resources.

(...)

As is already known, there has been a departure from the initial scenario envisioned for the repair of the *Tireless* that involves both the repair proceedings as well as their estimated duration. The details of these new circumstances were discussed at a new meeting that was held with the British regulatory authority in Madrid on 26 October.

What follows is a transcription of epigraph 8, Final Assessment, of the report drafted by the only competent body provided for under law for nuclear safety and radiological protection in Spain and which indicates that the Action Plan drawn up by Civil Protection should be followed to the letter.

8. Final Assessment.

'8.1. Under current conditions, the safety of the reactor is guaranteed throughout all of the steps of the repair process. Therefore, it presents no risk for the Spanish population residing in the towns located in the Campo de Gibraltar district.

The possibility of spills of radioactive liquids into the sea during the repair process is practically non-existent. However, the NSC shall keep the environmental surveillance measures set up in the Action Plan in place just in case of a potential incident during the time that the submarine remains in Gibraltar.

From the point of view of nuclear safety and radiological protection, that Plan should continue to be applied without any modifications whatsoever.

8.2. The NSC maintains formal and ongoing relations with the Regular Nuclear Safety Panel of the British Navy through which it will be provided with the technical information and the security evaluations needed to assess the progress of repair programme activities.

(...)

The Nuclear Safety Council continues to be of the opinion in its periodical

reports that the Action Plan is fully valid and that no additional measures need to be taken.

The Plan will remain in force until the submarine *Tireless* leaves the Port of Gibraltar unless the Nuclear Safety Council decides otherwise".

(*BOCG-Congreso.D*, VII Leg., n. 114, pp. 155–156).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

The Minister for Foreign Affairs, Mr. Piqué i Camps, in an appearance on 22 June 2000 before the Congress International Development Cooperation Commission to report on the general policy guidelines adopted by his Department on cooperation issues, stated that:

"The purpose of development cooperation should be to help, to help other nations to achieve a level of development that today, from our point of view, can only be attained through the application of certain mechanisms. I am referring to the Rule of Law, to the defence of full applicability and belligerent defence of human rights, to the universalisation of education and health care, to the market economy, to environmental respect and the protection and nurturing of culture. Development cooperation policy is part of Spain's external action and is a way to project to other countries cultural values and peaceful co-existence that fortunately are firmly established in Spanish society today. It is also a way for our country, for Spain, to take part in the world community as an advanced country, as a country committed to the values of peace and development...

(...)

... to the strategies and actions that the Government seeks to apply in its development cooperation policy during this legislative session. First and foremost, as cooperation law states, our action should focus on large geographical areas that I would like to expound upon. It should come as no surprise if I begin with Ibero-America. Ibero-America is the number one recipient of Spanish cooperation resources. Historical, cultural and social need are the reasons behind this priority. In addition to these reasons we should add the greater relative effectiveness in the use of these resources. The development attained from cooperation funds earmarked for those countries, the Ibero-American countries, is undoubtedly greater than that obtained in other countries.

In the area of Ibero-America, cooperation will follow three main lines of work. The first focuses on the least developed countries in the area where we would like to bolster efforts that support policies combatting poverty, policies that seek to strengthen institutions and develop the private sector and that are

implemented in accordance with the principles established by the Cooperation Law as I have already mentioned.

The second focuses on the so-called intermediate development countries. Here we will use those instruments that have proven to be effective and to have an impact in advanced environments of civil society and institutional structure. We therefore want to concentrate our intervention on processes that seek institutional modernisation, cooperation with enterprise and scientific and educational cooperation, all based on peer cooperation and experience sharing strategies.

The third focuses on the regional level. It is our intention to support the recently created Secretariat for Ibero-American Cooperation that ... has its headquarters in Spain and its cooperation programmes form part of the Ibero-American Conference with a view to developing a space for Ibero-American cooperation.

Due to our historical and geographical ties, the Arab world and the Mediterranean is the other large priority area of Spanish cooperation. Within this region, special attention will be paid to the Maghreb and particularly to Morocco where we would like to concentrate our cooperation on the development of the northern part of the country. Preferential attention will also be paid to Mauritania and to Tunisia.

In the Middle East, Spain will continue collaborating actively in the economic and social development of the region, paying special attention to the Palestinian territories with a view to contributing to the stability of the region and the peace process ...

With respect to sub-Saharan Africa, in addition to Equatorial Guinea where our cooperation will continue to focus on the same sectors as to date, and rightfully so in my view, those of health and education, the Government wants to give priority to countries with cultural ties, countries that have historical links with Portugal such as Angola, Mozambique, Cape Verde, Guinea-Bissau, and also Sao Tome and Principe.

Moving on to another geographical region, I would like to address the Balkans. Spain firmly supports the stability pact and has taken on very serious commitments that have grown in recent times. Last Friday's Council of Ministers adopted the decision to increase our presence in the Eurocorps KFOR forces up to a total of approximately 2,300 soldiers and of course we plan to continue collaborating; in addition to public order forces, there are more than 150 civil guard officers in the area. We also want to collaborate from an economic point of view in the reconstruction of Bosnia-Herzegovina, of Albania and of Kosovo. In this context, the role of cooperation should also be essential.

In the case of Asia we want to focus our efforts, and this is already the case, on consolidating our presence, for obvious reasons, in the Philippines and on strengthening our cooperation with China. Next Saturday the President of the Government – and I will have the honour of accompanying him – will

commence what I consider a very important trip to China and the Philippines and this has had important repercussions domestically ...

Now I would like to refer to our multilateral cooperation policy particularly in the European context in light of the fact that a considerable amount of Spanish cooperation is channelled through multilateral institutions ... Our policy in this field, and I am referring to multilateral cooperation, intends to be – I am going to state this in no uncertain terms – decidedly selective, increasing our presence in certain institutions and modifying it in others ...

(...)

Although the priorities of Spanish development cooperation policy largely coincide with Community cooperation, it is clear that we cannot say the same for the geographical approach or geographical priorities. Let me explain. Our main focus, for example, on Ibero-America or the Mediterranean is in contrast with the attention paid by the Community to the countries party to the Lomé Convention, and this is justified, but this is something that we should be aware of. Given that an active Spanish policy has led to greater attention being paid to Ibero-American and Northern Africa, we should insist now, at a particularly crucial time for a number of reasons, on maintaining this European cooperation effort on that continent and in the Mediterranean ...

Actions implemented in geographical and multilateral terms have a certain thematic unity provided by sectoral priorities that are set out by the Cooperation Law. The general aim of development cooperation policy is to contribute to the eradication of poverty and to thus establish the bases that can lead to a continuation of balanced development. This is the objective that the European Union has also set its sights on and that multilateral financial institutions have generally incorporated. The eradication of poverty has become the objective that inspires the development of other sectoral policies that are also recognised by the Cooperation Law such as environmental sustainability, human resources training, the strengthening of democratic institutions, etc.

(...)".

(*DSC-C*, VII Leg., n. 39, pp. 727–730).

The Secretary General of the *Agencia Española de Cooperación Internacional* (Spanish International Cooperation Agency or *AECI*), Mr. Gracia Aldaz, in an appearance on 12 December 2000 before the Congress International Development Cooperation Commission to respond to a question posed by the Popular Party parliamentary group on the link between the Government's immigration policies and development cooperation, responded as follows:

"Spain's development cooperation policy seeks to foster development in countries where we have this type of relationship. Thus, all of the development cooperation policy is an element that, to a certain degree,

contributes to giving order to or improving migratory policy in that it helps, if successful, population groups to settle providing opportunities in their home countries so that they do not have to leave ...

What we are doing, in accordance with Government guidelines, is collaborating within the framework of the working group of the National Emigration Plan as we have collaborated through the Spanish participation in the European Union subsequent to the Tampere Summit in the development of a migratory policy within Lomé, something that affects us in a significant way when it comes to migratory aspects, which are now the Cotonou Convention.

We are also working at strengthening and supporting the Community co-development initiatives especially in North Africa, the Maghreb, Mauritania, etc., given their proximity to our coasts in the Canary Islands as well as the south of peninsular Spain. In addition to this, we are working diligently and conscientiously in the countries from which immigrants are arriving: Morocco, Ecuador, Peru and some sub-Saharan African countries. Morocco, one of the countries from which a great number of immigrants come, has been one of the biggest beneficiaries of official development aid over the last several years and our cooperation in all aspects has clearly shown the interest that Spain has in achieving development in this area. What is more, our cooperation is particularly concentrated in the northern part of Morocco that is closest to Spain and that has the greatest influence on the migratory policy between Spain and Morocco. Our clear objective is to help with the development and establishment of the population.

In the case of the Dominican Republic, we are working hard on projects to generate employment on the island and are doing so in rural areas and in the tourism sector through Spanish technical cooperation as well as through Spanish investment in the tourist sector that helps to settle the population because the investments are in labour intensive sectors providing employment to the local population.

Along these same lines we are working to create opportunities through the micro-credit programme. We have not yet been able to conclude an agreement with Morocco but are in the negotiation stage and this is going to be an important element of our cooperation. We have done this in Peru with a programme of more than 1.5 billion pesetas. These are the mid and long-term policies that little by little are going to allow these development measures to convince and make a mark on these societies, providing opportunities at home for the underprivileged of these countries and therefore helping them to establish roots and have an ever increasing impact on the economy of their country."

2. Assistance to Developing Countries

a) Ibero-America

The IX Ibero-American Summit of Heads of State and Government held on 16 November 1999 approved the following Declaration, "Ibero-America and the International Financial Situation in a Globalised Economy":

"I. We, the Heads of State and Government of the 21 countries of Ibero-America meeting in Havana, Cuba on November 16, 1999 for the 9th Ibero-American Summit, discussed the main international issues of the moment, and in particular, the current international financial situation in a globalised economy, its implications for the growth and development of Ibero-America, and the measures that should be adopted to identify and implement strategies that will strengthen the international financial system, so that it genuinely and effectively responds to the stable functioning of the world economy, especially including the needs of the developing countries.

2. At this Summit, we reiterated the firm commitment of each of our governments to strengthening and achieving the effective functioning of democratic institutions, political pluralism, the Rule of Law, and respect for human rights and basic freedoms, including the right to development. With regard to international relations, all of the Ibero-American governments reaffirm their respect for the principles of sovereignty and non-intervention; of the self-determination of nations; of seeking peaceful solutions to conflicts, as opposed to the use or the threat of use of violence; and of the right of all nations to freely develop their own political system, in a climate of peace, stability and justice. We also reaffirm our commitment to contributing to the development of a just and participatory system of international relations, in accordance with the principles of international coexistence consecrated in the Charter of the United Nations, the Universal Declaration of Human Rights, and other international instruments.

3. On reaffirming that international coexistence demands respect for the principles of international law, the Charter of the United Nations, and the legal equality and national sovereignty of all States, we, the countries of Ibero-America, solemnly renew our commitment to these precepts. As a consequence, we reiterate once again our firm opposition to the unilateral and extraterritorial application of national laws or measures that infringe on international law and attempt to impose upon the laws and ordinances of third countries, in that they violate the principles that should govern international coexistence, weaken multilateralism, and are contrary to the spirit of cooperation and friendship that should prevail among our peoples. In this context, we place special emphasis on urging the government of the United States of America to put an end to the application of the Helms-Burton Act, in accordance with the resolutions adopted by the United Nations General Assembly in this regard.

4. On reaffirming the analysis carried out within the framework of the Porto Summit in relation to globalisation and the distinctive characteristics of this stage in history, we recognize the opportunities offered by the globalisation process for the development and well-being of our peoples, as well as the considerable challenges it entails. This fact has led the countries of Ibero-America to undertake efforts aimed at achieving the greatest benefits possible under the new conditions of the world economy. Nevertheless, we continue to face obstacles that hinder our progress in reducing economic and social inequalities. As a result, we deem it necessary, among other measures, to strengthen responsible, appropriate and prudent macroeconomic policies, alongside social policies designed to reduce inequalities, to ensure that the most vulnerable sectors of our societies benefit from the opportunities offered by globalisation, and to diminish the gaps that exist between both the developed and developing nations and the wealthiest and poorest sectors of the population. Our governments are therefore working towards the basic goals of seeking social justice; raising levels of well-being in our societies; strengthening policies for support and social security nets to protect the poorest and most vulnerable sectors; and expanding international cooperation in equitable conditions, as a means of providing support for the least developed countries and regions of Ibero-America.

5. We have confirmed that while the 1990s were characterised by improved economic performance in comparison with the 1980s, an economic deceleration has been observed worldwide in the past two years, as a result of the international financial crisis. Nevertheless, the application of consistent policies and programs in the monetary and fiscal spheres has allowed for a better and more timely capacity for response in order to attenuate the adverse impacts resulting from imbalances in the international financial system.

6. The extraordinary expansion of international financial markets and the multiplication of its agents and instruments has brought about a growing interconnection among the different financial markets of each country, principally because of the magnitude and speed of movement of international capital flows. To a large extent, the problem lies in the volatility of international flows of short-term capital, which have become a potential factor of instability for the world's economies. This situation has not been accompanied by an adequate development of national and international financial institutions, or by the necessary mechanisms for the regulation and supervision of banking.

7. Massive and sudden outflow of capital and the decrease in the flow of capital towards developing countries, which have brought about the recent financial crises, have been accompanied by a rise in interest rates and consequently an increase in the cost of internal and external credits, which, when added to other factors, have contributed to the deceleration of economic activity worldwide.

8. These crises in the international financial markets, given their

magnitude, recurrence and potential for transmission within a globalised economy, have had severe consequences for the most vulnerable social groups, the weakest and smallest economies, and the countries with serious economic imbalances. They have even infected countries that have adopted or are adopting structural reforms and appropriate fiscal, monetary and currency exchange policies, including some of the Ibero-American countries.

9. We consider it crucial for all governments and international financial organizations to rapidly demonstrate their commitment to advancing towards a more ordered financial system that will promote growth and international financial stability, as well as greater confidence among investors.

10. The downward trend in the prices of basic export products, the persistence of protectionist practices, the drop in global terms of the flow of official development aid, and the financial burden of the foreign debt have created unfavourable conditions for many of the economies of the region and eroded their capacity to react to and recover from international financial imbalances. Under these conditions, some countries have had to adopt programs in response to these imbalances, which have included restrictive financial and fiscal measures that demand enormous efforts on the part of the population and have had serious social implications in some cases.

11. In accordance with these considerations:

i) We reaffirm the validity of the Porto Summit Declaration and the declaration on the international financial situation, and we reiterate their current relevance and the urgent need for their implementation. In this regard, we call on the international financial organisations, the United Nations system and the G-8 to take the considerations and proposals contained in these documents into account in their analyses of these phenomena.

ii) We commit ourselves to working with a long-term perspective towards a global, regional and national strategy that will be coherent and effective in the face of current and foreseeable imbalances in the world economy. In addition, we concur that the transparent and democratic functioning of multilateral organizations and institutions and broad participation by all States within them constitute an essential element for the construction of a world order characterized by justice, equality and solidarity, and founded on international law.

iii) Given the seriousness and recurrence of financial crises, the severity of their impact on the world economy, and their negative implications for the capacity of Ibero-American countries to promote and manage development, we reaffirm the commitment endorsed at the Summit of the European Union and Ibero-America and the Caribbean to actively participate in the design of a new international financial architecture that will allow our countries to obtain the benefits of the integration of capital markets while reducing its risks. In this context, it is essential that these reforms include greater participation by the developing

countries in the decision making processes of financial institutions, in accordance with the growing influence of these countries in the flow of financing, trade and investment and the significant impact that reforms would have on them.

iv) Likewise, we back the United Nations General Assembly's request that the Secretary General, in close cooperation with all competent entities of the UN system, particularly the United Nations Conference on Trade and Development (UNCTAD), within the framework of their respective mandates, and in consultation with the Bretton Woods institutions, analyse with a wide-reaching vision and long-term perspective the current tendencies of world financial trends and ways of improving the capacity for early warning, prevention and timely response, in order to confront the emergence and spread of financial crises. Furthermore, this should be done while duly taking into account the problems of development and the need to protect the most vulnerable countries and social groups, through access to financing in favourable conditions.

v) We recognize the importance of strengthening the transparent and homogeneous exchange of information, as well as support among States and the assistance of international financial organisations to promote the stability and transparency of markets.

vi) We consider the establishment of the euro to be of significant importance, in that it can contribute to the stability of international currency and financial markets, facilitating new opportunities for economic links between the European Union and other countries, particularly in Ibero-America and the Caribbean.

vii) We reiterate our conviction that development constitutes a substantial objective of the multilateral trade system. For this reason, we will continue to promote the strengthening of multilateralism, the encouragement of international solidarity, and special and differentiated trade, in addition to free, non-discriminatory and balanced international trade and the processes of cooperation and integration, which can contribute to reducing the differences in levels of development. We also reiterate our commitment to promoting, at the next Ministerial Meeting of the World Trade Organisation, a new round of trade negotiations of a comprehensive nature, which do not exclude any sectors, aimed at reducing tariff and non-tariff barriers to the trade of goods and services, and creating a favourable climate for investment. In this regard, we oppose the imposition of any political, economic, social, labour-related or environmental conditions.

viii) Likewise, we advocate a just and lasting solution for the foreign debt problem affecting our economies. In this regard, we express our support for the countries of the Ibero-American community that have adopted structural adjustment and reform policies while confronting the high

payments required to service their debts. For this reason, we back the efforts aimed at accelerating access to the benefits of the Initiative for Highly Indebted Poor Countries, as well as bilateral negotiations geared towards alleviating the debt carried by these countries.

ix) Considering the delicate and complex economic situation facing the Republic of Ecuador, primarily caused by the adverse effects of *El Niño*, last year, and the recent international financial crises, which have made the servicing of its high foreign debt unsustainable, we express our solidarity and acknowledge the efforts that its government has responsibly undertaken to reorganize the economy and restructure its foreign debt to the international community of creditors, under terms that will allow it to fulfill its external obligations in accordance with its actual ability to make payments, while attending at the same time to the pressing social needs of its population.

x) In addition, we reaffirm the need to continue stimulating direct foreign investment, within an adequate legal framework of security, as a major component of international financial flows and national development strategies. In this regard, we consider it advisable to initiate studies aimed at evaluating the signing of an agreement on investment promotion and protection within the Ibero-American sphere.

xi) We concur that efforts to raise levels of well-being for our peoples within the framework of growing globalisation will be strengthened to the extent that we Ibero-American countries manage to adequately harness the benefits of technological progress and facilitate the training of human resources. For this reason, we consider collaboration and cooperation between our countries and international organizations to be of major importance.

xii) With regard to national resources and the environment, we recognize that certain positive results have been achieved, on both a global and regional level, but we remain profoundly concerned by the continued deterioration of the world environment and the persistence of obstacles that prevent the achievement of sustainable development, including its social and economic dimensions, in fulfilment of Agenda 21. In this sense, we ratify our commitment to policies that favour sustainable development and the removal of obstacles to this process. This entails a crucial need for the integration of policies that will allow us to anticipate their implications for the three dimensions of sustainability. In accordance with these considerations, the developed countries, cooperation agencies and international financial institutions must reinforce this integration of policies and support the movement toward development through the transfer of technology and financial resources.

xiii) Globalisation has contributed to spreading the cultural diversity of different nations to the rest of the world, although it also represents a

challenge for the consolidation and development of an Ibero-American culture. The countries of Ibero-America share a common historical legacy and cultural identity that facilitate concerted action on the part of our countries within the framework of the global economy, which should contribute to expanding access to the advantages of globalisation and improving the probability of success in confronting its challenges.

xiv) We, Ibero-American States, will continue to assume an active role in the face of the risks entailed by international economic and financial imbalances, based on the design of responsible, effective national policies with a long-term perspective. In this regard, we reiterate the need to reinforce discipline and transparency in the financial and banking sectors; to maintain healthy economic and financial policies; to promote an increase in rates of internal savings; and to pursue structural changes in our economies, in accordance with our own policies and interests.

xv) We reaffirm the central role of our States in the adoption of active policies aimed at promoting human development and equity; preserving the identity and culture of our peoples; placing priority on educational, public health and environmental conservation policies; and correcting inequality and social exclusion wherever they occur.

xvi) In a world where the strengthening of multilateralism, cooperation and joint action among the various regional processes is increasingly necessary to confront the current challenges, we reaffirm our will to consolidate the Ibero-American strategy as an instrument for dialogue and political consensus among our countries. We also emphasise the need to continue promoting integration in Ibero-America as a means of ensuring a more dynamic and competitive presence in a globalised world and making greater headway towards the solution of complex socioeconomic, technological and environmental problems that require a coordinated approach. At the same time, we highlight the importance of regional and subregional institutions and organisations in confronting the dangers of greater imbalances in the world economy and contributing to its stability.

