Spanish Diplomatic and Parliamentary Practice in Public International Law, 1998

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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.* 1998 (http://www.mae.es/mae/textos/oid/atdpe/atpd.htm), 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).

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

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

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I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis and Pnrpose

The Eighth Ibero-American Summit of Heads of State and Government, held in Oporto (Portugal) on 17–18 October 1998, adopted a Final Declaration which included the following:

"2. ... We reiterate our commitment to strengthening democratic institutions, political pluralism, the rule of law and respect for human rights and fundamental freedoms. We reaffirm our respect for the principles of sovereignty and non-intervention and the right of all peoples freely to build their own political systems in peace, stability and justice. We likewise reaffirm our resolve to help attain a fair system of international relations in accordance with the principles of international coexistence enshrined in the United Nations Charter and the Universal Declaration of Human Rights.

(...)

8. As we said at the beginning of this Declaration, international coexistence depends on respect for the principles and the rules of International Law, the United Nations Charter and the national sovereignty of States. The countries of Ibero-America therefore roundly reject the application of domestic laws outside their country of origin, covert operations that violate the laws and institutions of third countries, and acts of unilateral coercion which hinder cooperation between States. In this context, we call yet again on the United States of Ameriea to cease applying the Helms-Burton Act in accordance with the Resolutions passed in that connection by the United Nations General Assembly.

9. We acknowledge the importance of the progressive development achieved in international regulations concerning the criminal liability of individuals for the commission of certain crimes of international dimension. In this connection we cite with interest the recent approval of the Statute establishing the International Criminal Court.

(...)".

II. SOURCES OF INTERNATIONAL LAW

1. Codification and Progressive Development

Note: See V.1.*a) Diplomatic Protection*

2. Unilateral Acts

In his intervention before the Sixth Committee on Chapter VI of the International Law Commission report on the unilateral acts of States at the 53rd Session of the UN General Assembly, the Spanish representative, Mr. Pérez Giralda, stated thus:

> "As regards the debate in the Commission over the last few months, my Delegation takes the view that the scope of the directives on unilateral acts could be extended to such acts whose objects are other subjects of International Law, always assuming that the active subject is a State. We also believe that it would be extremely useful for the Commission to undertake a study of the consequences of silence and acquiescence as unilateral acts which, if only implicitly, can have legal consequences for other subjects of International Law. That is, my Delegation takes the view that it would be exceedingly useful to pursue the study of adaptation of the consolidated rules of Treaty Law, which has been the focus of the fruitful labours of the International Law Commission in codification and progressive development, with a view to determining how far these rules can be adapted to the question of unilateral acts. We refer particularly to the importance of defining which rules of interpretation apply specifically to unilateral acts and which are applicable both to unilateral acts and International Treaties.
>
> Finally, although consideration of this subject is still in the preliminary phase, in view of its nature, a series of practical guides would seem to be the most suitable way to approach it ...".

3. Treaties

Note: See XVI.1.*b) Cuba*

a) In General

On 22 May 1998, in reply to a question raised in Parliament regarding the States with which Spain has signed agreements providing for the completion of prison sentences in Spain for deeds judged in other countries, and States having Spanish prisoners with which there is no treaty for the serving of prison sentences, the Government explained as follows:

> "In the matter of Spain's bilateral treaties on the transfer of sentenced persons, the following are currently in effect or are being provisionally applied: Argentina: signed 29/10/87, entry into force 30/6/92. Bolivia: signed 24/4/90, entry into force 27/5/96. Brazil: signed 28/4/90, entry into force 24/4/98. Colombia: signed 28/4/93, entry into force 10/4/98. Denmark: signed 3/12/72, entry into force 20/4/73. Ecuador: signed 25/8/95, entry into force 10/3/97. Egypt: signed 5/4/94, entry into force 1/8/95. El Salvador: signed 14/2/95, entry into force 30/6/96. Hungary: signed 28/9/87, entry into force 1/2/89.

Morocco: signed 30/5/97 and provisional application 30/5/97. Mexico: signed 6/2/87, entry into force 17/5/89. Nicaragua: signed 18/2/95, entry into force 15/5/97. Panama: signed 20/3/96, entry into force 29/6/97. Paraguay: signed 7/9/94, entry into force 12/9/95. Peru: signed 25/2/86, entry into force 9/6/87. Russia: signed 16/1/98 and provisional application 16/1/98. Thailand: signed 7/12/83, entry into force 1/12/87. Venezuela: signed 17/10/94, entry into force 18/12/95.

Spain is also a party to Strasbourg Convention 112, along with the following States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein (entry into force 1/5/98), Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Rumania, Slovakia, Slovenia, Sweden, Switzerland, Turkey, United Kingdom and United States.

The following are signatories of this Convention: Canada, Croatia, Finland, Ukraine, Bahamas, Georgia, Israel, Trinidad and Tobago.

The above list indicates that there are very few States with which Spain does not have a treaty of this kind. In any event, the policy of our Government has been and is favourable to such treaties with as many countries as possible provided that the circumstances are appropriate"

(*BOCG-Congreso.D*, VI Leg., n. 284, p. 274).

b) Conclusion and Entry into Force

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

On 24 April 1998, the Government replied to a question tabled in the Senate regarding the date of entry into force of the Convention between the Member States of the European Communities on the enforcement of foreign criminal sentences (Brussels, 13 November 1991), in the following terms:

"Having regard to the entry into force of the Multilateral Convention between the Member States of the European Communities on the enforcement of foreign criminal sentences, under article 21 paragraph 2, this will take place "ninety days after the deposit of instruments of ratification, acceptance or approval by all Member States of the European Communities on the date on which it is opened for signature ".

As to the reasons for the delay in entering into force, we must point out that each State has its own internal legal procedures. As these procedures are completed, these States will deposit the Instrument of Ratification with the Belgian Foreign Ministry, which is the depositary.

Spain ratified this Convention on 9/2/94 and was the second State to do so".

(*BOCG-Senado.I*, VI Leg., n. 450, p. 38).

With regard to the entry into force of the conventions on transfer of sentenced persons signed with Brazil, Colombia, Guatemala, the Russian Federation and

Andorra, on 24 April 1998 the Government replied to a question in the Senate, thus:

"Brazil: The Treaty with Brazil on transfer of prisoners signed on 7 November 1996 will, according to article X, enter into force on 24 April next, thirty days after the Exchange of Instruments of Ratification, which was effected on 23 March last by the Minister of Foreign Affairs and the Brazilian Ambassador to Spain.

Colombia: According to article 11 of the Convention with Colombia on the transfer of sentenced persons, signed at Madrid on 28 April 1993, this will enter into force on 9 April next, sixty days after the Exchange of Instruments of Ratification, which was effected on 9 February last by the Secretary of State for Foreign Policy and the European Union and the Colombian Minister of Foreign Relations.

Guatemala: With regard to the Treaty with Guatemala on Sentenced Persons, signed at Madrid on 26 March 1996, the Spanish Parliament gave its consent for Spain to be bound by that Treaty. Guatemala has yet to ratify it.

Our Embassy in Guatemala has been requested to report on the status of procedures for ratification of the said Treaty.

Russia: On 16 January last, a Convention was signed with the Russian Federation on the transfer of sentenced persons for the serving of prison sentences, provisionally effective as from the date of signing. The Convention was published in the *BOE* n. 45, 21/2/98.

Andorra: The Government of Andorra submitted a draft convention on the transfer of sentenced persons, which was not considered acceptable by France or Spain. It was suggested that Andorra accede to the European Convention on transfer of sentenced persons, but we have no word to date as to whether the Principality of Andorra has signed that Convention".

(*BOCG-Senado.I*, VI Leg., n. 450, p. 38).

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

Appearing before the Joint Committee for the European Union on 20 October 1998 to report on the Government's failure to comply with Act 8/1994, 19 May, which regulates this Joint Committee, with particular reference to reporting by the Government to the Joint Committee regarding the legislative proposals of the European Commission, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, declared as follows:

"Act 8/1994, 19 May, which regulates this Joint Committee, was passed, as the preamble states, for the purpose of updating its functioning in response to the entry into force of the Treaty on European Union. Declaration number 13, annexed thereto, highlights the importance of fostering greater participation by national parliaments in the activities of the European Union and

proposes that the governments of Member States should see that their parliaments receive the legislative proposals of the European Commission.

Article 3 of the same Act 8/1994 lists the various competences of this Committee, and as regards the reason for my appearance here, includes those relating to sections a) and b) which establish the purpose of receiving, through the Government, the legislative proposals of the European Commission sufficiently well in advance to be duly informed of or to examine such proposals. At the earliest possible moment, pending a definitive assessment, the Government will remit to the House a summarised report on the substance of those of the European Commission's proposals that affect Spain. Whenever the Committee deems appropriate, it may ask the Government to expand on the information so remitted.

(...)

... immediately upon approval of Act 8/1994 in May, the Office of the Secretary of State for the European Union set in motion an internal mechanism for coordinating with the other ministries, with a view to laying down a special procedure to comply with the obligations arising out of this Act in connection with reporting and passing on the European Commission's proposals to the Joint Committee.

(...)

Let me explain this procedure in detail and how it works at the present moment.

As soon as Spain's permanent representation in Brussels receives a consignment of documents classified as final, the adviser for Parliamentary Affairs, in agreement with whichever advisers are concerned with the subject in question, proceeds to make a preliminary selection of those which are of special interest to Spain.

Immediately the preliminary selection is made, each adviser sends a facsimile to his or her ministry with a request for it to draw up, within two weeks, the statutory report provided in Act 8/1994, and another to the Office of the Secretary of State for the European Union, confidential in both cases.

The competent ministry or ministries must draw up their final reports as provided in Act 8/1994 and send them within two weeks to the competent deputy director general at the Office of the Secretary of State for the European Union, who in turn remits them by priority facsimile to the permanent representation, the competent adviser and the coordinator responsible for its delivery to the Spanish MEPs and the adviser for parliamentary affairs at my Office. The latter then sends them on to the Joint Senate/Congress Committee for distribution to its members.

In addition to this regular procedure, at every meeting of the Inter-ministerial Commission for matters relating to the European Union, which is held every two weeks, the agenda includes the distribution to those present, representing all the ministries, of a listing of all the documents approved by the Commission and any follow-up measures.

(...)

Of course I think that the system I have described can be further improved to speed up its operation, ... and promise that I shall be delighted to implement any suggestion or advice from the Honourable Members for improvement of the system, since the Government believes it essential that this Parliament be kept informed of all developments in the day-to-day business of Community institutions, for the good of Europe and its Member States".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 116, pp. 2406–2407).

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-Determination

a) Palestine

On 2 April 1998, in reply to a question tabled in the Congress regarding the Spanish government's position vis-à-vis the creation of a Palestinian State, the Government stated as follows:

"The Spanish government in principle supports the self-determination of the Palestinian people, including the option to create an independent Palestinian State. This proposal has also been recognized by the EU. For instance, at the European Council of Amsterdam (June 1997), the EU issued a 'call on the people of Israel to recognize the right of the Palestinians to exercise self-determination, without excluding the option of a State', and at the European Council of Luxembourg (December 1997) the EU expressed its willingness to offer concrete suggestions on such matters as 'the possible creation of a Palestinian State'.

The Palestinian National Council proclaimed the independence of Palestine in Algiers on 15 November 1988 (President Arafat has expressed his determination to establish such an independent State unilaterally next year if the Peace Process talks break down).

The implementation of the principle of self-determination is the exclusive affair of the Palestinian people. They will make the decision in light of the outcome of negotiations with Israel on the Final Statute of the Peace Process, which will deal with the issues of Jerusalem, borders, refugees, settlements, security, relations and cooperation with other neighbours and other issues of common interest.

Spain is convinced that the future Palestinian entity, at peace with Israel, will positively contribute to the development of friendship and cooperation among the peoples of the region".

(*BOCG-Congreso.D*, VI Leg., n. 261, pp. 283–284).

b) Western Sahara

There were numerous questions in Parliament throughout 1998 on the situation of Western Sahara, with various replies in the Congress and the Senate by the Government, the Foreign Minister and the Secretary of State for International Cooperation and Ibero-America.

In this connection, a question was tabled in the Congress on 7 May regarding the role of Spain in the process of self-determination for Sahara, to which the Government replied as follows:

"From the outset the Spanish government has supported the Settlement Plan of the United Nations Secretary General for Western Sahara. The Government believes that the agreements reached at Houston in 1997 established an extremely valuable basis for the parties in conflict to overcome their most immediate differences as to the implementation of this Settlement Plan. The government is further persuaded of the need to support the United Nations in promoting the implementation of that Plan, and this it has done and will continue to do throughout 1998.

The approval by the Congress of a Green Paper on 27 December 1997 creating a framework of parliamentary consensus to back the Government's cooperation with MINURSO was especially opportune. Following instructions from the Foreign Minister, on 8 January Spain's permanent representative at the United Nations in New York wrote to the UN Secretary General with the text of the Green Paper, reiterating Spain's willingness to cooperate with MINURSO.

The permanent representative had a meeting with Mr. Miyet, deputy secretary general for Peacekeeping Operations, for the same purpose. Expressing warm thanks for Spain's willingness to cooperate, Mr. Miyet acknowledged the value of Spain's contribution from the outset to the Secretary General's Settlement Plan for Western Sahara and resolved to determine the spheres in which additional contributions could best be made. In response to these representations, on 17 February Mr. Miyet replied to Spain's permanent representative at the United Nations with the following requests:

- Dispatch of an expert on documentation to work with the Identification Commission.
  Assistance in the repatriation of refugees: he recommended contacting the UNHCR in Geneva.
  Removal of landmines: he recommended that our representative in New York contacted the person in charge of this issue in his Department, to determine specific fields of cooperation.
  Possible use of radio broadcasting facilities in the Canary Islands to enable MINURSO to carry on a 'programme of civic information' with a view to the referendum.
  Access to medical facilities in Las Palmas for MINURSO personnel.

The following measures have been instituted to date:

- MINURSO has been advised of Spain's willingness to provide the requested expert on Spanish documentation.
  With regard to Spanish cooperation with the UNHCR, Spain's permanent representative at the United Nations in Geneva contacted the UNHCR in January to determine areas in which Spanish cooperation can be especially useful. In addition, at the request of the UNHCR, the Ministry of Defence furnished the latter with maps of the region for use in planning the repatriation of refugees. Also, at the end of 1997 Spain donated four million dollars to the UNHCR for its programme of repatriation of Saharan refugees.
  Spain's Permanent Representation at the United Nations in New York has already been instructed to initiate contacts with the UN Department of Peacekeeping Operations in order to determine areas in which Spanish cooperation can be especially useful for the conduct of the mine-clearing operations which MINURSO will have to undertake when the time comes.
- ... Spain's Permanent Representation at the United Nations in New York held a meeting at the beginning of March with the official of the UN Department of Public Information in charge of planning requirements for access to MINURSO information media. This official ... stated that at this time the Secretariat is negotiating with the parties to try and reach an agreement on this issue. When such an agreement is reached, he will contact the Spanish representation to determine how Spain can help to disseminate the 'civic information programme' that MINURSO wishes to conduct for the purposes of the referendum. Whether Spain provides assistance will depend on such an agreement.
- The agreement for utilization of Spanish military hospitals in Las Palmas de Gran Canaria by MINURSO personnel is practically complete.

Aside from these specific aspects in which the Secretariat has requested Spanish assistance, the Foreign Ministry remains in close contact with the MINURSO, particularly through the Permanent Spanish Representation at the United Nations in New York, in order to be kept up to date on progress in the Settlement Plan and to lend whatever assistance may be required.

(...)".

(*BOCG-Congreso.D*, VI Leg., n. 276, pp. 274–275).

On the same date the Government replied as follows to a parliamentary question on aids to guarantee the self-determination of the Saharan people through a free and fair referendum:

"The Spanish government has been closely following all events relating to the situation in Western Sahara .... Spain's interest in the situation in Sahara is even greater today, if that were possible, in that the Houston Accords open up

real prospects of a referendum, and hence of a solution to a dispute that has gone on for too long. ... Morocco and the Polisario, who in successive rounds of direct contacts sponsored by James Baker, agreed in the Houston Accords to give another opportunity to break the current deadlock in the UN Settlement Plan.

(...)

According to that Plan and the Houston Accords, the UN acquires sole authority to negotiate whatever phases and steps are required until such time as the referendum is held. Neither the Settlement Plan nor the Houston Accords appoint a 'guarantor' or assign a specific role to Spain. Spain's posture has been consistently neutral, not to be confused with indifference given that Spain is one of the countries most directly concerned about stability throughout the Maghreb region. Our role is therefore confined to wholehearted support for the work of the UN and willingness to cooperate with the UN in whatever it asks for, subject to the prior assent of the parties. This spirit is reflected in the Green Paper approved by the Congress Foreign Affairs Committee on 22 December last, with the support of all parliamentary groups. According to the Green Paper of 22 December, any help that Spain can give to the implementation of the Settlement Plan will depend on what the UN, with the assent of the parties, requests. Be it said that the capacity of Saharans to participate in the referendum depends not on aids but on whether or not they are included in the census of voters for the referendum. It will be up to the United Nations Mission for the Referendum in Western Sahara (MINURSO), through the Identification Commission, to draw up a list of voters and hence to decide who qualifies to take part in the voting to determine the future of the territory".

(*BOCG-Congreso.D*, VI Leg., n. 276, pp. 175–176).

Subsequently, on 9 June, the Government addressed the Senate in response to a question on progress in the identification of voters in the peace process for Western Sahara:

"Under the terms of the UN Settlement Plan for Western Sahara and of the Houston Accords which opened the way for its reactivation, the UN is in sole charge of handling this issue, which will be finally resolved when the Saharan people have the opportunity to decide on their own future in a free and fair referendum with adequate international guarantees. This is precisely the aim of the UN, which is 'the sole authority for all aspects relating to the referendum, including its organisation and conduct'. Therefore, only the UN is competent to make plans for the various aspects of the process leading up to the referendum.

According to the calendar envisaged in the Secretary General's report of 13 November 1997, the voter identification phase should be completed by 31 May 1998. ... Nevertheless, in view of the cumulative delays in this process due to a number of different causes ... that deadline no longer looks realistic.

(...)

Access facilities to the identification centres will be guaranteed by the Civilian Police Unit of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

(...)

The process of identifying the body of electors who will take part in the referendum is undoubtedly crucial and complex. It is crucial in that its purpose is to determine who can vote, and it thus vitally affects the transition to subsequent phases of the Settlement Plan. It is complex in that it has to be undertaken in a difficult natural environment and deals with a tribal, nomadic and therefore scattered population.

The fact is that the first sparks began to fly between the parties not long after identification operations were resumed at the beginning of last December in accordance with the Settlement Plan. This has meant interruptions and delays, so that the likelihood of running to a calendar which the UN itself already considered very tight is very remote.

(...)

The UN is aware of the situation. Spain is too, and is following very closely all developments relating to the territory and to the present phase of identification.

(...)

According to the Settlement Plan, and more specifically Security Council Resolution 658, the Identification Commission 'will be composed of an expert demographer familiar with the problems and structure of Saharan society, assisted by a group of three to five specialists in the demography of countries where nomadic customs predominate'. Further on, the Resolution states that 'the parties and the representatives of the OAU shall take part in its work as official observers. The tribal chiefs of Western Sahara shall also meet with the Identification Commission to assist in their work'. The sessions at those identification centres currently operational are conducted, as noted in the Secretary General's report of 13 November 1997, 'with two sheikhs present, one from each side, in addition to observers from Morocco, the Frente POLISARIO and OAU'.

As stated in the Green Paper of 22 December 1997, the Government at the time conveyed to the UN General Secretariat Spain's willingness to cooperate in the implementation of the Settlement Plan and asked in what actions our country's assistance would be most useful. None of the requests received from the UN so far is intended to facilitate travel in equal conditions for persons obliged to travel from their places of residence to the MINURSO identification centres. On the other hand, Spain has contributed four million dollars to the United Nations High Commissioner for Refugees (UNHCR), which under the Settlement Plan is one of the chief organisations responsible for seeing to the transfer of refugees to the territory to vote in the referendum.

As regards the return of refugees, the UN Settlement Plan for Western

Sahara envisages their return only upon conclusion of the current identification phase. However, strict application of the Plan would require that persons considered to be entitled to vote in the referendum and currently outwith the territory of Western Sahara in countries other than Morocco, Algeria and Mauritania be allowed to present themselves for proper identification.

Moreover, if they are included in the electoral roll, they should be enabled to exercise their right to vote.

The Government wishes insofar as it is within its power to facilitate due implementation of the Settlement Plan. In this connection, Saharans currently in Spain are subject to the mobility rules applying to the countries of which they are passport holders. Those legally registered as residents may circulate subject to the terms of the law, which include maximum periods of time outside Spain. There are also other Saharans subject to regularization procedures and the law applying thereto.

Also, for the current academic year (97/98) there are 23 Saharans in Spanish territory holding scholarships from the Spanish International Cooperation Agency. Their right to circulate will naturally depend on their maintaining their residence in Spain as scholars.

In this matter the Government is resolved to cooperate as fully as possible with the MINURSO and dependent bodies, including the Identification Commission, always subject to the prior assent of the parties as regards the utility of our assistance".

(*BOCG-Senado.I*, VI Leg., n. 492, pp. 130–132).

Finally, on 2 December the Government replied as follows to a question in Congress as to whether the European Union will issue a joint declaration on the deadlock in the referendum process for Western Sahara:

"Within the framework of the Common Foreign and Security Policy, the European Union continuously monitors progress in the dispute and the implementation of the United Nations Settlement Plan through a mission deployed in the territory for that purpose.

(...)

The EU recently had occasion to state its views on the dispute over Western Sahara, in the memorandum which it presents at the beginning of every period of UN General Assembly sessions. At the start of period 53, the Union addressed this question in a paragraph which succinctly states its position on the subject, as follows:

'The EU reiterates its full support for the UN Settlement Plan, which includes the holding of a free, fair and impartial referendum on self-determination of the people of Western Sahara. The EU calls on all parties to cooperate fully with the UN Secretary General, his personal envoy and his special representative in order to achieve rapid and substantial progress in the implementation of all aspects of the Settlement Plan'.

The decision to issue calls like the above is weighed by the EU on the basis

of regular detailed monitoring of the Western Sahara question and elementary considerations of political appropriateness. The possibility is, then, always open and is analysed in light of the circumstances, on the assessment of which the Fifteen have not so far encountered difficulties in reaching a consensus. At no time has Spain blocked a joint EU declaration on the deadlock in the Western Sahara referendum process".

(*BOCG-Congreso.D*, n. 352, p. 88).

On 25 March 1998, the Foreign Minister, Mr. Matutes Juan, answered various questions from the Congress Foreign Affairs Committee regarding the Settlement Plan for Western Sahara:

"... Spain's contribution of 4 million dollars to the UNHCR for the refugee repatriation programme and the Settlement Plan for Sahara that I mentioned. This contribution has been formally allocated to budget application 12.103.01.134.496.00. The code breaks down as follows: 12, Foreign Ministry; 103, Spanish Cooperation Agency; 01, technical office; 134, development cooperation; 496.00, official development aid projects.

On 15 December last, a memorandum of understanding was signed in Madrid between the Spanish International Cooperation Agency and the UNHCR, establishing the financial, administrative and other conditions governing the use of Spanish funds for the proposed purpose.

As regards Spanish representatives with the UNHCR who will be serving in that body, I would stress that the only Spanish representative with the UNHCR is our permanent representative at the United Nations Office in Geneva, where, as you know, the UNHCR has its headquarters.

There is no system of representation with the UNHCR other than through the United Nations Office. The personnel working for the UNHCR in its various programmes do not represent their States of origin; rather, they have a commitment of loyalty to the organisation. The purpose of that commitment is to guarantee the UNHCR's independence and neutrality wherever it acts, and that condition applies equally not only to the organisation's permanent personnel but also to experts who are engaged temporarily for a specific action. Therefore, as regards the deployment of Spanish experts seconded to the UNHCR to assist in the Settlement Plan, I would note that this plan assigns ... a very specific mission to the UNHCR: namely, the voluntary repatriation of all persons from Western Sahara who have been registered as voters by the Identification Commission, and of their direct relatives. For that purpose it will be setting up reception centres.

(...)

There are no plans to have Spanish representatives with the UNHCR, and therefore to date the Spanish contribution has been largely confined to the 4 million dollars I referred to. Implementation of the Settlement Plan is now the sole responsibility of the United Nations mission for organisation of the referendum, that is MINURSO ... as regards incidents arising in the current

phase of voter identification. The Government is keeping close track of all developments in this dispute, of implementation of the Settlement Plan, and particularly of the identification of voters, which is now at a crucial stage. Progress and the results in this phase will determine subsequent actions as provided in the plan since the resumption of identification operations.

(...)".

(*DSC-C*, VI Leg., n. 415, pp. 12099–12101).

Finally, we would highlight the address by Mr. Villalonga Campos, Secretary of State for International Cooperation and Ibero-America, to the Congress Foreign Affairs Committee, reporting on aspects of the situation in Western Sahara:

"The Government believes that the United Nations Settlement Plan is currently at a decisive stage for the future of the dispute. Given that ... there has been no new negotiation of the plan, the Government's position is still to support the plan as a framework for settlement, within which the measures advanced by the Secretary General will be implemented. This means political and practical support, which our country has provided in the form of various different material contributions to the mission deployed in the territory.

(...)

It is the Executive's intention to continue, as far as it is able, to provide any cooperation that is requested and has the assent of both parties.

(...)

The Government will, then, continue to invite both parties to cooperate with the United Nations, in a display of the kind of constructive spirit that is essential for the relaunching of the Settlement Plan. The Government will of course pursue a line of cooperation and confidence-building to help arrive at a happy outcome of the process sponsored and promoted by the United Nations.

(...)

The Spanish position is one of neutrality – not distant but active neutrality. This entails supporting the right of the Saharan people to self-determination, and by extension all United Nations resolutions aimed in that direction, and giving our full support to the peace plan. This means active support and financial cooperation, and the Government is of course willing to lend whatever assistance the United Nations may request to help the process along.

It is moreover a kind of neutrality which I would describe as positively discriminating, inasmuch as all humanitarian aid to the Saharan people is maintained. Admittedly the level of the Agency's action or subsidization in projects by non-governmental organisations in Sahara has declined – and I am prepared to remedy that – but it is not true that the total aid offered to the Saharan refugee camps has declined; food aid has increased, emergency humanitarian aid also stands in the region of 100 million, and the entire scholarship programme continues, as do other one-off items of aid.