12. In the context of the current international financial situation in a globalised economy, and recognizing the need for joint solutions for the world's principal socioeconomic problems, the community of Ibero-American countries pledges to step up actions of solidarity that have an impact on an international level. At the same time, they pledge to expand the conception and implementation of concrete cooperation programs in the economic and social spheres that contribute to the development of our nations and to confronting the major challenges of the 21st century".

Also at the Havana Summit within the framework of Ibero-American cooperation:

"We, the Heads of State and Government of the countries of Ibero-America, express our satisfaction with the work carried out in fulfilment of the decision adopted at the 8th Ibero-American Summit to draft and approve the Protocol and Statutes for the creation, structuring and operation of the Ibero-American Cooperation Secretariat, SECIB, which were signed on November 15, 1999, by the Foreign Ministers in the City of Havana, Cuba.

We grant our formal approval for the establishment of the Secretariat, as agreed upon at the Porto Summit, and for its headquarters to be located in Madrid, the capital of Spain. We express our warmest gratitude to the Spanish government for agreeing to serve as the headquarters for the SECIB.

At the same time, we declare our pleasure over the designation of Ambassador Jorge Alberto Lozoya as the Secretary of the Ibero-American Cooperation Secretariat, based on a proposal presented by the Government of Mexico and unanimously backed by all the other Member States.

(...)".

The X Ibero-American Summit of Heads of State and Government held on 17–18 November 2000 approved the following Declaration, "United for Children and Adolescents, on the Basis of Justice and Equity in the New Millennium":

"1. We, the Heads of State and Government of the 21 Ibero-American countries, meeting in Panama City on the occasion of the Tenth Ibero-American Summit, on 17 and 18 November 2000, and convinced that in order to achieve sustainable human development, democratic consolidation, equity, and social justice, based on the principles of the universality, indivisibility, and interdependence of human rights, it is essential that special attention be devoted to children and adolescents, have once again decided to consider together the situation of the children and adolescents of Ibero-America, with a view to formulating policies and promoting programmes and actions designed to ensure the respect of their rights, well-being and overall development.

2. We welcome the progress made since our first Summit, held in Guadalajara, Mexico, and note with satisfaction the deep affinities that unite and consolidate the Ibero-American community of nations, as a privileged forum for political dialogue and solidarity, which plays an increasingly active and influential role on the international stage.

3. We reaffirm our commitment to the promotion and defence of democracy and the Rule of Law; political pluralism and cultural identity; and human rights in their civil, political, economic, social and cultural aspects, including the right to development, respect for the principles of sovereignty and territorial integrity, non-intervention, the non-use of force, and of the threat to use force, in international relations, the peaceful resolution of disputes, and the right of all peoples to construct their political systems freely, under conditions of peace, stability and justice. These principles are part of our legacy to Ibero-American children and adolescents.

4. Convinced that the expansion of international trade is vitally important to the prosperity of our countries, we reiterate our individual and collective commitment to develop a multilateral trade system that is free, open, non-discriminatory, secure and transparent; regional integration; open regionalism, and the deepening of economic relations between the different regions of the world, under conditions of equity.

5. We vigorously reject any extraterritorial application of national laws or unilateral measures implemented in contravention of international law, the United Nations Charter, or the prevailing laws of international trade. We therefore reiterate the urgent need to abolish such measures and once more urge the United States of America to end its implementation of the Helms-Burton Act, in accordance with the pertinent resolutions of the United Nations General Assembly.

6. We also wish to stress that the total population of all our countries will soon reach six-hundred-million people, and that children and adolescents make up the majority of our people and are a source of creativity, energy, dynamism, initiative and social renewal.

We are delighted that most of our countries have succeeded in reducing mortality rates among infants and children under 5, and in eradicating certain immunopreventible diseases, as well as in increasing enrolment and graduation rates in primary education and in reducing illiteracy. However, the persistence of high rates of poverty and extreme poverty, of situations of social exclusion and socio-economic inequality, and of inadequate sanitation and health services, and the shortcomings and backwardness revealed by a number of indicators, call for a renewed collective effort to consolidate positive trends and guarantee effective observance of the rights of children and adolescents.

7. We also wish to stress that the infant and adolescent population constitutes an age group that is, by its very nature, particularly affected by negative socio-economic factors, which must be dealt with decisively, in order to eliminate or significantly reduce the damaging effects of the weakening of the social and family fabric caused by circumstances such as family abandonment, irresponsible fatherhood, and conflicts with the law.

Strategic orientations

8. We recognize the fundamental importance of children and adolescents as holders of rights in our societies, and the guiding regulatory role of the State in the design and execution of social policies that are intended for the benefit of children and adolescents and serve to guarantee their rights, and we reiterate our determination to build the foundations for the full development of their potential and social integration, in the light of the opportunities and challenges offered by today's global marketplace.

We therefore reaffirm our commitment to the principles and goals enshrined in the United Nations Convention on the Rights of the Child

and in other conventions, declarations and international instruments, both universal and regional, through which our Governments undertake to guarantee respect for the rights of children and adolescents, their access to a higher standard of well-being, and their effective participation in comprehensive development programmes.

Actions for equity and social justice

9. Convinced that our children and adolescents must live a full and healthy life, in the assurance that their rights are guaranteed and protected, we shall continue to encourage national policies and programmes designed to promote development with equity and social justice, thereby allocating a greater proportion of our resources to expenditure on social services, particularly in the area of health, education, culture, and science and technology. Consequently, we agree on the need to:

a) Guarantee the exercise of the children's right to be registered immediately after birth and, as far as possible, the right to know and be cared for by their parents, in accordance with the Convention on the Rights of the Child, through the promotion of legislative, administrative and other kinds of measures designed to accomplish those goals.

b) Continue to promote our strong, rich cultural roots, customs and traditions, while fully respecting the specific nature and values of each country, in order that we may progress toward an education system that is comprehensive, meaningful and respectful of linguistic, ethnic and cultural diversity and gender equity, and contributes towards human development.

c) Strive to ensure that, by the year 2015 at the latest, all children in Ibero- America have access to early initial education and to free and mandatory primary education, based on the principles of non-discrimination, equity, pertinence, quality, and efficacy.

   In this respect, we shall promote innovative social-incentive programmes, such as the School Scholarship programmes, under which all children of less prosperous families can attend school on a regular basis.

d) Encourage the free flow of information, at all levels, regarding the rights of children and adolescents, with a view to ensuring that information serves to foster the constructive participation of children and adolescents in society and enables them to express their ideas and creativity freely, and in order to ensure that such information is manifested both in daily life and in the functioning of institutions.

e) Promote the use of information technology in the teaching and learning processes, including open education and correspondence courses. In this context, we shall promote the development of computer programmes, as well as the infrastructure and equipment

needed for children and adolescents to gain access to these technologies.

f) Initiate a joint effort to promote the free flow of information and communication between Ibero-American educational, academic and scientific organisations, abolishing existing regulatory restrictions, allowing them freely to use all the technological resources, satellite facilities, or facilities of communications providers available in Ibero-America.

g) Strengthen food-security programmes within each country, including those provided within the schools, complementing them with nutritional information and education programmes, with particular emphasis on breast-feeding infants, young children, and pregnant women.

h) Extend social security systems to as many families as possible, and increase access to comprehensive health care services, especially for children, pregnant women and teenage mothers, with the goal of achieving a 50 per cent reduction in maternal mortality in Ibero-America by the year 2010.

i) Take urgent steps for the research, prevention, treatment and monitoring of this disease and its economic implications, and promote greater international cooperation in this area.

j) Incorporate sex-education programmes into education systems, both inside and outside schools, with the participation of the family and the community, with a view to promoting responsible sexual behaviour, including responsible fatherhood and motherhood, the prevention of sexually transmitted diseases, early pregnancy, and premature fatherhood.

k) Give high priority to the resolution of problems related to poor housing, including the provision of access to safe water, sanitation and other infrastructures offering life's basic necessities, in the knowledge that adequate housing encourages family integration, helps foster social equity, and strengthens feelings of human belonging, security and solidarity all of which are essential elements in the lives of children and adolescents.

l) Implement strategies and programmes directed at children and adolescents living in adverse social conditions and risky situations, including orphans, abandoned children, and children who work or live in the streets.

m) Promote the adoption of measures aimed at children and adolescents with disabilities, including rehabilitation and education programmes. Similarly, increase the dissemination of information on adoption policies and campaigns aimed at children who work or live in the streets.

n) Continue to develop policies designed to encourage sports and the

healthy and creative use of the free time of children and adolescents, with a view to ensuring that they achieve an appropriate level of physical and mental development.

10. Recognizing that poverty and extreme poverty, the unequal distribution of incomes, social exclusion, and violence within the family are the main reasons why children and adolescents enter the labour market prematurely, live on the streets, are the objects of economic or sexual exploitation, migrate, break the law, and are exposed to risky situations, we agree to:

a) Continue to make every effort to achieve a significant reduction in the high levels of poverty and extreme poverty from which some of our people suffer, in accordance with the commitments made during the Extraordinary Period of United Nations General Assembly Sessions on Social Development (Copenhagen + 5) and under the Millennium Declaration.

b) Continue to encourage economic and social policies that strengthen the family as the fundamental basis of our societies and promote unity, coexistence, and family integration.

c) Promote legislative measures and adopt stringent measures penalizing anyone participating in, or collaborating in the perpetration of the crimes of trafficking, abduction, the sale of organs or the sexual exploitation of children or adolescents, or any other illicit activity that infringes on their dignity or violates their rights. Likewise, to establish mechanisms for international cooperation and information mechanisms aimed at the prevention, control and penalisation of those crimes and the rehabilitation of the children and adolescents affected.

d) Express the deep concern of Ibero-American countries regarding the existence of cases of international abduction of minors by their parents.

e) Promote joint actions aimed at guaranteeing the observance of the rights of migrant children and adolescents, particularly those who are subjected to manifestations of xenophobia, discrimination, and cruel and degrading treatment. Similarly, to promote initiatives aimed at effectively defining and sanctioning the illegal trafficking of persons.

f) Design national policies and procedural models or judicial systems for minors, in accordance with national legislation, incorporating actions aimed at preventing crime and safeguarding the implementation of due process guarantees and the right of minors to be reintegrated within the family and society. Continue to modernise institutions responsible for dealing with and rehabilitating minors who commit offences, and take appropriate measures to prevent them from being interned in adult prisons.

g) Urge those countries that have not yet done so to consider the possibility of signing, ratifying, or acceding to ILO Convention 182 Concerning the Prohibition of the Worst Forms of Child Labour and

Immediate Action for its Elimination and ILO Convention 138 Concerning the Minimum Age for Admission to Employment, as well as the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption and the Convention on the Civil Aspects of International Child Abduction.

h) Strengthen and promote public policies designed to prevent and eradicate violence within the family and protect children and adolescents who have been victims of this form of violence.

11. Insist on the urgent necessity of modifying unsustainable patterns of production and consumption that encourage overexploitation of natural resources. In this respect, we agree that the Rio + 10 Summit offers the best opportunity to give renewed impetus to sustainable development, thereby promoting the socio-economic well-being of present and future generations.

12. We note with concern that during the armed conflicts that have occurred and continue to occur in our countries, children and adolescents have been affected by their inclusion in the conflict, the destruction of the nuclear family, and forced displacement, and that the physical and psychological consequences of these situations must be addressed. In order to deal with the realities of this situation, we propose to:

a) Take joint steps to rehabilitate and protect children and adolescents affected by armed conflicts.

b) Reiterate our satisfaction with the decision taken by a growing number of States to accede to or ratify the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, especially in view of their deplorable effects on the civilian population, particularly children and adolescents.

We agree on the urgent need to strengthen cooperation regarding the prevention of accidents, and also regarding the rehabilitation of victims, in order to facilitate their reintegration into the socio-economic life of their countries. We therefore call upon those States that have the necessary economic resources and technology to continue to provide their support.

We note with pleasure the fact that the Third Conference of States parties to the Ottawa Convention was held in Managua, Nicaragua in September 2001.

c) Do everything necessary to achieve concrete results at the United Nations Conference on the Illicit Trade in Small and Light Weapons in All its Aspects.

13. We note with pleasure the adoption by the United Nations General Assembly of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which are available for

signature at the headquarters of that organisation. We urge those countries that have not yet done so to consider the possibility of signing, ratifying or acceding to these instruments, so that they can enter quickly into force.

14. We recognize that the increase in the manifestations of violence, particularly those that victimize children and adolescents, within the home, at school, within institutions and in the streets, is one of the most serious problems affecting our societies. As we celebrate, in the year 2000, the International Year for a Culture of Peace, we reaffirm our commitment to the development of policies and the implementation of additional measures, both as individual nations and through concerted actions, with a view to confronting the problem of violence. Such policies and measures should include the imposition of more rigorous discipline regarding the access to, and possession of arms, the implementation within the schools of educational programmes for peace and tolerance, the conducting of awareness-raising campaigns within society, and the development of mechanisms for cooperation with the mass media and with the entertainment industry, with the aim of preventing the promotion and dissemination of a culture of violence.

15. We are aware of the importance of confronting the problem of drugs, based on the principle of shared responsibility for resolution of the problem and the exercise of our respective sovereignties. Accordingly, we agree to continue Ibero-American cooperation within the framework of the Action Plan on Drugs agreed by Ibero-America and the European Union.

With these goals in mind, we shall continue to promote the development of programmes aimed at detecting and preventing the trafficking and consumption of drugs, especially in the schools, by promoting large-scale, permanent dissemination campaigns concerning the harmful effects of the unlawful use of drugs, and by taking action to deal with the real underlying causes of this social problem.

In the same way, we accord special importance to the forthcoming Third Meeting on the Mechanism for Cooperation and Coordination on the theme of Drugs between the European Union, Ibero-America and the Caribbean, to be held in Bolivia during the first half of 2001.

16. Without prejudice to the role of the State, we recognize the important support provided by civil society in the formulation of policies and programmes designed for the benefit of children and adolescents. We agree on the need to encourage the participation of this sector in the protection and promotion of the rights of children and adolescents, through the established legal channels.

17. We reject the continued manifestations of racism, racial discrimination and intolerance. We therefore underline the importance of the World Conference on Racism, Racial Discrimination, Xenophobia, and Related Intolerance,: which offers an opportunity for the world community to seek appropriate solutions to this problem.

18. We shall encourage the strengthening of coordination and cooperation

with international financial institutions and agencies, with a view to implementing the actions we have agreed upon and to honouring our commitments.

We shall also work, both jointly and together with creditors, to achieve an effective, just and lasting solution to the problem of external debt, with a particular focus on the highly indebted countries of the Ibero-American community, in order to ensure that this problem ceases to represent an obstacle to economic and social development and that such countries can focus on the urgent needs of their populations.

We recommend that international financial institutions improve credit facilities through transparent, concerted and non-discriminatory mechanisms, which will help countries in difficulty to return to solvency and regain access to international financial markets.

19. We note with satisfaction the efforts made by Spain and Portugal to increase their level of Official Development Aid, and call upon other developed countries to adopt similar measures, with a view to halting the decline seen in recent years and increasing the level of resources allocated to social development, especially that of children and adolescents.

20. We recognize the progress made with respect to integration and agree on the need for us to redouble our efforts to consolidate the processes of regional integration in America and Europe.

We express our desire to participate actively in the consolidation of the bi-regional strategic alliance, in accordance with the commitments made at the Rio de Janeiro Summit of 1999 and within the framework of preparations for the Second European Union, Ibero-America and the Caribbean Summit to be held in Spain in 2002. We recognize the importance of incorporating Spain and Portugal in the Third Phase of Economic and Monetary Union , as this will make a positive contribution to relations between the European Union and Ibero America.

21. We commit ourselves to the consultation and coordination process in which our Governments will be involved during the preparatory process for next year's Twenty-fifth Extraordinary Period of Sessions of the United Nations General Assembly, which will seek to evaluate the progress made by, and provide follow-up to, the World Declaration on the Survival, Protection and Development of Children and the Plan of Action approved at the 1990 World Summit for Children, as well as define the United Nations' agenda in this regard for the coming years.

(...)".

The I Summit of Heads of State and Government of the European Union, Ibero-America and Caribbean held on 28–29 June 1999 approved the following "Rio Declaration":

"1. We, the Heads of State or Government of the European Union, Ibero-

America and the Caribbean, have decided to promote and develop our relations towards a strategic bi-regional partnership, based upon the profound cultural heritage that unites us, and on the wealth and diversity of our respective cultural expressions. These have endowed us with strong multi-faceted identities, as well as the will to create an international environment which allows us to raise the level of the well-being of our societies and meet the principle of sustainable development, seizing the opportunities offered by an increasingly globalised world, in a spirit of equality, respect, alliance and cooperation between our regions.

2. The strategic partnership gathers together two important actors on the current international stage. Ibero-America and the Caribbean is set to be one of the most flourishing regions in the 21st century as a result of important progress made in the political, economic and social spheres in recent years. For this reason, the region is determined to persevere in the advancement of democratic processes, social equality, modernisation efforts, trade liberalisation and broad-based structural reforms. The European Union, in its turn, has advanced towards a historic integration with multiple implications at the global level on political, economic, social, financial and trade matters, which has brought about constant improvement in the living standards of its societies.

3. This strategic partnership is based on full compliance with international law, and the purposes and principles contained in the Charter of the United Nations, the principles of non-intervention, respect for sovereignty, equality among States, and self-determination are bases for the relations between our regions.

(...)".

b) Cuba

The Minister for Foreign Affairs, Mr. Matutes Juan, in an appearance on 29 September 1999 before the Congress Foreign Affairs Commission to report on the threat of sanctions from the Government of the United States of America levelled at Spanish companies with investments in Cuba, made the following statement:

"On 30 July the US State Department sent a letter to the Spanish company Sol-Meliá ...

The said letter from the State Department focused on Title IV of the Helms-Burton Act. It specifically looked at the provisions of that title and sanctions envisioned.

The content of the letter is serious and causes concern because of the continuous references made to the application of the provisions of the Helms-Burton Act to a Spanish and therefore European company; because it explicitly underscores the contents of that law referring to a greater extra-territorial and retroactive nature and because, although great care is taken in

the text to point out that this is not a notification prior to a sanction, it is the first time that the State Department has sent a letter to a Spanish company in these terms.

... In a case such as this, it is somewhat comforting to know that the United States authorities are well aware of the fact that the application of sanctions pursuant to the Helms-Burton Act, would automatically give rise to a reaction from the European Union and all of its Member States' Governments; the reaction foreseen and imposed both from the regulation blocking the European Union, Regulation 22/71, as well as the understandings between the European Union and the United States, of 14 April 1997 and of 18 May 1998 respectively. The former provides for the right to compensation for the companies affected by the extra-territorial effects of the Helms-Burton Act and the latter, the understandings, suspend the commitment on the part of the European Union to abstain from filing suit against the United States before the World Trade Organisation for the Helms-Burton Act provisions.

(...)

On 26 July the Spanish Government sent a formal communiqué relating the facts to which I have just referred to the vice-president of the European Commission, Sir Leon Brittan. This official communication urged the European Commission to intervene before the United States authorities as well. Upon receiving this communiqué from Spain, the European Commission sent instructions to its delegate in Washington to remind the State Department of the unalterable position taken by the European Union, to gather information regarding US intentions and to warn the authorities of the risk they would be taking by applying measures of the Helms-Burton Act to a Spanish company. The Secretary of State gave me her response on 2 August ... Mrs. Albright confirmed that the 30 July note was nothing more than a request for information and therefore cannot be considered a formal notification of sanction. However, as I stated at the outset, the letter delivers a message that I consider serious and a cause for concern. Mrs. Albright also mentioned that the US Government was unable to obtain any sort of modification of the Helms-Burton Act from Congress, an effort that she committed to with the European Union in the above-mentioned understandings. She went on to mention that for the time being, the American administration was obliged to fulfil the Helms-Burton Act.

(...)

To sum up, it is the hope of the Government that the steps that we have taken as well as those taken by the European Commission, are considered seriously by the US authorities and that they restrain from initiating action against this Spanish company or against any other European company. As you know, two other European companies, the French Club Méditerranée and the German tourist consortium LTU have received similar letters. The Government will use all of the diplomatic, political and legal means at its disposal to block actions like the ones that I have just mentioned if they are

levelled against any European company; and even more so if actions are taken against any Spanish company".

(*DSC-C*, VI Leg., n. 754, p. 22155).

c) Maghreb

The Minister for Foreign Affairs, Mr. Matutes Juan, made the following statement during his appearance on 25 November 1999 before the Senate Foreign Affairs Commission to report on the new political relations with the Kingdom of Morocco subsequent to the death of King Hassan II and the rise to the throne of King Mohammed VI:

"... Morocco has become the number one recipient of Spanish cooperation that totalled 6 billion pesetas in 1998 and that was principally spent on projects and actions implemented in the northern region of the country. This is the case of a program developed by Spanish cooperation to improve and develop this region, the Paidar Med, that seeks to contribute to the fulfilment of the legitimate aspiration of equal growth rates for all of the regional components of the Moroccan mosaic given that, as you are all aware, imbalances exist that have a negative effect on this northern region. Our cooperation, therefore, focuses on this region in the areas of employment policy, education, health as well as cooperation in the building of infrastructure as well as other areas.

On the multilateral level, I would like to highlight the association between the European Union and Morocco, formalised in a treaty concluded in 1996 and that Spain has already ratified and that will soon enter into force once the final steps are taken by the other countries.

As is well known, our country is the driving force behind the Barcelona Process implemented in November 1995 and one of the principal elements of this process is the Euro-Moroccan Agreement. The Government, conscious of the importance of this new instrument, will do everything in its power to consolidate relations with Morocco in the Agreement's three main areas: political-economic, cultural and social order to achieve reciprocal benefit as well as to give impetus to the Euro-Mediterranean process in general.

The intensity of relations with Morocco both on a bilateral as well as a multi-lateral level has given rise to a dense network of interests on both sides of the Strait pointing to the need to further strengthen them with our sights set on the new century. The Government will continue along these lines in the conviction that Morocco, in this promising commencement of a new reign, has the will to modernise the country, step up democratic reforms and place greater emphasis on all areas related to human rights. Therefore, we will also foster, to the degree possible, all of the facets of our cooperation initiatives with Morocco.

(...)

... Illegal immigration has caused deaths and problems and that is why it is

essential to increase cooperation in both directions with a view to getting at the root and solving these problems while at the same time pursuing the illegal immigration mafias which are the beneficiaries of this tremendous suffering that often ends in the death of these good people.

(...)".

(*DSS-C*, VI Leg., n. 529, pp. 3–4, 8).

d) Islamic countries in general

The Government, in response to a question posed by the *Convergència i Unió* parliamentary group with respect to action taken on intercultural European dialogue with the Islamic countries, provided the following information:

"Spain is aware of the relative weight that the Islamic countries – with which in many cases it has a shared history, geography and interests – have in the international community. From among them, the Arab countries and those of the Maghreb have their own personality with different problems and challenges for the future that affect Spain both on a bilateral level as well as in the context of relations with the EU.

Intercultural dialogue and closing the gap with the civilian societies have proven to be especially important instruments in our relations with countries in this region. An effort should be made to change mutual perceptions, consolidate civil societies, promote the values of tolerance, pluralism, respect for human rights and the Rule of Law in countries that, in many cases, are beginning their political-parliamentarian lives within renovated institutional frameworks. Spain takes special interest in this exercise due to its historical, cultural and geographical links with the countries of the Islamic world, particularly with Arabs and the inhabitants of the Maghreb countries. Frameworks for dialogue such as the Averroes Committee are a good example of this as are the Friendship, Good Neighbour and Cooperation Treaties signed with countries such as Morocco and Tunisia, one of the aims of which is dialogue and understanding of culture and civilisation with a view to creating a common cultural area. Spain has a privileged relationship with the countries of the Islamic world and from within the EU has always tried to foster dialogue on all levels with the countries comprising that region. The conclusion of association agreements that envision cooperation and dialogue in the cultural sphere is, without a doubt, a valuable instrument in the achievement of this aim.

Another important arena for intercultural European dialogue with the Islamic countries is the Barcelona Process. In Chapter III of the Barcelona Declaration and its associated work programme focusing on socio-cultural subjects, it includes the need to foster dialogue among the principal religions represented in the Mediterranean and to bring the different cultures closer together.

(...)".

(*BOCG-Senado.I*, VI Leg., n. 645, pp. 10–11).

e) The Palestinian National Authority

The Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, in his 19 October 1999 appearance before the Congress International Development Cooperation Commission to respond to a question posed by the Popular Party parliamentary group on the status of the cooperation projects under way in Palestinian territories, stated that:

"Spanish support of the peace process and the economic and social development of the Palestinian people has given rise to generous cooperation and today the Palestinian people are one of the leading beneficiaries of Spanish aid in the world: 182 million dollars for the five year period 1994–1998, 126.5 million of which were in the form of bilateral aid and 65.1 in non-reimbursable grants. At the second donors conference held in Washington on 30 November 1998, The Secretary General of the Spanish Agency stated the Government's intention of maintaining this volume of aid for the ensuing five-year period 1999–2003.

Spanish-Palestinian non-reimbursable bilateral cooperation, as the Honourable Member is aware, is set up through the joint committees.

(...)

The majority of the joint committee projects have been executed in close collaboration with the Palestinian National Authority and its ministerial departments as well as with other central and local Palestinian entities: the Bethlehem 2000 Committee, the Hebron Rehabilitation Committee, Bethlehem Town Hall, Nablus, etc. Many important technical cooperation projects are also executed through NGOs and not only in the form of bilateral cooperation but also through Spanish and Palestinian NGOs: construction of schools, hospitals, housing; projects involving health care, vocational training, creation of employment, rural development, etc. Today, considering the number of projects and the volume of funds channelled through NGOs, this type of cooperation has surpassed the direct execution sort. In the future the execution of projects through NGOs, which includes the active participation of the civilian society, will play an increasingly important role in our relations with the Palestinian territories.

In addition to technical cooperation, the efforts we are making in the cultural field are also important ...

(...)".

(*DSC-C*, VI Leg., n. 781, pp. 23162–23163).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

On 14 September 2000, the Minister for Foreign Affairs, Mr. Piqué i Camps, in his speech before the United Nations General Assembly meeting at its 55th

session, just as his predecessor Mr. Matutes Juan had done at the 54th session, underscored, among other things, the need to culminate the United Nations reform process:

"(...)

We want a United Nations that is capable of carrying out the tasks assigned to it. In order to do this we ought to culminate the reform process. For example, the role of the General Assembly –the only body through which all of the Member States are represented– needs to be bolstered as the driving force behind debate and that which gives political impetus to the United Nations. The civil society must be incorporated to a greater degree in the goings on of the Organisation; an accomplishment that would contribute to bringing citizens closer and to obtaining a greater degree of commitment from them.

There is also a need to reform the Security Council so that it can fully perform its functions in maintaining peace and international security. It is the view of the Spanish Government that this reform should be based on the following principles:

- Consensus: reform should be based on broad and solid consensus so as to avoid dangerous divisions among the Member States and to provide the enlarged Council with a greater degree of legitimacy needed to effectively do its job.
- Democratisation: provisions should be made to increase the number of non-permanent members from all regional groups, especially from the developed world. Spain feels that an enlargement of the category of non-permanent members is a better reflection of the tendency towards the democratisation of the international society on the threshold of the third millennium.
- Effectiveness: situations in which the Council is blocked in certain crises because of the exercise of the right to veto should be avoided.
- Transparency: the Council's working methods should be improved, enlarging the number and increasing the quality of consultations between its members and the rest of the Member States so that the latter are not excluded from the decision making process.

(...)".

2. North Atlantic Treaty Organisation

A) Enlargement

On 4 May 1999, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, appeared before the Senate Foreign Affairs Commission to report on the enlargement of the Atlantic Alliance:

"From the outset Spain has been in favour of enlarging the Alliance because we are convinced that this will strengthen security in Europe in general,

contribute to the achievement of lasting peace and justice on our continent based on respect of individual rights, freedom, democracy, democratic pluralism and, in short, constitutes what has been called the new NATO that emerged at the end of the cold war and that is characterised by a profound renewal both of its internal structure as well as its composition.

The NATO enlargement process has two clearly differentiated facets. First of all, the so-called first enlargement admitting Poland, Hungary and the Czech Republic was agreed at the NATO Summit held in Madrid in July of 1997 the effective entry of these countries taking place on 12 March with the deposit of the ratification instruments of the accession protocols before the Government of the United States acting as the North Atlantic depositary. The entry of these three countries took place while overcoming the initial reticence of Russia and is a historical event in two different ways: first of all it is the first enlargement to take place in NATO since the accession of our country, Spain, seventeen years ago; and secondly, the three new countries were all members of the Warsaw Pact that was the equivalent of the Atlantic Alliance on the other side, a military alliance that counterbalanced the Atlantic Alliance.

(...)

...The statement issued at the end of the Madrid Summit in 1997 marked the path to follow for future enlargements by setting out in Paragraph 8, and we reaffirm this, that NATO remains open to new members pursuant to Art. 10 of the North Atlantic Treaty; the Alliance will continue to accept new members that are willing to promote the Treaty's principles and to contribute to the security of the Euro-Atlantic area.

This general principle of openness to new countries' joining in the future was later made explicit in the same declaration, establishing the commitment to revise the enlargement process in the 1999 Summit, i.e. the one held in Washington.

(...)

The issue of what stance to take at the summit with respect to enlargement was the object of a lengthy debate and some very different opinions.

(...)

Subsequent to a very long negotiation, a solution was reached that was made public in the final communiqué and that says: At the Madrid Summit we took stock of the progress made by several countries aspiring to join the Alliance in their preparation to take on the responsibilities and obligations that their possible accession would imply. Today we also recognise and celebrate the effort and progress still being made in Estonia, Latvia and Lithuania. We recognise and celebrate the positive developments taking place in Bulgaria since the time of the Madrid Summit; we also note and celebrate the recent positive events in Slovakia. We are grateful for the cooperation of the ex-Yugoslav Republic of Macedonia with NATO throughout the current crisis and we encourage that country to continue with its reform effort.

As can be observed, the preceding paragraph is fortunate in that it

specifically names the aspiring countries so that no one can feel discriminated against in comparison with the rest.

Having made this long reference to the aspiring countries, the communiqué contains another paragraph through which the Heads of State and Government commit to a re-examination of the enlargement process at their next summit meeting that will be held no later than the year 2000. We are therefore of the opinion that the idea of setting up a time framework within which the candidate countries can properly plan their efforts to prepare for accession has prospered.

The NATO Summit, however, did not limit itself to sending these two important political messages to the nine countries aspiring to join. It also passed the implementation of a set of measures aimed specifically at providing practical support for these countries in their preparation for eventual entry into NATO.

These measures take the form of the so-called action plan for accession that has the following characteristics. First of all, each candidate country will present NATO with an annual national preparation programme for possible future accession in five broad areas: political and economic issues, defence, budgets and security and legal issues.

Secondly, NATO will set up a technical team in charge of advising the candidate country on issues relative to each one of the areas that the aspiring member has included in its national programme.

Moreover, each year NATO will draft a report on the progress made by each aspiring country that will serve as a basis for discussion in the meeting that the North Atlantic Council will have in each candidate country.

And finally, participation in the action plan for accession does not guarantee future NATO entry given that the plan is conceived as a technical assistance mechanism, so to speak, while the decision to invite a country to enter the Alliance is essentially a political issue. Having said this, however, it cannot be denied that the straightest path that an aspiring country has today of entering or of increasing its chances of being invited to become a member of the Alliance is that of taking part in the action plan.

This is, then, a summary of the current state of events as regards NATO enlargement for which the aspiring countries have a new appointment in the year 2002 at the latest. In order that they take full advantage of the time left to properly prepare, they have the option of participating in the above-mentioned action plan and depending upon the progress made by these countries in this plan and the new international situation, it is up to the summit to decide whether new invitations are issued for accession into the Atlantic Alliance".

(*DSS-C*, VI Leg., n. 429, pp. 8–9).

B) New strategic concept

On 25 February 1999, in response to a parliamentary question, the Government informed Parliament of the position that it was going to defend at the

Washington Summit, to be held from 23–25 April that year, in relation to the definition of the new NATO strategic concept:

"There can be no doubt as to the need for a new concept of security in the Alliance capable of responding to the dramatic geo-strategic changes that have taken place. This new concept is developing based on the principle that security in Europe is undividable and therefore the events occurring on the periphery of NATO are important for the security of the allied nations. The ex-Yugoslavia is a case at hand.

The second principle is the effective non-existence of a military power that could threaten the Alliance, which leads one to believe that the possibility that NATO will become involved in territorial defence missions is remote.

The Alliance is therefore going to base its future strategy on actions (not operations) outside of its Art. 5 North Atlantic Treaty borders in defence of Allied security interests by projecting stability through dialogue, cooperation, association, crisis management and, if necessary, its participation in peace-keeping operations. This will be done without losing sight of the fact that collective defence continues to be its principal function.

Within the range of possibilities available in the design of this new strategy, Spain has already expressed its view with regard to the essential elements of the debate. Spain basically wants to pursue the renewal of the Alliance, a renewal that is clearly visible to the public eye while at the same time preserving its essential traditions.

The need for a United Nations Security Council mandate to carry out operations beyond the allied borders is one of the issues causing greatest debate.

It is Spain's view that Alliance action should be based on a United Nations mandate. However, experience has shown that there are exceptional cases such as the Kosovo crisis, for example, in which it may be necessary to take action based on international law. At any rate, these situations should be dealt with on an individual basis depending upon the specific circumstances surrounding them.

In short, Spain is in favour of a legal mandate from the United Nations but accepts the fact that in certain cases a degree of flexibility is needed so that the freedom for the Alliance to take action is not held hostage by the individual interests of third countries.

With respect to the new NATO missions, Spain favours giving them fundamental allied task status. However, Spain also advocates a functional and geographical limitation to such missions. Functional limitation when it comes to the nature of the missions, respecting the military structure of the Allied forces and their use in missions within their scope of functions. Although the Alliance can make a contribution just as any other international organisation, it should not become directly involved in issues such as the fight against terrorism or drug trafficking.

Geographically, Spain holds the view that the Alliance should not broaden

its area of action 'urbi et orbi'. Our view is to restrict that area to the Euro-Atlantic zone and its immediate periphery.

NATO's relation with the Mediterranean dialogue countries is an especially important factor for Spain. For that reason we would like the Strategic Concept to envision the progressive nature of this relationship as is called for in its founding document. Spain would like to see the current dialogue evolve towards true cooperation especially from a military point of view.

With respect to the development of the European Security and Defence Identity (ESDI) in NATO, we advocate continuing with and strengthening its development by making real commitments and adopting practical measures over the short term. It is our wish that NATO as an organisation allows for the development of the principal provisions of the recent decision taken at Amsterdam and Maastricht.

The proliferation of arms of mass destruction is of great concern to Spain and its allies. It is expected that the Washington Summit will adopt a specific initiative aimed at increasing efforts to fight against this sort of risk. The Strategic Concept will also reflect this concern through appropriate guidelines allowing the Alliance to provide itself with the proper means with which to prevent such proliferation.

Spain continues to defend the primary role that should be played by diplomacy and prevention as NATO's fundamental objective in the fight against proliferation and believes that an in-depth debate should take place prior to the adoption of operational decisions or the acquisition of sophisticated military equipment.

It goes without saying that a new strategic environment and new missions require allied forces whose conception and preparation are commensurate with their functions. The Strategic Concept will therefore serve as a guide for the allied military authorities in the development of the NATO defence strategy. Spain supports the view that envisions military forces whose principal characteristics are those of inter-operability, mobility, continued logistic capacity and survival".

(*BOCG-Congreso.D*, VI Leg., n. 385, pp. 183–184).

Subsequent to the Washington Summit, the Minister for Defence, Mr. Serra Rexach, in an appearance before the Congress Plenary on 12 May 1999, reported on the degree to which the Spanish viewpoint had been received by NATO's new strategic concept:

"First of all, the area of action. Spain defended the idea that we could not talk about a world-wide police force or a global guard as the role of the Alliance, i.e. non-globalisation. The final word on the strategic concept is that it will encompass the Euro-Atlantic area. Although the borders are somewhat ill-defined, it clearly does not refer to the entire world. Therefore, both with regard to the area of action and risks, the Spanish viewpoint was adopted.

Secondly, the mandate of the United Nations Security Council. Given the current situation and in light of the practical lessons to be taken from Kosovo, the Spanish position was in favour of maximum respect for Security Council resolutions and that NATO should always act in keeping with the principles of the United Nations Charter but should also reserve a minimum amount of flexibility to deal with, among other things, real cases such as Kosovo. This point was debated at length but it was our understanding that the Spanish viewpoint was sufficiently respected because in the end it was said that the Alliance will always remain committed, pursuant to the Washington Treaty as had to be the case, to the United Nations Charter.

Thirdly, the Mediterranean dialogue; a subject of special interest to Spain but one that could have easily been excluded. It was covered in points 12, 38 and 50. And finally, Spain wanted the concept of the European security and defence identity and the Atlantic Alliance's support to be included as more than a mere literary recourse ...".