Moreover, official aid, centralized and decentralized, increased over the last year.

This does not prevent us from a maintaining a posture of discretion and active neutrality, which is absolutely essential in view of Spain's position vis-à-vis Morocco and the Sahara. We therefore continue to support the peace plan or United Nations referendum plan and the Secretary General. ... The Government of course regrets the instances of non-compliance with the Houston Accords, and we have so stated to the parties, but we do not think it prudent to make public announcements ....

I repeat that the Government's position is one of full support for the United Nations plan and this new calendar. We shall of course use our influence – and this we have always said in our conversations with the parties – to stress the need for compliance with this plan, and we shall continue to maintain that same attitude of positive neutrality. First and foremost, humanitarian support for the Saharan people, and secondly, support for the United Nations referendum plan.

(...)

We have subsidized and committed aid to the UNHCR. We are willing to increase this aid. We have had talks with ECHO and we think it right and necessary that both the UNHCR and ECHO utilize and listen to the Spanish non-governmental organisations. We do not wish to dictate, as the Government and official supplier of aid, what non-governmental organisations ought to be involved in whatever work of transfer, mobilization, etc. may be necessary to put the United Nations plan into practice, because we feel that this could at the very least jeopardize the belief of one or both parties in our neutrality. We prefer such decisions to be made by the UNHCR or the United Nations Commission rather than directly by us; however, this has no bearing on the subsidies to non-governmental organisations for humanitarian tasks in the Saharan refugee camps".

(*DSC-C*, VI Leg., n. 589, pp. 17193–17194, 17201).

c) East Timor

In reply to a parliamentary question on 28 January 1998, the Spanish government expressed its concern at the violations of human rights being committed in East Timor:

"On receiving reports of serious human rights violations committed recently by Indonesian troops in East Timor, the Spanish government supported a proposal by Luxembourg as President of the EU for common representations to the Indonesian authorities in Jakarta, registering the protest of the European Union and its Member States at such serious events. These representations were duly made.

Spain shares the general position of the European Union and the United Nations of non-recognition of the annexation of East Timor to Indonesia

until such time as the people of that territory freely express their will on this issue.

Spain has supported the common position of the European Union on East Timor demanding full respect for human rights there.

The Spanish government, like the rest of the EU members, supports the initiative of the UN Secretary General to organize bilateral talks between Portugal and Indonesia on the future status of East Timor, for which the wishes of the inhabitants must be taken into account".

(*BOCG-Congreso.D*, VI Leg., n. 236, p. 451).

Replying to a question tabled in the Congress Foreign Affairs Committee on 25 March 1998, the Foreign Minister Mr. Matutes Juan explained Spain's position on the conflict in East Timor:

"We have made our position clear in bilateral contacts with the Indonesian government, in European Union initiatives and in the relevant forums of the United Nations.

Our government accepts the doctrine of the United Nations to the effect that the decolonization of East Timor was interrupted in 1976 following invasion and subsequent annexation by Indonesia, and that Portugal is therefore still the legitimate administrator. Spain firmly supports the current UN-sponsored dialogue between the governments of Portugal and Indonesia. A new round of negotiations is planned for April, and we urge both parties to make every effort to ensure that these negotiations produce an advance towards the solution of this conflict.

In this conflict, which is by no means a new one, Spain's position has been quite clear from the outset, and Spain will maintain and reiterate that position as long as is necessary.

At the beginning of last January we had a round of bilateral political talks with the Indonesian authorities in Jakarta, where we again voiced our concern about the situation in East Timor and we urged the Indonesian government to renewed efforts in its negotiations with Portugal.

I should say that Spain is one of the countries that have shown most solidarity on this issue with Portugal, and hence with Timor, within the European Union, and we intend to carry on in that direction. In the recent visit to which you refer, Monsignor Belo was naturally satisfied at Spain's position, which is coherent, consistent, and is of course the only possible position for us".

(*DSC-C*, VI Leg., n. 415, pp. I2109–12111).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protectiou

Note: See XIII.10 Citizenship of the Union

a) Diplomatic Protection

Addressing the Sixth Committee on Chapter V of the International Law Commission report on diplomatic protection at the 53rd Session of the United Nations General Assembly, the Spanish representative, Mr. Pérez Giralda, stated as follows:

"The subject of diplomatic protection has an ample and solid base in international customary law, and the Commission ought to take as basis the rules generally acknowledged and applied in practice by States in pursuing their labours. In the opinion of my Delegation, the issue of diplomatic protection is important enough to warrant the effort of codification a the basis for an international convention on the subject. Diplomatic protection is a complementary area of international liability. Together, they constitute a substantial core of International Law that merits formalization in a convention to unify the practices currently followed by States. We believe that the subject is susceptible of codification if, as would seem most prudent, we focus as far as possible on the definition of secondary rules.

Starting from the premise that this work should be based on Customary Law, we believe that the exercise of diplomatic protection should continue to be treated as a right of the State. Undoubtedly this right rests upon the prior violation of individual rights or interests by a State. However, it is advisable to maintain the distinction – artificial or notional as it may be – between the right of the State and the right of the individual, as is the case even of those States whose internal legislation has developed furthest the concept of diplomatic protection as a right of their nationals. These States have consistently reserved the option to compensate for the absence of diplomatic protection where vital State interests are involved. In such situations there is nothing to prevent States from providing for other kinds of compensation contemplated in their internal laws insofar as they are willing to grant their nationals the right to claim recompense from the State for failure to exercise diplomatic protection. There is no contradiction between such an option and the State's discretion to exercise diplomatic protection in the international sphere. Spain is a case in point, where the jurisprudence has applied a constitutional rule to recognize the right of individuals to seek monetary compensation from the courts for prejudice to their rights arising from failure to exercise diplomatic protection.

(...)

As to the relationship between diplomatic protection and the protection of

human rights, my Delegation acknowledges that although in the current State of evolution of international society there has been progressive recognition of individual rights in International Law, this progress has not been accompanied by a parallel enhancement of the procedural means whereby an individual can claim the rights to which he is entitled. Also, the protection of human rights and diplomatic protection normally operate on different planes as regards the matter or content of the rights protected, which in the latter case are chiefly property rights. For all those reasons, my Delegation takes the view that the two institutions are developing side by side, so that separate regulation of diplomatic protection as an institution proper to inter-State relations is not incompatible with the resurgence of Human Rights in International Law, which we support.

(...)".

b) Consular assistance

Addressing Parliament on 18 February 1998, the Foreign Minister, Mr. Matutes Juan, explained the steps taken by the Spanish government in response to the murder of a Spanish volunteer, Inmaculada Vieira Fuentes:

"As soon as the Ministry learned from our ambassador in Maputo of the tragic death of Doctor Vieira, it was given top priority by my department, and this Ministry instituted numerous measures. Our efforts have been aimed at two essential objectives: firstly, to ensure a proper investigation to identify and bring to trial the murderers of Doctor Vieira; secondly, to lend permanent support to her family in these dramatic circumstances, furnishing information and assistance until such time as the case is resolved. On the first point, our Embassy has been instrumental in ensuring that the case does not become lost in the labyrinth of bureaucracy.

On my instructions, our ambassador made repeated representations to the local authorities to impress on them the importance that Spain attached to the case. A thorough police investigation was demanded and conceded, culminating in a report to our ambassador identifying the culprit, no less than a police officer named Simeone Jojo; at the same time we explained the gravity of the case to our EC partners, and as a result, the ambassador for the Netherlands, at that time occupying the Union presidency, accompanied by the Troika, explained to the local authorities that the maintenance of EC cooperation with Mozambique depended on a satisfactory solution to the Vieira case. Thanks to this determined pressure, criminal proceedings were instituted and the hearing began on 20 November 1997.

During all this time the Secretary of State for Cooperation undertook personally to lend the family all possible support. He spoke with the family on several occasions to bring them up to date on the progress of the case. Also, in November he had a meeting with the Minister of the Interior of Mozambique, at which he reiterated our interest in the case. The secretary general of the

AECI stressed our interest once again on a visit to Mozambique two days later. The trial finally took place on 28 November last. The court sentenced police officer Simeone Jojo to one year's imprisonment for excusable homicide.

I would stress that, as an exceptional case given the family's financial situation, the Department of Consular Affairs has been authorized to defray the trial costs, which amount to 2000 dollars. The Government has further advised Dr. Vieira's family of its continued support in the appeal that they intend to lodge ...".

(*DSC-C*, VI Leg., n. 380, p. 11216).

The Government and the Minister of Foreign Affairs made various statements to Congress and Senate regarding consular assistance to Spanish citizens arrested abroad. In reply to a parliamentary question tabled in Congress on 8 January 1998 regarding what is being done to duly publicize internal Circular Orders on support for Spanish prisoners abroad by the consular services, the Government stated as follows:

"As regards consular assistance to Spanish detainees, there are currently 1344 Spaniards detained abroad, 987 (74%) of them for offences in connection with drug trafficking. The provision of assistance to these Spanish nationals is one of the chief concerns of the consular service. The nature of such assistance varies, depending as it does on a number of factors: the characteristics of the country in which the consular service works, cooperation with local authorities, the personal and judicial situation of the detainee, etc. Despite this diversity, the assistance given to Spanish detainees abroad is by no means 'inadequate'. There are certain steps that the consul will always take when a Spaniard is detained outside our borders, and these go considerably beyond what is common for most European Union countries. The most important of these are:

– To inform the Ministry of Foreign Affairs. Whenever a Spaniard is detained, under article 36.1.b of the Vienna Convention on Consular Relations, the authorities of the receptor State inform the detainee of his or her right to communicate with the competent Consulate. As soon as the Consulate learns of the situation, it remits to the Department of Legal and Consular Affairs full details of the subject and his or her arrest. If the detainee so requests, the Subdepartment of Consular Affairs contacts his or her relatives.

The duty to inform does not stop there. The Consulate is obliged to inform the central services of any significant change in respect of the detainee. Moreover, it must twice yearly remit a statistical report indicating the judicial status of all detainees within its purview.

– Visits to detainees. Under article 36.1.c of the Vienna Convention, consuls and consular section heads have the right to visit their nationals. In the case of Spain, these officers are obliged to visit at least once a year, and where the prison and the consulate are located in the same town, once every

two months. In most cases visits are in practice much more frequent, and may be as frequent as once a month.

On such visits, consuls have the opportunity to ascertain the situation of the detainees and to see to their needs. There is a visitors book in which they can enter their requests in writing (some of these, by the way, go beyond the duties of consular officials).

– Financial assistance. In view of prison conditions in some countries, Consulates may under certain conditions furnish financial assistance to Spaniards in need of help for health care and sustenance. Such assistance may not exceed one hundred dollars per month without the express authorization of the Department of Legal and Consular Affairs. It should be remembered that such financial assistance is not an inherent right of any detainee, as is sometimes believed, but that it is up to the consul to decide whether to grant it or not. But even so, where life in a prison is especially grim or difficult, such assistance is regularly granted provided the number of detainees in the consulate's constituency is not too large.

If the Consulate considers that a detainee requires a greater amount, it submits a proposal to the Department of Legal and Consular Affairs, and this department issues an authorization if the subject has no relatives to help him or her and has no financial means. Such extraordinary grants may be made for reasons of health, medical examinations, purchase of medicines, etc.

In 1996, financial aid of this kind totalled 51 million pesetas and was granted to 582 detainees.

– Legal assistance. When Spaniards detained abroad need a lawyer, the Consulate gives them a list of local practitioners whom it deems competent. In very exceptional circumstances of poverty, the Ministry of Foreign Affairs may defray the costs of the detainee's legal defence.

– Transfer to Spain. Spain has ratified numerous bilateral and multilateral conventions making it possible for Spaniards serving sentences abroad to be transferred to Spain. We currently have bilateral conventions with Argentina, Bolivia, Denmark, Ecuador, Egypt, El Salvador, Hungary, Morocco, Nicaragua, Mexico, Panama, Paraguay, Peru, Thailand and Venezuela. Spain is currently negotiating bilateral conventions of this kind with twenty other countries, in some of which there are considerable numbers of Spanish prisoners. These countries are: Andorra, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Equatorial Guinea, Guatemala, Honduras, India, Indonesia, Kenya, Mauritania, Philippines, Rumania, Russia, South Africa, Tunisia and Uruguay. As for multilateral agreements, Spain is a party to the 1983 Strasbourg Convention on the Transfer of Sentenced Persons and the 1987 Brussels Agreement on the application among Member States of the European Communities of the Council of Europe Convention on the transfer of sentenced persons. Consuls in countries with which there is an agreement of this kind are obliged to inform the detainees in their constituencies of the terms of the agreement and to process applications as appropriate.

In any event, the existence of a Convention for the Transfer of Sentenced Persons does not entail *ipso facto* transfer to Spain: some conventions establish exceptions such as persons convicted for drug trafficking. In any case, transfer requires the assent of three parties: the State where the person was convicted, the State where he or she is to serve the sentence, and the sentenced person.

These are the outstanding aspects of the assistance that Consulates provide for Spaniards serving sentences abroad. The Subdepartment of Consular Affairs also undertakes complementary duties, the chief beneficiaries being the relatives of prisoners, who are kept up to date on any new development or change and are helped to send correspondence or money.

Finally, it is well to remember that in many countries there are circumstances that make the consulates' work in this field extremely difficult, despite which detainees receive assistance from the time of their arrest to the time of their release.

Nonetheless, it is often forgotten that when a Spaniard commits an offence in another country he or she is subject to that country's jurisdiction, and that the consulate, however satisfactory its assistance may be, can never interfere in matters pertaining to the sovereignty of another State"

(*BOCG-Congreso.D*, VI Leg., n. 231, p. 195).

Replying to a parliamentary question on 12 May 1998, the Spanish government furnished the following data on the number of Spanish citizens detained abroad who have applied to serve their sentences in Spain under one convention or another:

"The number of Spanish citizens who have applied for transfer under these conventions is 388, that is concluded processes in which the Cabinet has resolved to authorize the transfer. Of these, 262 come under the European multilateral treaty and 126 under bilateral conventions"

(*BOCG-Senado.I*, VI Leg., n. 467, p. 65).

Appearing before Parliament on 16 April 1998, Mr. de Miguel y Egea, the Secretary of State for Foreign Policy and the European Union, reported on the application of the 1997 bilateral convention between Spain and Morocco as it relates to the provision of assistance to detainees and the transfer of sentenced persons:

"The Convention with Morocco on assistance to detainees and the transfer of sentenced persons was signed on 30 May 1997 and was applied provisionally as from the date of signing, as provided in article 22. It was published in the *BOE* of 18 June 1997. According to the same article, the convention will formally come into force at the end of a statutory period commencing when it is placed on record that the parties have concluded the constitutional procedures required in each case. For the Spanish part, a verbal note was delivered to the Moroccan Embassy in Madrid on 16 December 1997 to the

effect that Spain had concluded all the constitutional formalities for its entry into force.

Between the first provisional application and March of this year, 14 Spanish citizens have been transferred. Naturally, as in all agreements of this kind, such transfer requires the consent of both Governments, which in this case has been forthcoming, and that of the citizens applying for transfer.

At 3 March 1998, the Spanish inmates in Moroccan prisons totalled 129, of whom 122 were serving sentences for drug-related offences. From those 129 we must subtract the 14 already transferred, plus a further 12 with applications in the pipeline.

... All the signs are that most of these 129 or so prisoners will wish to apply for transfer under the convention. Spain is willing to support all such cases, and we hope that, as in cases of the 14 prisoners already transferred and the 12 pending resolution, the Moroccan government will raise no objections. 1 hope that this positive attitude will be confirmed – and that is indeed our wish – at the top-level meeting scheduled in Rabat in the next few days".

(*DSS-C*, VI Leg., n. 270, p. 9).

2. Aliens

On 4 March 1998, the Spanish government made the following reply to a parliamentary question on the deportation of Algerian immigrants:

"1. The deportation of Algerians is considered to be in compliance with international agreements, for the following reasons:

- All asylum applications from Algerian citizens are studied individually and in detail. On the basis of the dossier built up, applicants are granted refugee status where they meet the requirements laid down in article 1.A.2 of the Geneva Convention.
- Where the requirements for refugee status are not met, protection as provided in article 17.2 of the Asylum Act may be granted in the light of individual circumstances in each case. We would note in this respect that the Interministerial Committee for Asylum and Refuge has been studying and monitoring the Algerian situation and its evolution, and on that basis establishes and delimits those cases that are entitled to some kind of protection, whether under the Geneva Convention or instruments of intent like the European Convention on human rights and fundamental freedoms, or the Convention against torture and other cruel, inhuman and degrading forms of treatment or punishment.
- The criteria followed here are those laid down for Algeria by the United Nations High Commissioner for Refugees (UNHCR) and by other international human rights organizations, which identify groups or populations in need of international protection by reason of persecution by non-State agents.

- Algerian citizens are not repatriated where there is evidence that their lives or safety may be at risk in the event of a return to their country, in accordance with international instruments on the protection of human rights and refugees.

2. Expulsions of Algerian citizens ordered by Spain in accordance with UNHCR recommendations are not carried out where there is evidence of risk to their safety or their human rights in the terms of the European Convention on human rights and fundamental freedoms and the European Convention against torture and other cruel, inhuman and degrading forms of treatment or punishment..

In any event, the following must be taken into consideration:

- Not all Algerian citizens are at risk on returning to Algeria, as witness the transit on the Oran-Alicante sea crossing. This is the line used for expulsions to Algeria..
- Spain cannot unilaterally decide to totally suspend expulsions of Algerian citizens; that is a decision that has to be made with our EU partners in view of how this would affect Spain's international commitments.

3. The State Administration has prepared two immigrant reception centres in the city of Melilla. Foreigners from the sub-Saharan region are received at the La Granja centre and Algerians at the Lucas Lorenzo centre.

The rules and procedures for reception in Melilla are the same for sub-Saharans and Algerians.

The centres are fitted out and maintained in cooperation with the authorities of Melilla. Inmates are adequately fed and have permanent access to health care".

(*BOCG-Congreso.D*, VI Leg., n. 251, p. 206).

3. Human Rights

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

In reply to a parliamentary question on 18 February 1998, the Government explained its position vis-à-vis the political situation in Algeria:

"The Government trusts that with the consolidation of political and economic reforms, the authorities and the people of Algeria will be better able to introduce measures to staunch extremist violence. The Government has at all times been prudent and constructive, scrupulously respecting the independence and sovereignty of Algeria. As a friendly country, Spain has followed the situation in Algeria very closely, gathering all possible information on recent serious developments. Whenever the occasion has arisen, Spain has expressed its willingness to cooperate in every sphere, including those called for by the Algerian government with a view to consolidating the structures

necessary for the Rule of Law. It was in this spirit that Spain supported the dispatch of the EU Troika to Algiers.

Despite dark areas, there are promising signs in Algeria's difficult transition process, for instance parliamentary representation of the most important political currents in present-day Algeria, including political Islamism. The Government believes that in view of the current precariousness of Algerian institutions, it ought to avoid any move that could undermine the legitimacy of the Algerian government. The Spanish government believes that the new institutional framework will consolidate the Rule of Law to the extent that it reflects the desire of the vast majority of the Algerian population to organize itself in a spirit of peaceful coexistence.

On a different plane, Spain's economic, strategic and other interests in North Africa are part of a global relationship, including all the North African countries and deriving from a long history of historic ties and shared aspirations, which demands our firm commitment to economic development. Spain therefore uses all means at its disposal (soft loans, coverage of export risks, renegotiations, etc.) to promote the operation of Spanish companies there to our mutual benefit. The Government is persuaded that this is a positive influence, given that stability is indissolubly linked to prosperity and that, in both the medium and long term, the prosperity of the peoples on the Southern shore of the Mediterranean is a guarantee of prosperity for the Northern shore as well".

(*BOCG-Congreso.D*, VI Leg., n. 244, p. 192).

In reply to a parliamentary question on 19 June 1998, the Spanish government explained its position as regards the appointment of a Special Rapporteur for Algeria by the United Nations Human Rights Committee.

"The action of the Spanish observers at the 54th session period of the United Nations Human Rights Commission regarding the situation in Algeria was entirely in line with that of the European Union.

The appointment of a special rapporteur for a specific country must be approved by the Committee for the relevant proposal, whose approval requires the assent of the majority of the Committee's 53 members. The delegations of the fifteen EU members held frequent consultations on the matter and concluded that, both for tactical reasons as regards the adoption of a resolution and for political reasons, it would not be feasible to appoint a special rapporteur in this session period.

Having discarded that option, the partners decided to introduce strongly-worded references to the human rights situation in Algeria in the European Union's addresses to the Commission. The Union acted accordingly, particularly in the debate on subject 10 (situation of human rights world wide).

Meantime, throughout the session period the European Union made constant representations to the Algerian Delegation to persuade the Algerian

government to make a public undertaking to the Commission regarding the mechanisms set up by the Commission to monitor respect for human rights (such as 'thematic rapporteurs'). At the failure of these representations, the European Union intervened once more to draw attention to the lack of cooperation from Algeria. The Union warned the latter that it did not consider the matter closed but would continue to keep a very close watch on developments, and if there were no progress, this would determine its posture at the United Nations General Assembly or in the next period of Commission sessions.

The Union intends to continue placing the issue of human rights high on the list of priorities in its dialogue with Algeria".

(*BOCG-Congreso.D*, VI Leg., n. 296, p. 271).

4. Human rights violations in Chile and Argentina

On 18 February 1998, the Government replied as follows to a parliamentary question on investigation of the disappearance of Spanish and Chilean citizens during the military regime of Augusto Pinochet:

"Neither the Government nor any other institution is legitimately entitled to prejudge the criminal nature of any act inside or outside Spain; given that the task of judging and enforcing judgment is the exclusive province of the courts appointed by law, in accordance with the rules of competence and procedure laid down by that law (article 117.3 *CE*). These are independent bodies, impartial, immovable, objectively disinterested and predetermined by law. They are responsible bodies which deal exclusively with matters for which they are competent, they owe obedience only to the Constitution and to the laws governing the Spanish and international legal systems, and the Government and all citizens are obliged to cooperate with them at their requirement as the law provides and within their respective spheres of competence (article 118 *CE*).

As regards the proceedings referred to by the Lady Member, as with any other criminal proceedings, the Government's sole active function is to have the Department of Public Prosecutions, in due discharge of its duties, set the wheels of justice in motion in defence of the law, of the rights of citizens and of the public interest as protected by the law, and to protect the independence of the courts.

It is the duty of the Department of Public Prosecutions, governed by the principles of legality and impartiality, to cooperate with the courts by examining whether these overstep or fail to exercise their jurisdiction or competence, thus annulling proceedings as referred to in article 238 *LOPJ*. However, the decision lies not with the Department of Public Prosecutions but with the court, which on its own initiative or at the instance of a party or the Prosecutor delimits its own jurisdiction and competence, relinquishing a

case where it lacks these. In the event of an appeal, lack of jurisdiction may also be determined by a superior court, either *ex officio* or at the instance of the Department of Public Prosecutions.

The requirements of a competent court acting in accordance with the law must always be obeyed by the Government and by all citizens. When a public body receives a request for cooperation or an order, the first thing it has to do by law is verify the competence of the court so requiring or ordering and the legality of the action requested. Such a body will always accede, unless it is persuaded that the court is not competent or the action requested is unlawful. Such decisions by public bodies, including the Government, are also subject to judicial control.

The words that the lady member quoted from the Chilean Foreign Minister are a common tenet of Public International Law, with which the Spanish government and any other democratic government can only agree. Indeed, no sovereign State can judge another sovereign State or the actions of its governments or authorities within their respective spheres of authority, nor even their embassies or consulates. Such matters are governed by the well-known institution of immunity of jurisdiction, cited in article 21 of the *LOPJ* as a limit on the powers of Spanish courts.

As regards the prosecution of international offences, in cases of international liability of States, certain entities and exceptionally individuals, the competent forums are international organizations and the International Community, particularly the United Nations. It is within this framework that international crimes perpetrated in some States by some governments and by some individuals have been prosecuted, for example at Nuremberg and Tokyo after the Second World War, and more recently there is the constitution of International Courts for the former Yugoslavia and Rwanda. Beyond such cases of war and armed conflict, the international community has still not succeeded in setting up a permanent or *ad hoc* criminal court to sanction the international crimes defined in some international resolutions.

Specifically regarding the alleged facts relating to Chile, there is no record of any move for sanctions in the sphere either of the United Nations or of the Organisation of American States. In the latter sector, moreover, the jurisdictional body is the Inter-American Court of Human Rights, which considers cases of violations of human rights committed by States acknowledging its jurisdiction. Such cases must be brought by States likewise acknowledging its jurisdiction. As part of a different geographical region, Spain does not acknowledge the Jurisdiction of this court but of the European Court of Human Rights in Strasbourg".

(*BOCG-Congreso.D*, VI Leg., n. 244, p. 140).

Addressing the Congress in full session on 11 November 1998, the Prime Minister Mr. Aznar López explained the Government's position regarding the prosecution of Mr. Pinochet by European courts.

"The Government defends the universal validity of individual rights and freedoms and therefore has no qualms – quite the contrary – about expressing its condemnation and disgust at any authoritarian or dictatorial regime wherever it may be. I am talking about dictatorships, and that means not only *de facto* dictatorships but also dictatorships which may lay claim to a theoretical discourse, and I am convinced, I hope and I desire, that we all condemn alike any dictatorship wherever it is and whatever its ideological hue.

I also wish to say on this point that precisely for that reason, we are delighted whenever a dictatorship ceases to be and where there is a transition that leads or may lead to a democracy. It is the obligation of Spain and the Spanish government – and I believe of this House as well – to cooperate with all countries undertaking a transition to democracy in the wake of a dictatorship, and it is also our duty to cooperate with such countries in the consolidation of such a transition. This doctrine rests on a position now held by Spain for 20 years. When the transition commenced in Chile, the Spanish government at the time supported it, and rightly so, because it was that government's duty just as this government is doing its duty by seeking to help consolidate democracy in Chile. There is no question that we prefer a democracy in Chile or any other country to an authoritarian regime or a dictatorship.

At the same time, this also means observing the rules defined in a government's position, which is at all times to respect judicial decisions, and I have respected these decisions, and we have sought the extradition of the former Chilean dictator Mr. Pinochet. That and none other has been the Government's decision. And I should also like to say that, politically, here in this Congress of Deputies, I wish on behalf of the Government to express my respect for Chilean democracy, my esteem for the Chilean government and my desire to see their situation fully consolidated for the sake of freedom and democracy in Chile".