(*DSC-P*, VI Leg., n. 238, pp. 12695–12696).

a) Mediterranean Dialogue

On 4 May 1999, the Secretary of State for Foreign Policy and the European Union reported to the Senate Foreign Affairs Commission on the development of the Mediterranean dialogue within the framework of NATO:

"NATO's Mediterranean dialogue dates back to the Brussels Summit of 1994 at which, as the result of a Spanish initiative, it was recognised that the stability and security of Europe was closely linked to stability and security in the Mediterranean. This forms part of Spain's traditional thesis that, after all is said and done, the Mediterranean is part of our most immediate geographical surroundings and one cannot speak of peace and stability on the European continent without taking this area into consideration.

As a result of this intervention, of this Spanish initiative, the Council took the decision in December of that same year to establish for the first time direct contacts with the Mediterranean non-Alliance member countries. The objectives pursued were and continue to be as follows: to promote political dialogue between both parts of the Mediterranean; to instil a climate of mutual trust; to dissipate the erroneous perceptions with respect to NATO's role in the Mediterranean – that are quite frequent –; to add to these countries' understanding of the activities carried out by the Alliance; to arrive at a heightened understanding of the security needs of this group of Mediterranean countries.

At the beginning dialogue was established with only five countries: Morocco, Tunisia, Mauritania, Egypt and Israel and in 1997 Jordan came on board as well. Naturally, our wish is now to extend this dialogue to other countries and this will be the case if those countries show some interest and

request this sort of contact with the understanding this would work in favour of increasing security in the region.

At the 1997 Madrid Summit a new and important step was taken when, once again acting on a Spanish initiative, a Mediterranean cooperation group was created. This was an important step forward down the path to institutionalising dialogue in that it introduced, among other novelties, the establishment of periodical bilateral political discussions of this group with the Ambassadors in Brussels of the dialogue countries.

With regard to its content, Mediterranean dialogue today envisions political dialogue as well as the participation of the Mediterranean partners in specific activities in areas such as science, information technology or civil emergency plans as well as a myriad of cooperation programmes and activities in the military field.

The so-called Contact Point Embassies, established by agreement in December 1998, form a very important part of Mediterranean dialogue acting as points of contact with the dialogue countries. They are similar in nature to the already existing Contact Point Embassies of Central And Eastern Europe although their characteristics had to be tailored to the specific conditions of the Mediterranean partners. During the biennial period 1999–2000, Spain was given charge of Contact Point Embassies in Morocco and Mauritania. Their purpose is to function as channels of communication and information between NATO and these countries. This means that each European NATO member country specialises in a specific country and sees to it that all of the information is received by that country and that all of the requests for information issued by that country with respect to NATO activities are answered.

The idea was to give special impetus to Mediterranean dialogue on the occasion of the special NATO summit that took place in Washington. In order to foster this idea an international seminar was held in Valencia in February entitled 'The Mediterranean Dialogue and the New NATO' with a view to drumming up support for all of these ideas. This seminar also helped with the preparation of the Washington Summit.

This seminar marked an important milestone in the development of the dialogue in that it brought all of the ambassadors from the allied countries and the dialogue countries alike together for the first time within Atlantic Alliance territory. Never before had such a high level meeting taken place with a multilateral-type format.

The Heads of State and Government attending the Washington Summit took note of and endorsed a Mediterranean cooperation group document, promoted by Spain along with other Mediterranean Member States, containing a number of proposals for the strengthening of the dialogue that was inspired at the debates engaged in at Valencia. First of all in the political realm, a proposal was made to increase the frequency of bilateral political discussions, the number of multilateral meetings, even at the Ambassador level, and the

participation of the dialogue countries in the drafting of the annual work programme thus having the opportunity to express their own desires and needs and even promote parliamentary contacts between the two groups.

On a practical level, the inclusion of new categories of activities was suggested in areas in which NATO can furnish added value in comparison with other similar initiatives for example, search and rescue activities, security at sea, medical evacuation, etc. as well as greater participation of NATO in the training of Mediterranean country high-ranking officials in the areas of security and defence including issues related to peace keeping operations and visits by NATO experts to dialogue countries to reinforce the activities of the Contact Point Embassies.

Finally, this document that was approved in Washington proposes the study of new forms of financing for specific activities or programmes. This aspect is especially relevant to the Spanish Government because, although the general rule of self-financing is upheld, in our view we should prevent situations in which financial difficulties in the dialogue countries prevent them from participating in programmed activities and could even result in the cancellation of the said activities and along with them the aim that was envisioned of encouraging the participation of these Mediterranean countries".

(*DSS-C*, VI Leg., n. 429, pp. 2–3).

b) Terrorism

In response to a parliamentary question on the Government's opinion on terrorism being considered a risk listed by NATO as possibly justifying military intervention, the Government stated the following:

"The reference made at the NATO Summit in Washington to terrorism was contained in paragraph 24 of the new strategic concept in a section focusing on the risks and challenges to the security of the Alliance.

In this paragraph mention is made of a wide range of risks that could affect the security interests of the Alliance and, among others, terrorism is named.

This mention does not in any way mean that NATO should intervene militarily in the fight against terrorism; the fact is that it is not included among the so-called 'fundamental tasks of the Alliance.' Terrorism, like other risks that can affect the security of the Alliance, is a cause for consultation among the allies within the framework of Art. 4 of the Washington Treaty that states that 'the parties will consult with one another when, in the opinion of any one of them, the territorial integrity, political independence or security of any of the Parties comes under threat".

(*BOCG-Congreso.D*, VI Leg., n. 475, p. 170).

c) Nuclear arms

On 22 July 1999 the Government, in response to a parliamentary question, explained the role of nuclear arms in the new NATO:

"The Washington Summit did not ratify the use of nuclear armaments but rather their role as a deterrent in light of the new risks to current European security.

The Atlantic Alliance is a defence organisation and this principle was confirmed at the Washington Summit. It also reiterated its position of not considering any nation an enemy or adversary. These premises clearly show NATO's firm will not to use its forces in an offensive way against anyone.

However, the Alliance has the fundamental mission of guaranteeing the security of its Member States against any type of aggression or threat.

The existence of nuclear arms capable of reaching the territory of Alliance members is a reality that should be borne in mind to preserve security and stability in the Euro-Atlantic area.

Moreover, the risk incurred by the proliferation of arms of mass destruction is another factor the importance and possible consequences of which are sufficient to warrant the Alliance's consideration of their study and prevention.

Taken as a whole, the above considerations comprise an environment with risks against which it is necessary to prepare.

It is preferable, however, not to have to reach the point at which the decision must be taken to act. And it is in relation to this point that the deterrence factor takes on greater importance; a factor that is characterised by the possibility of communicating to a possible aggressor the certainty that its action will not meet with success.

There is no better defence than effective deterrence to avoid the need to resort to the use of military force to guarantee that defence.

Allied nuclear arms form an essential part of the Alliance's deterrence strategy because they show that the use of force against the allies is not a rational option.

The Alliance has reduced its nuclear forces in Europe to levels unimaginable in a not too distant past. Only the minimum necessary arsenal is preserved to guarantee the deterrence effect as a fundamental element in achieving the security of all of the allies.

Furthermore, Spain maintains and continues to maintain its position on all nuclear issues respecting the decision taken by the Spanish people in the 1986 referendum".

(*BOCG-Congreso.D*, VI Leg., n. 469, pp. 187–188).

c) Military structure

On 17 February 1999 in response to a parliamentary question, the Government reported on Spain's participation in NATO's new military structure:

"The new Military Command Structure is one of the most important aspects in the design of the 'New NATO' that got under way at the Brussels Summit in '94 and received a definitive boost at the '97 Madrid Summit. Subsequent

to this last Summit, the Military Committee approved the MC 324 document which establishes the command levels and the number and location of the new allied headquarters and the Ministers for Defence agreed that the said Committee will present an Implementation Plan for the New Structure at the Ministerial meeting in December 1998.

At the 17 December meeting the Ministers for Defence first of all approved the MC 324 document that determines the New Military Command Structure and then proceeded to approve its detailed Implementation Plan...

The said Plan contains all of the elements that allow for the guarantee of the irreversibility of the new structure and the simultaneous activation of all of the Headquarters. Upon approval of the plan the implementation phase of the new structure gets under way; i.e. a transition period that will end when the last of the Headquarters has become operational. The salient and historic aspect of all of this is the full integration of Spain in this implementation phase.

For Spain, full integration means, first of all, that as of 1 January 1999 it will participate in a normalised fashion in the following areas:

1. Military Budget; participating in all of the activities that this encompasses and all of the annual periods regardless of whether it participates in the said activities or not.
2. Security Investment Programme (infrastructure), with the salient aspect that through this programme financing will be provided for the new Headquarters including the civil works of the new allied headquarters in Retamares, Madrid and its information and telecommunications systems.
3. Planning of Forces with special mention of the importance of acquiring firm commitments for the proper outfitting of the forces in accordance with the objectives of the allied forces and corresponding budgetary assessment.

This also means the normalisation of Spain's participation in the command structure by gradually taking on duties and responsibilities commensurate with our strategic importance and our contribution to the Alliance...

Full participation in the Command Structure means that approximately 270 officials and deputy officials will be stationed at allied Headquarters outside of Spain and a further 200 will be stationed at the allied headquarters in Retamares, Madrid. Spain will hold 13 out of the 135 General Officer posts which comes to an acceptable 10 percent if one considers that posts have been reserved for the three new allies, Hungary, Poland and the Czech Republic, raising the number of allied nations opting for those posts to 17.

Of the 13 posts assigned to Spain, seven of which are permanent and six on a rotating basis with other allies, four are located in the Strategic Command Atlantic while the other nine are in the Strategic Command Europe. Of special relevance are Spain's permanent posts of Commander of the Sub-regional Allied Command in Retamares, Madrid; Second Allied Commander Oeiras, Lisbon; Second Supreme Regional Allied Commander of Naples, Italy; Supreme Commander of the Sub-regional Allied Post in Verona, Italy; and

Second Commander of the Naval Component Post of the Southern Regional Command, Naples, Italy.

The full participation of Spain as of 1 January marked the beginning of the cancellation process of the current Coordination Agreements between the Chief of Defence Staff and the two Supreme Allied Commands in Europe and the Atlantic and their framework document, the MC 313. These agreements will be substituted by other provisional command and control documents and will be in force during the period of transition leading to the new structure.

The Atlantic Council's cancellation at its Defence Planning Committee (DPC) of the MC 313 document and of the Coordination Agreements will be done by means of the proper allied document to which the corresponding letter of cancellation signed by the two Strategic Commands and the Chief of Defence (CHOD) will be attached. Spain's reservations on the Allied Gibraltar Command (GIBMED) will be safeguarded until it is definitively dissolved in the spring".

(*BOCG-Congreso.D*, VI Leg., n. 380, pp. 163–164).

On 6 July 1999, the Government was questioned about the breakdown of relations between the Russian Federation and NATO and provided the following explanation:

"The Government, just as the rest of the NATO allies, feels that rather than a breakdown it is a freezing of relations due to the crisis in Kosovo.

The Government deeply regrets this decision taken by President Yeltsin and, as I had the opportunity to state within the scope of NATO, I have complete trust that this is a temporary situation and that the Russian Government will reconsider its position.

In the final communiqué of the NATO Washington Summit, there are two paragraphs dealing with NATO-Russian relations. They emphasize the importance that these relations have for the stability and security of the Euro-Atlantic area; special mention is made of the progress made between the two parties in dialogue and cooperation since the time of the signing of the NATO-Russia Founding Act in May of 1997 and a call is made for the reestablishment of these relations because it is precisely in times of crisis that dialogue and consultation are most essential.

Spain, which participated along with the rest of the allies in drafting this document, fully supports this sentiment and will not miss any opportunity to express to the Russian authorities the need to re-establish NATO-Russian relations as soon as possible".

(*BOCG-Congreso.D*, VI Leg., n. 458, pp. 360–361).

3. Western Enropean Union

In response to a parliamentary question posed on 5 October 2000, the Government defined its position on the WEU:

"Today the integration of the WEU into the European Union is already decided. At the Cologne European Council in June of 1999 the decision was taken to integrate the WEU functions necessary in order for the EU to fulfil its new responsibilities in the field of humanitarian missions, peace keeping and crisis management. This integration was foreseen in the Union Treaty, amended two years previously in Amsterdam.

The Spanish Government took part in these decisions and therefore is of the view that this integration will contribute to making it possible for the EU to play its full role in the international arena furnishing some of the resources and capacities that it needs to assume its responsibility in the area of Common European Security and Defence Policy (CESDP).

Once the European Union establishes its permanent CESDP operational structures, the WEU will cease to carry out its crisis management functions. On the other hand, this organisation will uphold its obligations to its members with regard to Art. 5 of the Brussels Treaty; i.e. those referring to mutual assistance.

The naming of the High Representative for the Common Foreign and Security Policy of the European Union as secretary-general of the WEU had the backing of Spain, which felt certain that if the same person were in charge of the two posts, the transfer process of the WEU to the EU would go more smoothly.

The WEU observer status was created to include, in the political consultation process of this organisation, those European Union members that had no intention of submitting to a mutual assistance clause including the WEU as full members.

It is thus that Denmark is one of the observer countries and therefore forms part of the WEU pursuant to one of the accession statutes. Looking towards the future, Denmark will participate as a full member in the EU's new security dimension.

The associated member status was given to European NATO members with a view to allowing them to participate in WEU activities. A closer relationship was thus established between the two principal organisations charged with European security and defence.

Not only are Turkey and Norway associated members of the WEU but Iceland, Hungary, the Czech Republic and Poland are as well. Their status will not carry over into the EU and therefore will not be a disadvantage in the development of a common defence policy. At the recent Feira European Council a decision was taken regarding the way in which the WEU's participation would be implemented and a series of consultation mechanisms were designed allowing for its collaboration in the European Union's military crisis management.

(...)".

(*BOCG-Congreso.D*, VI Leg., n. 70, p. 281).

XIII. EUROPEAN UNION

1. Enlargement

In his 26 October 2000 appearance before the Joint Committee for the European Union, the Secretary of State for European Affairs, Mr. de Miguel y Egea, reported on the Spanish position on enlargement of the European Union:

> "From the very outset Spain has been in favour of opening the door of our European Union model to Eastern Europe... We have always been pioneers in this sense... From the very beginning our country has been in the vanguard of those that have taken a leadership role in this necessary process of enlargement as a fundamental objective of the Union and this is due to a number of reasons. First of all because of a basic feeling of solidarity. Spain received a great deal of help when we were permitted to negotiate and subsequently enter into the Union and this has enabled Spain to make an important qualitative leap during the course of the last several years and it would certainly reflect poorly on us if we were to refuse this same opportunity to other countries that, for historical reasons, have found themselves cruelly cut off from the main flow of Western Europe. Secondly, because Spain, due to past historical reasons and present political ones, has been isolated and separated from this whole group of Central and Eastern European countries. Remember that Spain did not have diplomatic relations with any of those countries until the year 1978. Therefore, the enlargement and accession negotiations provide a unique opportunity to establish a wide array of human, social, cultural, economic, commercial and other ties with these countries and their citizens in a world that, after all, is that of our European family. For this reason, both the former Government as well as this one have always stressed that enlargement is basically an opportunity and not a threat. It goes without saying that enlargement means facing challenges ...
>
> Spain has always taken the lead when it comes to supporting enlargement and this has been the case since the very first day of debate. In the months prior to the first decision taken in Luxembourg in 1987, we took a stance that was diametrically opposed to that taken by the big countries and the Commission, which wanted to separate the candidate countries into two groups: one that was chosen quite arbitrarily to be the first enlargement group and then the rest. We always said that all of the countries should be given the same opportunity, that negotiations needed to be initiated with all of them and that each one, based on their own merits, would then situate itself in the next step of the negotiation process: acceptance of the Community acquis and chapter-by-chapter negotiation. This thesis that became known as the Regatta model and that we advocated back in 1997, did not receive the backing of the European Council, which decided to form a lead group with Poland, the Czech Republic, Hungary, Slovenia, Estonia and Cyprus. It was not long

before the Union realised that it had made a big mistake. First of all because many of the dividing lines drawn were artificial. One could pose the question of why Estonia and not Latvia? Why the Czech Republic and not Slovakia? Then because some of the first-group countries started to show that perhaps they did not belong there and some that were outside of that privileged group began to make noteworthy progress. The procedure therefore was reviewed once again and we had the sweet satisfaction of witnessing the adoption of the Regatta model at the December 1999 Helsinki European Council. This is the model that we had advocated from the very beginning and it allowed all of the countries, with the exception of Turkey that has yet to be examined on the Copenhagen criteria, to initiate multiple-speed negotiations based on merit.

With respect to the enlargement negotiations, the chapters closed are not that all important; the serious ones are yet to be negotiated.

With regard to the industrial chapter, Spain is going to insist specifically on rigorous respect for the rules of competition. Spain is a country that has suffered profound industrial restructuring at a very high social cost starting back in 1986... When it comes to industrial subjects, therefore there are only two options: either establish a transition period during which industrial products from candidate countries do not enter into the Union market or, if they do enter, from the very first day they would have to enter in accordance with absolutely all of the rules of competition, the same that are applied to Member States.

With regard to agriculture, we feel that it is possible, and is in fact an obligation, to fully apply the CAP to the candidate countries. There is a myth circulating that asserts that this is impossible. There is a lot of talk about the cost of applying the CAP but the truth is, and we have made a number of requests, the European Commission has never undertaken a study on the possible cost of applying the CAP to these countries. It would seem to be politically and socially intolerable, however, that in the case of many of these countries in which large proportions of their population work in the agricultural sector (Poland is a good example with 40 percent), to say that the CAP will not be applied to them when at this very moment it is being applied to countries like Denmark, with a per capita income of 36,000 dollars and with a positive net balance with the Community thanks to the EAGGF Guarantee transfers. I feel that politically this is unacceptable.

Moreover, there is a gradual entry process for these countries given that the Common Agricultural Policy, although applicable as of day one, takes several years to get up to cruising speed as was the case with Spain until... the same will hold true for the candidate countries. At the same time there is a move to reduce Common Agricultural Policy spending which comes down to a reduction in the subsidies; like the proposal that we made at Berlin of progressively decreasing the application of EAGGF funds... In short, the aim should be to provide CAP subsidies to support poor farmers and not to make the Union's rich farmers richer. Naturally this is almost utopian to suggest

given that the agriculture of the large paying countries is very rich, but I feel that the issue should be brought up in order to make the CAP accessible to the candidate countries.

It should also be considered that there is clear margin to do this. We are using 1.09 percent of the Union's own resources and we have up to 1.27 in a European Union that is currently growing at a rate of three percent and that is capable of generating a large amount of resources over the next four or five years with a margin of 1.27 that, in our opinion, is enough not only to pay for the application of the common policy but also the economic and social cohesion policy, which we also feel should be applied to the candidate countries; i.e. the regional policy, European Social Fund, etc. This is also with the understanding that there would be a gradual acceleration up to cruising speed regarding the economic and social cohesion of these countries and a gradual departure of other countries, like ours for example.

(...)