(*DSC-P*, VI Leg., n. 192, p. 10205).

VI. STATE ORGANS

1. Foreign Service

Note: See V.1.*b) Consular assistance*; XIII.10 Citizenship of the Union

The appointment of an ambassador to Cuba gave rise to various questions in the Congress/Senate Foreign Affairs Committee, which were answered by the Foreign Minister, Mr. Matutes Juan, and the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea.

Specifically on 18 February 1998, the Minister replied as follows to a question

in Congress as to what circumstances would have to be given for the government to appoint an ambassador to Cuba:

"... At this moment, the talks – these are not strictly speaking negotiations – between the Cuban and the Spanish governments at the top level, given that the two Foreign Ministers talk frequently, are proceeding well enough that it seems possible that in a short time – I should like to think a matter of weeks – the Spanish government will be able to propose a new ambassador to the Cuban government.

Nonetheless, for the sake of discretion, given the diplomatic talks and the importance of the issues under discussion, we must proceed with a minimum of caution.

(...)

... our chargé d'affaires is doing an excellent job and is being received at the top level by the Cuban authorities, which does not happen to every ambassador. Also, the latest advances, aside from a substantial increase in trade between Spain and Cuba, include the opening next December of a Spanish Cultural Centre in Havana, a long-standing Spanish aspiration which has finally received the blessing of the Cuban authorities ... I should stress that under the auspices of my Ministry, Spanish Television has opened offices in Cuba, and we have raised the strength at our Embassy with the appointment of a military attaché, again in the last few weeks. All these developments point unmistakably to a continued improvement in our relations, which will be fully normalized, within this atmosphere of goodwill, by the appointment of an ambassador whenever the overall context to which I referred renders this possible and desirable. I am convinced that this will only happen when the time is considered to be fundamentally favourable to Spain's general interests. I should like very much to be able to make that appointment at the earliest possible moment".

(*DSC-C*, VI Leg., n. 380, pp. 11219–11220).

Also, a question was tabled in the Senate Foreign Affairs Committee as to when the Government expected to appoint an ambassador to Cuba. On 16 April 1998 the Secretary of State for Foreign Policy and the European Union replied as follows:

"... Mr. Corderch received the *placet*; he was appointed by the Cabinet and was on the point of taking office when he was rejected. This is the worst thing that can happen to a representative, because when a *placet* is denied there is no need for an explanation; but in this case the appointee received the *placet* only then to be snubbed.

(...)

The matter is now settled. Time has passed, an ambassador has been appointed and that is an end to it.

(...)

Not to have an ambassador is an abnormal situation which no-one desires,

least of all the Government, and that situation came about solely because the Cuban government rejected a Spanish ambassador appointed by the Cabinet, after having given its *placet*. That was the origin of this unwanted situation, which does us no good at all. It has not been catastrophic in that we have been able to maintain relations, but the situation needed to be normalized, and that we have done when the circumstances were right ... we have reached an agreement, and understanding and normalization, which I believe warrants a word of pleasure and satisfaction. Let bygones be bygones, as we have got over the insult of rejection – and I say insult because that was the ambassador of Spain, of all the Spanish people.

(...)".

(*DSS-C*, VI Leg., n. 270, p. 16).

On 25 March 1998 the Minister of Foreign Affairs appeared before the Congress Foreign Affairs Committee to answer a question on Spain's representations to the United States to replace the last US ambassador to Spain, Mr. Gardner:

"On 13 February the US government requested the *placet* for the next ambassador in the name of Mr. Edward Romero; the Cabinet granted the *placet* on 20 February, from which point the appointment of the ambassador has to pass through a number of procedural stages in the United States. As these pertain exclusively to the US Legislature, Spanish representations are not appropriate at this stage.

(...)

The reason for this delay is simple. Mr. Edward Romero, who has always been the Government's preferred candidate, was finally proposed for the position, but at that time, owing to rumours of which you are all aware in connection with the financing of an election campaign in the United States, it was decided to run certain checks, and this was done with entirely satisfactory results. We were advised that if we had no objections, this would entail some delay, and our reply ... was naturally that we would wait until these checks and formalities were concluded. Once the formalities were completed and any doubts cleared up, Mr. Romero's name was put forward and immediately accepted by the Spanish government ...

(...)".

(*DSC-C*, VI Leg., n. 415, pp. 12108–12109).

Appearing before the Senate Foreign Affairs Committee on 17 September to answer a question about how the Government guarantees consular assistance to Spaniards resident in Antwerp and Liège (Belgium), the Minister stated as follows:

"The Spanish Consulates General in Liège and Antwerp were closed on 1 January 1998. The purpose of these closures was purely and simply to make better use of budgetary resources. With new countries continually appearing,

with the need to open new embassies in countries whose political and economic importance so warrant, and with current budget restrictions, I believe that this Ministry took the right decision in instituting an ongoing scrutiny of the deployment of Spanish diplomatic and consular representatives all over the world with a view to adapting to the shifting demands of the international situation and better serving the interests of Spaniards and of Spain abroad. And here I wish to make clear the special attention devoted to consular assistance for Spaniards resident abroad.

Spain is no longer a country that generates emigration, and in the present circumstances of the European Union, given the need to open an embassy in Vietnam, another in Slovenia and other consulates elsewhere, it did not seem necessary to maintain three consulates general in a country as small as Belgium. Given the central geographical location of Brussels, the consulate general there can perfectly well provide consular assistance to all Spaniards resident in Belgium. The duties of the other two consulates general have therefore been taken over by the Consulate General at Brussels.

(...)

Therefore, consular assistance for all Spaniards world wide, and particularly those resident in Liège and Antwerp, is fully guaranteed through the Consulate General at Brussels, which has been equipped with adequate means to effectively receive and provide services".

(*DSS-C*, VI Leg., n. 323, p.10).

VII. TERRITORY

1. Territorial Divisions, Delimitation

Note: See VIII.2.*a) Gibraltar*

2. Territorial Jurisdiction

Note: See VIII.2.*a) Gibraltar*

3. Colonies

a) Gibraltar

Note: See VIII.2.*a) Gibraltar*

In the Green Paper approved by the Congress Foreign Affairs Committee on 24 February 1998, the Congress of Deputies urges the Government:

"To reiterate that Spain only recognizes sovereignty of the United Kingdom

over Gibraltar as set forth in article X of the Treaty of Utrecht and that the occupation of the isthmus is illegal and in breach of International Law.

2. To continue the dialogue with the United Kingdom within the framework of the Brussels Declaration, to resolve the problem of Gibraltar.

3. To reiterate that the only valid interlocutor in the negotiations on Gibraltar is the United Kingdom, and nevertheless to express willingness to accept the participation of the inhabitants of Gibraltar as part of the British delegation.

4. To press the subject of Gibraltar in the United Nations, especially in the Committee of 24.

5. To reiterate Spain's rejection of any modification of the current status of Gibraltar contrary to the terms of the Treaty of Utrecht, to the resolutions of the UN General Assembly on the issue and to the Brussels Declaration.

6. To continue proposing for Gibraltar a status similar in terms of political and administrative autonomy to that of the Spanish Autonomous Communities, which will protect their linguistic and cultural identity within Spain.

7. To reaffirm the offers to Great Britain of a period during which sovereignty could be exercised jointly by both countries before Gibraltar is finally handed back to Spain.

8. To press in the European Union and bilaterally for strict compliance by the United Kingdom with the Community directives regarding waste dumping and the Community monetary and financial regulations, stressing that the existence of a tax haven can never be compatible with a Europe of free circulation.

9. To guarantee the freedom and security from illegal detention of Spanish fishermen fishing in the Straits area.

10. To carry on with measures for application of the agreements on joint use of the airport.

11. To call for protection and the guarantee of social and labour rights for all citizens of the Campo de Gibraltar working in the colony".

(*BOCG-Congreso.D*, VI Leg., n. 252, p. 8).

At the 6th meeting of the Special Political and Decolonisation Committee (Fourth Committee) of the United Nations General Assembly on 12 October 1998, referring to the statement made on 7 October 1998 by the petitioner from Gibraltar, Mr. Caruana, the Spanish representative Mr. Morales noted that:

"33. ... in the majority of cases, colonial peoples had exercised their right to self-determination and that the principle was equally applicable to the majority of the 17 Territories which remained under colonial rule. However, where colonies had been established on the territory of other States, decolonization could only be achieved by re-establishing the territorial integrity of the States involved. Gibraltar came into the second category.

34. It was not just Spain which sought formal application of the principle of territorial integrity to the decolonisation of Gibraltar. It was also the

annual practice of the United Nations to urge the United Kingdom and Spain to continue their negotiations with a view to ending the colonial status of Gibraltar.

35. Gibraltar, geographically and historically an integral part of Spain, differed from other colonial Territories that had been seized by force in that it had been made into a military base by the colonial Power. Gibraltar was a colony of the United Kingdom, even if the real inhabitants of the Territory were not a colonial people. That people was not the indigenous population; it was composed of the descendants of British settlers and others whom the colonial Power had brought to Gibraltar. Mr Caruana was right: Gibraltar had been populated by British people for 294 years. It was precisely for that reason that the right to self-determination, the purpose of which was to end colonialism, could not be invoked in order to perpetuate the colonial phenomenon.

36. Furthermore, it was not possible to compare, as Mr. Caruana had done, the situation of Gibraltar with that of the United States, Australia or New Zealand prior to independence. It more closely resembled the situation of Hong Kong or Macao, the existence of which affected the territorial integrity of the State in which each had been implanted.

37. Gibraltar could continue to be a British colony or revert to Spain. No other solution was possible. Spain would continue to oppose any initiative that would lead to the question of Gibraltar being settled other than in accordance with the retrocession clause of the Treaty of Utrecht, which had established Spain's right to exercise sovereignty over Gibraltar should the latter cease to be British, pursuant to the consultations it had held with the United Kingdom in Brussels, the tenets of the United Nations and the decisions of the General Assembly. The fourth option set forth in General Assembly resolution 2625 (XXV) was relevant only to Territories to which the principle of self-determination was applicable, not to Gibraltar.

38. The Spanish Minister for Foreign Affairs, Mr. Matutes, had said that he was prepared to meet the Gibraltar Minister, but the latter had rejected sight unseen the proposal made by Mr. Matutes at negotiations between the Governments of Spain and the United Kingdom in December 1997. Depriving Spanish fishermen of their only means of subsistence and invoking the sovereign rights of Gibraltar over waters over which Spain did not recognize the jurisdiction of the United Kingdom was no way for the latter to create conditions favourable to dialogue".

(UN Doc. A/C.4/53/SR.6).

Appearing before the Senate Foreign Affairs Committee to explain the Spanish government's policy on Gibraltar, the Minister of Foreign Affairs, Mr. Matutes Juan, reported on the following matters.

With regard to the legal/political "status" that Spain offers Gibraltar, the Minister explained:

"On 10 December 1997 I met my British colleague Mr. Cook and conveyed to him a new offer addressed to both his government and the people of Gibraltar. What is new in this proposal is that it uses the Spanish constitutional legal system to offer Gibraltar a legal/political status which greatly improves on their present condition as a colony of Great Britain.

The essence of the Spanish offer is contained in the following points: Gibraltar is offered a statute similar in degree of political and administrative autonomy to that of the Spanish Autonomous Communities, whereunder the democratic rights and freedoms enunciated and protected by the Constitution of 1978 would automatically extend to Gibraltar, where they are similarly enshrined in the Constitution of 1969. Like the most advanced statutes of autonomy, that of Gibraltar would protect their linguistic and cultural identity within Spain. Moreover, negotiation of the statute would include definition of the competences pertaining to the government of Gibraltar under article 148 of the Spanish Constitution. This means that the powers of the present local authorities of Gibraltar would be considerably augmented by such a statute, which would further provide for the organisation of institutions of self-government in the territory, particularly the judiciary.

Special features in the tax system would be accepted within the framework of Community legality. We could negotiate a preferential regime allowing Gibraltarians to choose between Spanish and British nationality, or even allowing dual nationality. We would accept a transitional period in which sovereignty would be exercised jointly by Spain and the United Kingdom before passing finally to Spain. This formula was proposed by my predecessor Mr. Morán in 1984, and I myself had repeated it to the British Foreign Secretary Malcolm Rifkind the previous year. This time, as you see, it has been formally tabled, and what is more in conjunction with a complete legal/political structure, in what is a very serious and highly positive proposal.

The fact is that the British government's initial reaction – although this is a long term issue – was positive. The joint British-Spanish communiqué of 10 December referred to this offer as part of a general agreement on sovereignty and to a British undertaking not to impose any solution contrary to the wishes of the people of Gibraltar. This outcome marks a break from the traditional deadlock in the Brussels process. Hitherto, as you know, it had been impossible to get the British even to discuss questions of sovereignty. It is also true that on this occasion again it was not possible to have representatives from Gibraltar present. Whatever happens after this agreement, our claim is inalterable. We cannot accept the amputation of part of our territory, which detracts from our condition as a State and furthermore is in breach of United Nations resolutions. The British government is aware that we shall not be diverted from this path by any manoeuvre or by attention to other matters. The options are quite clear: either negotiation or no future for Gibraltar. The only restrictions imposed so far have been those strictly necessary to preserve

the rights of Spain intact. There is therefore a great difference between the prudence and caution with which we exercise our power to control and the strict enforcement of legality on which we could insist, especially as regards EC regulations. Only by a solution to the problem of sovereignty can Gibraltar be assured of a stable, prosperous future free of tensions with Spain.

On the basis of the results so far, it is now a question of waiting while the terms of the joint British-Spanish communiqué in London are set in motion. For the time being, both government and opposition in Gibraltar reluctantly acknowledge that a new phase has commenced and that the United Kingdom has officially recognized that Spain has a decisive role in the future of Gibraltar. Their immediate reaction is to reject the Spanish proposals. Nonetheless, we remain hopeful that our arguments will be listened to by the people of Gibraltar and will persuade them that a settlement to this conflict is the way for them to secure a future of prosperity and freedom, for these will certainly be very limited if they resolve to live it in opposition to or outside Spain.

(...)".

With regard to Gibraltar airport, the Minister stated as follows:

"Having regard to Gibraltar airport, any regulation directly affecting the airport must acknowledge the existence of a dispute between Spain and the United Kingdom. To resolve this situation, Spain and the United Kingdom negotiated an agreement for joint use on 2 December 1987. That agreement provided for regular consultations between the aviation authorities of both sides on issues relating to civil use of the airport, construction of a new Spanish terminal in La Línea and the setting up of a committee to coordinate civil air transport activities at the British and Spanish terminals. The local authorities have opposed implementation of the agreement, and the outcome of this deadlock has been the maintenance of the existing restrictions on use of the airport, which chiefly prejudice the people of Gibraltar. The development of a district like this, with all the tourist potential of south-west Andalusia, requires a large airport. More intensive use of the existing airport would benefit the people of Gibraltar and Campo de Gibraltar to a limited extent, although the former more than the latter, but it could never be a solution to the needs and problems of the area. Gibraltar airport will not do as the major regional airport that the area requires, for obvious reasons of size, location and geography. This is one of the reasons why it has become necessary to improve landward access to Jerez airport, which is the best placed to serve a rapidly-developing area and can generate sufficient demand to maintain and increase the viability of a major airport.

(...)".

With regard to the free circulation of people in the European Union and Spain's position on its applicability to Gibraltar, the Minister noted the following:

"The purpose of the convention on external borders is, as you know, to create a European space free of internal borders by establishing stronger controls on the external borders. The proposal in its current form is prejudicial to our interests in that it accepts the line between Gibraltar and Spain as an inter-State frontier. The terms of the convention mean that Spain is obliged to remove the frontier controls in La Línea, thus depriving us of a means of combating the pernicious effects of criminal activities based in Gibraltar. Spain has suggested various formulas to the United Kingdom for successful conclusion of the convention. We proposed a joint control which would free the deadlock on application of the agreement for joint utilization of the airport. However, the British government will not even discuss the possibility of excluding Gibraltar from the application of the convention.

The underlying problem is the United Kingdom's reluctance to accept the free circulation of people within the European Union, as demonstrated on numerous occasions, for instance its refusal to be part of the Schengen area. The United Kingdom views frontier controls as an inalienable element of its sovereignty, which makes it all the more paradoxical that it should seek to remove controls in Gibraltar while fiercely defending the opposite in Great Britain and Northern Ireland. Spain advocates the need to move towards the totally free circulation of persons and is, as a you know, a signatory of the Schengen Agreement unlike the United Kingdom. But of course this does not signify any willingness to renounce our legitimate aspirations as regards Gibraltar ...

(...)

For those unfamiliar with it, I would once again explain the attitude of the Spanish government at the last European summit in Amsterdam, where we demanded that the principle of unanimity be upheld for admission of any country to the Schengen Agreement. As you know, it was agreed in Amsterdam that the entire Schengen process be a Community issue – that is, that it should not be a simple matter of inter-government cooperation and hence subject to special majority rules, but that the principle of unanimity should be maintained in all cases. This was intended – and we said it clearly at the time – to prevent the back-door inclusion of Gibraltar, which has lately been introducing a whole range of measures – including the issue of driving licences and identity cards, neither of which the Spanish government recognizes – increasingly designed to present Gibraltar to the world and to the European Union as a State by adopting measures very like those proper to a sovereign State. These measures the Spanish government opposes and will continue to oppose.

With regard to Schengen, our government naturally made it clear that it would never accept a departure from the principle of unanimity. When this was sanctioned at Schengen, the British Minister asked if it was directed particularly at the United Kingdom, to which we answered that it was not, that Spain would naturally assist and applaud the inclusion of the United

Kingdom in Schengen, but that Gibraltar is a separate case and we would not allow it to be sneaked in by the back door. We have, then, a consistent, serene and firm policy in no way intended to exacerbate our relations with the United Kingdom. To the contrary, we seek to stress the magnificent relations and the important interests that we share as peripheral countries and as Atlantic nations belonging to the same Union, having considerable transatlantic interests and for that very reason sharing relations of as yet unexplored potential ..."

Finally, in connection with the waters in contention, the Minister stated:

"I am very much aware of the attitude of Gibraltar and the United Kingdom to the water in question, and I am equally aware of the abuses being committed in some cases against Spanish citizens of Gibraltar. On the other hand, I am a little more puzzled by the attitude of Mr. Carracao to these problems, ranging as it does from belligerence to the extent of practically wanting to declare war when these problems arise, to objection to the firmness of the Spanish government in defence of our inalienable rights in connection with the colony. My point here is this attitude of serene firmness, which I believe is the correct one.

... in response to these acts, which we view as gratuitous provocations and which at a certain point also threatened aspects of Spanish sovereignty, the Spanish government has persistently protested to the British government and has warned that at this time what both countries can least afford – when we are discussing possibilities and assets, and whether the bases in Gibraltar can be integrated in the new NATO structure – is to create frictions of this kind, and we are continuing along these lines.

(...)".

(*DSS-C*, VI Leg., n .270, pp. 18–21).

As regards the negotiations on military use of the Gibraltar Base in NATO operations and exercises, in an appearance before the Congress Foreign Affairs Committee, the Secretary of State for Foreign Policy and the European Union, Mr de Miguel y Egea, explained that Spain has not the slightest intention of removing air and naval restrictions on Gibraltar.

"As regards naval restrictions, Spain has historically reserved the right not to admit requests for stopovers in Spanish ports by foreign naval units coming from or going to Gibraltar.

This policy is reflected in the reservation made by Spain on ratifying the NATO STANAG 1100 normalization agreement, to wit: The Spanish government reserves the following rights: a) at any time to refuse, reconsider or amend any authorization of a stopover request under the STANAG provisions; b) not to allow vessels coming directly from Gibraltar to stop over in Spanish ports; c) not to allow vessels which have visited any Spanish port and go directly from there to Gibraltar to stop over in Spanish ports. In

practice, this reservation is unnecessary in that the content of STANAG 1100 does not restrict the sovereign right of the host country to refuse permission to stop over if it sees fit. However, on ratifying the STANAG, the Spanish government decided to include this reservation as a means of drawing attention to this bilateral dispute. I would add that the imposition of naval restrictions is chiefly due not to legal considerations regarding sovereignty but to political considerations. It should be remembered that while the port of Gibraltar was of course ceded under the Treaty of Utrecht, the British authorities have since expanded the port facilities into waters adjoining the isthmus over which Spain claims sovereign rights.

Turning now to air restrictions, the Spanish government's policy of restrictions on air traffic is likewise long-standing. It is not set forth in any one document but is reflected in various domestic and international air traffic regulations which have been subject to amendments over the years. The present situation is very briefly as follows. There is a general rule prohibiting entry in Spanish airspace and stopovers in Spanish territory by any State aircraft whose airport of origin, airport of destination or alternative airport is Gibraltar. This rule does not apply to humanitarian flights or to aircraft in an emergency situation. Civil aircraft whose airport of origin or destination is Gibraltar may not overfly Spanish territory if coming from or proceeding to a Spanish airport; overflight is now permitted in all other cases, although at one time it was also prohibited. Moreover, since 1967 no flights are allowed over a zone known as LEP 117, which includes the Campo de Gibraltar and adjacent waters and considerably restricts operations at the aerodrome. This restriction was introduced after Spain had lodged innumerable complaints of violation of Spanish airspace, the object being to counteract any British claim of Spanish acquiescence in an alleged right of way through Spanish airspace for British military aircraft, which had been operating from Gibraltar for 25 years. As a result of commitments to cooperate in civil aviation following the joint Spanish-British declaration of Brussels of 1984, in 1985 the prohibition was lifted from a restricted zone known as LER 49 to allow approach and takeoff manoeuvres of civil aircraft to and from Gibraltar airport.

In addition to these air and naval restrictions, there are others relating to NATO operations and exercises. Spain has always adopted the unwritten official posture of not participating in operations or exercises in which airborne or naval units coming from or going to Gibraltar take part. There is also another set of restrictions relating to use of the Gibraltar facilities. As you know, Gibraltar has fixed facilities for communications with all maritime traffic, port and airport facilities, command and control facilities and so forth. To date, Spain has not opposed the use of these fixed facilities, although we have refused to establish direct coordination procedures with the authority that runs them and we do not take part in exercises where these facilities or systems are used.

Having analysed all this group of restrictions, we should distinguish

between restrictions intended to preserve our position in the dispute (basically air and sea restrictions) and those responding to the presence of an allied command in Gibraltar, GIBMED (Gibraltar-Mediterranean), in the context of non-membership of the command structure or the military structure (communication, systems, participation in exercises, etc.).

Obviously Spain's inclusion in the command structure and the dissolution of GIBMED constitute a change in the circumstances that warranted our position regarding some of the restrictions in force, particularly those affecting operational exercises within the Gibraltar command.

On the basis of these premises and the overall approach, our negotiating strategy was to differentiate between issues affecting sovereignty and issues not affecting sovereignty. There was also another essential premise, namely that in questions affecting sovereignty, concessions could only be made if there was an adequate quid pro quo. Other restrictions could be dealt with in accordance with political convenience and the attitude of the British. It was in this context, on the understanding that in issues affecting sovereignty over Gibraltar there was no room for manoeuvre and these were not negotiable, that these conversations took place.

(...)

Spain has no intention of lifting the present restrictions as long there is no progress on issues of sovereignty favourable to us. On this point I would note that the only acceptable solution to the dispute for Spain is recovery of our sovereignty over the territory ceded under the Treaty of Utrecht, and the recovery also of those parts not ceded under the Treaty – that is, the isthmus, over which we never relinquished sovereignty – which were illegally occupied by the British and in respect of which the United Kingdom should immediately commence negotiations for their return.

In considering the conditions under which the restrictions prompted by the dispute could be lifted, there is a distinction between those directly tied to Spanish sovereignty and those which were introduced in response to the political circumstances of the time. The restrictions relating directly to Spanish sovereignty apply to those parts not included in the Treaty of Utrecht, as well as the isthmus, its air space and its waters. In order to sustain our claim, we have been and remain compelled to oppose any action that could be used as an argument in favour of British consolidation of their alleged rights over these parts.

Generally speaking, any modification in respect of restrictions affecting the issue of sovereignty must be dealt with in the framework of the Brussels process, which the two governments have agreed is the forum for discussion of parallel advances in the issues of sovereignty and cooperation for mutual benefit.

This category of restrictions bearing on sovereignty includes those governing air traffic. The Government's position is clear. The airport was built on the isthmus illegally occupied by the United Kingdom, and we cannot

accept any action which could detract from our claim of sovereignty over that isthmus.

The first formula accepted by both sides sought to neutralize in practice the dispute regarding sovereignty over the airport. This was manifested in the agreement for joint Spanish-British use hammered out over three long and difficult negotiating sessions in 1987. . . .

As to the naval restrictions not bearing directly on Spanish sovereignty – that is, those not arising chiefly out of legal considerations relating to the question of sovereignty over the isthmus – the lifting of such restrictions will depend on the progress made in negotiations with the United Kingdom.

Finally, I should stress that the terms of the understanding I just referred to, which were agreed to and accepted informally by both sides, have not been enshrined in a formal agreement, or even recorded in writing. This is, then, an informal, technical understanding arrived at by the two governments.

(. . .)".

(*DSC-C*, VI Leg., n. 514, p. 14860–14863).

Appearing before the Senate Foreign Affairs Committee to explain the agreement reached by the governments of Spain and the United Kingdom for the lifting of military restrictions on the colony of Gibraltar in NATO manoeuvres and operations, the Minister of Foreign Affairs, Mr. Matutes Juan, reported as follows:

"Upon the Spanish government announcing its decision to become fully integrated in the new NATO command structure, the United Kingdom presented a reservation predicating its agreement to the new structure and Spanish participation therein on Spain's lifting the naval and maritime restrictions on Gibraltar.

From the outset, Spain rejected any tying of restrictions on Gibraltar to the adoption of a new NATO command structure. Our basic position was that Spain would not pay – and in the event has not paid – a toll of any kind on its full integration in the Alliance; we would make no concessions that might infringe upon or weaken Spain's position in the bilateral dispute over Gibraltar.

Spain declared its willingness to make any necessary technical adjustments in the context of a new command structure that eliminates the allied GIBMED mandate in Gibraltar and the prospect of full Spanish integration in the Alliance, but Spain has never sought to raise its bilateral dispute with the United Kingdom over Gibraltar in the framework of NATO.

To counter the arguments put forward by the United Kingdom, diplomatic representations were made throughout the negotiations, especially during the second half of last year, to explain our position to the allies. I sincerely believe that this diplomatic campaign was a complete success and persuaded the allies to appreciate the rightness of our position.

Spain's firmness convinced the United Kingdom that the Spanish

government would not give way on this issue and therefore shifted from a forward position to one focusing on those aspects in which Spain could cooperate without prejudicing its legitimate claims. The most obvious example of the change in the British position was its approval in December 1997 of a new command structure without any concessions from Spain.

In this context and on the basis of these premises, in Luxembourg on 21 November last the Spanish and British Foreign Ministers agreed that senior officials of the Foreign Ministries of both countries should commence technical discussions to solve whatever problems might arise from the new situation ... By the end of the fourth round of talks, the terms of an understanding had been outlined. After that, Mr. Cook and I agreed to approve the conclusions reached in these discussions. The understanding concerns ...

> Coordination and communication with the British military authorities. From the very beginning, Spanish integration in NATO raised the problem of an allied command in Gibraltar. The coordination agreements between Spain and the NATO commands dealt with this question pragmatically, avoiding direct relations without altering the structure then in place. These agreements provided that Spanish military coordination within the framework of NATO would not go through the allied commands in Gibraltar.
>
> - The prospect of Spain's integration in the new command structure and the disappearance of GIBMED alters that situation. Spanish integration will entail the scrapping of the existing coordination agreements and the drafting of new ones, so that in this context there would be no point in continuing to refuse to coordinate and communicate with the British military authorities in Gibraltar.
>
> Thanks to this new situation, the two countries have been able to deal constructively with the issues arising from the disappearance of the allied command in Gibraltar. Gibraltar remains a British military base, with whatever forces and command elements that the United Kingdom may decide to maintain there, and it was appropriate to define relations with these military authorities on some kind of basis, namely withdrawal of Spanish opposition to use by NATO of the communication, information and command and control systems in Gibraltar. Henceforth, Spain will not refuse to allow the use of this communications system in NATO operations and exercises where it is required. With the disappearance of GIBMED, Spanish practice heretofore no longer serves a useful purpose ...
>
> Participation of Spanish forces in NATO operations or exercises in which allied units coming from or going to Gibraltar take part. Spain has always adopted the unwritten official posture of not participating in operations or exercises in which allied units coming from or going to Gibraltar take part. With Spanish integration in the new structure, we

> can now abandon that posture without in any way altering the existing air and naval restrictions, which remain as they were, since this does not imply authorization for such units subsequently to stop over at Spanish ports or airports.
>
> Landings in emergency situations are excluded from the air restrictions, but solely for humanitarian reasons, and they are absolutely exceptional. In fact prior to all these conversations Spain systematically authorized overflying of Spanish territory in emergencies by aircraft proceeding to Gibraltar and if they lacked authorization to overfly, this was granted. Thus, all the naval and air restrictions on Gibraltar remain intact, and that also applies to Spanish participation in NATO exercises in which allied units operating from Gibraltar take part, as such units cannot then proceed to Spanish ports or airports".

(*DSS-C*, VI Leg., n. 371, pp. 12–13).

Replying to a question from the Socialist Group about irregularities in the labour situation of many Spaniards working in Gibraltar, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, told the Congress Foreign Affairs Committee that:

> "... We have a major problem, with proceedings in the Court of Justice of the European Communities for irregularities in the payment of social security to Spanish workers in Gibraltar. It seems that Mr. Flynn, the Commissioner for Social Affairs, is very aware of the problem despite an initial tendency to shy away, given that this is a British problem and the Irish are not keen to clash with the British on such issues. Now, both the Commissioner and the European Commission are fully aware of the problem, proceedings for breach of regulations have been initiated and the problem has been laid with the court. This constitutes a clear precedent of flagrant, large-scale violation of the social rights of many Spanish workers, and here we also have the power to take up this major case and show that there are other cases as well. This is very worrying, in that we see no good reason why in a place like Gibraltar, which is not only part of the United Kingdom but also claims to be part of the European Union, there should be such violation of the most basic conditions of the social statutes of the European Union and the United Kingdom. In that connection I wish to assure Ms. Romero that the Government stands clearly in favour of supporting the victims at every stage, both in seeking a negotiated solution and compensation and in any internal appeals. If they should fail to receive the compensation they deserve through the internal appeals procedure, we should not hesitate to take the matter to the European Commission, and we should also treat it as a diplomatic conflict of International Law between the United Kingdom and Spain".

(*DSC-C*, VI Leg., n. 470, p. 13556).

VIII. SEAS, WATERWAYS, SHIPS

1. Territorial Sea

Note: See VIII.2.*a) Gibraltar*

2. Fisheries

a) Gibraltar

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

Regarding the fishing incidents in Algeciras Bay on 13 and 14 March 1998, the *Oficina de Información Diplomática (OID)* issued the following communiqué:

"1. On the night of Friday 13 to Saturday 14, there was a serious incident in Algeciras Bay between the fishing boat *José y Carmen*, a launch and a helicopter from the Customs Surveillance Service, and personnel of the Royal Gibraltar Police.

This is just one of the incidents that have been cropping up due to harassment of our fishing boats by the Gibraltar police when they operate in disputed waters around the Rock, where they have always traditionally fished.

2. The British Ambassador in Madrid was invited this morning to meet the Director General for Europe and North America at the Foreign Ministry.

The ambassador protested at the action of the Customs Surveillance Service helicopter and at the use of allegedly 'illegal' gear by our fishermen.

3. The Director General for Europe rejected the British complaint and in turn conveyed a strong protest to the ambassador, as follows:

a) The incident which took place on the night of Friday-Saturday is not the fault of the Spanish fishing vessels but of a deliberate policy of harassment and the disproportionate use of force by the Gibraltar police to control them. This policy must cease forthwith.
b) The Customs Surveillance Service launch and helicopter performed their duties properly – the helicopter filmed the incident. There is no evidence that the helicopter executed any dangerous manoeuvres.
c) The British government must explain the reasons for the policy of harassment which began about a year ago.
d) Finally, the British authorities are asked to provide details of the 'special' regulations for protection of marine species in waters surrounding the Rock, which are apparently being utilised against the activities of our fishing vessels, and to explain how it fits into European Union fishery regulations.

It is unacceptable for the principal authorities of Gibraltar to say that there are no objections to our vessels fishing in the waters of the Rock while at the

same time applying 'local regulations' which in practice prevent any kind of fishing and whose legality from the standpoint of EU regulations is more than dubious".

Addressing the Congress Foreign Affairs Committee in reply to a request from the Socialist Member for an evaluation of the incidents and acts of harassment of Spanish vessels fishing in Algeciras Bay by patrol boats from Gibraltar, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, explained:

"The Spanish-British agreement concluded between Messrs. Cook and Matutes allows fishing in the waters at issue; that is the name given to the waters in Gibraltar, since they hold that Gibraltar is entitled to territorial waters and we hold that it is not. Thus, given two civilized countries holding opposing views as to what should be the legal status of a body of water – the waters at issue – we work on the basis of an understanding, as the English call it, that until such time as we resolve the issue of whether or not they are sovereign, we should at least allow fishing to go on as it has done since time immemorial ...

The waters at issue are essentially a mile and a half westward and three miles eastward of the Rock, and there the understanding allows fishing in the following terms. Firstly, fishing will not be permitted in the security zone – what are known as Admiralty waters – that is, a band 200 metres wide towards the interior of the bay and parallel to the entrance walls of the port of Gibraltar, which as we all know is essentially a military base. Secondly, to avoid incidents, there should not be too many fishing vessels in the zone at any one time. Here we have followed Community practice, drawing up a base list and a presence list; that is, a list of all fishing vessels authorized to enter the zone, and a list of those that can be in the zone, limited to a number, and the number of vessels allowed to deploy their tackle simultaneously in the zone. This last is very small, and it has been agreed to limit it to three. This allows us to carry on fishing, and at the same time does not allow them to allege that Admiralty waters are being invaded by excessive numbers of fishing vessels. The vessels can perfectly well take turns, and since these vessels also fish in many other zones, it is quite feasible to operate a rota system, which is in fact now working. The third point of understanding is that the Gibraltar naval police will exercise all due restraint so as to allow fishing, but that such restraint will also be reciprocated by our fishermen. We are aware of the abuses that have been perpetrated by Gibraltar patrol boats, which have not always understood or wished to understand the terms of the understanding. For our part, there have also been cases – although I should say there are now practically none – of infringements by Spanish fishing vessels.

(...)

Regarding the speculation that has arisen around this agreement, I should like to make two points. First of all, this is not a written agreement; it is an

understanding of whose terms the parties involved are aware and which the two governments are willing to guarantee, but it has not been set forth in a formal document because the circumstances do not so permit. The aim of both Spain and the United Kingdom is to revert to the traditional situation as regards fishing, without prejudging questions of sovereignty over the waters at issue. Neither Spain nor the United Kingdom is manoeuvring for position here, as has traditionally been the case in anything to do with Gibraltar in connection with issues of sovereignty. Such would have been the case had there been a formal agreement, in that a formal agreement would set a precedent that could be used by either side as leverage to consolidate positions or set milestones in the dispute over sovereignty. The important thing is that this is a *de facto* understanding with no bearing on sovereignty, whose sole purpose is to regulate and guarantee continued fishing.

In the second place, I think it important to note that our fishing industry, which is aware of the problems relating to Gibraltar and has a sense of responsibility, agreed not to fish in the security zone. There have been no problems in that respect. No-one can accuse Spanish fishing vessels of irresponsibly trying to fish in the security zone, and in any case 95 per cent of the zone is less than 35 metres deep, and as we all know, both Community and Spanish legislation prohibits fishing in such areas. So, that has not been a problem.

In the vicinity of the entrance to the port, Spanish legislation, the military requirements of the United Kingdom and the question of safety of navigation all coincide, which seems reasonable. This does not of course imply any recognition by Spain of British jurisdiction over that zone, nor does British acceptance of Spanish fishing vessels in the waters at issue imply the contrary. They neither do nor intend to recognize that the fact of our vessels fishing in the zone implies Spanish right of sovereignty over the waters being fished.

(...)

We know that there is major opposition to the agreement in Gibraltar, that the very existence of this understanding has sparked off a debate with which the Member Mr. De la Encina is quite familiar, and that it is extremely important for us to stand firm in the confidence that the terms of understanding negotiated by the Spanish government will make it possible to continue fishing, which is, as we have said, a traditional activity that the Spanish government is committed to preserving".

(*DSC-C*, VI Leg., n. 553, pp. 16073–16074).

b) Argentina

In reply to a question tabled by a Socialist Member regarding the Government's position on the seizure of the Galician fishing vessel *Arpón* in Argentine waters, the Government reported as follows:

"The *Arpón* was detained by Argentina in waters that Spain considers to be outwith the scope of the 1992 Agreement on relations in the sea fisheries sector between the European Economic Community and the Argentine Republic and hence not regulated by any international fisheries organisation. Therefore, the vessel was operating under the free right to fish on the high seas and not under any fishing agreement subscribed by the European Commission. Its detention raises a question of jurisdiction over vessels on the high seas and is therefore a matter for Spain as the country of registration and not for the European Commission.

The Spanish State will urge the appropriate European institution in each case to discharge its functions under the treaties relating to defence of Community interests where the detention of a Spanish vessel impinges on the competences of the Community.

The Government not only deems it compatible but has in fact taken several kinds of action vis-à-vis the Argentine authorities regarding the detention of the *Arpón* while conversations were going on between the European Commission and Mercosur.

On the high seas, in the absence of an international agreement, the prevailing jurisdiction is that of the State of registration. The competence here therefore lies with Spain and not the Commission".

(*BOCG-Congreso.D*, VI Leg., n. 261, p. 409).

c) Gambia

Appearing before the Congress Foreign Affairs Committee to report on the arrest of the crew of the fishing vessel *Briz-3* in Gambia, the Minister of Foreign Affairs, Mr. Matutes Juan, stated as follows:

"On 2 June, *Briz-3*, registered in Dakar (Senegal), property of the Senegalese company Atlantic Peche and operated by the Spanish company Tarso Consulting, was proceeding through Gambian waters, apparently from a Senegalese fishing ground south of Gambia to another north of Gambia. As you know, Gambia is a small country with a stretch of coast straddled by Senegal. The vessel's booms were swung out and the nets were suspended from the booms, but the crew declared – and the Spanish authorities, myself included, have defended and supported this declaration – that the nets had not been cast. In those circumstances the vessel was halted by a Gambian patrol boat and forced to berth in the capital, Banjul, where it was accused of fishing without authorization. The crew were urged to sign a statement admitting that they had been fishing illegally, to which the skipper refused. On arrival at the port of Banjul, the vessel was moored with all the crew on board under the guard of soldiers from the patrol boat. Meanwhile, the skipper and the engineer were taken to Gambian naval police facilities, where they were arrested and held.

On the following day, 3 June, our Embassy in Dakar learned of the

detention and immediately advised the Honorary Vice-Consul in Banjul, who travelled to the police facilities and found the two Spaniards in good condition. He was able to negotiate the release of the skipper and the engineer – they were under arrest – who were then accommodated at the Sun Wing hotel and allowed freedom of movement while the shipowner negotiated the fine on the vessel and the crew left Gambia.

From that moment on, innumerable steps were taken ... all aimed at assuring the protection of the detainees. As soon as the shipowner requested consular assistance in his negotiations, one month and one week after the detention – and I think it important to note that we are talking about three months here – our authorities backed the shipowner's efforts to secure the return of the vessel.

This Ministry mobilized all its resources, in addition to the efforts of the Spanish Embassy in Dakar and the Vice-Consul in Gambia, and also the Spanish Embassy in Paris since the Gambian ambassador to France is also accredited for Spain, so that we had to contact the Gambian Embassy through our own embassy there ...

(...)

The judge in charge of preparing the case did not commence the investigation until well into the month of August. The skipper and the engineer, who were detained in Banjul along with the vessel, were eventually summoned by the court. From then on, our efforts were directed at seeing that the judicial proceedings and the negotiation of the fine with the government were concluded at roughly the same time ... It seems that an agreement was reached on the amount of the fine on a Wednesday, the court hearing and payment of the fine took place on the Thursday, and again on the Thursday, with the money prepared and the shipowner present in person in Banjul, the latter finally discharged all his obligations.

At this point matters came to a head. The Gambian Ministry of Fisheries had been unhappy from the outset at the negotiations between the Gambian Foreign Ministry and the shipowner, assisted by our own services, and when it learned the amount of the fine – a little over thirty million pesetas – it objected, and there was a serious possibility that it would appeal against the court's decision and file for a fine in the region of two hundred million pesetas or four years' imprisonment. At that point I judged that a political decision was both opportune and warranted – that is, my own intervention at the highest level ...

I therefore decided that same day, the Friday, to speak to the President of Gambia. It was a long, frank conversation which ended very cordially, and I wish here to extend my personal thanks to the Gambian President, who was most receptive to the arguments that I placed before him, and even to the fact that we had chosen to invite his personal intervention, and so he stated once the court's decision was delivered and the fine paid.

(...)

That same night the two Spanish citizens were given back their passports, and they could have set off for home at once; however, they decided to complete their provisioning and set sail the following morning ...".
(*DSC-C*, VI Leg. n. 506, pp. 14610–14612).

d) Reunion Island

In reply to a question tabled by Member from the Mixed Group, the Government reported on the measures adopted to secure the repatriation of the Spanish fisherman detained on Reunion Island:

"On 18 August 1998, the Minister of Foreign Affairs learned of the detention on Reunion Island of a Spanish national, Manuel González Vila, master of the vessel *Mares del Sur II*, under the flag of Belize, accused of: unauthorized fishing, failure to declare tonnage, failure to signal its presence on entering French Austral and Antarctic Territories, attempting to elude the fisheries police and concealing the vessel's identifying elements.

My Ministry has been in contact at all times not only with the Spanish skipper, who was under court supervision but at liberty and staying in a hotel, but also with his relatives, his counsel, the shipowner's attorney ...

Both the Embassy and the Spanish Consulate General in Paris have kept in close touch with the situation of Manuel González Vila in order to lend him assistance of any kind and bring proceedings to a speedy conclusion.

Specifically, apart from the representations made to the director of the French Foreign Minister's Office by the Spanish ambassador and the Consul General in Paris urging a speedy solution, the Spanish deputy consul in Paris travelled to Reunion Island to take direct stock of the situation of the vessel's master and the legal proceedings, and also to repeat the offer of assistance from the Spanish authorities through the Consulate General in Paris. He further spoke with the defence counsel ... and made representations to the French State prosecution ...

Mr. González Vila was charged under Act 97-1051, 18 November 1997, on deep-sea fishing and exploitation of maritime products in the French Austral and Antarctic Territories, published in the *Journal Officiel* of 19 November 1997. This Act was in force at the time the *Mares del Sur II* was arrested (there is therefore no question of retroactive application) and stipulates heavy fines for infringements in these waters. However, Mr. González Vila's counsel advised us that in cases of illegal fishing, failure to pay any fine that may be imposed on Mr. González Vila would not necessarily entail a prison sentence in lieu, given that although the penalty is imposed on the vessel's master, in the mind of the prosecution and the court, liability lies ultimately with the shipowner, who is responsible for payment of the fine.

The upshot of all the foregoing is that the Spanish master of the *Mares del Sur II* attended a hearing of the *Tribunal de Grande Instance* on 9 October last.

At the end of the hearing his passport was returned and he was able to depart the island the same day, journeying to Madrid via Paris".

(*BOCG-Congreso.D*, VI Leg., n. 342, pp. 142–143).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

Spanish policy on development cooperation originates basically with a declaration in the Preamble to the Constitution of 1978, in which the Spanish nation proclaims its willingness to collaborate in reinforcing peaceful relations and to achieve effective cooperation among all peoples of the earth. The International Development Cooperation Act 23/1998, passed by the Parliament on 7 July 1998, fills a regulatory gap and addresses the chief problems in this field.

Under Act 23/1998, Spanish cooperation must:

"... [foster] development processes conducive to the defence and protection of human rights and fundamental freedoms, economic and social well-being, and sustainability and regeneration of the environment in countries having high rates of poverty and countries in transition towards full consolidation of their democratic institutions and incorporation in the international economy".

It also lays down the following principles and objectives for Spanish policy in respect of international development cooperation:

"Article 2: *Principles*

Deriving its inspiration from the Constitution, Spanish policy as regards international development cooperation reflects the solidarity of the Spanish people with developing countries and particularly with the most disadvantaged peoples in other nations. It is based on a broad nationwide political and social consensus in accordance with the following principles:

a) Recognition of human beings individually and collectively as the protagonists and the ultimate beneficiaries of development cooperation policy.

b) Defence and promotion of human rights and fundamental freedoms, peace, democracy and public participation on the basis of equality between men and women, and more generally, the absence of discrimination by reason of sex, race, culture or religion, and respect for diversity.

c) The need to promote sustainable, participatory, interdependent global human development with gender equality in all nations, and to seek to apply the principle of shared responsibility between States, in order to guarantee and enhance the effectiveness and coherence of development cooperation policies in addressing the eradication of poverty world wide.
d) Promotion of lasting and sustainable economic growth of countries, accompanied by measures that promote a fair redistribution of wealth in order to help improve living conditions and access to health, education and cultural services and promote the well-being of their populations.
e) Respect for the commitments acquired as a member of international organisations.

Article 3. *Objectives.*
International development cooperation policy comes under the exterior activities of the State and is based on the principle of unified exterior action by the State.

The principle of unified exterior action by the State will be applied in accordance with the regulations currently in force, within the framework of the competences of the various government departments.

International development cooperation policy lays down strategies and initiatives aimed at promoting sustainable human, social and economic development to help eradicate poverty in the world through the following objectives:

a) To use human and material resources to foster the development of the poorest countries and help them achieve economic growth with a fairer distribution of the fruits of development; to propitiate the conditions necessary to achieve self-sustaining growth founded on the capacities of the beneficiaries themselves; to propitiate improved living standards in beneficiary populations, particularly the most deprived strata, and to promote better guarantees of stability and democratic participation within a framework of respect for the human rights and fundamental freedoms of men and women.
b) To help achieve a better balance in political, strategic and trade relations and so promote a stable, secure framework that will underpin international peace.
c) To anticipate and address emergency situations by providing humanitarian aid.
d) To propitiate the advent and consolidation of democratic regimes and respect for human rights and fundamental freedoms.
e) To foster political, economic and cultural relations with developing countries based on the principles and other objectives of cooperation.

Article 4. *Principle of coherence.*

The principles and objectives set forth in the foregoing articles shall guide all policies implemented by public offices in their purviews insofar as these may affect developing countries".

(*BOE*, n. 162, 8–7–98).

1. Development Cooperation

Appearing before the Congress Foreign Affairs Committee to reply to a question from a Member of the Popular Group, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, explained the objectives and priorities established for Spanish economic and trade cooperation in the year 1998:

"Regarding Spanish priorities in economic and trade cooperation for 1998 ... as to the priority objectives of my Department, I should say that we find little Spanish trading but on the other hand a high level of investment, that we shall be seeking to foster both trade and investment in the Mercosur area, and that we shall also be closely monitoring regional integration programmes. Other priority objectives include safeguarding economic relations with Cuba and strengthening relations with Mexico as part of the Nafta area.

As regards the OECD and West European countries in particular, we shall of course support Spanish enterprises, especially in large-scale public projects; we shall be working harder to resolve bilateral disputes and to add to or complete the regulatory framework with some of these countries – for example a dual taxation agreement with Greece, negotiations between the European Union and Switzerland, etcetera.

Eastern Europe. We shall be helping our companies to get to know the economic environment in the region, the legal systems and the effect of any investment and commercial exchanges. We shall continue to provide institutional support for initiatives by Spanish firms in Central and Eastern Europe in terms of new trade links, investment and tenders.

Priority objectives in Africa, Asia and the Pacific include debt conversion programmes in Morocco, fishing, the creation of Spanish companies on the basis of joint ventures or agreements with North African countries, and involvement in the Middle East. In Sub-Saharan Africa we shall also be following up and strengthening relations, especially with South Africa, Angola and Mozambique.

(...)".

(*DSC-C*, VI Leg., n. 440, p. 12729).

In the same session of the Congress Foreign Affairs Committee, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, explained the priorities and objectives of the *Instituto Cervantes* and the *Casa de América*:

"As to the objectives of the *Instituto Cervantes* and the *Casa de América* for 1998, in the first place it is an absolute priority for the *Instituto Cervantes* to open two new centres, one in Tel Aviv and the other in Brazil; the first is in response to demand for dissemination of Spanish language and culture as well as helping preserve a major Spanish-speaking community. In Brazil, there are plans to teach Spanish generally throughout the education system, for which the Brazilian authorities calculate that they will require nearly 200,000 Spanish teachers in the next few years. The Cervantes organisation wishes to take part in such large-scale introduction of our language in a great country, and to that end it will be setting up a training centre for teachers of Spanish. This will work with universities and local institutions; it will not provide Spanish teaching but teacher training.

Also, the Cervantes virtual centre, created in 1997 as part of the Cervantes network, will be used over this year and next year to start up to 37 projects, whose main objective is teaching of the Spanish language but which also deal with other aspects of our culture such as collections of Spanish and Ibero-American classics, virtual exhibitions, auxiliary material for teachers, a forum on Spanish, etc. ...

(...)".

(*DSC-C*, VI Leg., n. 440, p. 12728).

In this same session, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, also presented the following priorities and objectives for Cultural and Scientific Cooperation in 1998:

"... cultural action abroad is basically run through two ministries: Foreign Affairs and Education and Culture. There is a cultural affairs delegate committee which also deals with the activities of other departments where these have a bearing on this field.

The Foreign Ministry's activities in cultural and scientific cooperation are channelled through the Department of Cultural and Scientific Relations and the Spanish Cooperation Agency. The Department has a budget of 1050 million pesetas, which means that it is forced to rationalize. The specific objectives for the current year briefly include the following: to enhance coordination with other bodies having similar responsibilities, to initiate bilateral negotiations on the subject of agreements for the opening and operation of *Instituto Cervantes* centres in various countries ...

(...)

Multilaterally, we shall be intensifying the follow-up of agreements in the course of 1998, such as the agreement to combat desertization and climatic change and the Antarctic Treaty. Special attention will be paid to feedback from multilateral organisations, and the Spanish Cooperation Agency is carrying on cultural cooperation activities in Ibero-American countries, with the aim of making Spanish culture generally known in the region, and also in North Africa and the Arab world. The Agency is spending more on this even

than the Department of Cultural Affairs. The budget is in the region of 2,200 million pesetas. Also in this line there have been over one hundred exhibitions in the past year, 400 literary initiatives and an indeterminate number of other activities and sponsoring.

The basic instrument through which these activities are pursued in America is the network of Spanish cultural centres in Ibero-America, in Buenos Aires, Asunción, Santiago de Chile, Lima, San José de Costa Rica, Santo Domingo and Havana, plus the support and training centres that we have in America – specifically three: Santa Cruz de la Sierra, Cartagena de Indias and Antigua, in Guatemala. We have a sub-network of six centres belonging to the Brazil-Spain cultural society, whose teaching and cultural activities are supervised by the *Instituto Cervantes*, and another major objective for this year is to open new cultural centres in Mexico and Montevideo.

The Agency's scientific cooperation operates through three main instruments: the programme of cooperation with the Ministry of Education and Science for joint research projects between universities and Ibero-American public research bodies; and the Ibero-American programme of science and technology for development, CITER, which was created in 1984 and is intended to promote the modernization of production, improve the quality of life in all the participating countries, and foster cooperation in R&D (Research and Development) in pursuit of results that can be transferred to the production and social systems of Ibero-America".

(*DSC-C*, VI Leg., n. 440, pp. 12728–12730).

Appearing before the Congress Development Cooperation and Aid Committee on 9 June 1998, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, reported on the results of the Annual Plan for International Cooperation:

"In 1997, Spanish public authorities spent 179,688.8 million pesetas on official development aid, that is 0.23 per cent of the gross domestic product. According to these figures, Spain's contribution in terms of cooperation for developing countries was 19,582 million pesetas, that is 12.2 per cent more than in 1996, reversing the downward percentage trend of 1995 and 1996.

(...)

Multilateral cooperation totalled 67,662.3 million, that is 47.1 per cent up on 1996. The total for bilateral cooperation was 112,000.26 million, roughly the same as the previous year. The rise in multilateral cooperation reflects an increased contribution to European Union development spending through the Community budget and through the European Development Fund and international financial bodies. As we shall see, although the figures for both elements are lower than was planned by the Government, they are still much higher than in 1996.