On the subject of the hotly debated free movement of persons, we have also taken a stance that does not coincide with that of many of the big countries. We are of the view, and this is based on personal experience, that when countries have a clear perspective and horizons of economic and social development, migratory flows stop automatically... We feel that the migratory flows from the candidate countries are going to stop radically, but it is obvious that two problems will remain and one of them is the very sensitive issue of work in the border regions. A case in point is the fear of the Austrians, who share borders with four countries and have the city of Bratislava 45 minutes from Vienna. This means that a person living in Bratislava could travel to Vienna every day to work, demanding a lower salary than the Austrians and transforming the entire Austrian labour market. This is what has produced in Austria the reactions that we are all familiar with and the rejection on the part of the working-class sector of society to enlargement because they feel that it could cause an enormous flow of labour in the border areas... an *ad hoc* solution will have to be found here, just as a solution will also have to be found to the border control of beyond countries.

(...)

A very hot topic, which is that of the date. We have always been against setting a date for entry into the Union. We feel that it is a two-edged sword for the candidate countries and we have always held this opinion. At the time of negotiation Spain never wanted to set a date because we felt that once a date were set we would be made to accept conditions that we were unwilling to accept. We were more interested in how than in when but it is clear that the majority of the candidate countries are more interested in when than how. Spain, therefore, is going to maintain its position that a date is a mistake; that it is something that works against the interests of the candidate countries and the importance of the date lies in what has already been done: as of the year

2003, the Union will be prepared to accept new Members but no other dates should be set.

(...)".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 15, pp. 256–259).

2. Intergovernmental Conference 2000

a) Weighting of votes in the EU Council

The Minister for Foreign Affairs, Mr. Piqué i Camps, in his 3 October 2000 appearance before the Joint Committee for the European Union to report on the Biarritz Informal Council regarding the general lines of his department policy, explained the Spanish position regarding the re-weighting of votes in the Council:

"The Spanish position's point of departure is well known: a new weighting of votes is essential if geographical and population balances that have deteriorated and will continue to do so with the upcoming enlargement are to be restored; a far reaching reform is indeed needed. The renouncement of the second commissioner also implies, pursuant to the Amsterdam protocol on institutions, the need to properly compensate the large States in terms of Council votes. In the case of Spain, this renouncement has a peculiar effect as was recognised at that time in the so-called Ioannina Compromise and through the Declaration N. 50 relative to the said protocol in the Amsterdam Treaty and a solution should thus be sought for the special case of Spain at Nice. Our final aim is to assure sufficient minimum blocking capability. In a Union in which an ever increasing number of decisions that directly affect citizens is taken by qualified majority, a system that permits such decision to be taken without the backing by a large percentage of the European population, a system that can turn a blind eye to significant sectors of this population is unconceivable. Although we do not disregard any system that could satisfy these objectives, we do believe, together with the majority of the Member States, that the simple weighting of votes is more appropriate than the double majority system because it is more transparent and less complicated to put into practice. For Spain, the restoration of balance in the Council is an objective that absolutely must be addressed and if a satisfactory solution is not found, an agreement in Nice will not be possible"

(*DSCG-Comisiones Mixtas*, VII Leg., n. 11, p. 143).

On 20 December 2000, subsequent to the Nice European Council, the President of the Government, Mr. Aznar López, in his appearance before a Congress Plenary Session to report on that Council, explained the new reweighting of votes in the Council:

"Council votes have been redistributed to facilitate the decision-making process when the European Union is comprised of twenty-seven members.

(...)

The new weighting of votes in the Council was the most difficult and tedious part of the negotiation and that which tainted the global package of the Intergovernmental Conference.

The current voting system was the end result of shuffling the scheme called for in the 1957 Treaties of Rome and the different regulations decided on the occasion of the accessions of 1973, 1981, 1986 and 1994. All of these enlargements have substituted or amended the original balances. Furthermore, in a not too distant future, we are going to be facing an enlargement that will transform the 15-Member Union as we know it today into a Union of 27 Members. It therefore became necessary to come to grips with a substantial reform of Council voting procedures with a view to giving this institution greater legitimacy, allowing it to take stock of new balances and new realities.

In the Nice Treaty one can distinguish five large groups of countries in accordance with the new scale of votes in the Council. The first group is formed by Germany, United Kingdom, France, Italy, Spain and Poland, with 29–27 votes. The second is comprised of Romania, Holland, Greece, the Czech Republic, Belgium, Hungary and Portugal with 14–13 and 12 votes. The third group includes Sweden, Bulgaria and Austria with ten votes. In the fourth group we would have Slovakia, Denmark, Finland, Ireland and Lithuania with 7 votes. And finally, the fifth group would be Latvia, Slovenia, Estonia, Cyprus, Luxembourg and Malta with four and three votes.

The formation of these groups, of course, is based on population size but that is not the only criteria. The large demographic differences within and between groups show that there is another series of political criteria that was taken into consideration.

(...)

If this distribution is compared with what there was up to now, it can be seen that in terms of votes, Spain is now a big country. In our accession treaty this was not clear in the Council but it was in the Commission. In the Community of twelve, the number of votes separating Spain from the big countries was two, that is 20 percent and the difference with the next group was three, or 27.5 percent. With the Treaty of Nice, the difference between Spain and the four biggest will be two, or seven percent and the difference with the average number of votes in the following group, which is 13, will be 48 percent.

One of the main objectives of this exercise was that of re-establishing the balance between the large and small countries. The purpose of this objective was to avoid situations in which a small percentage of the population or a small number of States can leave out the majority of the States or the majority of the population. We believe that the formula that we have found; i.e. in a Europe of 27 Members, three big countries and one small one have sufficient legitimacy to oppose a decision that is not sufficiently representative, gives us what we have been looking for.

Nice should be interpreted as the search for a formula to take decisions in the Council that allow us to continue working in a more dynamic and legitimate fashion in the spirit of the Union; i.e. in attaining political union.

Spain has achieved the fundamental objectives that it set for itself which were, first of all, to design an effective and representative decision-making system and, secondly, to restore and improve upon the balances that existed at the time when we entered the European Community. The new formula agreed upon will enter into force when the next Commission is formed, as of 1 January 2005".

(*DSC-P*, VII Leg., n. 54, p. 2486).

b) Qualified majority

During that same appearance the President of the Government emphasised the importance of using the qualified majority as the main voting system in the Council:

"The use of the qualified majority as the Council's decision-making mechanism has been further reinforced.

The objective sought in instituting the qualified majority as the Council's principal voting system was to provide the Union with greater flexibility and legitimacy. While currently more than 60 percent of Union decisions are taken by qualified majority, we believe that in light of what was passed that that figure will be closer to 80 percent. We must, however, continue working to reduce the approximately 25 provisions that remain in the treaties and still require unanimity.

Thirty-five provisions that to date have been governed by the unanimity principle will now be voted by qualified majority. Some of them are of great importance to Spain such as those dealing with citizenship or the free movement of persons which will allow progress to be made in the Tampere Agenda for the development of an Area of Freedom, Security and Justice. On this topic I would like to point out that the measures on asylum and immigration will be adopted by qualified majority once the common regulations and the principles governing these issues have been defined and, in the case of external borders, as soon as an agreement is reached on their scope of application".

(*DSC-P*, VII Leg., n. 52, p. 2487).

c) Composition of the Commission

With respect to the Commission, the President of the Government, Mr. Aznar López, in his appearance before the Congress Plenary Session to report on the Nice European Council, explained how it would be reformed:

"From our point of view, the Commission is the driving force behind European integration. All of the delegations have been very aware of the

vitally important work it is doing for the Union in deciding on the operation and the composition of the council of Commissioners. We have been able to maintain the comradery of the Commission. Inequality among its members was not permitted to develop further and its monopoly over initiating legislation was maintained.

The agreement that we have reached on a differed limitation of the Commission is a reasonable one although we would have preferred a Commission with fewer Commissioners. As of the year 2005, the Commission will be comprised of one national from each Member State. Once the Union has 27 Members, a decision will be taken to establish the definitive number of Commission members that, at any rate, should be lower than 27 following a balanced rotation scheme. In this way we can guard against unlimited growth on the part of the Commission and when the time comes to take the decision we will have enough experience to know what its ideal composition should be.

Within the context of this reform it is also very important to strengthen the powers of the President who will be elected by qualified majority and will have full authority to decide the internal organisation of the Commission including the freedom to reorganise the distribution of posts during the course of his term in office and he may also name the vice-Presidents that he deems necessary. The members of the Commission will be elected by the Council by a qualified majority and by common accord with the designated President".

(*DSC-P*, n. 52, pp. 2486–2487).

d) Reinforced Cooperation

On 20 December 2000, the President of the Government, Mr. Aznar López, in his appearance before a Congress Plenary Session also reported on the final agreement reached with regard to the subject of reinforced cooperation:

"In the final agreement on reinforced cooperation, i.e. the mechanism provided for in the Treaty that allows one group of States to advance more rapidly than others in a determined field, a satisfactory conclusion was reached both from a general perspective as well as from the perspective of the ideas contributed by Spain.

First of all, the proceeding by which reinforced cooperation is established under the first pillar has been provided with greater flexibility by eliminating the right to veto and strengthening guarantees to assure respect of the Community acquis so that the said cooperation cannot impair the internal market. Secondly, the possibility is offered to extend its application to a significant part of the second pillar. Moreover, from now on reinforced cooperation will remain open which means that States that are not participating in them will have the possibility to do so at any time.

I would like to call your attention to the importance of the fact that in the future reinforced cooperation may be constituted for the application of a joint action or a common position under the second pillar. Although small, this is

an important step towards the future definition of a common external and defence policy. From this time forward, all of the Member States shall be able to take part in as many initiatives regarding external policy as are developed within the scope of the European Union.

(...)

A few months ago a great debate was under way all through Europe on the issue of reinforced cooperation, on its advantages and disadvantages, and in the end a substantially positive agreement was reached. Reinforced cooperations run the risk of calling into question the common base of the European Union, i.e. the common base of the first pillar of the European Union related to the single market and related issues. This risk has been completely dispelled thanks to the guarantees set out in the Treaty of Nice. Reinforced cooperations also present the risk of constructing an à la carte Europe and coming up with a sort of jigsaw puzzle that would not make much sense. But in the decisions taken at Nice from the point of view of openness and the integration of those countries that at the beginning did not form part of a reinforced cooperation, I do not believe that this danger exists any longer and reinforced cooperations thus become an important factor fostering integration with respect to the meaning of the fundamental content contained in third pillar reinforced cooperations, i.e. freedom, security and justice. For that reason, the agreement between Spain and Italy to supersede the extradition proceeding and set up a common judicial area is being studied by all of the European governments to determine whether this can be labelled as one of the most important advances on this pillar. Can this give rise to a reinforced cooperation? It can give rise to a reinforced cooperation and it would be a good thing if it could materialise in the Europe that is closest to the citizens which is the Europe of freedoms, the Europe of security, the Europe of free movement, the Europe of justice. In the midst of all of this I have to admit that I am proud to state that the proposal for reinforced cooperation was made by the Spanish Government.

Under the second pillar, where progress is being made (the definition of common position and common action policies can be decided and established within a framework of reinforced cooperation), we would have liked to have seen progress within the framework of security policy as well. We ran into different sorts of problems there. There are neutral countries, there are countries that are in NATO but not in the European Union or in the European Union and not in NATO. In other words, there are different positions that need to be fitted together. And the Government would have liked to have made progress in this area and for that reason we tabled the proposal for reinforced cooperation with regard to the second pillar. I hope that we can continue to make progress in this field and logically I also hope that we continue to make progress in the area of security.

(...)".

(*DSC-P*, VII Leg., n. 52, pp. 2487, 2510–2511).

3. Charter of Fundamental Rights

In response to an initiative made by Germany and under the auspices of the European Council, a convention was formed comprised of personal representatives of the Heads of State and Government, representatives from the national parliaments and representatives from the European parliament to provide the European Union with a Charter of Fundamental Rights.

In his 22 June 2000 appearance before a Congress Plenary Session to report on the European Council held in Porto (Portugal), the President of the Government, Mr. Aznar López, highlighted Spain's support for the drafting of the said Charter:

> "Spain fully supports the drafting of this Charter. It is a very important initiative allowing citizens to feel more integrated in the European project and it gives greater visibility to the values that integration is based upon.
>
> In our opinion, the text of the Charter should be brief and should formulate fundamental rights with sufficient clarity and visibility. At the same time it should be balanced in its definition of each right and in the limitations of its jurisdiction so as not to give rise to legal insecurity. The Charter should remain within the bounds of Union jurisdiction and should be respectful of national constitutions but, at the same time, should include the whole range of civil and political rights, including economic and social rights. Spain favours giving the necessary impetus to the Convention's work in order that it may be possible to adopt the text of the Charter at Nice without prejudice to the political or legal status that it may be given. Spain also supports, given the transcendent nature of this exercise, that it be crowned, to the degree that this is possible, with the consensus of all of the Member States.
>
> (...)".
>
> (*DSC-P*, VII Leg., n. 17, p. 672).

On 26 October 2000, the Secretary of State for European Affairs, Mr. de Miguel y Egea, once again referred to this ambitious project before the Joint Committee for the European Union:

> "I sincerely believe that the intervention of the Spanish delegation has had a decisive influence on steering this exercise towards realistic and possible terrain. The Spanish delegation, i.e. the Spanish representatives at this convention, have always worked with the famous Kantian supposition of 'as if', as if this were going to be law, not simply a stated declaration but rather as if it were meant to be part of a treaty to be ratified by Parliament. The end result, in our opinion, has been optimum. A compendium of the fundamental rights of European citizens has been made that is frankly all encompassing, does not contradict national constitutions and rounds out the Rome Convention on Human Rights. There were those who held that it was enough to ratify the Rome Convention of 1950 but the fact is that this had a very important disadvantage that I feel is important to point out here and that

is it would have been synonymous with recognising a jurisdiction superior to that of the Luxembourg Court.

(...)".

(*DSCG-Comisiones Mixtas*, VII Leg., n. 15, p. 256).

Several months later on 20 December 2000, the President of the Government, Mr. Aznar López, in an appearance before a Congress Plenary Session to report on the Nice European Council, once again addressed the subject of the Charter of Fundamental Rights:

"The Council, the Parliament and the Commission have solemnly and jointly proclaimed the Charter of Fundamental Rights that encompasses the values and principles that are common to the European Union and takes responsibility for preserving and fostering them effectively situating the individual person in the centre of Union action. The text of the Charter is both ambitious and realistic given that it is the result of a praiseworthy effort of negotiation between governments, national parliaments and the European Parliament. Spain, which played a very active role in drafting the Charter, would like to see it form part of the new European Union Treaty and be given binding legal power.

(...)

Spain has clearly stated its opinion that the Charter of Fundamental Rights should be integrated into the Treaty now, at Nice. This has not happened because there are States that either do not agree or that want to discuss this issue in 2004. This is all well and good but Spain would like to see this Charter with a binding nature incorporated into the treaties now. Obviously in 2004 when this subject is once again addressed, Spain will defend its incorporation into the treaties with the resulting binding legal force".

(*DSC-P*, VII Leg., n. 52, pp. 2488–2508).

4. Agenda 2000

The President of the Government, Mr. Aznar López, in a 30 March 1999 appearance before a Congress Plenary Session to report on the European Council held in Berlin on 24 and 25 March, spoke of the global agreement reached on the Agenda 2000:

"With the approval of the Agenda 2000, a financial framework has been established for the upcoming seven-year period 2000–2006 and the agricultural and cohesion policies have been reformed. The final results obtained will allow for the keeping and improvement of the current model of European Construction and to successfully meet the challenge of enlargement".

a) Own resources

With regard to resources the President made the following observations:

"The Spanish position is based on the joint defence of the European project and legitimate national interests. Therefore, at the Berlin Council, we defended the principles that to date have inspired the model of European construction, the existence of a system of fair and balanced income to replace the regressive elements of the own resources system now in use and to maintain policies of solidarity.

The results obtained are as follows. The European Union will have a total volume of resources for the entire period and for all of the Community policies of 686,000 million euros, which works out to be 114.1 trillion pesetas at their 1999 value. Out of this amount approximately 22,000 million euros, i.e. 3.7 trillion pesetas, will be earmarked for pre-accession expenditures and 33.000 million euros, 5,5 trillion pesetas, earmarked for accession and financed by the current fifteen Member States.

Of the total amount of resources, close to 298,000 million euros will be for structural spending of the Fifteen and 14,000 million euros earmarked for rural development will be included in the new fiscal period as agricultural spending rather than structural spending. If we look at the figures in real terms, the above numbers would come out to 284,000 million euros for agricultural policy and 227,000 million for structural policy. The figures corresponding to the current fiscal period are 284,000 million euros and 215,000 million euros, 35.88 trillion pesetas, which means that in the interim between the two periods agricultural spending has stabilised and there will be an increase in real terms of 5.6 percent in structural spending.

The enlargement of Community policies during the new fiscal period will provide Spain with a positive net balance of approximately 49,700 million euros for the period 2000 to 2006; 8.3 trillion pesetas or 1.2 trillion per year. We will, however, earmark 1,800 million euros of this amount to finance our part of the pre-accession and accession costs if this finally comes about in 2002 as expected.

(...)

The Council agreement will make the financing framework to be applied as of the year 2000 more fair. With regard to resources, the following has been decided: to maintain the limit of own resources at the current level of 1.27 percent of the European Union's gross national product subject, of course, to revision of the financial perspectives at the time of enlargement.

In order to take into consideration the contributing capacity of each Member State and to correct the regressive aspects of the current system in the case of the less prosperous Member States, there will be a reduction in the maximum rate applicable to VAT resources from 0.75 percent in the year 2002 down to 0.50 percent in 2004. The traditional own resources will be maintained and there will be an increase of up to 25 percent in the collection rates of Member States as of the year 2001.

(...)

And finally, prior to 1 January 2006, the Commission should carry out a

general review of the own resources system that includes the effects of enlargement. This review should include the creation of new autonomous own resources.

I believe that a balanced agreement has been reached regarding the Union's own resources system. On the one hand, the substitution of VAT resources by gross product resources will eliminate the system's regressive elements as requested by Spain. Furthermore, the introduction of maximum levels of States' contributions to the budget, which could have had very negative effects on the future development of the Union, was avoided".

As regards agricultural spending:

"As regards agricultural spending, I should begin by saying that the basic agricultural guideline will not be changed. Prior to the first wave of Union enlargement, a review will be done based on a report that the Commission will present to the Council with a view to implementing the adjustments deemed necessary.

The European Council was very pleased with the agreement reached by the Ministers of Agriculture in their March session on the reform of the common agricultural policy. The content of this reform will guarantee that agriculture will be a versatile, sustainable and competitive sector extending throughout the whole of the European territory and that it will be capable of conserving the rural landscape and preserving nature.

As far as Spain is concerned, the CAP reform has remedied some of the historic injustices suffered by the grain, beef and dairy product sectors.

Turning to grain, discriminations have been corrected that affected their historic yields on which aid calculations are based, set until now at 2.6 tonnes per hectare, the lowest in the Community, raising this level to 2.9 tonnes per hectare meaning a 10 percent gain. In the beef sector, the number of animals entering into the calculation was raised by 20 percent to put it on a par with the rest of Europe.

And finally, the dairy product quota set at 5,567 million tonnes prior to Berlin now receives a supplement of 550,000 tonnes effectively doing away with the artificial limit set at the initial 1985 negotiation.

The new wine regulation allows us to increase our production with aid of 21,500 million pesetas annually to improve a situation that called for a decrease in production just three years ago.