The pattern in bilateral cooperation is different. If we take the two main traditional divisions, reimbursable and non-reimbursable, we find that

reimbursable cooperation was down by 19.8 per cent on 1996, while non-reimbursable cooperation was up by about 11.3 per cent. There is also a positive side to this in that it confirms the progressive reduction of net disbursements of DAF credits, which therefore constitute a decreasing percentage of total official development aid.

In the case of DAF credits, I should say that the decrease is due basically to the high level of amortization last year, which in the final analysis was offset by new disbursements ... As you know, multilateral cooperation operates through the following mechanisms: contributions to the European Union and contributions to non-financial international bodies. As I said, total spending on multilateral cooperation in 1997 came to 67,662.3 million pesetas ...

(...)

Reimbursable bilateral cooperation consists of loans to governments and public institutions in beneficiary countries ... This heading includes DAF credits, which oblige the beneficiary to acquire Spanish goods and services. The specific weight of this instrument in Spanish official development aid is determined by net disbursements in the relevant year – that is, the difference between payments or disbursements in that year and amortizations received on previously formalized credits.

In 1997, net disbursements of DAF credits qualifying as ODA (Official Development Assistance) totalled 33,021 million pesetas. These disbursements were 18 per cent less than envisaged in the 1997 Annual Plan for International Cooperation, and net disbursements were also down on 1996, in this case by 19.8 per cent.

Non-reimbursable international cooperation is the heading that covers all transactions in cash or in kind for which the beneficiary country acquires no legal debt ...

The total spending under this heading in 1997 came to 79,005 million pesetas, that is 8.3 per cent more than was spent on this type of cooperation in 1996 ... Thus, in 1997 Spain waived 13,727 million pesetas of debt owed by Guinea Conakry, Madagascar, Morocco and Egypt, the largest contingent being that of Madagascar, at 11,627 million. The second heading is programmes and projects. In 1997, disbursements to programmes and projects totalled 65,277.8 million pesetas, that is 13 per cent more than in 1996. This increase came mainly from augmented spending on technical cooperation and Spanish emergency aid.

Going by this new criterion, non-reimbursable bilateral cooperation, the only area in which there is decentralized cooperation, could account for 25 per cent. This is an important point in that it justifies the need to keep on pushing to achieve continuous improvement in the coordination and harmonization of the efforts of all authorities to ensure the most effective possible utilization of the official resources that Spain devotes to ODA. Once developed, the Interministerial Commission to be set up under the proposed Cooperation Act may well prove an effective means of achieving this end.

In terms of geographical areas, the largest slice of Spanish aid, 50.9 per cent, went to Ibero-America. Central America received 13,116 million and South America 12,801 million. The other Ibero-American countries received a total of 9,117 million pesetas. Thirty per cent of Spanish official development assistance went to Subsaharan Africa; 14 per cent went to North Africa and the Middle East, and much smaller percentages went to Asia, Oceania and Europe.

(...)

As you know, planning of our cooperation is currently in transition between the traditional Annual Plans for International Cooperation and the new instruments provided by the Cooperation Act: a master plan, new annual plans, and strategies by sector and country. Nineteen ninety-eight will probably be the last year of effective life of the existing guidelines and the Annual Plans for International Cooperation, which have given signal service to date.

(...)

These will therefore be the last Annual Plans for International Cooperation. We are now working together to draw up the master plan, which is well advanced, and we hope that the new planning instruments provided by the Act will make for faster action and, most importantly, for better monitoring and verification of all data on Spanish cooperation".

(*DSC-C*, VI Leg., n. 487, pp. 14021–14023).

In the same session of the Congress Cooperation and Development Aid Committee, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, explained the analysis of Spanish Development Aid 1994–2006 conducted by the OECD Development Assistance Committee:

"The main task of the DAC (Development Assistance Committee) is to lay down official guidelines for aid to less developed countries. Along with the United Nations Programme for Development and the World Bank, it is possibly one of the international organisations that has contributed and continues to contribute most to defining profiles of international cooperation.

(...)

The second examination of our aid began in May last year. My Office drew up a memorandum on Spanish cooperation since 1994, following which the second phase commenced, consisting in an on-site study and verification of our situation. The OECD deems it best not to focus exclusively on interviews in capital cities and prefers to fill out the picture with an exhaustive examination of the reality of aid on the ground. The country chosen for this was Peru, and the body in charge of the examination was the Development Assistance Committee.

(...)

I should note that the OECD delegates were favourably impressed by the

effectiveness of Spanish aid and judged that the basic objectives of the visit had been fulfilled. They found that the Spanish programme was well-devised and rigorous, and that it covered the areas identified as priorities by the OECD which I referred to earlier.

They found, then, that Spanish cooperation activities fitted perfectly with the objective of achieving sustainable growth through actions on a varying scale agreed on with the Peruvian authorities, which actions contributed to the restructuring of Peruvian society by helping draw more beneficiaries out of poverty and marginalization and into the stream of economic and social recovery.

(...)

Drafting of the OECD report on Spanish aid commenced last November. When it was completed, the examination process culminated with the formal presentation of our programme by the Spanish delegation ...

The Spanish position consisted in pointing to the initiatives and advances that are being pursued to improve our programme. The key point of the Spanish exposition was undoubtedly the proposed law on cooperation, which reviews the institutional structure of cooperation and establishes channels for resolving problems of coordination among the various different departments having competences in this field. It pointed out that this bill would assure coherent and structured participation by all agents having an interest in the sphere of cooperation. It also highlighted the essential task of reinforcing the role of the Parliament in laying down essential guidelines and strategic priorities for this policy, and the need to furnish the government body responsible for coordinating cooperation policy with sufficient means and powers to ensure that all parties involved are properly adapted to achieve the objectives set.

(...)

The question of evaluation was another of the central points in the Spanish discourse and was again well received by the other countries.

In quantitative terms, the Spanish exposition underlined the notable increase in allocation of resources to official development assistance, which following a transitory dip in 1995 and 1996, resumed in 1997 and was consolidated in 1998. Our forecasts suggest that the figure this year will be in excess of 200 billion pesetas, bringing the DA/GDP ratio up to 0.26, that is close to the average for DAC countries.

As regards the relative weights of reimbursable and non-reimbursable aid, the recent change in our programme reflects a progressive increase in the relative weight of donations and orientation of development assistance credits towards social sectors, in line with another major recommendation of the DAC in its first analysis of 1994.

(...)

Another crucial point in Spain's position vis-à-vis the DAC was introduced and debated in connection with our action in Guatemala, where the basic

purpose is to support the peace process, to assist in the conversion of the former guerrilla to a political party, to reinforce the legislative authority, the judiciary and other democratic institutions, and to promote greater participation and involvement of the indigenous population, accompanied by programmes to build up local authorities and support basic sectors of society. In this case, it was made clear that alongside the Programme of Governability in Central America, which Spain co-finances with the UNDP, our cooperation awards priority to reform and modernization of the State, specifically measures of support for the consolidation of peace, rehabilitation and political transitions.

(...)

My Office therefore believes that the verdict of this second analysis of our cooperation is highly positive ...

The essential part of the report – the summary and the conclusions – indicates that the Spanish aid programme is going through a process of adjustment and reform which affects its legislative bases, its composition and the management tools that it uses. As well as referring to the current debate on the cooperation bill, it highlights the sharp contraction of our reimbursable aid and the change of orientation to a sector-based approach. There has been a significant increase in decentralized aid, now channelled mainly through non-governmental organisations, which is a particularly innovative aspect of Spain's assistance policy. And major improvements are being made in planning and evaluation functions. Overall – and again I quote – these measures largely meet the DAC's recommendations in its first analysis of 1994 and promise a considerable improvement in the quality of Spain's development aid effort.

(...)".

(*DSC-C*, VI Leg., n. 487, pp. 14012–14015).

2. Assistance to Developing Countries

a) Ibero-America

Appearing before the Senate Foreign Affairs Committee to report on the Eighth Ibero-American Summit held in Porto on 17 and 19 October 1998, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, stated as follows:

"The historic, linguistic and cultural links between our countries, including the survival of family ties, speak for themselves. These traditional links have been strengthened in recent years as Spain has become more dynamic and outward-looking, with a growing presence of Spanish companies in Ibero-America, sustained growth of trade flows and increasing allocation of funds to cooperation.

We know that Spain invested more in Ibero-America in 1997 than in the rest of the world, and that Spain has been the leading European investor in Ibero-America for the past six years. We are one of the leading world contributors of development assistance to Ibero-America. Our traditional relationship based on cultural associations has been reinforced by shared economic interests. The special priority awarded to Ibero-America in our foreign relations is expressly reflected in article 56 of our Constitution, which recognizes the King as the supreme representative of the State in international relations and adds, significantly, 'with special reference to those nations comprising our historic community' ...

(...)

As regards the content of the Eighth Summit, the theme, very acutely chosen by the Portuguese *pro tempore* Secretary, was globalization and the challenges of regional integration.

... In this connection several Ibero-American representatives highlighted and applauded the Spanish proposal to contribute five billion dollars, of which three billion went to support International Monetary Fund measures in Ibero-American countries aimed at balancing the financial situation of the countries worst hit by the crisis.

In the debate at Porto on the effects of globalization in our region, Spain upheld the view that we should not only acknowledge the clearly positive effects of a world-wide economy, but that we should also be especially alive to the danger of unequal benefit from the opportunities afforded by globalization, leading to the marginalization of minorities, increasing internal inequality and inability of more vulnerable States to defend themselves against other States or against private interests. Policies should therefore be defined to counteract these dangers, a point in fact mentioned in the Porto declaration.

We proposed to our partners that in order to forestall the increasingly evident dysfunctions in financial markets, we should consider the desirability of reinforcing supervisory measures, such as internal, and more importantly international, control of banking, the introduction of mechanisms for the interchange of information and support between States, and the possibility of pressing for international financial organisations to adapt to new realities and new needs. This point was also included in the Porto declaration.

(...)

On the subject of cooperation programmes, Spain believes that the chief hurdle in the path of greater development of Ibero-American cooperation lies in the lack of a specific structure within which to implement programmes, which as we saw are growing in number and importance ...

For all these reasons, we proposed the creation of a permanent body for cooperation – a Secretariat for Cooperation – operating on principles of efficiency and operational effectiveness and kept to a size that precludes sterile bureaucratization. The Porto Summit approved the creation of such a Secretariat for Cooperation.

As we proposed, the remit of such a permanent Secretariat for Cooperation would be to consider any new cooperation projects submitted, to coordinate and monitor current programmes, to identify sources of funding and to promote and publicize Ibero-American cooperation.

(...)

We are confident that these reforms will help consolidate these summits, to the benefit of our fellow citizens, but obviously the summits will not be immutable and we shall not be completely satisfied until they are tested in practice. One thing we have learned from the summits to date is that there has to be continuous renewal and adaptation, and that they must be permanently open to our societies if we are to achieve our common objective – that is, decisive progress in the construction of a community of Ibero-American nations. This last is the prime goal of Spanish diplomacy".

(*DSS-C*, VI Leg., n. 359, pp. 2–5).

Appearing before the Senate in full session to reply to a question tabled by a Senator from the Socialist Group, the Minister of Foreign Affairs, Mr. Matutes Juan, gave the following clarification regarding bilateral policy with Cuba:

"The fundamental principles underpinning relations between the Spanish Government and Cuba have not changed in the last few years and have therefore in no way affected our cooperation with Cuba, as I shall be explaining.

These principles have always consisted in the maintenance of good relations – proper relations – with the Cuban government and with all sectors of the Cuban population not strictly connected with the government. I therefore do not exclude those sectors, both inside and outside the country, which closely monitor the situation and can or do influence that situation. Another principle is the defence of Spanish interests, whether commercial, investment – which by the way continues to grow – or political. Political interest means the maintenance of a relationship whereby Spain can better support future positions in an eventual peaceful transition in Cuba. And finally, there is the defence of human rights and democratic freedoms in Cuba as in the rest of the world, and especially in Latin America.

The guiding criteria for cooperation, based on these principles, have not therefore changed. They consist in promoting the well-being and better living conditions for the people of Cuba by channelling aid preferentially through non-governmental organisations and independent institutions, or else by awarding priority to projects which directly affect the living conditions of Cuban citizens. At the same time, we seek to strengthen our historical and cultural ties and to promote relations and interchange in scientific and technical fields.

In fact, up until 1994 our cooperation relations with Cuba were very modest, confined basically to scientific cooperation and the training of human resources.In fact, up until 1994 our cooperation relations with Cuba were very

modest, confined basically to scientific cooperation and the training of human resources. It is only since 1993 that Cuba has been included in assistance. In the last few years, this has never varied regardless of ups and downs".

(*DSS-P*, VI Leg., n 97, p. 4448).

b) Maghreb

In reply to a question from a Member of the *Izquierda Unida* Federal Group, the Government reported on Spanish cooperation with Morocco in the electoral sphere:

"Within the framework of the agreements concluded in 1996 by the Spanish and Moroccan Interior Ministries, in 1997 the Moroccan Ministry of the Interior asked its Spanish counterpart for technical and financial assistance in organizing computerization for six distinct electoral processes scheduled to take place in Morocco in 1997 and early 1998 (General Elections, and Elections to Chambers of Deputies, Professional Chambers, Provincial Assemblies, Regional Assemblies and Chambers of Councillors).

Spain acceded to the request from the Moroccan Interior Ministry in view of the fact that the electoral process that took place in Morocco in the course of 1997 marked the start of a new phase of institutional development

(...)

Therefore, following formal presentation of the Moroccan request to the Office of the Secretary of State for International Cooperation and Ibero-America at the Ministry of Foreign Affairs, it was decided that, under the Hispano-Moroccan agreement on scientific and technical cooperation of 8 November 1979, the Spanish International Cooperation Agency should be detailed to finance this cooperation through a State subsidy to the Moroccan Interior Ministry. This subsidy has been used to supply the computer material and equipment needed to organize and process the data of the elections I mentioned, and to supply paper for voting slips".

(*BOCG-Congreso.D*, VI Leg., n. 334, p. 152).

c) Angola and Mozambique

Appearing before the Senate Foreign Affairs Committee to report on the status of cooperation with Angola and Mozambique, the Secretary of State for Cooperation and Ibero-America, Mr. Villalonga Campos, explained as follows:

"Mozambique is a priority target for Spanish cooperation, confirmed year after year by growth of the budget for development projects there. The basic aim of our cooperation in Mozambique is to promote peace and the economic and social reconstruction of the country. Since the conclusion of the basic agreement on scientific and technical cooperation between Spain and Mozambique in 1989, which marked the start of cooperation between the two countries, there have been three bilateral joint commission meetings. The

fourth is scheduled for this November when President Chissano visits Spain. At the meeting of the Joint Commission we shall be evaluating the results of the cooperation programme over the last three years and deciding on what is to be done over the coming three years.

In the years so far, cooperation projects have concentrated on the following sectors.

Transport: we have cooperated with the Spanish rail operator Renfe, which for more than two years has lent technical assistance to the *Companhia Nacional de Caminhos de Ferro de Mozambique*, to a value of nearly 10,000 million pesetas, for personnel training, restructuring of the company and more efficient operation of rail corridors ...

Health: this is another of the chief targets of Spanish cooperation, through a number of major projects such as a care programme for the Hospital de José Macamo health area in Maputo. This commenced in 1989 and has continued up to this year with investment totalling nearly 500 million pesetas ...

We have rehabilitated and commissioned the Polano Caniço Health Centre. Following investment totalling 300 million pesetas, this centre is now fully functional ...

We have set up a tropical disease centre in order to train research personnel for local study of priority health problems in the country, chiefly malaria. This centre operates within the framework of an agreement signed by the Secretary of State and the Immunological Institute of Bogotá, and one of its priorities is to evaluate Dr. Patarroyo's SPF66 malaria vaccine. Four hundred million pesetas has so far been invested in the project run by the Clinic Foundation of Barcelona University, which is working in close cooperation with the Mozambique Institute of Health. This programme has received considerable international publicity because it is also linked to South-South cooperation between Colombia and Mozambique, with Spain acting as intermediary.

Institutional support: this is another sector in which we are still working in Mozambique. Between 1993 and 1996, projects were implemented to support the electoral process, and also projects for the settlement and readaptation of demobilized soldiers, the latter through the United Nations Development Programme. All these projects have clearly done a great deal to help democracy take root in Mozambique.

Also, two major projects are now afoot to reinforce local institutions
(...)

Yet another project in which Spain is in close cooperation is the training up of the police ...

Other sectors in which we have also worked and continue to work in cooperation with Mozambique include projects for training in tourism. In this connection we now have the 'Andalucía' Hotel School.

(...)

Other instruments of cooperation; scholarships and grants. At present

there are 21 scholarships which enable students from Mozambique to come and study in this country ...

We also subsidize non-governmental organisations. As you know, Mozambique is a priority country in the Agency's requests for proposals and is traditionally one of the largest recipients of the AECI's annual RFPs, averaging 600 million pesetas in the last three years ...

As regards debt and DAF credits, as you know, servicing of overseas debt is a tremendous drag on Mozambique's development, and therefore it is one of the countries in a similar position chosen by the World Bank for a programme of debt relief. Relief so far amounts to 3,000 million dollars, but there are proposals for a complete write-off.

Spain has now written off around 400 million pesetas of bilateral debt. Also, the Secretary of State for Trade has set in motion a novel initiative, in conjunction with a non-governmental organisation, Intermon, for the latter to purchase part of Mozambique's debt and then negotiate with the Mozambique government to turn the debt acquired into development projects.

(...)

There is daily increasing support from the community of donors to Mozambique, thanks mainly to good economic results and to institutional reforms aimed at consolidating democracy, which are an example for the whole area. For its part, Spain intends to maintain the levels of fund allocations of the last three years, which average 1300 or 1400 million pesetas annually. As I said, the distribution by sectors and the definition of specific projects will be dealt with at the next Joint Commission meeting.

Spanish cooperation with Angola began in the mid-1980s and is regulated by a General Agreement of 20 May 1987. Since then, there have been four meetings of the Joint Cooperation Commissions, the last of which took place in Madrid last March. Each of these meetings evaluated the bilateral programmes of non-reimbursable official development aid which we have been implementing together.

Cooperation with Angola has been very limited ... owing to civil war up until the Lusaka Accords of November 1994. Cooperation began to intensify in 1995 following the first donors' conference in Brussels. By the end of 1997, all the contributions committed in Brussels in 1995 had been honoured.

In this context, the objectives of our cooperation with Angola have been concentrated geographically in the province of Bengo and in the capital Luanda, in the areas of governability or institutionalization. Here, we have been supporting the peace process and democratization of the country through contributions totalling 125 million pesetas to the UN-led programme for community rehabilitation and national reconstruction. In the area of governability, the Joint Commission recently drew up a feasibility study for reform of the prison system, which also entails modification of the legal system.

As to health, we have set up a programme of support for the rehabilitation of health infrastructures in the centre, south and north of the province, operating through several health-oriented NGOs, *Médicos del Mundo*, *Médicos Mundi* and the Spanish Red Cross. The Agency's health programme covers practically all of the province and has cost 500 million pesetas in two years. Also, a network of medical companies has been set up to facilitate primary care and some specialities like paediatrics, gynaecology, ophthalmology and physiotherapy; some employees of Angolan public enterprises have been guaranteed medical care at a total cost of 40 million pesetas. Also, we have now completed the handover of the National Institute of Ophthalmology to the Angolan government, while we continue to support the Institute with technical assistance, organisation of specialized courses and doctorate examinations, at an estimated annual cost of 8 million pesetas. The ophthalmology unit in Luanda is the only training centre of its kind in the entire region, excepting South Africa of course.

(...)

In the fields of agriculture and rural development I would cite the farming programme on an experimental estate at Funda on the outskirts of Luanda, where we have provided means of production and accommodation for 40 displaced families, while the region is on the way to development thanks to rehabilitation of irrigation infrastructure. The *Fazenda* at Funda has supplied almost all the vegetables for the capital in the last few years.

In fisheries, the Government of Galicia has commenced cooperation in a programme for 20 Angolan students to train in fish farming at its facilities on the isle of Arosa ...

In industry, several projects have commenced, including a feasibility study for the creation of an industrial development company in Luanda at a cost of 12 million pesetas; implementation of a training programme for functionaries and executives in the industrial sector to upgrade their skills, at a cost of 26 million pesetas; we have also started up a programme to restructure the *Banco de Popança e Crédito* – the second largest bank after the Angolan National Bank – with a view to adapting it to market conditions and turning it into a competitive instrument in the service of the financial sector and the country. The cost of this programme is 60 million pesetas.

We are also working on drinking water and sanitation. In the closing months of 1998, we started drawing up a master plan for drinking water and sanitation for two major cities in the south of Angola, Lubango and Namibe, at a cost of 62 million pesetas. Angola is also a priority candidate for subsidies to non-governmental organisations, although it has benefited less than Mozambique due to the insecurity of the territory. Also, we run a scholarship scheme like that of Mozambique, under which there are currently 26 Angolans studying in Spain.

In the case of development credits, Angola actually benefits more than Mozambique. In the last few years Angola has received major DAF credit

lines totalling around 100 million dollars, which have been disbursed not without some difficulties. These have been used largely in the rehabilitation of infrastructures in the health and other productive sectors, or in the food sector, through a barter system consisting in shipments of oil.

(...)".

(*DSS-C*, VI Leg., n. 358, pp. 4–6).

d) Middle East

Appearing before the Senate Foreign Affairs Committee to report on the status of cooperation with Middle Eastern countries, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, explained

"The defining feature of the current situation as regards cooperation in the Middle East is Spain's growing support for the Arab world. This support is comprehensive, covering practically all countries and territories from Egypt to Iraq, and most particularly the development of the Palestinian territories of the West Bank and Gaza.

This significant support and the specific weight of Spanish cooperation goes back to the Madrid Conference of 1991 where the peace process began and is grounded on the conviction that economic development of the area is a very important and substantial part of the peace process.

In the sphere of non-reimbursable cooperation, last year's figures show that the Arab world has become another permanent priority area for Spanish cooperation. The volume of cooperation doubled from 3000 million in 1996 to nearly 6000 million in 1997, over 3000 million of which went to the Middle East, while there was also major decentralized cooperation to the tune of 500 million pesetas.

In fact the Middle East, with its central focus in the Palestinian territories, is now in absolute terms one of the leading recipients of Spanish non-reimbursable official aid.

If to non-reimbursable cooperation we add concessional credits, which in 1997 came to 2,287 million pesetas, this means that our bilateral cooperation with the Middle East in 1997 totalled 5,436 million pesetas.

I should say that these DAF credits are especially soft – that is, they are interest-free. They are for 35 years with a 14-year grace period, and in real terms they are equivalent to a donation of at least 95 per cent of the nominal amount.

If to the figure for bilateral cooperation we add our principal contributions to multilateral cooperation in the Middle East – that is, European cooperation through MEDA and ECHO funds – which came to approximately 5,500 million pesetas in 1997, and if to this we further add contributions to the United Nations, which came to at least 200 million pesetas in 1997, then total Spanish cooperation for that year came to around 11,179 million pesetas.

I shall now try to summarize non-reimbursable cooperation in the Middle East by countries and sectors. Within the framework of centralized non-reimbursable cooperation, the chief beneficiaries in 1997 were by far the Palestinian territories, with 1,984 million pesetas, that is 73 per cent; then Egypt, with 352 million; Lebanon with 203 million; Jordan with 85 million; Iraq with 74 million and Syria with 25 million pesetas.

The main sectors targeted by aid in 1997 were the following, in descending order: Spanish non-governmental organisations, 985 million pesetas. In the field of social cohesion: community services and population, 500 million pesetas; food aid, 450 million pesetas; education and training, 286 million; agriculture, stockbreeding and fishing and integrated rural development, 189 million; culture, 164 million; institutional reinforcement, 70 million; humanitarian and emergency aid, 25 million; business development and social economy, 8 million, and manufacturing and extractive industries, nearly 4 million pesetas.

Before listing the main cooperation projects, I should point out that our forecasts for 1999 may give a figure in the region of or even higher than the 11,000 million I mentioned before. And that figure could be as high as 12,000 or 13,000 million if the concessional credits are increased".

(*DSS-C*, VI Leg., n. 358, pp. 9–10).

Specifically addressing the cooperation projects agreed by the Spanish government and the Palestinian National Authority in 1997, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, told the Development Cooperation and Assistance Committee:

"With Palestine, these entail a large figure, in excess of 2,000 million pesetas, and cover a wide range of action.

The third meeting of the Joint Hispano-Palestinian Committee for cultural, educational and scientific cooperation in Gaza ... on 5 February 1997 agreed on a generic multi-sector programme, subject to the definition of specific projects as they were submitted. The following sectors were selected for implementation of projects: agriculture, tourism, education, culture, institutional development, infrastructures, local administration and child care.

I shall now attempt to list the projects identified in each sector and their current status.

First, agriculture. We have a land rehabilitation project in the north of the West Bank, which is being implemented by the Palestinian Ministry of Agriculture and has received 105 million pesetas from the 1997 budget ...

Next, tourism. Star Street in Bethlehem is being rehabilitated. On 4 March 1998, the Official State Gazette (*BOE*) published a request for proposals for the drafting of a plan of protection and urban rehabilitation of the area including Star Street, and for an urbanization project for the same street ...

Another major sector is education. We are currently building an elementary school in Halhul. The project is being executed by the Palestinian Ministry of

Education with 60 million pesetas of funding from the 1997 budget. We are also continuing rehabilitation and maintenance of eight schools in the Jerusalem area, again implemented by the Palestinian Ministry of Education, with 50 million pesetas from the 1997 budget. We provide financial support for the Al-Amari club. The 1997 budget also provided for subsidies to the Palestinian Ministry of Youth and Sport, with 8 million pesetas to subsidize the club's sporting activities for young Palestinians. We have a scholarship programme. Fifty-six scholarships have been awarded for the 1997 academic year: 41 for courses, 20 for doctorates, 19 for graduate courses, 2 for medical specialities and 15 short-term scholarships, with a total budget of 58 million pesetas. We also have a readership and university support programme. In 1997, we subsidized two readerships in Spanish at the universities of Bethlehem and Nablus, to which we also sent bibliographic material, with a budget of 10 million pesetas. In 1998, an additional readership was also inaugurated at the University of Hebron, with a budget of 12 million pesetas.