Turning to agricultural spending, Spain will receive 35,000 million euros, 5.8 trillion pesetas, for the whole of the period which comes out to 1,800 million euros or 333,000 million pesetas more than is being received in the current seven-year period. However, given that the current reforms will favourably restructure total agricultural spending in the case of Spain, the final total expenditure could reach more than 39,000 million euros or 6.5 trillion pesetas. This figure represents an increase of 18.2 percent when compared to the 1983–1999 period".

And finally, with respect to Structural and Cohesion funds:

"With respect to Structural and Cohesion funds, the Council approved a total of 213,000 million euros for the new financial perspectives period. This volume of expenditure will consolidate the global effort made by the Union in this field. The Council is of the opinion that the proper level of credits that should be consigned in the financial perspectives for structural funds, including transitory support, the Community initiatives and the innovative actions should be at the 195,000 million euro level.

The greatest concentration of funds in the neediest areas will be achieved by means of a substantial reduction in the number of objectives to three. Objective 1 will cover development promotion and structural adjustment of the slowest development regions. Objective 1 regions will be those whose gross per capita product is below 75 percent of the Community average and the ultra-peripheral regions. Objective 2 will support the economic and social reconversion of the areas facing structural problems. Included in this group are those undergoing economic and social change in industrial and social sectors, declining rural areas, urban areas facing difficulties and those areas dependent upon fishing that is in a crisis situation. Actions implemented in the fisheries sector that are implemented outside of the objective 1 regions will receive a contribution from the Financial Instrument for Fisheries Guidance (FIFG) for a total of 1,100 million euros throughout the entire period. Transitory support will be lent to those regions and areas that do not meet the pertinent criteria to receive aid from objectives 1 and 2. The transitory period will end in the year 2005. A series of concrete situations have been taken into consideration for the period 2000–2006 that have been instrumental in reaching an Agenda 2000 closing agreement. The amount assigned to Spain stemming from these specific situations was 200 million euros. The earmarking of resources to the Member States for Objectives 1 and 2 will be done in accordance with transparent procedures applying the following criteria and objectives: beneficiary population, regional prosperity, national prosperity and the seriousness of the structural problems, especially the unemployment level.

For objective three, the breakdown by Member States will be done mostly in function with the beneficiary population, the employment situation, social marginalisation, educational and training levels and the participation of women in the labour market. In each Member State the total of annual income from structural interventions, and this includes Cohesion Funds, should not surpass the 4 percent gross national product level.

The structural fund co-financing rate is subject to the following limits: between 50 and 75 percent for objective 1, rates that could rise as high as 80 percent in the case of cohesion countries, and between 25 and 50 percent in the objective 2 and 3 regions.

The European Council recognised that the fundamental objectives of the Cohesion Fund remain valid today. The Council also accepted that Member

States with per capita gross product below 90 percent of the Union average could gain access to Cohesion Funds through a programme the purpose of which is to meet economic convergence criteria even though the State in question is part of the single currency. The global level of available resources for the Cohesion Fund will be 18,000 million euros.

Aid set aside for Member States participating in the euro will be adapted so as to account for the increase in national prosperity achieved during the course of the prior period. In tune with this principle, Spain will be a receiver of funds during the new period at a rate of 62 percent instead of an annual 55 percent. In the year 2003 stock will be taken of the appropriateness of receiving cohesion fund support in accordance with the 90 percent Community gross product criteria.

(...)

Structural spending in Spain will avail itself of resources for the new seven-year period for an overall total of over 57,000 million euros (9.5 trillion pesetas). This amount would rise to nearly 59,000 million euros if rural development that is provided for in the new period under the heading of agricultural spending were considered. This comes out to a 5.6 percent increase in structural spending with respect to the 54,000 million euros obtained in the 1993–1999 period.

Spain has defended the continuance of the Cohesion Fund in its current configuration and has achieved a situation in which the combination of the funds received and the increase in Spain's share provides us practically with the same level of aid that we are receiving now. Thus, the returns from the Cohesion Funds will be nearly 11,200 million euros compared to 10,300 earmarked for the 1993–1999 period which means an increase of 8.5 percent.

And finally, two last considerations related to structural funds. The first is that modifications of the rules governing Community regional policy were prevented. If these modifications had been implemented, however, they would have led to notable losses in our capacity to absorb funds using our current internal management model. Thus the elimination of the national prosperity criteria in the distribution of funds among countries would have led to a 3,000 meuro decrease in the case of Spain for the duration of the period. If the condition that credit spending has to be used for structural actions had been abandoned, this would have meant a very significant loss for Spain during the course of the period although this figure is impossible to quantify exactly at this moment. The second is that a situation in which several communities could have been removed from objective one was also avoided. This would have led to losses amounting to 4,600 million euros for the whole period.

In a context of frequent requests for budget cuts and regressive correction mechanisms, Spain has contributed to the safeguarding of the principle of solidarity within the Union which is expressed through the structural funds and the cohesion fund as well as to the strengthening of an agricultural policy

that raises farmers' income while at the same time implementing necessary reforms.

(...)".

(*DSC-P*, VI Leg., n. 226, pp. 12020–12023).

5. External Relations

a) Ibero-America – Caribbean

On 3 November 1999 the Secretary of State for International Cooperation and for Ibero-America, Mr. Villalonga Campos, appeared before the Congress Foreign Affairs Commission to respond to a Parliamentary question concerning the European Union, Ibero-America and Caribbean Summit held in Rio de Janeiro (Brazil) on 28 and 29 June 1999 and provided the following information:

"The Rio Summit concluded with two documents: a political declaration, the Rio Declaration, and another entitled action priorities. These priorities are divided into three chapters: political, economic and commercial and a third chapter focusing on the cultural, educational and human dimension.

(...)

Our country played a key role in the preparation and in the results of the Rio Summit and this was somewhat due to the fact that not all of our Union partners perceive in the same immediate fashion the interest that Ibero-America has for the Union from a strategic point of view. On many occasions we felt obliged to strengthen the conviction of our partners before further progress could be made.

The idea itself of holding a summit was first proposed by President Aznar in 1996. Along with President Chirac, Spain also played an important role in determining who would actually attend the summit (all of the Ibero-American countries, Europe and the Caribbean); what points would figure on the agenda which was based on a joint memorandum presented by Spain and France; the character and nature that the final documents should have and the need to set up a monitoring mechanism, among other aspects.

Spain also played the role of being the driving force in getting the Union to approve the mandate for negotiation of a free trade area between the European Union, Mercosur and Chile, undoubtedly one of the most important results despite the fact that this topic was approached outside of the summit framework. This fundamental role was recognised in a certain way by all of the participants at the Rio Summit when, by unanimous decision, they decided to accept President Aznar's proposal of holding the next summit of Heads of State of the European Union, Ibero-America and the Caribbean in Spain during the course of the first semester of 2002.

The final balance of the Rio Summit was very satisfactory for both regions and represented a qualitative change in the development of relations between the European Union, Ibero-America and the Caribbean.

In the political arena, the summit set up a strategic association between Ibero-America and the Caribbean. This means that the European Union recognises that Ibero-America and the Caribbean is no longer a secondary region as it was considered before the entry of Spain and Portugal into what was then known as the European Economic Community.

But this is not the only issue. At the Rio Summit the European Union also recognised that Ibero-America and the Caribbean, as a first-echelon partner, is a region with which it shares the same political, cultural and economic values and this sets the stage for the construction of a real association between the two areas. In the future this principle will have, and this is expressed in the Summit's final documents, practical and effective applications to the degree to which collaboration is envisioned between the EU, Ibero-America and the Caribbean in certain areas of international policy ranging from the United Nations to the WTO and also including issues such as international financial structural reform or cooperation in the fight against drugs.

Thanks to the Summit, the Union has been strengthened as a global political actor and has shown its desire to increase its political, economic and cultural presence in that region of the world. That same strengthening of capacity for global action holds true for Ibero-America and the Caribbean as well and it should not be forgotten that this is the first time in history that Ibero-America and the Caribbean have spoken with one voice. What we have here is the consolidation of two international, regional actors in a multi-polar order, the European Union on one side and Ibero-America and the Caribbean on the other. We are witnessing the incorporation of Ibero-America and the Caribbean into an association based on the Union and the establishment of an alliance at the highest political level between the two regions, capable of generating joint initiatives over the medium term. This is something that fills us as Spaniards, being both European as well as Ibero-American, with a deep sense of satisfaction.

In the economic arena, I do not think that I would be exaggerating if I said that the Summit and the initial Spanish approach have been very useful instruments used to forge ahead and make substantial progress in the negotiation of free trade agreements with Mercosur, Chile and Mexico. This was also especially clear in the case of relations between Mercosur and Chile. It is most likely that in the absence of the pressure exerted by the summit on the more reticent partners to approve a mandate calling for the negotiation of a free trade agreement with Mercosur and Chile, the said mandate would probably never have been approved, would have been approved at a much later date, or would have been much more watered down. As you are all aware, subsequent to arduous negotiations during the Rio Summit, the agreement was reached to initiate in 1999, this year, the negotiation of a free trade agreement with Mercosur and Chile. As the summit was being prepared, parallel discussions were also under way with Mexico and today there are very encouraging perspectives of concluding an agreement in the near future.

Independent of the agreements reached with Mexico, Mercosur and Chile, during the course of the Rio Summit the speeches made by some of the leaders hinted at the ambitious perspective of progressive and reciprocal liberalisation of bi-regional trade of goods and services with the eventual creation over the medium or long term of an inter-regional free trade area. As for the rest, the action priorities that emerged from the Rio Summit foresee cooperation between the two regions on very specific economic and trade issues and that undoubtedly will allow for greater transparency and effectiveness of our commercial and investment flows over the medium term.

Focusing on inter-regional cooperation, the summit has set some priority axes for the upcoming years placing emphasis on collaboration in the areas of education, science and technology and culture with the conviction that relations between the two regions will only become truly fruitful to the degree to which our societies become more just and fair.

I was pleased that the summit also provided for guarantees of follow-up and continuity allowing us to state with certainty that the Rio meeting was not an isolated event but rather was the start of a new phase of richer, more solid and more institutionalised relations. You can rest assured that this Government will cut no corners when it comes to making the effort to ensure that the second summit of Heads of State and Government of the European Union, Ibero-America and the Caribbean to be held in Spain in 2002 will be a complete success".

(*DSC-C*, VI Leg., n. 790, pp. 23522–23523).

The Secretary of State for Foreign Policy and for the European Union, Mr. de Miguel y Egea, in an appearance before the Congress Foreign Affairs Commission spoke of the Spanish support given to the agreement to create a free trade area between the EU and Mercosur and explained the consequences that this agreement has for Spain:

"In this relationship with Mercosur, the accession of Spain to the European Union has not altered the priority that Spanish trade policy has always put on Ibero-America. Just the opposite is actually true. Since the time of its entry, Spain has tried to re-strike the Community balance that was shifted towards other regions like Eastern Europe and the African, Caribbean and Pacific countries, defending the opportunity to reach association agreements especially with Mediterranean and Ibero-American countries and more specifically with Mercosur, the two major partners of which are the two most distinguished beneficiaries of Spanish exports and investment.

Spain and Italy have been the countries that have most contributed to improving the European Union's position in Mercosur. Spanish exports to Mercosur have grown over the last several years by 350 percent and imports have risen by approximately 42 percent, reaching for the first time in 1996 a trade surplus that continued to widen in subsequent years. This lively export trade with Mercosur has led to an increase in market share and Spain's

moving up in the classification of European supplier countries currently reaching the status of the Union's number four supplier behind Germany, Italy and France. Spain was the number one European investor in Ibero-America during the 1990–1997 period and Mercosur, mostly Argentina and Brazil, were the priority countries for Spanish investment in Ibero-America. This bears witness to the fact that Spanish companies are strategically backing these economies.

At present, the list of Spanish companies present in Mercosur is endless ... The common language and cultural affinities of all sorts facilitate our entry into the market but there are also other specific reasons that explain this interest such as the processes of liberalisation, generalised privatisation in many of these countries as well as the phenomenon of regional integration that offers magnificent opportunities for the acquisition or participation in companies with a huge potential for growth in a broad-based market.

The current debate going on between the European Union and Mercosur focuses on the preparation of the negotiations on the future inter-regional agreement signed in Madrid at the end of the last Spanish Presidency in 1995. In that agreement, aside from the effort, the political and economic dialogue and the boosting of cooperation of mutual interest, the gradual and reciprocal liberalisation of trade between the European Union and Mercosur is foreseen in future negotiations. This is the fundamental subject of this inter-regional association agreement that we are getting ready to negotiate. Right now in the Council we are analysing and debating the different elements of this proposal for a negotiation mandate that has been put on the Council's table by the Commission and, although there is no pre-established timetable, the German Presidency would like the Council to approve it before the European Union–Ibero-American summit that, as your Excellencies are well aware, will be held on 28 and 29 June of this year under the auspices of the above-mentioned Presidency.

Spain is concerned by the fact that it has run into resistance within the European Union in striving to make headway along the lines proposed in the Commission's mandate. Specifically, France is proposing the inclusion of a number of clauses aimed at delaying customs negotiations and the liberalisation of services until the year 2003. France also opposes the inclusion of a clause impeding new restrictions on the movement of capital and seeks to eliminate any reference made in the mandate to a free trade area. With this it seeks to completely alter the nature of the negotiations that we are going to engage in with Mercosur. This French attempt at setting back the initiation of negotiations on essential chapters is characteristic of a particular scale of Community priorities. It need not be said that Spain, while sharing some of France's concerns, supports Germany's timetable as well as the nature of the mandate proposed by the Commission.

With respect to the calendar, Spain would like to see a mandate for the Rio Summit in June so as to be able to begin negotiations at the close of the

summer. In our view it is very important for the European Union to arrive at the Rio Summit with a positive message in the form of a clear mandate to negotiate with Mercosur.

(...)

In light of our geostrategic and political interests in the region taken together with our clear defence, economic and commercial interests that our companies seem to fully share, Spain is going to continue making a strong push in the European Union to tighten our inter-regional relations with Mercosur. Today our position is rooted in full support for the negotiation of a free trade agreement between Mercosur and the European Union and the defining of that mandate prior to the above-mentioned summit between the European Union and Ibero-America that will take place at the end of June.

(...)".

(*DSC-C*, VI Leg., n. 641, pp. 18695–18696).

b) Mediterranean

With respect to Mediterranean policy, the Secretary of State for Foreign Policy and for the European Union, Mr. de Miguel y Egea, informed the Senate Foreign Affairs Commission on 4 May 1999 of developments in the Euro-Mediterranean dialogue:

"Focusing now on the Barcelona Process which has defined Mediterranean policy that has taken shape as one more of the Union's policies, important progress has been made over the last several months.

First of all, another very important meeting was held in Valencia on 28 and 29 January of this year entitled the Conference on Regional Cooperation. At this Conference sights were not set on North–South cooperation as has traditionally been the case in the framework of the Mediterranean, i.e. actions dictated by European Union countries and implemented in the countries on the southern shores of the Mediterranean, but rather on a new concept of South–South regional cooperation. The object was to take stock of which regions in the Mediterranean zone such as Syria, Lebanon, Jordan, Tunisia or Algeria could cooperate to achieve the objectives and, furthermore, to obtain Community funding for their projects. Here there was the possibility of using 10 percent of the MEDA funds; i.e. considering that these funds total 6,000 million euros, 600 million euros could be earmarked for this type of regional cooperation action.

Spain was of the view that this was a channel of Euro-Mediterranean cooperation that was yet to be explored and was certainly worth the effort not only due to its value of promoting integration among the Mediterranean countries but also because of the opportunity that it offered them to cooperate with one another without the North – South predominance, allowing them the opportunity to make use of an important sum of money that was set aside but not yet used.

One of the great difficulties that the MEDA Programme runs into is precisely that of finding points to which to anchor projects and ways to use the funds; use of money that is growing in importance in light of voices indicating that much of the MEDA programme budget had not been used and these funds could be earmarked for Eastern Europe or other regions of the world. It is plain to see the efforts that Spain has been making for years in the European Union to try to raise the volume of MEDA funds every time funds were earmarked for Eastern Europe. In this sense the work carried out by Messrs. Matutes and Marin when they were Commissioners of the Mediterranean area should be highlighted. They took advantage of every occasion to increase the volume of Union aid channelled towards the Mediterranean countries.

It is very important to come up with projects to analyse these funds because, if not, they could be re-channelled due to the simple fact that the majority of the Member countries have little interest in the Mediterranean because the fact is that we in the Mediterranean region are in the minority. The Valencia idea was extraordinarily successful and was well-received. All of the Barcelona Process countries were present, without exception, including Israel and Syria that had difficulties in being present. A new channel of cooperation was opened up that, once again, was reflected at the meeting that was held later and that I would like to expound upon as the second event in the Mediterranean process.

The meeting of the Presidents of Euro-Med Parliaments that was held in Palma de Mallorca on 8–9 March brought together the Presidents of 27 Euro-Mediterranean Parliaments plus those of the European Parliament and was preceded by meetings held in Palermo and Tunisia. It was, therefore, another interesting example of parliamentarian diplomacy within the confines of the Barcelona Process through which conclusions were reached recognising the importance of the fight against terrorism, organised crime and the creation of a women's forum of Euro Parliamentarians and also contributed to increasing the acquis of the Ministers' meeting in Stuttgart.

The Third Mediterranean Conference of Foreign Ministers was held in Stuttgart on 15 and 16 April; the first was held in Barcelona and the second was the unfortunate Malta Conference that Your Excellencies will remember did not amount to much because it became infected by the Arab-Israeli conflict that is the virus that threatens Euro-Mediterranean cooperation.

This third Ministerial meeting was quite successful; much more so than the Malta meeting. It was thoroughly prepared by means of a series of ministerial-level meetings in which Ministers of Culture and of Industry, Economic and Social Councils, etc. participated and the Valencia Seminar, thanks to which it was possible to arrive at conclusions that allow one to believe that the Mediterranean process is, once again, treading on firm ground and that the MEDA funds are less threatened now than they were some time ago because the European and Mediterranean Ministers are determined to continue forward with cooperation.

It is also worth mentioning that at this Stuttgart meeting, once the conditions of the Lockerbie case had been satisfactorily resolved, Libya was admitted for the first time. As a first step Libya was admitted as an observer but at the conclusion of the meeting there was a unanimous vote in favour of admitting Libya to form part of the Barcelona Process that, as you are all aware, was not exactly in favour of the embargo placed on that State as a result of the Lockerbie case. This is a big step forward in that it included the only Mediterranean partner that had been left out of the process and cleared the way for a more hopeful period of Euro-Mediterranean cooperation.

(...)

The creation of a free trade area presents more problems in that it is conditioned by subsequent negotiation and ratification of the agreements. Many are the agreements that have been negotiated but have not entered into force because they have not been ratified. A case at hand could be the Mediterranean partner that is of greatest interest to us, Morocco. The agreement that was negotiated in 1995 and ratified by Spain in 1996 is still pending ratification by Italy. The only agreement that has been fully ratified is the one with Tunisia while some of the rest have negotiation pending which is the case with agreements with Syria, Lebanon or Algeria and others that have been negotiated but are yet to be ratified.

It would be very useful if the Mediterranean policy statements made by some countries were backed up by action. Spain preaches by example and, in this sense, the Spanish Parliament has been exemplary in the ratification of the Mediterranean agreements. We have always been the first country to ratify them.

(...)".

(*DSS-C*, VI Leg., n. 429, pp. 4, 7).