Another key sector in the Joint Committee's resolutions is culture. The prime target is the dissemination of Spanish culture, which involves two major initiatives: participation by Spanish groups in the Bir-Zeit festival of music and dance, and the Spanish culture week in Jerusalem. Both events were held in 1997 and are scheduled again for 1998. The budget is approximately 8 million pesetas. Fusion of Palestinian culture in Spain. We also subsidize the participation of popular music and dance groups in Spanish festivals.

In institutional development, another of the sectors identified by the Joint Committee, we are currently fitting out the new headquarters of the Palestinian Ministry of Planning and International Cooperation. In 1997 that ministry received subsidies for this purpose totalling 22 million pesetas.

In the area of infrastructure, there is the Spanish Park in Jericho. The project is being executed by the Palestinian Ministry of Social Affairs with a subsidy of 60 million pesetas awarded in 1997.

We support local administration through programmes of assistance to local authorities in the West Bank. These consist in the execution of minor infrastructures and other local activities in 20 West Bank municipalities. The work began at the beginning of this year under the direction of the UNDP and the Palestinian Ministry of Local Affairs, with a subsidy of 75 million pesetas (1998 budget).

We also undertake cooperation in all sectors through non-governmental organisations ...

We also make special contributions, as agreed at the 3rd meeting of the Joint Committee, to the budget of the Palestinian Ministry of Finance. In 1997 we donated 250 million pesetas to balance their budget. We make special contributions to the UNRWA; the first amounted to 100 million pesetas, and another contribution of 100 million pesetas is planned for 1998. And of course we continue to supply food and emergency aid. This came to 265 million pesetas in 1997 and is expected to total 100 million pesetas in 1998.

(...)

The Palestinian National Authority has serious problems of administration and project management, and hence our contributions to the Ministry of Planning and the Ministry of Finance. They can do with all the institutional support we provide, but they frequently have problems in the formulation of projects. They receive a great deal of funding, although never enough for the Apartheid to which the Palestinian people are subjected, and that also creates problems for the management of Spanish funds and projects. However, we shall do all we can to make a good showing at Bethlehem 2000 and to see that this project carries on".

(*DSC-C*, VI Leg., n. 487, pp. 14032–14033).

3. International Terrorism

Addressing the Agenda on measures to eliminate international terrorism at the 29th meeting of the United Nations Sixth Committee on 14 November 1997, the Spanish representative, Mr. Garcia-Cerezo, stated that:

"80. ...his delegation supported the statement made on the subject by the representative of the Netherlands on behalf of the European Union and wished to make a few additional comments that were of particular interest to his country.

81. Spain condemned in the strongest possible terms terrorism in all its forms and manifestations. The Spanish Government devoted a great deal of effort to combating international terrorism and considered that cooperation among countries was essential to the fight against that scourge. Evidence of that was the large number of international agreements in that field to which Spain was party, as indicated in document A/52/304.

82. His delegation had participated actively in the negotiations aimed at the elaboration of an international convention for the suppression of terrorist bombings and, while it would have preferred a convention of wider scope, it was willing to accept in a spirit of compromise the text which had been submitted to the Sixth Committee by the Working Group. He hoped that outstanding issues would be resolved as early as possible, since the adoption of the convention would mark a significant step forward in the fight against terrorism.

83. Spain supported the proposal to consolidate in Vienna United Nations activities against crime, drugs and terrorism. The centre to be established must coordinate cooperation activities in the fight against terrorism and enhance their effectiveness, while at the same time emphasizing their links to other activities of organized crime and drug trafficking".

(UN Doc. A/C.6/52/SR.29).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

Note: See XIV.1.*a) Establishment of a permanent International Court*

a) Reform of the Charter

Addressing the Fifty-third Session of the General Assembly on 20 November 1998, on the question of equitable representation on and increase in the membership of the Security Council, the representative from Spain, Mr. Arias, stated:

"... We believe that any reform of the Council must be effected by the largest majority provided for in the Charter, as set forth in Article 108. This is based upon historical, legal and political criteria and on simple common sense. Any reform resulting from a different majority would be illogical, if not fraudulent. We are asking for the majority provided for in Article 108 to be applied to any reform of the Security Council; that majority is already provided for in the Charter. I stress that point because I should like to make it clear that we are not inventing anything or attempting surreptitiously to amend or reform the Charter.

(...)

Spain takes very seriously the issue under consideration. We are a responsible Member of the Organisation. Nothing could be further from our purpose than the creation of divisions. We are in favour of Security Council reform, which we consider necessary and urgent and which we believe cannot be postponed. But such reform must be carried out in a legitimate manner, precisely in order to obviate the atmosphere of confrontation and division that would arise if the reform were not adopted by the largest majority legally established in the founding Charter of this Organisation.

Who is afraid of Article 108? If we confine ourselves to the issue of the Security Council, who is afraid of our reiterating clearly and unequivocally that in order to reform the Security Council we need the logical majority that the Charter demands for a subject of such importance? Who are the obstructionists and the creators of unnecessary controversies? Those who, in accordance with the Charter, want far-reaching reform to be adopted by a reasonable and appropriate majority, or those who are trying to undermine that majority with arguments that are confused and beyond my understanding?

(...)".

(UN Doc. A/53/PV.64).

b) International Criminal Court

To a question in Congress as to Spain's support for the creation of a United Nations International Criminal Court, on 2 April 1998 the Government replied as follows:

"In the General Debate on Friday 26 September 1997 at the Fifty-second Session of the United Nations General Assembly, the Minister of Foreign Affairs expressly supported the creation of an International Criminal Court. His words were: 'Recent experiences in the conflicts in the former Yugoslavia and in Rwanda have brought home the need to create a judicial body which will prevent impunity and contribute towards the reconciliation of war-torn societies and the consolidation of peace processes. The creation of an International Criminal Court is therefore an issue of supreme importance to the Spanish government'.

Moreover, point 1.1 of the Memorandum distributed by the European Union at the beginning of the Fifty-second Session of the General Assembly refers specifically to the creation of an International Criminal Court in the following terms: 'the Union is pleased at the progress being made in drawing up the statute for a Permanent International Criminal Court, whose task it will be to judge serious crimes and serious violations of human rights which are a matter of concern to the International Community. It hopes that the final issues now being discussed in the Preparatory Committee are resolved so that the statute can be adopted during the Diplomatic Conference to be held in Rome in 1998'. As you know, the Memorandum is a public document of the first importance which sets out the European Union's principal common positions on foreign policy.

Finally, Spain firmly supported the proposal that the European Union Presidency address the Sixth Commission of the General Assembly on 21 October 1997 on the single issue of setting up the International Criminal Court.

(...)

From all the foregoing it is clear that in its chief intervention in the Fifty-second Session of the General Assembly, the Spanish government expressly supported the creation of an International Criminal Court and helped ensure that the European Union, in different ways, likewise supported the creation of such a UN Court".

(*BOCG-Congreso.D*, VI Leg., n. 261, pp. 417–418).

2. North Atlantic Treaty Organisation

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

In reply to a question tabled in Congress on 13 August 1998 regarding the 1999 NATO Summit at which the United States will propose that the scope of NATO

action be extended from the North Atlantic area to the whole planet, the Government stated:

"The US Administration has not so far formulated any such proposal in the North Atlantic Council. Nor has it announced its intention to formulate such a proposal at the Summit of Heads of State and Government in Washington in April 1999.

We would point out that the need to respond to the profound changes that have taken place since 1991, both in the sphere of security and in NATO itself, has prompted the decision to review the strategic concept of the Alliance. Such a review must be approved by the Summit of Heads of State and Government in Washington in 1999. In this context, discussions have commenced within NATO to determine the scope of such a review".

(*BOCG-Congreso.D*, VI Leg., n. 314, p. 409).

Also, appearing before the Congress Foreign Affairs Committee on 18 February to reply to a question on relations between Greece and Turkey and how the present situation affects the processes of enlargement of the European Union and the transformation of NATO, the Minister of Foreign Affairs, Mr. Matutes Juan, stated the following:

"Greece and Turkey are both friendly States and allies of Spain. In certain aspects their relations transcend strictly bilateral bounds and impinge on a wider context ... there is ample room for improvement and intensification of Greek-Turkish relations.

(...)

It is not easy to summarize the status of their differences. At this time, the most serious conflict facing the European Union in terms of enlargement is Cyprus, where the Turkish Cypriots refuse to be associated with the accession negotiations, and where also Turkey has announced a process of progressive absorption in defiance of international law and international resolutions. In this context, the European Union is doing everything possible to overcome this contradiction and the exclusion of a major portion of the Cypriot population, and despite everything it has decided to initiate negotiations for accession ... It is no news that there have been several major situations of bilateral tension between the two NATO allies ... and that initiatives for a solution through the International Court at The Hague have not so far been accepted, and this undoubtedly introduces elements of instability, even in the context of a defence and security organisation like NATO. Nevertheless, whenever the actual organisation has been affected, as in the case of the reform of the command structure, differences have ultimately been overcome thanks to the goodwill of all the partners and to flexibility on the part of Turkey and Greece".

(*DSC-C*, VI Leg., n. 380, p. 11218).

On 23 September 1998, the Secretary of State for Foreign Policy and the

European Union, Mr. de Miguel y Egea, appeared before the Congress Foreign Affairs Committee to report on the negotiations and the agreement reached between Spain and the United Kingdom regarding use by NATO of the base at Gibraltar and the Government's latest diplomatic manoeuvres in connection with Gibraltar:

"... The Spanish government's decision to participate fully in the new NATO command structure was at first utilized by the United Kingdom to score points in the bilateral dispute over sovereignty in Gibraltar.

(...)

Spain's reaction was founded upon its refusal to pay any kind of toll for full incorporation to NATO in terms of sovereignty over Gibraltar. We stated that we would not make – and indeed we have not made – any concessions that would or might jeopardise or weaken Spain's position in the bilateral dispute over Gibraltar. In consideration of full Spanish integration in the NATO military structure, from the outset we expressed willingness to make any adjustments necessary in the context of the new command structure, from which the GIBMED allied command is to be eliminated. At no time did we seek to introduce the bilateral dispute with the United Kingdom over Gibraltar into the framework of NATO, and we sincerely regret that the British should have done so. In light of the British declarations, we launched a major diplomatic campaign ... with all the NATO members to explain our position and make quite clear, firstly that we had no wish to inflict our bilateral dispute on the issue of the new command structure, and at the same time that we had not the slightest intention of lifting air and naval restrictions, given that these affected issues of sovereignty over Gibraltar. We also pointed out that these restrictions in no way affected the normal functioning of NATO, and we further stressed the low operational value of the Gibraltar base in a new context where Spain is a full member of NATO. This diplomatic offensive, combined with the firmness of our position, convinced the United Kingdom that the Spanish government would not give way on the issue. They then abandoned their forward position for one designed to focus the objectives of the conversations on those aspects that Spain was prepared to discuss.

(...)

In this context, on 21 November the Spanish and British Foreign Ministers agreed to hold conversations between a group of senior officials of the Foreign Office and the Ministry of Foreign Affairs to outline the terms of an understanding, following which agreement was reached. To grasp the real implications of this understanding, it is well to recall the circumstances and the significance of the restrictions on Gibraltar.

As to naval restrictions, Spain has traditionally reserved the option of refusing requests for stopovers in Spanish ports by any foreign naval units coming from or intending subsequently to go to Gibraltar.

This policy is reflected in NATO's STANAG 1100 by the reservation that

Spain included on ratifying the normalization agreement. Its terms are as follows: The Spanish government reserves the following rights: a) To refuse, reconsider or amend at any time any authorization for a stopover requested under the STANAG provisions. b) Not to allow vessels coming directly from Gibraltar to stop over in Spanish ports. c) Not to allow vessels which have visited any Spanish port and proceed directly to Gibraltar to stop over in Spanish ports.

(...)

The imposition of naval restrictions is chiefly due not to legal considerations regarding sovereignty but to political considerations. It should be remembered that while the port of Gibraltar was of course ceded under the Treaty of Utrecht, the British authorities have since expanded the port facilities into waters adjoining the isthmus over which Spain claims sovereign rights.

Turning now to air restrictions, the Spanish government's policy of restrictions on air traffic is likewise long-standing ... it is reflected in various domestic and international air traffic regulations which have been subject to amendments over the years ... There is a general rule prohibiting entry in Spanish airspace and stopovers in Spanish territory by any State aircraft whose airport of origin, airport of destination or alternative airport is Gibraltar. This rule does not apply to humanitarian flights or to aircraft in an emergency situation. Civil aircraft whose airport of origin or destination is Gibraltar may not overfly Spanish territory if coming from or proceeding to a Spanish airport; overflight is now permitted in all other cases ... Moreover, since 1967 no flights are allowed over a zone known as LEP 117, which includes the Campo de Gibraltar and adjacent waters and considerably restricts operations at the aerodrome.

(...)

As a result of commitments to cooperate in civil aviation following the joint Spanish-British declaration of Brussels of 1984, in 1985 the prohibition was lifted from a restricted zone known as LER 49 to allow approach and takeoff manoeuvres of civil aircraft to and from Gibraltar airport.

In addition to these air and naval restrictions, there are others relating to NATO operations and exercises. Spain has always adopted the unwritten official posture of not participating in operations or exercises in which allied airborne or naval units coming from or going to Gibraltar take part. There is also another set of restrictions relating to use of the Gibraltar facilities.

(...)

Spain has not so far opposed the use of these fixed facilities, although we have refused to establish direct coordination procedures with the authority responsible for them, or to participate in exercises where these facilities or systems are used.

(...)

On the basis of these premises, our negotiating strategy was to differentiate

between issues affecting sovereignty and issues not affecting sovereignty ... in questions affecting sovereignty, concessions could only be made if there were an adequate quid pro quo. Other restrictions could be dealt with in accordance with political convenience and the attitude of the British.

(...)

... after several meetings, an understanding was reached on technical issues, such as the possibility of coordination and communication between Spanish and British military authorities in Gibraltar; the possibility of NATO utilizing the Gibraltar command and control systems; the possibility of Spanish forces taking part in exercises alongside allied units coming from or intending to go to Gibraltar; and emergency situations for aircraft belonging to the State. I shall now deal with each of these aspects.

Firstly ... Spanish integration in NATO raised the problem of an allied command in Gibraltar. The coordination agreements between Spain and the NATO commands dealt with this question pragmatically, avoiding direct relations without altering the structure then in place. These agreements provided that Spanish military coordination within the framework of NATO would not go through the allied commands in Gibraltar, but the prospect of Spain's integration in the new command structure and the disappearance of GIBMED alters that situation. Spanish integration will entail the scrapping of the existing coordination agreements ... In this new context there would be no point in continuing to refuse to coordinate and communicate with the British military authorities in Gibraltar.

(...)

Gibraltar remains a British military base, with whatever forces and command elements that the United Kingdom may decide to maintain there, and work has begun on defining relations with these military authorities.

I shall refer in second place to Spain's non-objection to the use by NATO of the communications, information, command and control systems in Gibraltar. To be more exact, Spain will not henceforth refuse to take part in NATO operations or exercises in which these systems are used.

Thirdly, I shall deal with the participation of Spanish forces in NATO operations or exercises involving allied units coming from or going to Gibraltar.

(...)

... Spain does not intend to place obstacles in the way of allied exercises by refusing to take part in those involving vessels or aircraft coming from or going to Gibraltar. It must be made clear, however, that this does not imply the authorization of subsequent stopovers at Spanish airports, overflight of Spanish territory or stopovers at Spanish ports, all of which remain subject to air and naval restrictions.

Finally, emergency landings ... for humanitarian reasons and because they are absolutely exceptional, it has been decided that in an emergency not only may aircraft coming from or proceeding to Gibraltar land at Spanish bases or

airports as has been the case up till now, but they may proceed thereafter to Gibraltar. Therefore, only the air and naval restrictions imposed hereto remain in force.

(...)

Spain has no intention of lifting the present restrictions as long there is no progress on issues of sovereignty favourable to us. On this point I would note that the only acceptable solution to the dispute for Spain is recovery of our sovereignty over the territory ceded under the Treaty of Utrecht, and the recovery also of those parts not ceded under the Treaty – that is, the isthmus, over which we never relinquished sovereignty – which were illegally occupied by the British and in respect of which the United Kingdom should immediately commence negotiations for their return to Spain.

In considering the conditions under which the restrictions prompted by the dispute could be lifted, there is a distinction between those directly tied to Spanish sovereignty and those which were introduced in response to the political circumstances of the time. The restrictions relating directly to Spanish sovereignty apply to those parts not included in the Treaty of Utrecht, as well as the isthmus, its air space and its waters. In order to sustain our claim, we have been and remain compelled to oppose any action that could be used as an argument in favour of British consolidation of their alleged rights over these parts.

Generally speaking, any modification in respect of restrictions affecting the issue of sovereignty must be dealt with in the framework of the Brussels process ...

This category of restrictions bearing on sovereignty includes those governing air traffic. The Government's position is clear. The airport was built on the isthmus illegally occupied by the United Kingdom, and we cannot accept any action which could detract from our claim of sovereignty over that isthmus.

The first formula accepted by both sides sought to neutralize in practice the dispute regarding sovereignty over the airport. This was manifested in the agreement for joint Spanish-British use hammered out over three long and difficult negotiating sessions in 1987....

It has proved impossible to implement the agreement due to the opposition of the local authorities of Gibraltar, which has been reiterated on several occasions, the last in July of this year. A second opportunity to lift the restrictions arose at the Luxembourg meeting in November 1997 ...

This offer was rejected by the United Kingdom ...

As to the lifting of naval restrictions not directly bearing on Spanish sovereignty ... this will depend on how far we advance in negotiations with the United Kingdom.

I should like finally to stress that the terms of the understanding I referred to earlier ... have not been the subject of a formal agreement, and have not indeed been set down in writing. This is therefore an informal understanding of a technical nature which has been arrived at by the two governments.

Our assessment of the terms of the understanding reached in the course of these conversations is positive. We have maintained our position in the dispute over the colony without making any concessions, and at the same time we have arrived at the understanding we needed in order to adapt to the new situation created by the elimination of the allied command in Gibraltar and our integration in the new military structure.

(...)".

(*DSC-C*, VI Leg., n. 514, pp. 14860–14863).

3. Organisation for Secnrity and Cooperation in Enrope

Addressing Congress on 19 June 1998 in reply to various parliamentary questions in connection with Spain's participation in OSCE observer missions, the Spanish government stated:

"In November 1990, the Charter of Paris for a New Europe created the 'Office for Free Elections' and chose Warsaw for its headquarters. However, its administrative capacity was very small and its sole objective was to facilitate contacts and the exchange of information among Member States on the subject of elections.

(...)

... Section G paragraph 1 of the Copenhagen Document supplementing the Paris Charter commissioned the Office for Free Elections to undertake the following tasks:

1. To gather information from governments or other sources regarding dates, procedures and official results of national elections held in participating States.
2. To organize observer reports on such elections which could be remitted as required to any governments, parliaments or civil institutions requesting them.
3. Lastly, to facilitate contacts by organizing or participating in seminars or meetings and promoting exchanges of any kind between third parties and the authorities of States in which elections were organized.

(...)

The Office became operational in the first half of 1991 and its initial efforts were devoted to helping international experts on electoral affairs to access information on the 'free' elections then being organized in Bulgaria, Poland, Albania and Rumania. However, it was precisely in these early days that the process of enlarging the 'electoral dimension' of the CSCE began. At the Council of Ministers held in June 1991, the US Secretary of State proposed that the Office for Free Elections be changed to the 'Office for Democratic Institutions'. At the same time France agreed that the Office's mandate be extended to local elections ...

At the Moscow meeting on the Human Dimension and at the Oslo Seminar

on democratic institutions, both held in 1991, the USA and other participating countries suggested 'that the appropriate bodies of the CSCE consider extending the attributions of the Office for Free Elections to enable it to reinforce democratic institutions in the participating States'.

... even the 1991 Atlantic Summit in Rome, paragraph 14, referred to the restructuring of the Office for Free Elections as necessary to reinforce the future OSCE.

(...)

... the Office, which was by then known as the Office for Democratic Institutions and Human Rights (ODIHR), had its mandate extended to include 'assisting participating States in their transition to democracy' in accordance with the Prague Document of 1992.

(...)

The ODIHR was also charged with administering the Support Programme for Recently Admitted Participating States (RAPS). The creation of this programme in conjunction with another programme called 'Rule of Law' constituted an element of cooperation for democracy within the framework of preventive diplomacy, one of the basic innovations introduced by the OSCE in the construction of peace in the new Europe. The ODIHR was assigned an important and far-reaching task in the configuration of 21st-century Europe.

Since 1992, the Warsaw Office has operated in over 60 electoral processes of all kinds ... elections which have taken place in more than 20 Central and East European States. Its intervention has been especially important in elections held in the former Yugoslavia, but it has also been active outside Europe, in the Central Asian republics of the former Soviet Union.

These interventions are always in response to an official invitation from the authorities of the country holding the elections to the Permanent Council, and they are of two main kinds – technical support for the actual electoral process and coordination of electoral observers.

Technical support for the electoral process takes very different forms, some prior to the process and other immediately following the polling.

(...)

The other main objective of OSCE action, and a very important political aspect as experience has shown in the last two or three years, is observation of elections.

(...)

OSCE electoral observation missions are manned by personnel placed by the countries at its disposal and carry out three kinds of task:

1. Supervisors. The OSCE has sent substantial numbers of supervisors to the various elections in Bosnia-Herzegovina. These receive training which although brief is sufficient to enable them to intervene responsibly in the electoral process. This is an exceptional operation organized under the Dayton Agreements and at the direct instance of the High Representative ... In Bosnia-Herzegovina the work of the

supervisors has been financed by the European Union as part of a high-cost 'common action'.

2. Long-term observers. When general elections are called, or State-wide local elections, the OSCE normally sends a relatively small number of long-term electoral observers for 10 to 12 weeks, for the purpose of verifying the whole process prior to the election proper ... and their duties also include organizing the deployment of short-term observers during polling days.
3. Finally there are what are known as short-term electoral observers, that is people who travel to the country where the election is being held for a very short stay of five or six days. They act under the OSCE flag but alongside many other observers who may be sent by other public or private, regional, local or international institutions. Short-term observation is also conducted by national parliaments and the parliamentary assemblies of international organisations like the Council of Europe or the OSCE itself, and by the European Parliament. The mission of OSCE short-term observers is similar to that of the scrutineers placed by Spanish political parties at polling stations. These remain at the polling station from the moment voting commences until the record is signed and the ballot papers have been delivered to the electoral authority.

(...)

Spain has not been left out of this process of democratic construction in Europe. Over the last few years, Spain has taken considerable pains to be among the leaders in pressing for the normalization of elections and referendums as a decisive tool in the stabilization of Central and Eastern Europe. This parallels the effort in men and military resources that has been put into pacification of the Balkans under the cooperation plans that Spain is implementing, and intends to intensify, with Central and East European countries ... However, the will to cooperate in electoral processes has been far from easy to organize, and there is still a need in Spain to define more clearly the most suitable mechanisms for cooperation within the framework of the OSCE.

(...)

... observing of elections, the very structure of the Missions, their duration and the personal profile best suited for them, all greatly complicate the matter of seconding officials to such missions.

(...)

The Spanish Administration has had to devise a variety of formulae to adequately resolve the internal problems and assure Spanish participation in the work of the OSCE.

In the last few months, three solutions have been tried to come up with a procedure that combines speed and effectiveness in the organisation and financing of observer missions.

- Individual financing of the process for each observer, through the Spanish International Cooperation Agency (*AECI*), with organisation of travel, selection of volunteers, individualized information, etc. undertaken by the Human Rights Office and the Directorate General for Europe. This experiment was not a success because a political department lacks both the organisation and the means for a task of this kind.

  It was also attempted to pass these responsibilities on to the OSCE itself, leaving Spain responsible solely for the selection of personnel and asking the OSCE to handle the logistics and individual payments against subsequent block reimbursement ... the OSCE had neither the means nor the personnel to provide such a service.
- Finally ... a third formula was tried whereby a Non-Governmental Organisation was financed to take charge of the entire process of organisation, travel and volunteer services.

(...)

Spanish observers are selected from a roster of volunteers

Normally, an effort is made to secure a balance of men and women. An effort has also been made to achieve a balance in the regions of origin of the observers ...

There is no uniform observer profile. Most are university graduates with intermediate/advanced level English aged under 35. However, all observers cannot be said to belong to any given branches or specialities, such as possessing a Political Science degree or belonging to an NGO ... A good number of recent recruits have been lawyers. The intention is to diversify the data base as far as possible to prevent the creation of a closed and exclusive circle.

(...)

We need to come up with an effective formula for Spanish participation in elections attended by OSCE observers, subject to two considerations. Firstly, we must ask whether it is reasonable and effective to create an institution within the Spanish Administration (without raising costs) between the Ministries of Justice, Interior and Foreign Affairs, which would form a pool of experience and ability with which to organize seminars and meetings, promote contacts and provide training courses in Spain and abroad, and which would of course keep up a list of experts and volunteers for assistance and observer duties in elections. Spain's experience needs to be made available to other countries in which democracy is nascent, so that errors are not repeated and our good choices are copied; however, we need to consider whether such functions can reasonably be discharged by the State Administration. It might well be more economical and better for the State to place the means and the information in the hands of civil society so that these tasks can be transferred to their natural sphere – that is, non-governmental organisations and development assistance ...

On the other hand, the State must obviously exercise control over this kind of cooperation. It is up to the State to decide what elections are to be observed by Spain as a member of the OSCE, and it is also the task of the State administration to provide information and to advise volunteers and experts about the political situation that they will encounter, about what they have to do and about what they can contribute to the OSCE's pool of experience. (. . .)".

(*BOCG-Congreso.D*, VI Leg., n. 296, pp. 257–260).

4. Council of Europe

Appearing before the Congress Foreign Affairs Committee on 18 February 1998 to reply to a question about the decisions adopted at the Second Summit of Heads of State and Government of the Council of Europe, the Minister of Foreign Affairs, Mr. Matutes Juan, stated:

"The second Summit of Heads of State and Government of the Council of Europe approved two documents: a Final Declaration and an Action Plan. The declaration lists a number of issues which summarize that institution's areas of interest for the next century, within a new context where the Council of Europe embraces almost all European States. The objectives are: European stability, which is reinforced by the promotion of human rights and plural democracy; social cohesion, which is a primary requirement in a new, enlarged Europe; acknowledgement of citizens' concern at threats to their security and the dangers besetting our democracies; and especially the role of education and culture in achieving understanding among our peoples.

The second document is the Action Plan, which lays down broad guidelines for the work of the Council in the coming years and addresses the reform of the Council of Europe itself. The plan of action cites the Oviedo Convention on Human Rights and Biomedicine and mandates the Council of Ministers to adopt an additional protocol prohibiting the cloning of human beings. At this pan-European level of the Council, where all countries pursue the same objectives, the plan includes a reference to social cohesion in our continent and to the two instruments created by the Council of Europe to promote such cohesion – the European Social Charter and the Social Development Fund.

The Summit also addressed other problems that concern all Spaniards, such as the situation of refugees, emigrant workers and the least-favoured sectors of society in general. The summit reiterated its firm condemnation of terrorism and its determination to use all the means at its disposal to combat this menace, with all due respect for the law and human rights as sustained by this government. The plan of action stresses the utility of the conference proposed to the parliamentary assembly, which will examine the phenomenon of terrorism in democratic societies, and will also address the fight against corruption and drug trafficking, child protection and education for a democratic citizenry.

This I believe is an ambitious plan from which we can expect nothing but good.

(...)".

(*DSC-C*, VI Leg., n. 380, pp. 11218–11219).

XIII. EUROPEAN UNION

1. Democratic legitimacy

Appearing before the Congress in full session, on 17 June 1998, to report on the meeting of the European Council at Cardiff, the President of the Government, Mr. Aznar López, referred to the problem of the democratic legitimacy of European Union institutions:

"I do not believe there is a problem of legitimacy as regards either European institutions or Member States, and yet it is being said that the representatives of the Member States who sit on the European Council are not fully legitimate. That is not true. The persons sitting on the European Council are legitimized democratically by the fact that they govern countries whose citizens have so decided; just as Euro-MPs are legitimized by the fact of having been elected by their citizens, and the Commission is legitimized by the fact that its president is appointed by the European Council by internal agreement of the European Union. So, there is no problem of legitimacy ... in my view, this problem of democratic legitimacy does not exist. If democratic deficit means that we ought to pursue policies of closer relations with the citizens or of improvement of institutional functions, then I agree that such improvements of legitimacy are necessary.

(...)".

(*DSC-P*, VI Leg., n. 170, p. 9127).

2. Reform of institntions

The President of the Government went on to explain Spain's position with respect to institutional reform:

"As to institutional reform, we have agreed that once the Treaty of Amsterdam is ratified we shall swiftly decide how and when to address the institutional aspects that were not resolved there. As we see it, this is a consequence of adhering fully to the logic of the Treaty's institutional protocol, which envisages two stages: one in which we have to address the composition of the Commission and a reshuffle of the votes on the Council before the first new accession, and a second when the number of Union members exceeds 20, at which point we will conduct a global review of the functioning and composition of institutions.

(...)

The Government's position hitherto and now is that there should be no institutional debate until the Treaty of Amsterdam is ratified.

(...)".

(*DSC-P*, VI Leg., n. 170, pp. 9102, 9128).

3. Subsidiarity

Appearing before the Joint Committee for the European Union, on 10 March 1998, to explain the reasons for the Government's refusal to sign the Declaration on the Subsidiarity Principle annexed to the Treaty of Amsterdam and subscribed by Germany, Austria and Belgium, the Minister of Foreign Affairs, Mr. Matutes Juan, explained Spain's position with respect to this principle:

"The position on the subsidiarity principle defended by the Spanish government at the Inter-Governmental Conference that negotiated the Treaty of Amsterdam was based on the need to prevent modification of article 3 b) of the Treaty and to incorporate the elements and principles of Edinburgh in the form of a protocol. A majority of the delegations supported this position, which was finally incorporated in the Amsterdam Treaty.

Inclusion in the Treaty of the Edinburgh Declaration on subsidiarity is extremely important for the development of this valuable principle in that it acquires the full legal status that it lacked hitherto. The Spanish government's position on this issue is in complete agreement with that approved by the Joint Committee for the European Union in its opinion of 26 December 1995 and its report of 29 May 1997. The Joint Committee's report ... states that the content of the Edinburgh and Birmingham Declarations should be the core of a new text on the principles or subsidiarity and proportionality. The same report adds that any proposals tending to promote the renationalization of Community policies should be rejected. This is the heart of the issue and the reason for the move to amend article 3 b) of the Treaty.

(...)

The declaration on the subsidiarity principle signed by Germany, Austria and Belgium reflects the position of these three countries at the conference, which clashes with the position defended by Spain and most other delegations. Having worked for the formula that was finally adopted, the Spanish government could not reasonably be expected to then sign another declaration which contradicted that formula and which it had already rejected.

The Government has explained that its position does not conceal any prejudice against increasing regional participation in Union affairs. We are naturally opposed to any interpretation of the subsidiarity principle that might lead to renationalization of Community policies, given the enormous costs that this would entail for the national budget and the budgets of our own Autonomous Communities.

(...)

It is also the case that Spain is one of the countries that has most vigorously and successfully defended the functions of the Committee of the Regions as a means of progressing towards regional participation in the European Union".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 91, pp. 1890–1891).

4. Participation by Autouomons Communities in European Union related affairs

Appearing before the Congress in full session to reply to a parliamentary question, on 25 February 1998, the Minister of Foreign Affairs, Mr. Matutes Juan, explained how the Spanish Autonomous Communities participate in the affairs of the European Union:

"From the outset, Spain's integration in the European Communities entailed the transfer to Community institutions of certain competences of the State as the central administration, of the Autonomous Communities and of local authorities. This transfer of competences is the essence of the process of European integration and hence affects all levels of competence. Also, this integration has enabled the State to defend the general interest and the specific interests of the Autonomous Communities in the European context. Thus, if competences were handed over, this was in exchange for the capacity to influence the major political and economic decisions that affect us all. At the same time, European integration has not altered the internal distribution of competences between the State and the Autonomous Communities.

The combination of these two principles – the transfer of competences to a higher authority, namely the European Union, and the unaltered internal distribution of competences in each State, and particularly between the State and the Autonomous Communities or territorial authorities – underpins the guiding principle governing relations between these authorities and the State in matters concerning the European Union. This principle, known as the principle of cooperation, is the basis for the internal mechanisms whereby the Autonomous Communities participate in this sphere, through what are known as sector conferences.

The Governments that preceded us laid the foundations for application of this principle by setting up the various sector conferences and regulating their procedures.

With the experience of all these years since 1986 and the determination of the Government, we have attempted to improve and complete this internal means of participation by Autonomous Communities, especially in those decisions. I would recall in this connection the upgrading to the category of a Law of the Conference for matters relating to the European Communities, whose fundamental purpose is to see to the proper conduct of the various

sector conferences and to deal with horizontal issues or issues not pertaining specifically to any sector conference.

At the same time we have reinforced our means of informing the Autonomous Communities through our permanent representative in Brussels, especially with the creation of a new council for regional affairs.

Then again, the presence of regional representatives on the Commission committees whose primary task is to develop technical means of implementing Community regulations is useful, bearing in mind that in many cases the Autonomous Communities are ultimately responsible for applying such regulations.

Finally, of the latest Government actions I would stress the formalization of an agreement regulating the participation of the Autonomous Communities in the proceedings of the Court of Justice in Luxembourg, which extends the events contemplated in the 1990 agreement to all cases in which regions have an interest.

It is clear from all this that the Autonomous Communities now possess the instruments necessary to make their views heard in Community institutions. This is the keystone of the system, both as regards the decision-making process in Community affairs and the actual implementation of European Community rules. In exercising its powers within this sphere, the State always follows this internal procedure, thus combining defence of regional interests with defence of the general interest.

(...)".

(*DSC-P*, VI Leg., n. 139, pp. 7342–7343).

Subsequently, on 20 October 1998, the Secretary of State for Foreign Policy and the European Union, Mr. De Miguel y Egea, reported to the Joint Committee for the European Union on the status of implementation of the Congress's resolution on participation by the Autonomous Communities in the Councils of the European Union:

"The resolution passed by Congress on 10 March opened up a process of discussion by the Government, the political parties and the Autonomous Communities, regarding participation by the latter in affairs concerning the European Union. This agreement refers to two closely-related types of discussion. The first concerns the present system of internal participation by the Autonomous Communities in European affairs through the sector conferences. In fact, when we talk about the system of internal participation, we are referring to the implementation in practice of the principle of cooperation on European issues as sanctioned by our statutes.

Our aim in this connection, and the aim of the resolution of Congress, is to take a close look at the ground we have covered to date after over ten years of Spanish membership of the European Communities and a few years less of institutional development of the internal mechanics of cooperation between the central administration and the regional administrations on Community

matters. This analysis is necessary for us to arrive at the right conclusions in judging the current system and present means of improving it.

The other issue addressed by the resolution of Congress is the participation of regional representatives in the Council of Ministers of the European Union. Point four of the resolution states literally: [This House] urges the Government, within the framework of the conference on matters relating to the European Communities, to include in the agenda for the full meeting next June the start-up of procedures to establish a formula whereby a representative of the Autonomous Communities may be admitted to the Government Delegation at meetings of the European Union Council of Ministers dealing with resolutions on matters which are the exclusive province of the Autonomous Communities.

This dual process was initiated on 10 June at the conference on issues relating to the European Communities, chaired by the Minister for Public Administrations ....

Firstly, we should bear in mind that the logic and the actual wording of the resolution call for two parallel and mutually complementary procedures. It should be remembered that there is no point in participating in the Council without an effective internal working method. Secondly, the Congress resolution clearly defines the parliamentary mandate by direct reference to the exclusive competences of the Autonomous Communities.

In either case we need to be clear about what we are discussing before reaching any conclusion on the matter. To this end the Minister for Public Administrations presented two reports to the Conference on matters relating to the European Communities. The first addressed the internal participation of the Autonomous Communities through the sector conferences, and the second consisted in a preliminary report defining the substance and scope of the Autonomous Communities' exclusive competences ... we have yet to receive the awaited response from the Autonomous Communities.

In the meantime, the Secretary of State for Foreign Policy and the European Union is analysing the translation of exclusive competences in the domestic sphere to the Community sphere, in conjunction with the Ministry of Public Administrations and in contact with the other ministries concerned. The exercise of such competences is undoubtedly complicated, firstly by the need to take into account the international dimension in which a competence is exercised – that is, the Council as a forum for negotiation between members of the European Union – and secondly, by the fact that the complexity of such exercise is very much influenced by the reality of Community practice in that a specific matter may overlap the boundaries of various divisions of the Union Council. This analysis will be presented to the Autonomous Communities and to this House.

(...)

And lastly, I believe that, both internally and within Community institutions, regional participation in European affairs ought always to be

mediated by a mechanism that protects the general interest. Such mediation in legitimate but opposing positions is not a task solely for the Government but should also be a priority for the Parliament.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 116, pp. 2413–2414).

5. Single Market

Appearing before the Congress in full session on 17 June 1998 to report on the European Council meeting at Cardiff, the President of the Government, Mr. Aznar López, stated as follows:

"The single European market is a reality which needs to be consolidated day-to-day and is an effective generator of employment. At this European Council meeting the Commission presented a chart with indicators of effective integration in the single market, with a twofold purpose – to underline the price differences between members, and to highlight the records of members in applying single market measures. Spain strongly supports full implementation of the single market, to the extent that we have already incorporated 95 per cent of the relevant European Union directives in our legislation. Moreover, we agree with the Commission on the need not only to introduce new regulations, but above all to put them into practice. This is the only way to make the single market a reality.

(...)".

(*DSC-P*, VI Leg., n. 170, pp. 9100–9101).

6. Economic and Monetary Union

Appearing before the Joint Committee for the European Union on 28 April 1998 to report on the European summit scheduled for 2 and 3 May in Brussels, he referred as follows to the third phase of economic and monetary union with the adoption of the Euro as the single currency:

"For its part, Spain has made a tremendous effort to participate fully in the general process of integration, the first in which it has had the opportunity to participate from the outset. On 2 May, when the Heads of State and Government officially announce the list of countries qualifying for the introduction of the single currency, they will be realizing the wishes of the vast majority of the Spanish people and of the political parties represented in our Parliament. From the outset, this Government clearly stated its desire to correct existing imbalances, called at all times for strict application of the criteria of Maastricht and therefore consistently opposed any solution entailing any political negotiation whereby the criteria of convergence might be flexibilized to admit countries which did not fully meet the convergence requirements.

Thanks to Spain's refusal to support the negotiation of more relaxed rules whereby more countries could be admitted to the single currency, the eleven candidates have succeeded in correcting their imbalances and implementing a more rigorous policy. As a result, we have a single currency supported by a broad political and demographic base, with a healthy economic foundation and considerable potential for growth.

Spain has fulfilled the requirements from the outset, in certain respects better than some of our partners – average inflation in 1997 was 1.8 per cent, well below the 2.7 per cent set for convergence; the public deficit has fallen steadily to 2.6, again well below the maximum of 3 per cent; the peseta has remained completely stable in the European exchange system for the past two years; long-term interest rates are historically low, at around 6.3 per cent in 1997. Public indebtedness, as you know, stands at 68 per cent, admittedly above the 60 per cent mark, but here again, Spain's record is much better than that of some partners in the first phase of the Euro.

The reports of the European Commission and the European Monetary Institution both attest to Spain's clear fulfilment of the requirements.

(...)

In addition to the European effect I have referred to, the single currency will be especially important for Spain's international relations. The mere fact of being partners in what may eventually be the world's first currency can only result in enhanced credibility and strength.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 100, p. 2074).

Regarding the representation of the Euro outside the Union, the President of the Government informed Congress of the resolution adopted by the European Council in the meeting at Vienna on 11 and 12 December:

"When the Euro comes into being in two weeks time, it will undoubtedly be one of the world's great currencies. With the Euro, Europe, including Spain, will have a decisive voice in the principal decisions and institutions of the world economy. It is important to remember that the Euro will in no way detract from Spain's specific weight in international economics – to the contrary, as part of a united Europe, Spain is gaining more economic influence than at any time in the century now ending. Hence the importance of the agreement reached in Vienna on exterior representation of the Euro, based on the report previously approved by the European finance ministers.

At Vienna it was agreed that if the president of the Ecofin Council is from a country not belonging to the Euro zone, the president of the Euro 11, assisted by the Commission, will attend economic and financial meetings of the G7. It was also agreed that the European Central Bank should have observer status in the International Monetary Fund directory. I should note here that any external discussion of matters relating to economic and monetary union, particularly in the framework of the G7, may only take place after thorough

preparation within the Euro 11. This will require the establishment of new, modern and effective means of real-time communication among the participating States, the Commission and the European Central Bank.

The Vienna Council was bound to discuss the recent international financial crisis and the reforms that are essential to prevent such crises. Europe and the Euro will inevitably play a major role in such future reforms. The European governments are agreed as to the responses required, which may be encapsulated in three ideas: the International Monetary Fund is and should continue to be the cornerstone of the international monetary and financial system, although it ought to introduce the necessary internal reforms; the international financial and banking sector should be strengthened by the introduction of greater transparency and more effective supervisory regulations and instruments; and extra-territorial financial centres should respect and comply with international regulations.

(...)".

(*DSC-P*, VI Leg., n. 204, pp. 11019–11020).

7. Agenda 2000

Agenda 2000 was a Spanish idea which consists in establishing a sequence for the challenges that the European Union must address in connection with enlargement. The proposals submitted in 1998 to implement and complete those of 1997 may be divided into four broad groups:

1. Agricultural regulations: There are four proposals for regulations governing reviews of the common agricultural market organisations with respect to VAT (cereals, milk and meat) and three proposals for horizontal agricultural regulations governing rural development, the environment and measures on subsidiarity.

2. Regulations relating to structural funds and the Cohesion Fund; general regulation of structural funds; three regulations on the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Agricultural Guidance and Guarantee Fund (EAGGF); and Cohesion Fund Regulations.

3. Regulations concerning pre-accession assistance: general regulation of coordination of pre-accession assistance for the East and Cyprus, the pre-accession agricultural instrument and the pre-accession instrument for structural policies.

4. Documents on financial prospects: the report on the inter-institutional agreement on budgetary discipline and the draft of a new agreement, and the Commission's communication regarding the establishment of new financial perspectives for the period 2000–2006. This last includes the regulation of financing of trans-European networks, a proposal for a review of the Exterior Loan Guarantee Fund and an undertaking to present a detailed report on the internal resources system in autumn this year.

a) Reform of the Common Agricultural Policy

Appearing before the Joint Committee for the European Union on 3 June 1998 to report on Spain's position regarding Agenda 2000 and the objectives of the Cardiff European Council, the Minister of Foreign Affairs, Mr. Matutes Juan, stated:

> "On the reform of the common agricultural policy, our position is as follows: maintenance of financial solidarity, Community preference and application of the principle of cohesion. The treatment of Mediterranean products must parallel that of other agricultural products. This is not the time to introduce changes in the present common agricultural policy which entail unilateral concessions, prior to the forthcoming negotiations of the World Trade Organisation.
> (...)".
> (*DSCG-Comisiones Mixtas*, VI Leg., n. 107, p. 2204).

Also, the President of the Government, Mr. Aznar López, addressing Congress in full session, on 17 June 1998, on the Cardiff European Council, reported:

> "As regards the common agricultural policy, we consider that the Commission's proposals constitute a basis for reform and we have agreed that negotiations for this reform should be based on the conclusions approved by the Agriculture Council on 26 May, where all the Spanish positions are reflected. Again with regard to the common agricultural policy, I should stress that we have offered our support to the Presidency in seeking an agreement for reform of the common banana market organization which takes into account not only the output of the ACP countries but also Community output, of course including the Canaries in the case of Spain.
> (...)"
> (*DSCG-Comisiones Mixtas*, VI Leg., n. 170, p. 9101).

b) Economic and social cohesion

Reporting to the European Union Committee on the proposal for an Agenda 2000 Issue on 14 March 1998, the Secretary for Foreign Policy and the European Union, Mr. de Miguel y Egea, underlined Spain's commitment to maintaining the gains achieved in economic and social cohesion:

> "We take the view that the European Union cannot embark on the most ambitious project of continental solidarity since the foundation of the European Economic Community 50 years ago by steamrollering one of its common basic principles, that is economic and social cohesion. And unlike those calling for enlargement, there are also many who would see the principle of economic and social cohesion sacrificed within the Fifteen to finance the rest. It is no longer a question of paying for enlargement with the Cohesion

Fund or with part of the structural funds. That could be done, but the day that this happened, apart from seriously prejudicing all the beneficiary countries, it would cause even more serious prejudice by negating one of the fundamental principles of the 'acquis communautaire', a principle of basic right which once eliminated would disappear for good and all. We often hear talk of this odd concept of West-East solidarity. Before that there was North-South solidarity, and now there has to be a West-East solidarity whereby countries like Spain, Portugal and Greece which have received funds for many years must now give up what they have received or what they are entitled to receive and give it to the Eastern countries. This is a fallacy. It is the argument used by all those countries which seek enlargement at zero cost, and on that score Spain's position has always been the same, viz., that enlargement will have a cost and Spain is willing to pay its share of that cost, but not at the expense of economic and social cohesion; for in sacrificing economic and social cohesion we shall also be sacrificing not just financial resources to which Spain is entitled under the 'acquis communautaire', but also the very principle of economic and social cohesion, which will be lost forever precisely when it is needed most. For there will be a very great need of economic and social cohesion in coming years if we really wish to take on this great project of continental solidarity. And therefore we have always held that if more resources must be contributed and if everyone contributes proportionately more, then we shall do the same. Spain is willing to put in its fair share if everyone else contributes. What we cannot accept is that no-one be prepared to contribute and that part of the enlargement be paid for with the cohesion funds due to Spain and other countries under the 'acquis communautaire'.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 96, p. 2006).

With regard to the reform of structural funds and the Cohesion Fund, the Spanish position was outlined by the Minister of Foreign Affairs, Mr. Matutes Juan, in a report to the Joint Committee for the European Union on 3 June 1998 on Agenda 2000 and the objectives of the Cardiff European Council.

"Our position is as follows. Firstly, to hold the level of economic and social cohesion at 0.46 per cent of the Community gross national product [more or less 287 billion Euros for the period 2000–2006] as proposed by the Commission; secondly, two-thirds of total funds should be allocated to Objective 1, and the level of funds attained in 1999 should be maintained; thirdly, we oppose the setting of objectives for structural funds other than as set forth in the Treaty, i.e., reduction of income differentials between regions; fourthly, maintenance of the link between the inclusion of the Canary Islands in Objective 1 and their entitlement to accede to the aids specified in article 92.3.A) of the Treaty; fifthly, we accept the criterion of 75 per cent [of GDP per inhabitant] in Objective 1 with the establishment of adequate transitional periods for regions due to be phased out of that objective; sixthly, in order to

evaluate the Commission's proposal regarding the new Objective 2, we need to know how the parameters proposed for distribution of the resources will be applied and weighted. In Objective 2 we favour preferential treatment of industrial and rural rationalization areas over urban areas. The horizontal approach of Objective 3 should be maintained and should apply equally to Objective 1 and 2 regions; we reject the 10 per cent reserve for effectiveness proposed by the Commission. In cooperation, programming and management we favour the maintenance of a situation much like the existing one, which has worked very well to date. And although we agree with the Commission's objective of simplifying and flexibilizing legislation on funds, we do not believe that the Commission's latest proposals serve that end. We do not accept the idea of no automatic commitment in the second year if payments are not requested by the Member State, since this is incompatible with the special nature of category two expenditure. As to the Cohesion Fund, we appreciate the Commission's proposal for compatibility with the single currency, but we believe that there should be no new macroeconomic conditions other than those stipulated in the Treaty.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 107, pp. 2203–2204).

In a later address to the Committee for the European Union, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, explained Spain's exact position regarding structural funds:

"A preliminary analysis suggests that the following aspects are positive: maintenance of the level of economic and social cohesion at 0.46 per cent of the Community GNP is a good thing; it is also good that, subject to strict application of the 75 per cent rule, ultraperipheral regions be automatically included in Objective 1 irrespective of their level with respect to the Community GNP, since they come under Objective 1 in any case since whether or not they exceed 75 per cent of the income level, they will always retain structural characteristics of remoteness, insularity, etc.; the inclusion of unemployment as a criterion for distribution of the numbers in Objective 2 is also a good thing and is in the new proposals; the establishment of a system of phasing out of regions from Objectives 1 and 2 is likewise a good thing, given that the process does not end upon reaching 75 per cent, but there is a period of six years for phasing out of Objective 1 and four years for phasing out of Objective 2. The maintenance of the Cohesion Fund ... is also highly positive in that there is a large majority of countries, basically net contributors, which question the Cohesion Fund, and above all for countries meeting the convergence criteria.

And what are the elements that we see as debatable, negative or requiring negotiation ...? For example, the new introduction, the new condition to qualify for the Cohesion Fund to which I referred earlier, we feel ought to be rejected. We believe that this condition, whereby in countries belonging to the economic and monetary union aids from the Cohesion Fund are contingent

on meeting the public deficit target set by that state in the Stability Pact, simply adds an extra condition to what article 104 C of the Treaty already clearly states with regard to the Stability Pact.

Another negative point, which I have already mentioned here, is the vagueness of the figure allocated to Objective 1. We are told that this it is around two-thirds and not two-thirds as we would wish. In our view this makes for a lack of legal certainty as to the amounts allocated to this objective, which is of paramount importance to Spain as everyone knows.

(...)

Also, the fact that the Commission establishes a population ceiling per Member State compatible with the overall ceiling of 18 per cent of the Community population is dangerous in that it could affect the distribution of resources. For example, Objective 2 says that the EAGGF-Guarantee will finance actions under Objective 2 and there will be no more financing by EAGGF-Guidance; we object to this because there is a principle, which we have always upheld, whereby the financing of agricultural guarantee funds and structural actions is kept separate. We do not see EAGGF-Guarantee as a structural fund. EAGGF-Guidance, on the other hand, is a structural fund. As to the delimitation of Objective 3 proposed in the regulation and applicable to areas not included in Objectives 1 and 2, this contradicts the horizontal nature of the fund.

Again, with regard to the 10 per cent effectiveness reserve, this could come to be a sanction on countries qualifying for the Edinburgh cohesion agreement. The latter is still our yardstick, and of the last financial perspectives it was also the one that produced a very interesting result regarding economic and social cohesion, which we are keen to maintain.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n 96, pp. 2005–2006).

Again, in reply to several parliamentary questions, on 20 October 1998 Mr. de Miguel y Egea stressed certain aspects of the proposed reform of structural and cohesion funds to the Joint Committee for the European Union, and in relation to regions included in Objective 1 stated:

"The guiding principle behind the reform of instruments for implementation of the economic and social cohesion policy – that is, the regulations governing structural funds – is that efforts should be concentrated on a limited number of priority objectives. The objectives laid down in previous regulations are reduced to three, the first of which is the one concerning regions lagging in development and what are known as deprived regions. That is, regions coming under Objective 1.

The Commission's proposal as set forth in the Agenda 2000 communication of March 1997 maintains the same criterion for inclusion in Objective 1 as in the current regulations for structural funds. In other words, the per capita GDP, as measured in terms of equal purchasing power, of the regions

defined statistically as NUT-II (the equivalent of our Autonomous Communities) must be less than 75 per cent of the Community average. This calculation has to be based on the last three years for which the European Communities Statistics Office, Eurostat, has figures available at the time of drawing up the list for implementation of the regulation.

(...)

The Government will fight at Community level to prevent the exclusion of any beneficiary Spanish regions from Objective 1. In any event, if as a result of Spanish economic progress over the past few years any regions should be found to now surpass the threshold and hence no longer qualify for Objective 1, it should be remembered that under the reform of structural funds, there is to be no drastic cutback in the receipt of aids. There is a transitional regime for this purpose whereunder the reduction in the frequency and amount of aids is to be even and progressive.

These transitional periods will allow regions ceasing to qualify for Objective 1 to carry on receiving Objective 1 aids over the next period. The Commission's proposal does not define this transitional mechanism, which the technical staff at Brussels call 'phasing out', clearly enough. The matter is therefore now under debate and I feel it is premature at this time to undertake a detailed evaluation of the phasing-out proposal.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 116, p. 2423)

Regarding the conditions of eligibility for the Cohesion Fund:

"According to the agreement reached at the Inter-Governmental Conference and formulated in the Treaty of Amsterdam, it was accepted that there would be no amendment of Title XIV of the Treaty Establishing the European Community regarding economic and social cohesion, and this Title would therefore stand unchanged in the new draft. In considering the guarantee of application of the fund to Spain, it must be remembered that this fund is intended for Member States whose GDP is less than 90 per cent of the Community average and which have in place a programme for compliance with the conditions of economic convergence as set forth in article 104 C of the Treaty.