6. Area of Freedom, Security and Justice

On 20 October 1999, the President of the Government, Mr. Aznar López, in an appearance before a Congress Plenary Session to report on the European Council held in Tampere (Finland), a meeting proposed by Spain and focusing monographically on justice and home affairs, explained the specific measures adopted in favour of establishing an area of freedom, security and justice that the Amsterdam Treaty defined as one of the objectives of the Union:

"In a domestic market in which there is free movement of persons, novel opportunities are also created for organised crime and problems arise when citizens want to exercise their rights due to the differences among the legal and administrative systems of the Member States. I am pleased to announce that the creation of an area of freedom, security and justice in response to these problems benefited from both the support and guidance of Spain...

(...)

The creation of an area of freedom, security and justice was proposed by

Spain more than three years ago at the last Intergovernmental Conference inaugurated at the Turin European Council in March of 1996... In December 1996 with the draft of the new treaty tabled at the Dublin Council, our idea gained momentum and ended up being prominently expressed in the Amsterdam Treaty. The said Treaty presents a new global perspective on the issues of immigration and asylum in Community policies. Its Title VI completely renews the regulations concerning the so-called third pillar focusing them on legal and police cooperation in criminal matters.

(...)

The Council has implemented a global view of immigration...

(...)

The Union will adopt a common system of asylum based on the application of the Geneva Convention and on the principle that no person will be repatriated to a country in which he or she suffers persecution. The first step will be to pass common procedural regulations and to harmonise the minimum hosting and recognition conditions.

(...)

Tampere also fostered the development of common immigration policies accompanied by coherent border control to slow down illegal immigration and to fight against those organising the said immigration and committing crimes in relation to it.

(...)

With regard to the European Judicial Area, the objective that we have set for ourselves is that individuals may appeal to the courts of justice and the authorities of any Member State with the same freedom as if they were in their home country and that judicial sentences and judgements be respected and executed throughout the whole of the Union. The complexity and incompatibility of the legal and administrative systems of the Member States cannot impede or mire the exercise of citizens' rights. Along these lines initiatives that facilitate access to justice by any citizen in any European Union court are going to be initiated. Minimum regulations will be adopted to guarantee an acceptable level of legal assistance in cross-border litigation throughout the whole of the Union, minimum regulations on access to penal justice as well as common procedural norms with a view to simplifying some cross-border litigation regarding consumer issues, business affairs not involving large sums of money and child support payments. The Council has also taken a very important decision in this area. The principle of mutual recognition of civil and criminal judgements and of other judicial decisions has been adopted as the cornerstone of this judicial area. A sentence delivered in one European Union country is valid in any other Member State. Prior to December 2000 a programme that specifically develops this principle will be passed. A decision has also been taken to reduce the intermediate measures involved in the recognition of a resolution or judgement delivered in another Member State and to make progress towards greater convergence in aspects

of civil law and procedural civil law necessary to allow for this free movement of judicial judgements and decisions. In criminal matters, the Council has accepted the petition that the British Prime Minister and I myself made to the Council President to move forward on issues having to do with extradition. Thus, all of the Member States were urged to ratify and apply the extradition conventions of 1995 and 1996 as soon as possible. Of particular importance, however, was the decision to suppress extradition over the medium term replacing it with the simple transfer of persons so that those convicted by a final judgement cannot escape the hand of justice.

We have also adopted a series of measures to guarantee a high level of security in a borderless Europe through the fight against all forms of delinquency, also on a Union-wide scale. A joint mobilisation of judicial and police resources has been implemented in the fight against crime to guarantee that in the Union no place will remain for delinquents to hide.

The Council has reflected upon the crimes that are most worrisome to European citizens: terrorism, the sexual exploitation of minors, crimes against the environment, money laundering, etc. and on the ways to prevent and combat them. In the area of prevention, comparison programmes of the so called best practices will be developed among the administrations in three areas of prevention: juvenile delinquency, urban crime and drug related crime. It was decided to create joint teams among Member States for police investigation specifically in the fight against drug trafficking, terrorism and trafficking in human beings. Tampere also called for an operational unit of heads of security and police for the sharing of experience and information and the planning of operational actions. A step was also taken to strengthen Europol that will support these joint teams and this operational unit of heads of security... In the future, Europol will be able to ask Member States to initiate investigations in certain areas of crime, always under national judicial supervision, for the pursuit of what is considered serious organised crime. Furthermore, a unit known as Eurojust will be comprised of prosecutors and judges and will coordinate the national prosecutors and will support criminal investigations in collaboration with Europol and with the European judicial network focusing on the all important goal of simplifying the red tape and the execution of letters rogatory. The decision was also taken to create a European police academy to train high-ranking civil servants open to all candidate countries as well. It was also decided to work towards the objective of harmonising penal law definitions, charges and sanctions with regard to a number of crimes such as: financial crime, drug trafficking, trafficking in human beings, sexual exploitation of minors, high technology crime or crimes against the environment... And finally, we have decided on taking special action against money laundering, an activity that is at the very core of organised crime. What is being sought, first of all, is the development and application within the Members States of European and international regulations on these matters without permitting that bank secrecy can stand

in the way of the transparency of financial transactions. Moreover, steps will be taken to move towards the harmonisation of civil and criminal law matters in those aspects related to money laundering and jurisdiction will be given to Europol in this field.

These three substantial fields of action will be further developed through the external dimension of each one of them.

(...)".

(*DSC-P*, VI Leg., n. 265, pp. 14075–14077).

XIV. RESPONSIBILITY

1. Responsibility of Individnals

At a parliamentary appearance on 20 December 2000, the Secretary of State for European Affairs, Mr. de Miguel y Egea, reported on the status of the ratification process of the Statute of the International Criminal Court:

"To date, 120 countries have signed the treaty and of these, 25 have deposited their instruments of ratification. Entry into force will take place 60 days after the deposit of 60 instruments of ratification, acceptance, approval or accession according to the wording of Art. 126. We are therefore 35 deposits away from full entry into force.

All of the European Union Member States signed the Statute and from among them, aside from Spain, which by the way was the first; Belgium, Luxembourg, France and Italy have also ratified. This performance is not exactly brilliant for a Community like ours in which the entire Fifteen should have been in the vanguard of ratification as we were.

On 24 October Spain became the 22nd country to deposit its instrument of ratification before the Secretary General of the United Nations. This act was the culmination of a process that began two years ago on 18 July 1998 with the signing. When it came before this Chamber the spokespersons from the other parliamentary groups expressed their clear support and satisfaction at being able to participate in the approval of a treaty that will mean the implementation of an International Criminal Court, which is a historical step in the fight against impunity in cases of massive violations against the right to life and other fundamental rights relating to the dignity of people.

When it deposited this instrument of ratification, Spain made two statements that I would like to mention. The first was a proceeding related to Art. 87 and the second is substantive in relation to Art. 103. In relation to paragraph one of Art. 87 of the Statute, the Kingdom of Spain declared that, without prejudice to the competencies of the Foreign Affairs Ministry, the Ministry of Justice will be the competent authority to process requests for cooperation submitted by the Court and those that are sent to the Court. In relation with paragraph 2 of Art. 87 of the Statute, the Kingdom of Spain

declared that requests for cooperation submitted by the Court to Spain and the documents justifying the said request, should be drafted in Spanish or accompanied by a translation into Spanish. Regarding section B) of paragraph 1 of Art. 103 of the Statute, Spain made the following statement: Spain declares that when the time comes it will be willing to receive individuals convicted by the International Criminal Court as long as the duration of the sentence given does not exceed the maximum sentence permitted under Spanish legislation for any crime. This declaration was based on Art. 25.2 of the Constitution that requires that sentences entailing deprivation of liberty and security measures be oriented towards the rehabilitation and social insertion of the convict.

The conclusion of the ratification procedure met one of the aims set by this Government during this legislative period and I think that it is well worth highlighting, as is affirmed in the stated purpose of Organic Law 6/2000 of 4 October authorising ratification of the Statute, that Spain is included among the countries that will contribute from the outset with its participation in the process of instituting the new Court and drawing up the mandatory instruments of development for the establishment of a more just international order based on the defence of fundamental human rights".

(*DSC-C*, VII Leg., n. 129, p. 3764).

2. Prevention of Significant Transboundary Damage

In his appearance before the Sixth Committee of the General Assembly in its year 2000 session, the representative from Spain, Mr. Pérez Giralda, explained Spain's position on the draft convention on Prevention of Significant Transboundary Damage presented by the International Law Commission:

"In relation to the draft preamble and articles for a Convention on the Prevention of Significant Transboundary Damage, my delegation is in agreement with the approach taken by the ILC which proposes to look after the prevention of transboundary damage caused by dangerous activity. However, the coding of the content and the scope of prevention duties covered in this draft give rise to problems that are almost as complex as those arising from determining international responsibility for the damaging consequences of acts not prohibited by international law, the codification of which is left for a later date. It is therefore necessary to bear in mind the necessary inter-connections between both issues and to be aware of the fact that decisions taken now with regard to prevention will have a later bearing on how to deal with responsibility.

The draft Convention is worthy of praise in so far as it extends the notion of damage not only to that caused to people and property but also to the environment (Art. 2, [b]). It is, however, restrictive in its definition of 'transboundary damage' per se covered by the Convention. The fact is that Art. 2, (d) limits this damage to that caused 'in the territory or in other

locations under the jurisdiction of a State other than the State of origin...'. As a result, environmental damage caused to areas outside of the national jurisdiction (damage to the so-called *global commons*) are clearly excluded from the draft Convention's scope of application; and this is despite the fact that damage to common areas has been generally incorporated into the concept of 'transboundary damage' and generally recognised in practice through international case law.

In fact, the 1972 Stockholm Declaration already stated very clearly in its principle 21 that States have the responsibility to:

'Ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction'.

This same statement with slight variations has been reproduced in other Resolutions issued by international bodies and conferences, among which mention should be made of the World Charter for Nature (AG. Resolution of 28 October 1982, point 21, sections d) and e) and the 1992 Rio Declaration on Environment and Development (Principle 2).

Similarly, the proposal to protect the environment in general against encroaching damage without making distinctions between state areas and common areas is the veritable reason behind a number of international conventions, the object of which is to protect these common areas such as the seas, the atmosphere or the Antarctic. In this sense, special mention should be made of the United Nations Convention on the Law of the Sea of 1982 (Art. 194, section 2) and of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

In terms of case law, the International Court of Justice recognised the most far-reaching application of the principle of prevention of transboundary environmental damage in its ruling on the 'legality of the threat or use of nuclear weapons' issued on 8 July 1996.

For all of these reasons, my delegation would like to join forces with other States that have shown a preference for a broader view of the Draft Project that, from our understanding, is not guaranteed by the allusion made in Art. 18 to its relation with 'other norms of International Law;' when the regulation of responsibility is undertaken, that is when consideration will have to be given to the special categories of environmental damage caused to common areas outside of national jurisdiction. This would allow not only for keeping the Project in line with International Law on the environment with respect to prevention, but would also give a green light to the possibility of aligning it with the rules proposed by the ILC on the responsibility of States to remain more open to the demand for State responsibility in light of serious violations of obligations resting on the shoulders of the international community in general (Arts. 41 and 42)".

3. Responsibility of States

In his appearance before the Sixth Committee of the General Assembly in its 2000 session, the Spanish representative, Mr. Pérez Giralda, explained Spain's position on the work carried out by the International Law Commission on the subject of the Responsibility of States:

"The Commission has put a large proportion of its efforts into progressing with the draft articles on the responsibility of States and has presented the draft provisionally approved by the Drafting Committee to the Governments. The Special Rapporteur, Professor James Crawford, has carried out very relevant work which has allowed for the formulation of a clear and better systematised project than the 1996 one. Pursuant to the request formulated in paragraph 26 of the ILC Report, Spain will soon present its written observations on the draft articles. On this occasion, therefore, my delegation will simply pose some general questions on the form, structure and content of the most salient aspects of the draft articles.

First of all I would like to reiterate the position already stated before this Commission that the International Law Commission should conclude its work with the approval, subsequent to the second reading, of a Draft Convention that would later be subject to discussion and acceptance by the States. We feel that the work that the Commission has done over the last fifty years should not end with a draft Declaration of Principles; the flexibility that characterises this instrument does not justify leaving by the wayside the legal security guaranteed by a conventional text. The coherence of this position will be expressed later with our support for incorporating a conflict resolution system into the Draft.

With respect to the structure and thanks to the efforts, as I have already mentioned, of the Special Rapporteur, we now have a well organised and comprehensible draft. However, mention should be made of certain issues with regard to which systematic organization is relevant when it comes to content. I am referring, first of all, to the rule of depletion of internal resources that we consider of fundamental importance to a State's international responsibility regime.

Although it is true that the current wording of Art. 45 allows the rule to be considered as much a substantive requirement for the existence of an illicit one as a procedural presupposition, for the same reason my delegation feels that the inclusion of depletion of internal resources as one of the conditions for the admissibility of a claim leads to the understanding that it is attributed an exclusive procedural nature and it is therefore our view that it be included among the provisions of the first part of the project as was the case in 1996.

The same can be said of the current Art. 56 ('lex especialis'), that is now one of the general provisions applicable to the draft as a whole, while in 1996 its application was limited to the second part (former Art. 37). We feel that that article should be worded in a positive fashion (application 'without

prejudice' to other special regimes). Moreover, the article itself or the commentary should at least provide the safeguard that the existence of specific regimes or regulations should not prevail over imperative International Law norms, specifically those violations regulated under Arts. 41 and 42 of the draft.

With respect to content issues, I would first of all like to refer to draft Arts. 41 and 42 that introduce the notion of 'serious breaches of obligations to the International Community' in replacement of controversial Art. 19 from the 1996 draft. As the Spanish representative stated on a number of occasions before the Sixth Commission, we favour regulation of draft articles by means of a regime based on the international responsibility of the State. The denomination of this regime is not as important as its content and it is not possible to avoid the opposition of many States to the criminal law connotations contained in the expression 'international crime'. Spain has no objection to the use of the expression proposed by the Drafting Committee in the heading of Chapter III of the Second Part of the Draft.

The definition of these illicit actions should be by agreement of the States, expressed in international practice. As is regulated in proposed Art. 41, that practice can only consist in a remission to the consensus of the international community as provided for under Art. 53 of the 1969 Vienna Convention on the Law of Treaties. That definition could be criticized as being circular or tautological but no other alternative seems possible in light of the current development of the international legal system.

The greatest difficulty lies in the definition of a regime based on international responsibility that arises when 'a serious breach of an essential obligation to the international community' is committed. For my delegation, this regime based on international responsibility can lead to different consequences. First of all, one must include the expressed remission to international regulations on criminal responsibility attributable to the individual (Rome Statute of the International Criminal Court, *ad hoc* courts and others). Secondly, in principle the inclusion of the concept of 'damages reflecting the gravity of the breach' (Art. 42.1) can be accepted and the same can be said of the proposal contained in Art. 54 according to which 'in the cases referred to in Art. 41, any State may take countermeasures, in accordance with the present chapter in the interest of the beneficiaries of the breached obligation'. In the event of an infringement of one of the violations of Art. 41, all States would be justified in taking countermeasures.

However, these effects as well as the substantive consequences stemming from serious violations of Art. 41, contained in Art. 42 remain, to a great extent, undetermined. The Commission should delve as deeply as possible into the obligations of all the States foreseen in Art 42, defining them either in the text of this article or in its associated commentaries. All of this always without prejudice to the remission developed in Art. 42.3 so that it is the evolution of the international legal system itself that develops the legal

regime of the 'serious breaches of essential obligations to the International Community'.

However, the lack of determination that we alluded to will necessarily persist which is why my delegation feels that the best way to correct this deficit is, without a doubt, the progressive development of conflict resolution mechanisms. In the Draft approved in 1996, the International Law Commission sought to set up a conflict resolution system with a general scope, safeguarding other conventional special regimes that it would rule on with respect to any violation of a regulation of International Law. The importance of this system is paramount and we therefore feel that it is unfortunate that the proposal approved by the Drafting Committee left out a third part focusing on conflict resolution especially in light of the fact that this omission, as can be deduced from paragraph 311 of the Report, is due to the fact that the ILC apparently rules out the possibility of the Draft becoming a legally binding Convention.

My delegation would, therefore, support a system similar to the one provided for in Arts. 54 to 60 and in Annex I of 1996 including the appeal to the International Court of Justice to hear controversies regarding Arts. 41 and 42 of the new draft once all the other conflict resolution procedures were employed. With a view to encouraging generalised acceptance of the text, the latter could envision the formulation of reservations exclusively with respect to the appeal to the International Court of Justice and compulsory arbitration as set out in Art. 58.2 of the 1996 Draft.

Moving on to other more specific issues contained in the proposal presented by the Drafting Committee, my delegation was glad to see that some provisions containing imprecise terms have been eliminated from the Draft approved in 1996. This is the case with section d) of old Art. 43 which contains an exception to restitution in kind which in practice can be very difficult to verify. The regulation envisioned in the new Art. 36 conforms better to international practice.

With regard to the 'satisfaction' regulated in the new Art. 38, we also feel it was good to eliminate the reference to punishment of the perpetrators of an illicit act as one of the forms of satisfaction; a measure that does not seem to have been confirmed by the practice of States. The same can be said with regard to the so-called 'punitive damages' as they are regulated in Art. 45 of the 1996 Draft. Only in the case of 'serious violations of the obligations that are essential to the International Community as a whole' is it justified to make a reference like the one in Art. 42.1 of the damages reflecting the 'obligation to pay damages reflecting the gravity of the breach' and always mindful of the need, which we defend, of falling back on the regulation of conflict resolution.

In terms of countermeasures, the proposal contained in Arts. 50 to 55 merits a positive assessment for the most part insofar as it attempts to strike a balance between the rights and interests of the damaged State and those of the offending State. We once again reiterate, however, that the inclusion of

conflict resolution into the Draft is needed for the application of countermeasures.

It was particularly good news to find that in the regulation of prohibited countermeasures, the one that referred to, in the 1996 Draft, the 'extreme economic or political coercion designed to endanger the political independence of a State that has committed an internationally wrongful act' was eliminated. A prohibition of such measures would, however, seem justified when they are aimed at endangering the territorial integrity of the State, which is also included under the proportionality principle envisioned in Art. 53.

And finally, we would also like to point out with regard to sections b) and c) of Art. 51 proposed by the Drafting Committee that, in the case of Spain, the 'fundamental rights' and the humanitarian obligations referred to in these two provisions are those that focus on the protection of life and the physical integrity of the human person in line with Art. 60.5 of the 1969 Vienna Convention on the Law of Treaties and in accordance with the regulation contained in a good number of international human rights and humanitarian treaties which include a set of human rights that cannot be called into question by Member States under any circumstances. Along these same lines we feel that the comment made by the International Law Commission in 1996 on this provision was on the mark in its highlighting of the fact that under these circumstances, the exceptions of a humanitarian nature that should be taken into consideration in the adoption of economic measures should include allowing for the supply of food and medicine to the population of the State that is the object of the countermeasures".

XV. PACIFIC SETTLEMENT OF DISPUTES

1. Jurisdictional Modes of Settlement

In response to a parliamentary question on 17 March 1999, the Spanish Government made the following assessment of the Judgement delivered by the Hague Court in the so-called 'Turbot Case' and the seizure of the ship *Estai* by Canadian authorities:

"The unilateral statement issued by Canada excluding from the jurisdiction of the International Court of Justice (ICJ) 'the controversies that could arise from the management and conservation measures adopted by Canada on ships fishing within the regulatory zone of the Northwest Atlantic Fisheries Organization and their execution', on 10 May 1994, two days before approving the amendment to the Coastal Fisheries Protection Act that provided domestic legal coverage for the illicit seizure of the *Estai*, indicates that the Canadian Government itself had no doubts as to the international illegality of its acts and therefore intended to exclude them from international jurisdiction.

The effective exclusion from the jurisdiction of the ICJ depended on the interpretation given to the ICJ Statute and to Canada's reservation. The Government regrets that the thesis defended by Spain, characterised by a more progressive interpretation of International Law, was shared by a minority of the Court's members in the decision that Spain, by the way, will fully abide by. The majority of the Court opted for a literal interpretation of the International Court of Justice Statute and of Canada's statement; an interpretation that means a step backwards in the progressive development of International Law in its jurisdictional aspect. The Government is not satisfied with a decision that in no way can be considered a stimulus to States' bringing their actions in line with International Law.

The judgement made by the ICJ refers exclusively to its lack of jurisdiction to hear Spain's complaint against Canada for the illegal seizure of the *Estai* by virtue of the reservation filed by that country. The ICJ Statute recognises the fact that States that have accepted its jurisdiction may formulate reservations excluding certain types of affairs from this jurisdiction and, as stated in paragraph 54 of the Courts Decision, they may do so 'precisely because they feel vulnerable regarding the legality of their position'. This is obviously the case with Canada. What that State cannot do, and nor can any other for that matter, is to exclude its acts from International Law and this is specifically stated in paragraph 56 of the Judgement: 'Whether or not States accept the jurisdiction of the Court, they remain in all cases responsible for acts attributable to them that violate the rights of other States ... '. The Canadian reservation made with respect to the jurisdiction of the ICJ cannot make its wrongful acts licit although it can delay and bog down the determination of its international responsibility and its execution.

With regard to the specific case of the *Estai*, the ICJ's decision brings an end, for the time being, to the jurisdictional route. All of the other conflict resolution options by pacific means remain open. The ICJ decision itself in paragraph 56 mentioned above indicates that '... any resultant disputes (responsibility for wrongful acts) are required to be resolved by pacific means, the choice of which, pursuant to Art. 33 of the United Nations Charter, is left to the Parties'. The Spanish Government reserves the right to forge ahead with its complaint against Canada for the seizure of the *Estai* by means of any other pacific means of conflict resolution recognised under International Law.

The Government does not rule out the use of any pacific means of conflict resolution recognised under International Law in order to procure full restitution, by virtue of compensation that it deems fit, of the rights of the Kingdom of Spain and of the natural or legal persons of Spanish nationality that suffered damages at the hands of the illicit acts committed by the Canadian Government and its agents.

With respect to fishery rights on the high seas in general, it is common practice for the Spanish Government to defend the interests of the fleet in all multilateral fora with jurisdiction in fishery affairs as well as in dealings with

foreign governments that seek to assume jurisdiction over waters of the high seas.

Naturally, the defence of the fleet's interests over the long term often means the adoption at the appropriate multilateral fora of the necessary resource conservation and management measures; measures that frequently mean a limitation to fishery freedom".

(*BOCG-Senado.I*, VI Leg., n. 649, p. 62).

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Measnres

a) Iraq

At a parliamentary appearance on 3 November 1999, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos reported on the Government's assessment of the consequences of the bombing of Iraq by the United States and the United Kingdom:

"I would first of all like to refer to the exclusion zones that date back to 1991 when there was a mass exodus of Kurdish refugees towards the borders with Turkey and Iran as a result of the repression against this ethnic group or population implemented by the regime of Saddam Hussein immediately following the Gulf War.

In order to deal with this situation, the European Union implemented a humanitarian mechanism in which Spain participated along with other countries and the Security Council condemned the repression and called for a halt to the massacre. The United States, United Kingdom and France set up these zones located to the north of the 36th parallel and to the south of the 33rd to protect the Kurdish and Shiite populations from the north and south of Iraq from Iraqi air strikes. Despite the fact that they were not created under the auspices of a United Nations Resolution, the legitimacy of these zones received a large degree of tacit international consensus in so much as their usefulness to the degree to which their establishment was made necessary in order to achieve the objectives set out in the United Nations resolutions, especially number 688. However, increased tension in the zones and repeated attacks have led to a waning of international consensus. Moreover, this increased tension makes it more difficult to procure Iraqi collaboration for a global solution to the crisis and this is a fact.

With regard to the domestic political situation, it should be pointed out that the increased tension in the exclusion zones, the impact of the sanctions, deficient economic management and the authoritarian or dictatorial nature of the Iraqi regime, isolated on both the international and regional levels, has given rise to an important degree of deterioration of the economic, social and

human conditions of the entire Iraqi population. All of this inevitably produces social discontent and greater political instability.

(...)

The position of the Spanish Government, as has been stated on earlier occasions, is that we are not at all in agreement with the US implementation of a new strategy known as the Iraq Liberation Act that seeks, through the progressive deterioration of Iraq's political and socio-economic conditions, the overthrow of Saddam Hussein; we believe that the Iraqi people should be the ones to decide. Today, ... the old principles of international law, among which we find sovereignty, are subject to review by the international community with a right to humanitarian intervention on the part of the United States. Therefore, although in disagreement with this position taken by the United States and the aim of the bombings being the overthrow of Saddam Hussein, the protection, that was the original intention when the exclusion zones were set up, of the Shiite and Kurdish peoples I believe to be proper and the Spanish Government lends its approval. What I do not believe to be proper, however, is the recent objective of overthrowing Saddam Hussein implemented by the United States in the Liberation Act.

There are no US bases in Spain and we are not collaborating with these bombings. We would like to see the embargo lifted, along with a consensus in the UN Security council by Iraq and we would like to see Iraq, with or without Saddam Hussein, return to its rightful place in the international society in conditions of normality. This is the desire of Spain as well as that of all of Iraq's neighbours, over and above the propaganda effort being made by the Iraqi Government eager to show the serious humanitarian consequences that the embargo, the exclusion zone and international isolation may be having on Iraq. We would like to see a non-isolated Iraq; we would like to see an Iraq to which humanitarian aid may flow; we would like to see an Iraq in which NGOs may freely distribute humanitarian aid, something that is not possible today...

The Spanish Government is, therefore, by no means at ease with, nor does it support these bombings; the Spanish Government by no means supports Iraq's failure to comply with the United Nations' resolutions. We once again state that not only would we like to see Iraq fulfil its international obligations, but also its humanitarian obligations as a member of the international society and a return to Middle East normality in a country that is absolutely essential for stability in the Gulf region and stability in the Middle East. This is the position of the Spanish Government and in no way would I like to give the impression that the Government is supporting the indiscriminate bombings which are actually not so indiscriminate. Neither would I like to give the impression that we support Iraq's reiterated failure to meet its international obligations, among which are not only those stemming from the Security Council but also humanitarian obligations with regard to its peoples".

(*DSC-C*, VI Leg., n. 790, p. 23503).

b) Sudan and Afghanistan

In response to a parliamentary question posed on 26 January 1999, the Spanish Government reported on its position regarding the US bombings in Sudan and Afghanistan.

"At least 12 US citizens and approximately 250 of other nationalities perished as a result of the indiscriminate violence stemming from the brutal attacks against US embassies in Nairobi and Dar-es-Salaam on 7 August. The US reacted on the 20th of that same month with attacks against very specific objectives in Khartoum and Afghanistan. The United States justified this intervention as an act of legitimate defence provided for under Art. 51 of the Charter.

The Spanish Government issued a public communiqué expressing its support of the Government of the United States in the action carried out against terrorist bases located in Sudan and Afghanistan, underscoring the fact that Spain would always be with its allies in the fight against international terrorism.

It also pointed out that 'the action of the United States in its attack against terrorist bases in Sudan and Afghanistan is legitimate to the degree to which it has proof that these countries have actually been involved in the strikes perpetrated in Kenya and Tanzania'.

Support is based on two pillars:

– The fact that we are allies indicates a presumption of support that could justify not requiring specific proof and 'understanding' of the lack of prior consultation that would have weakened the surprise effect of the action.

– The commitment of the international community to the fight against international terrorism and the priority interest that Spain has in its eradication. In this respect mention is made of the repudiation of terrorism expressed in United Nations General Assembly Resolution 51/210 of 17 December 1996 and the 1994 Declaration on 'measures to eliminate international terrorism' (Res. 49/60) which also encourages States to refrain from organising, instigating, assisting or participating in terrorist acts... or to permit – or encourage activities in their territories, the purpose of which is the committing of the said acts"

(*BOCG-Congreso.D*, VI Leg., n. 370, p. 82).

c) Kosovo

In a parliamentary appearance on 6 April 1999, the Spanish Government reported on its position regarding the situation in Kosovo:

"... On the 24th the Atlantic Alliance launched a military initiative against objectives in the Federal Republic of Yugoslavia. This decision was reached once the international community had used up all of the instruments within its reach to put an end to the conflict in Kosovo. Persuasion did not meet with

success, warning was in vain and sanctions produced no results. All instruments of persuasion had failed. What to do? Was resignation the answer? Should we sit back and passively accept new crimes, new massive violations of the most fundamental of rights? Stand by and watch as a new chapter of ethnic cleansing unfolded? As a result of all of this, an extremely difficult decision was taken. On the 23rd the NATO Secretary General instructed the Organisation's military authorities to launch a campaign of air strikes against strategic objectives in the Federal Republic of Yugoslavia.

(...)

From the very outset, the legitimacy of NATO's military action was one of the Government's concerns... The use of NATO force could be considered legitimate under three conditions: first, an emergency humanitarian situation; secondly, the refusal of the Government of the Federal Republic of Yugoslavia to put an end to its repressive actions, and third, blockage in the Security Council given the refusal of one of its permanent members to use or authorize the use of force...

With regard to the Security Council,... it remains blocked. The majority opinion within the Council, however, on the Alliance's current military operations was made clear on 26 March when a draft resolution presented by Russia calling for a halt to these actions only received three supporting votes and a negative response from the rest of the members of that body that refused to condemn the armed initiative. The Secretary General of the United Nations himself expressed a very similar opinion when he stated that there are times when the use of force can be legitimate in the pursuit of peace".

(*DSC-C*, VI Leg., n. 662, p. 19238).

In response to a parliamentary question posed on 22 July 1999, the Spanish Government reported on the Spanish forces and supplies used by NATO in the war against Yugoslavia:

"The 9 October 1998 agreement made by the Council of Ministers authorised the participation of 8 F-18 aircraft, 2 in-flight refuelling TK-10 aircraft and a C-212 transport plane in the Atlantic Alliance Force constituted to implement air operations in support of diplomatic efforts to reach a negotiated, fair and lasting political solution in Kosovo and to promote regional peace and security.

Of the authorised forces, however, 6 F-18 aircraft, one TK-10 and one C-212 were transferred to the Atlantic Alliance. With regard to personnel to operate these aircraft, 216 people are stationed in Italy.

Moreover, the navy ships assigned to the Atlantic Alliance's permanent naval forces in the Mediterranean (STANAVFORMED) and in the Atlantic (STANAVFORLANT) are participating in support of operation 'Allied Force'; One Santa María class frigate and another Baleares Class frigate with a total of 461 men and women crew members. Prior to this, the logistical

support ships *Marqués de la Ensenada* and *Patiño* with a combined crew of 160 individuals also participated".

(*BOCG-Congreso.D*, VI Leg., n. 469, p. 161).

2. Collective Measures. Regime of the United Nations

a) Kosovo

In a parliamentary appearance on 24 June 1999 the Spanish Government reported on the conflict in Kosovo:

"Concerning United Nations Resolution 1244 I would like to highlight three aspects. First of all, the Resolution explicitly includes each and every one of the conditions that were originally imposed by NATO on the Belgrade Government and that were supported by a large proportion of the international community to reach an agreement: an end to repression, withdrawal of all Serbian forces, return of refugees and displaced persons, deployment of an international force organised by NATO and establishment of an international civilian administration; this together with provisions for the demilitarisation of the Kosovo Liberation Army, an essential prerequisite if stable peace is to be established. This inclusion of all of the former conditions leads me to believe that a proper agreement has been reached. Secondly, I would like to express my satisfaction at the fact that the Kosovo issue has made its way back to the Security Council. It was only due to the blockage of this United Nations body that it became necessary to carry out essential action that has proven to be correct but we would have preferred that this were developed and decided in the Council. And third, I would like to once again call attention to Russia's role in the development and approval of this resolution. I have pointed out on a number of occasions that Russia has and will continue to have a relevant role to play in the Balkans. Its participation in the agreement bears witness to this fact. Finally, I would like to express my satisfaction with regard to the key role played by President Ahtisaari of Finland, the future President of the European Council.

Subsequent to having reached an agreement, the current situation is as follows. The stage is set for peace. The Security Council has approved Resolution 1244, withdrawal of Serbian troops is complete and an agreement was reached with Russia concerning the modality of its participation in the international military force that is in the final stages of its deployment. Moreover, the demilitarisation and de-arming process of the KLA has begun. Despite these advances we must recognise that very important challenges lie ahead. I would like to make special mention of three. First of all, the levels of humanitarian aid must be maintained. The situation that we had to face in Albania and in the Former Yugoslav Republic of Macedonia has made its way to a large degree to Kosovo. For this reason it is important to continue with the flow of aid until the situation becomes stabilised. To the degree

necessary, humanitarian aid should also be channelled to the Republic of Serbia, which has evidently been seriously damaged by this conflict and, although excluded from the Balkans reconstruction plan until certain political and democratisation, etc. conditions are met, that is not the case with humanitarian aid, which will, of course, be a priority objective of the Spanish Cooperation Agency. Moreover, the return of the refugees must be regulated to the degree that this is possible. Our principal objective has been that of getting a million refugees and displaced persons back to their homes under the protection of an international force. This is definitive proof that the policy of ethnic cleansing has failed.

This civilian administration, Unmik, has three types of principal functions. First of all, it carries out the basic tasks of government and administration of a devastated territory, proposes basic services and watches over public order and security. Secondly, it fosters the establishment, until such time as a definitive political arrangement is reached, of a substantial autonomy keeping the Rambouillet accords very much in mind. Third of all, it facilitates the political process finally leading to a definitive status for the future of Kosovo.

During the course of the last few days, intense consultations have been held with the United Nations in order to define the distribution of competencies among the different international organisations and the result of these consultations was the definition of four large pillars of administration that will correspond with the work and direct responsibility of the same number of organisations. The UNHCR, the United Nations High Commission for Refugees, will be in charge of all issues related with refugees: return, settlement and aid. The OSCE will take charge of organising and monitoring future elections and strengthening the civilian society. The Council of Europe will work in tandem with the OSCE on these issues. The United Nations as such will take direct responsibility, with the collaboration of those States that want to help, for territorial administration per se, as well as for the organisation of the autonomous regime and negotiation of the future status. Along these lines Spain is looking into its contribution to the civil police contingent participating in this United Nations mission. And finally, the European Union is going to lead and mostly fund the large process of reconstruction of Kosovo's economic infrastructure. With this end in mind, the first donor's conference will be organised under the auspices of the European Commission and the World Bank and therefore the funding for the Kosovo reconstruction will not come exclusively from the European Union (although the majority of funds will) but also from other donor countries and international financial institutions.

The very broad spectrum of functions to be carried out by the civilian administration together with those of the international military force that the Defence Minister will speak to you about, provides an idea of the complexity of the task at hand. I would like to especially highlight two difficulties. The first concerns the reestablishment of a multi-ethnic society in Kosovo. We are

also faced with the inherent difficulty of promoting a democratic society – democratic to the full extent of the word – within the framework of a State the regime of which is basically authoritarian and this is already suggesting the type of relations that Spain, and in a more general way the European Union, should have from this time forward with the current Government of the Federal Republic of Yugoslavia.

I would like to reiterate that the Government places a high priority on the work being done by the International Criminal Court for war crimes in the former Yugoslavia. Within a few days time a new agreement will be signed on the execution of this Court's sentences. Furthermore, Spain will send a team of forensic experts to Kosovo to collaborate in the work of collecting evidence in relation to crimes committed.

(...)".

(*DSC-C*, VI Leg., n. 722, p. 20592).

In a parliamentary appearance on 10 November 1999, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, informed the Senate Foreign Affairs Commission regarding the peace agreement in Kosovo and the decisions adopted regarding the plans for regional economic reconstruction:

"Four months subsequent to the adoption of Resolution 1244 by the Security Council we can say that the situation in Kosovo, although far from being bright, has improved substantially...

The first objective was to put an end to the brutal repression and ethnic cleansing that was taking place in Kosovo territory against the Kosovar people of Albanian origin by the Belgrade Government. The Serbian forces today – military, paramilitary or of any other nature – have completely withdrawn from Kosovo and an international military force, the Kfor, has been deployed in the territory offering stability and security. Today this force is comprised of 41,000 troops from 20 different countries including 1,200 Spanish soldiers...

(...)

All of this leads us to the third major theme, which is also the third question that I had posed: the debate on the future status of Kosovo. This issue, as I have already stated, and in accordance with the terms of Resolution 1244, should be approached in the future by the Kosovar people as well as by the international community. For this reason we feel that to speak now of independence is to bring up a false problem that, as such, cannot be solved.... – Spain is not in favour of the independence of Kosovo. This is our position because we are firmly convinced that another State entity in the Balkans apparently based on ethnic homogeneity, would only be the prologue to new conflicts and new wars in this part of Europe. An independent Kosovo at this point in time would not solve even one of the problems that this territory and, in a more general sense, southeast Europe is facing. These are problems that

have to do with political development, incomplete democratic transitions or processes that simply have not even got under way, consolidation of the civilian society, economic development, creation of market economies capable of generating wealth, regional integration. It is plain to see that none of these problems will be solved through independence but other new problems could arise: the process of political and economic construction of this territory would be endangered; the Bosnia-Herzegovina process would be totally incoherent and collaterally the Dayton accords would be threatened; it would lead to an extraordinary degree of instability in the south of the Balkans, particularly in Albania and Macedonia – in Macedonia 35 percent of the population is of Albanian origin and the population of Albania is completely Albanian –, and would have very negative consequences on the domestic constitutional processes under way in the Federal Republic of Yugoslavia.

(...)

With respect to humanitarian action, I will simply state for information purposes that Spain has given refuge in its territory to 1,467 Albanians. Moreover, the Ministry of Defence built and maintained a refugee camp in the north of Albania in Durres. That operation was carried out at a cost of 1,500 million pesetas... The Spanish International Cooperation Agency is actively contributing to aid and reconstruction in Kosovo and has earmarked approximately 2,200 million pesetas for this purpose.

Concurrently, a commitment was made by the Ministry of Economy and Finance to award 7,000 million pesetas in the form of Development Aid Funds to help with the reconstruction of Kosovo and, naturally, mention should also be made of efforts made in the field of public order with 150 civil guard and national police as I stated earlier.

I would not want it to be forgotten that Spain contributes between six and seven percent of the effort being made by the European Union to help in the region affected by the Kosovo crisis that includes Albania, Bosnia-Herzegovina, Croatia, The Federal Republic of Yugoslavia and the ex Yugoslav Republic of Macedonia. The estimated amount of aid flowing from the European Union to this region in 1999 amounted to 730 million euros".

(*DSS-C*, VI Leg., n. 512, p. 2).

XVII. WAR AND NEUTRALITY