... some Member States, in line with the European Parliament's resolution of 28 May 1998, propose that as from the year 2000, any countries joining the economic and monetary union be excluded from the Cohesion Fund. That is the opinion of some Member States and is an opinion of the European Parliament, which is neither binding nor overturns primary law, given that such an eventuality is not contemplated in the Treaty, in the protocol on economic and social cohesion, or again in the conclusions of the Edinburgh European Council or the regulations on the Cohesion Fund. Nowhere is it written that regions meeting the conditions of eligibility should cease to be eligible on acceding to the single currency.

(...)

... all the instruments I have cited, which constitute the legal basis of the Cohesion Fund, treat this as a goal-oriented fund whose sole objective is cohesion, coming under the title referring to cohesion policy – articles 130 A and 130 E – and not under the titles referring to economic and monetary union.

As regards the second requirement, that the beneficiary state have in place a programme for compliance with the conditions of economic convergence as set forth in article 104 C of the Treaty, I should say that this article refers solely to public deficit and public debt – in other words, to budgetary discipline and not to other convergence criteria for EMU, which are regulated in other articles not cited in the protocol on economic and social cohesion.

(...)

We are therefore assured that the reference in the Treaty of Amsterdam sufficiently guarantees the maintenance of the Cohesion Fund as regards Spain, and that such maintenance is contingent upon the condition whereby incomes must be less than 90 per cent of the average Community GDP and upon the deficit not exceeding 3 per cent of the GDP.

(...)".

Finally, regarding the effectiveness reserve on structural funds he stated:

"The effectiveness reserve proposed by the Commission, as set forth in article 43 of the draft general regulations for structural funds, is currently being discussed by the Council groups.

(...)

The effectiveness reserve is an important new introduction to the existing system of fund management.

(...)

This proposal by the Commission, which appears in article 43 of the regulations I mentioned, consists in reserving 10 per cent of all structural funds, to be deducted at the beginning of the period – in the year 2000 – and distributed by the Commission half-way through the period (at the latest by 31 March 2004) among those countries which are considered to have administered their structural funds most efficiently.

(...)

On the basis of the indicators established by itself and of methodological parameters, the Commission will allocate the credits held in reserve to a list of programmes which are considered the best or the most efficient. It is plain that the distribution of this reserve is a rather obscure point, subject to the Commission's discretion and to the way in which the Commission defines its indicators and conducts its assessment. Like most of the Member States, Spain is therefore very much against a reserve of this kind, which should at least be reasonably objective.

Our position in no way means that Spain objects in principle to efficient management of the funds.

(...)

Our position is based upon the desire not to hamper the attainment of objectives in the sphere of economic and social cohesion nor to interfere with the proper management of resources. In the first place, holding back ten per cent of all funds could come to be a new way of influencing the entitlement of each country to structural funds as a consequence of cohesion policy.

(...)

In the second place, the proposed reserve introduces an added management difficulty for beneficiaries of structural funds, in that they will not know beforehand how much they are to receive nor how the funds are to be distributed, which is crucial for multi-annual financial programming.

(...)

In the third place, the reserve could become a means of directly penalizing countries in receipt of cohesion funds in particular, and countries in receipt of structural funds in general, which would be deprived of substantial sums in the first years.

(...)

Finally, we need to establish clear and transparent criteria for the distribution of a large amount of funds. The regulations are neither specific nor clear in this respect.

In conclusion, I should say that our position in the debate on the effectiveness reserve will be to welcome any initiatives conducive to more effective application and management of structural funds, but always provided that the objectives themselves of economic and social cohesion are not circumscribed and that the these funds do not constrain the capacity of beneficiary states and regions to attain the objective of reducing regional imbalances.

We do not therefore think it reasonable, and in forthcoming sessions of the Council's work group we intend firmly to oppose the introduction of this ten per cent reserve on structural funds".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 116, pp. 2425, 2427–2428).

c) Financial prospects and pre-accession aids

Reporting to the Joint Committee for the European Union on 14 April 1998, regarding the Commission's proposal on Agenda 2000, the Secretary of State for Foreign Policy and the European Union stated:

"Own resources have a bearing on the financing of enlargement, ceilings on expenditure and fair distribution of burdens in the European Union. The position of the Spanish government has not altered ... we are in favour of the fifth option, namely to introduce a system of contributions whereby the basic element in determining the contribution of each member country to the Community budget is the GDP, qualified by per capita income. These, however, are theoretical questions. The Commission's report on own

resources has yet to be tabled. In any case we have made our position quite clear, and not only as regards the ceiling of 1.27. You will recall the intervention of the Spanish delegation, which was instrumental in preventing the acceptance of this ceiling on own resources and in introducing dual programming, a fundamental issue which is now being implemented by the Commission. This means that, at least for these financial prospects, expenditure will be programmed for the Fifteen on the one hand and for the candidates on the other, so that the different issues are dealt with separately. But Spain is still blocking the agricultural directive because the Commission has not so far clarified or given any kind of figures regarding the cost of agricultural expenditure in the candidate countries in the event that some of the more advanced candidates, e.g. Poland, Hungary and the Czech Republic, achieve accession by the year 2006.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 96, pp. 2003–2004).

In June 1998 the Minister of Foreign Affairs, Mr. Matutes Juan, again addressed the Joint Committee for the European Union to report on Spain's position regarding Agenda 2000 and the objectives of the Cardiff European Council.

"As regards the future financial framework, several Member States have called for the creation of a mechanism to correct what they call the budgetary imbalances of net contributors. This issue will be addressed in a report on the system of own resources which the Commission is due to present next autumn. The Government opposes this proposal, since the principle of 'a fair return' on which these requests are based is quite alien to the terms of the treaties. It is moreover a politically pointless debate since there is no way of objectively assessing the net balance. There is a possibility that the Presidency or some delegation will try again at this Council to push through a ceiling on own resources. There have already been serious attempts at other Councils to limit own resources to 1.27 of the Union's gross national product and to maintain the existing agricultural guideline. Spain intends to stick to its position since the Commission has not yet carried out the study which we asked for to estimate the costs of full integration of candidates in the Union. Our position is based on a question of principle and a question of procedure. Whatever ceiling is eventually agreed on ought logically to be the final result of such an assessment and under no circumstances a prior condition on negotiation of the overall Agenda 2000 package.

(...)

We have contested the principal of a fair return, we contest it every time and we shall continue to contest it. In fact the Spanish government has proposed the introduction of a new, progressive approach which takes into account the relative prosperity of each Member State – that is, the per capita gross domestic product of each country. I have already put forward this

proposal and I shall continue to do so. Furthermore, it was a constructive response to the principle of a fair return which is not contemplated in the treaties, in that it not only contests something that does not exist but also proposes constructive and positive initiatives which offer a solution to a foreseen problem of own resources by means of a new approach based on fairer criteria than those existing to date.

(...)

Spain's strategy is not to accept any partial agreement. We have therefore vetoed the ceiling of 1.27 of the gross national product on the grounds of logic and procedure. First there must be an assessment of the costs that enlargement will entail, for there is no doubt that the cost of full integration of Poland for the common agricultural policy will be enormous. We therefore asked the Commission for an impact study and an assessment, which has not been forthcoming. Spain has therefore gone ahead with its own study, which shows that 1.27 per cent would be insufficient for full incorporation of other countries. Obviously all ten will not accede, and those that do will face long transitional periods before full integration, especially as regards the common agricultural policy. And we need to discuss and assess all this before accepting a ceiling of 1.27.

Besides the question of logic and procedure, there is also a question of tactics. We do not intend to make any partial concession until we are quite clear on what the overall package will be and where Spain will stand. Therefore, and I repeat, we shall not approve the 1.27 proposal; for that reason we have vetoed the agricultural gate line, and for the same reason we accept the principle that there must be substantial funds available now to finance pre-accession, and also substantial funds to finance the accession of these countries when it occurs. But we cannot accept the fixing of a single amount until such time as a global agreement is reached and we know exactly what Spain's share will be. Spain will therefore not tolerate the poorer countries – the recipients of cohesion funds – ultimately being made to pay the costs of enlargement.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 107, pp. 2203, 2209–2210).

Following the European Commission's presentation of its report on own resources, in an appearance before the Joint Committee for the European Union on 15 October 1998, to report on the Austrian Presidency, the Minister of Foreign Affairs explained Spain's position regarding the report.

"As regards the future financial framework of the Union, Spain believes that strict budgetary discipline should be required to ensure that the European Union has sufficient resources to implement its policies and to meet the costs of enlargement.

I made it quite clear that Spain considered the 1.27 limit quite inadequate and was not prepared to accept it. Under no circumstances should whatever

margins are made available to finance enlargement entail any limitation on the current cohesion process. We believe it is essential that the future financial framework keep expenditure on the Europe of the Fifteen entirely separate from expenditure relating to enlargement. Spain has repeatedly expressed its opposition to the setting of any *a priori* ceiling on resources before we know what the costs are going to be. We feel that this position is further justified at a time when world events could at any time dictate amendment of the economic growth figures utilized by the Commission hitherto.

The amounts allocated to structural actions should be based upon the commitments set forth in the financial prospects for 1999, preferably as measured for the period 1993–1999.

The Commission has presented its report on the own resources system which was debated at the recent ECOFIN Council on 12 October. The Commission merely proposes a number of interchangeable options without declaring in favour of any particular one.

(...)

We can give a brief account of the Commission's report, as follows. The report analyses the functioning of the present system and reaches the following conclusions: The result of the present system of resources has been positive; the present conditions are based on a system that is fair in that it is the one that most closely approximates to the GNP of each Member State; the imperfections of the current own resources system arise from a certain lack of transparency in VAT; and the present system could be simplified by basing it solely on the gross national product.

It then goes on to analyse the issue of budgetary imbalances in a section whose main points are as follows. It is difficult to assess imbalance in terms of each country's budget, and it is likewise difficult to define imbalance. Two criteria are used: the Fontainebleau criterion, which considers only GNP and VAT but includes administrative costs, and the operational balance criterion, which excludes administrative costs and takes into account all of a country's own resources. The cost of accession must be financed by the Member States according to their ability. The origin of the problem of imbalances lies in spending, and therefore greater budgetary discipline is required.

The solution might be, firstly, to go back to a simpler system of financing based on the Gross National Product, secondly to reduce the financing of direct aids to farmers, which would cut down spending, and thirdly a general system of corrections involving partial reimbursement of negative imbalances over a certain limit.

(...)

The Government does not agree with the Commission's report in either form or substance. In formal terms we believe that the Commission has exceeded its mandate under article I0 of the decision on own resources by examining other proposals such as direct aid to the CAP. Of course the Commission has the power to take initiatives, but in this case there was a clear

mandate and we felt that it was better politically not to exceed it. Moreover, the report is clearly not balanced in that it devotes most its pages to an analysis of proposals from Germany, the Netherlands, Austria and Sweden and pays less attention to the issues identified in article 10 of the decision on own resources.

Spain is also at odds with the report on the underlying issue. We view the proposal to co-finance such direct aids as a breach of the principle of financial solidarity currently prevailing in the CAP. Agricultural co-financing would entail an obligation to pay farmers out of the national budget over and above the own resources decision. The proposal therefore ignores the fact that national parliaments are the sole sovereign bodies empowered to approve expenditure, aside from the own resources mentioned; the point of such an option is not to make the CAP more efficient but simply as a means of redistributing the burden of spending, which implies a reduction of the agricultural guideline and the ceiling on own resources. Spain rejects this, since it would make it impossible to finance the policies of the Fifteen and the future enlargement of the Union.

At the same Council, Spain reiterated its support for the proposal to create a new progressive resource, also supported by Portugal and Greece. The proposal seeks to make the system of resources progressive, along the same lines as the Member States' own revenue budgets, for which purpose it might be necessary to modify the calculation method used by the Commission.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 119, pp. 2477–2478).

8. Enlargement

Appearing before the Joint Committee for the European Union on 10 March 1998, to report on the work programme of the United Kingdom's Presidency of the Union, the Minister of Foreign Affairs made particular reference to the subject of enlargement:

"In March we shall be setting in motion the decisions agreed as necessary at the Luxembourg European Council to start up the enlargement process as a whole: European conference; initiation of the accession and opening process; inter-government conferences, with five plus one; reinforcement of the pre-accession strategy through approval of partnerships for accession and screening of the *acquis*.

(...)

As regards initiation of the accession process, the joint meeting of the Foreign Ministers of the Fifteen plus the ten CEEC candidates and Cyprus, will take place on the morning of 30 March.

(...)

All six inter-governmental conferences for accession negotiations with

Poland, Hungary, the Czech Republic, Slovenia, Estonia and Cyprus – five plus one – will be inaugurated in succession on the morning of 31 March.

(...)

Accession partnerships are another fundamental aspect of the whole process. The Luxembourg European Council resolved to set this new instrument in motion as a cornerstone of the pre-accession strategy. For each candidate it will include the priorities to be followed as regards assimilation of the *acquis communautaire*, and also the particular financial means available for this through the PHARE programmes.

(...)

Finally, as regards the *acquis*, it was accepted that screening – which determines the extent to which these countries have assimilated the *acquis* – should apply equally to the group of candidates with which inter-governmental conferences are inaugurated and to the five others, given the desirability of having an assessment of their assimilation of the *acquis*. Screening is intended essentially to verify the extent to which each candidate has assimilated the *acquis* and to identify the problems that will have to be addressed in the negotiations in light of that assessment.

(...)".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 91, pp. 1878–1879).

Replying to a parliamentary question in Congress on 28 January 1998, on the Spanish position regarding Turkey's accession to the European Union, the Government stated as follows:

"The Spanish government attaches special importance to the consolidation and strengthening of relations between the European Union and Turkey, in the hope that our joint efforts will eventually lead to Turkish accession.

(...)

The Government is persuaded that Turkey's place is in Europe, that Turkey will eventually be a member of the European Union, and that accession will benefit both Turkey and all the members of the Union. We therefore believe that both Turkey and the European Union ought to do everything possible to facilitate its eventual integration.

The issue as the Government sees it is not whether Turkey should join the European Union but rather when and how. It is important to remember in this connection that membership of the European Union is subject to strict compliance with certain criteria and standards, ranging from respect for human rights to an economic and commercial structure compatible and consistent with those of the other member countries and with the European Union itself, including a democratic system, the rule of law and adherence to principles of international conduct compatible with those of the European Union. The European Union is not, by the way, a Christian club, so that no country may be excluded for reasons of culture or religion. However, it is a club with very clear rules governing conduct in the spheres of democracy,

economics, international affairs and human rights, and these rules must be adhered to.

Unfortunately, Turkey at this time does not comply with these criteria. Our position is therefore that the door must be kept open and that Turkey must be treated fairly, with no discrimination with respect to other candidates. We need to continue strengthening our relations with Turkey in order to facilitate progress in democratic and economic reforms as a means of moving as swiftly as possible towards eventual accession, which must be considered in terms of objective, non-discriminatory criteria.

(...)

We believe that what Turkey has been offered is reasonable, balanced and consistent with the evolution of relations between the Union and Turkey. It is therefore to be hoped that this friend and ally will reconsider its initial reaction to the conclusions of the European Council and will agree to take part in the European Conference scheduled for March 1998".

(*BOCG-Congreso.D*, VI Leg., n. 236, p. 405).

9. Employment

Appearing before the Congress in full session on 16 December 1998, to report on the European Council meeting in Vienna on 11 and 12 December, the President of the Government, Mr. Aznar López, referred to the issue of employment as one of the priorities of Union policy:

"Employment remains one of our chief policy priorities. Since the Luxembourg Council we have achieved progress on employment throughout Europe. In this connection Spain is an outstanding example. There have been 450,000 jobs created, and 90 per cent of our growth has brought creation of employment, something quite unprecedented in our recent history.

At Vienna there was a high degree of consensus on the central lines of our employment policies. The process begun at Luxembourg has been reinforced. We shall be joining the economic and monetary union with a good rate of economic growth generating employment, based on a common model entailing greater stability and economic coordination, encouragement of the spirit of enterprise, creation of small and medium enterprises, promotion of competitiveness and structural reform.

Vienna has produced concrete results in terms of employment. The 1998 joint report on employment was approved, and thus the European Council has given its blessing to the national plan of action for employment presented by Spain, which along with the French plan received the highest marks of all those presented in Brussels.

Also approved were the employment guidelines for 1999, which establish a framework for next year's new employment plans. Spain's budget for 1999 provides for a 66 per cent increase in the allocation for active employment policies, the highest growth figure of all spending policies.

The new guidelines for 1999 confirm the direction taken last year at Luxembourg. Spain welcomes the increased emphasis that these place on female employment and equal opportunities for women to enter the labour market.

(...)

My Government and the British government presented a declaration on employment for the Vienna European Council. The Luxembourg conclusions reflect the proposals presented by the United Kingdom and Spain – a specific acknowledgement that employment is the best means of providing opportunities for all and of combatting exclusion and poverty; the need to promote equality of employment opportunities between men and women; insistence on the need for permanent training and promotion of small and medium enterprises; acknowledgement that any long-term strategy for job creation has to be based on macroeconomic stability, competitiveness of enterprises and structural reforms; the need to examine our systems of taxation and protection to stimulate reintegration of the unemployed in the world of work, and the creation of new jobs for entrepreneurs.

The message from Vienna is clear – namely, that the Luxembourg process is producing good results and should be consolidated. We have therefore agreed to draw up a European pact for employment entailing a reaffirmation of the process initiated in Luxembourg just over a year ago, and ratification of the fact that the top priority of our governments is to maintain a high level of job creation as monetary union draws closer.

We have also agreed to resume investment in infrastructures as part of our strategy for growth and employment. To that end we shall be looking at the best means of financing, including the private sector or the European Investment Bank as appropriate.

In this connection, members have been called upon to improve the structure of their national budgets, cutting back on current spending to allow for a greater proportion of public investment. As you know, Spain is well placed in this field. Firstly, we lead Europe in terms of public investment as a percentage of gross domestic product, and secondly, we amply meet the 'golden rule' of budgets in that our public investment is double our public deficit.

(...)".

(*DSC-P*, VI Leg., n. 204, pp. 11018–11019).

10. Citizenship of the Union

In reply to a parliamentary question following the massacre of Indians sheltering in the church of the township of Acteol in Chenaldo, Chiapas State perpetrated by paramilitary forces on 22 December 1997, the Government reported on measures to protect voluntary workers or clergy in the area who are European Union citizens:

"The Government believes there is a need to swiftly ratify the Agreement on Economic Association, Political Coordination and Cooperation between the European Union and the United Mexican States so that it comes into full effect as soon as possible.

(...)

As regards European Union voluntary workers or clergy in the area, we should distinguish between provisions to guarantee consular protection of all nationals of European Union member countries and specific measures for the protection of clergy and voluntary workers.

Regarding consular protection of European Union citizens, article 8.c of the Treaty of Maastricht provides that 'in the territory of a third country where the state of which he or she is a national has no representation', any citizen of the Union 'may seek the protection of the diplomatic and consular authorities of any Member State in the same conditions as the nationals of that state'. Thus, any person meeting the requirements of this article may, regardless of the task he/she is discharging abroad, seek consular protection from a Consulate or Embassy of a Member State if he or she is in difficulties such as an accident, serious illness, arrest or imprisonment, etc. The Embassy or Consulate providing assistance will act in contact with the Foreign Ministry of the subject's country.

With regard to the protection of voluntary workers and clergy serving in the State of Chiapas, the Ministry of Foreign Affairs took appropriate steps in the form of recommendations to travellers, advising anyone thinking of travelling there to so notify the Spanish Consulate General in Mexico City and to register as in transit with the Registry of Nationals.

Following the recent events in Acteol, we made direct contact with all Spanish Non Governmental Organizations having projects in progress to warn them very seriously of the risks run by their volunteers, and to provide them with any information of use to them. In this connection, special attention was drawn to the importance of voluntary workers complying strictly with local laws and having the requisite papers.

(...)

Spain has several Honorary Vice-Consulates in southern Mexico which can help our voluntary workers.

Should the situation deteriorate, the Ministry of Foreign Affairs will take all necessary steps to guarantee the safety of the Spanish colony, including voluntary workers. In such an event machinery may be set up for coordination with the representatives of other Member States of the European Union".

(*BOCG-Congreso.D*, VI Leg., n. 269, p. 358).

11. Foreign Relations

a) Cuba

In reply to a parliamentary question on the compatibility of support for Cuba's request to join the ACP (Africa, Caribbean and Pacific) group as an observer with the Common Position adopted by the European Union, the Government stated:

"One of the goals of the European Union's Common Position on Cuba is to encourage a transition towards plural democracy and respect for human rights and fundamental freedoms, and also the recovery and sustainable improvement of standards of living for the Cuban people. The use of coercive measures is expressly excluded, and the Union's position calls for dialogue with the authorities and all sectors of society in Cuba as opposed to isolation as a means of achieving these goals.

It is in this spirit that Spain supports Cuba's participation as an observer in the negotiation of the new Lomé Convention, which is to commence on 30 September. Granting of observer status at the negotiations does not prejudge the outcome of that process and therefore does not entail any prior commitment by the European Union regarding the inclusion of Cuba in the ACP group, which would require a specific decision at the appropriate time in light of the circumstances. In the meantime, observer status entails no financial or commercial advantage. At the same time, the Common Position does cite the need for more democracy in Cuba, to which end it establishes a set of positive, constructive and non-coercive conditions. Cuba qualifies for observer status in terms of geographical location (in the Caribbean) and underdevelopment, and to deprive it of this opportunity would be discriminatory.

In political terms, the granting of observer status shows that the Government is open to dialogue and rejects international isolation, and that it favours cooperation.

The Common Position calls for intensification of political dialogue and cooperation 'in line with progress by the Cuban authorities towards democracy' – in other words, it adopts a progressive approach. The granting of observer status to Cuba is the right kind of stimulus to facilitate such a progression, given that this would initiate the kind of dialogue that can best help achieve political and social changes.

The Common Position is therefore still compatible with observer status for Cuba, in a process which ought to be addressed in terms of evolution over time. Furthermore, the Common Position offers the way to a better future through the development of fundamental rights and freedoms, which is its ultimate purpose".

(*BOCG-Congreso.D*, VI Leg., n. 296, p. 203).

Also, in reply to another question tabled in Congress, the Minister of Foreign Affairs, Mr. Matutes Juan, stated that the Government would support the Cuban request to join the ACP block and take part in the negotiations to renew the Lomé Convention:

"Spain supports Cuban participation as an observer in the negotiation of the new Lomé Convention, due to start on 30 September, firstly at the request of the Cuban authorities and secondly in line with the principles informing the European Union's common position on Cuba – namely, support for a peaceful transition to democracy, respect for human rights and recovery and improvement of Cuban standards of living. We reject policies that seek to isolate Cuba. We wish to enter into a dialogue with the Cuban government to facilitate the accomplishment of these objectives. In our view, the granting of observer status to Cuba in these negotiations will encourage their authorities and open the way to contacts and interchanges favouring the transformations to which we referred. The conditions that the European Union's common position attaches to cooperation should be interpreted in a positive and progressive light, in the expectation of gradual democratic changes over time.

As a Caribbean country, Cuba meets the geographic and income level requirements for inclusion in the ACP group, and to deny it that possibility out of hand would be discriminatory. For that reason, at the General Affairs Council in Luxembourg I pressed for the European Union to authorize Cuba's presence as an observer.

(...)".

(*DSC-P, VI Leg.*, n. 167, pp. 8903–8904).

Finally, in Congress on 10 June 1998, the Minister of Foreign Affairs referred to the European Union-United States Agreement on investment in expropriated properties and how it affects Spanish-Cuban relations:

"The 18 May Agreement was signed by Spain and the other fourteen members of the European Union precisely because this Agreement provides more guarantees and security to Spanish investors, and because it contributes to the normalization of our relations with Havana.

(...)

There are four basic points to the agreement. The first is acceptance of a clean slate for investment up to 18 May 1998, all of which is legalized. The second is that as from that date any new investment in the countries involved (Cuba, Libya and Iran), which are also major targets of Spanish investment, are no longer prohibited. The third is that the President of the United States has agreed that the controversial Title III of the Helms-Burton Act will not be applied and has promised to seek Congress's assent not to apply the equally controversial Title IV, although the latter is unlikely to be expunged from the Act itself. As a professor of law, I believe that this clearly deactivates the unacceptable parts of the Act in question. The fourth is extremely important. From now on, investments affecting goods expropriated in contravention of

International Law are prohibited, but on condition that such a breach of international law must henceforth be established by both parties – that is, not only by the United States as was the case hitherto, but also by the country of origin of the investment, in this case Spain. This will further obviate conflicts of jurisdiction. Thus, for the first time the United States has agreed to refrain from imposing its own unilateral view.

(...)

Cuba has expressed its gratitude for Spain's assistance in combatting the more hostile attitudes of some of the members to its inclusion in regional structures.

(...)

Spain held firm throughout these negotiations, and at the negotiation stage, particularly in the COREPER on the 17th, scored three points essential to its interests. Firstly, that the European Union should make no commitment in the side letter which supposedly recognized the illegitimacy of certain expropriations in Cuba. Eventually the letter, which the Americans were demanding, was signed only by Sir Leon Brittan on behalf of the Commission, and all references to the European Union or its Member States were eliminated. Secondly, the inclusion of Libya in the scope of the principles. Thirdly, Spain asked for and obtained a commitment to solidarity from the fifteen European Union members. This is a real cut-off clause which was incorporated in the unilateral declaration of the Fifteen, adopted unanimously, including: a) a guarantee that all Member States will automatically withdraw from the agreement if the United States applies sanctions or fails to grant the requisite dispensations promised in Titles III and IV; b) a declaration by the European Union that it will not accept principles such as retroactive effect, extraterritoriality or secondary embargoes – that is, in case there was any doubt about our rejection of the Helms-Burton Act.

(...)

Like the other fourteen members, Spain has accepted this Agreement because it is beneficial to Europe and to Spain and is of course highly positive for our investments in Cuba, Libya and Iran. It is, then, a good agreement, in fact the best possible as the Cubans themselves seem to recognize judging by their moderate and confident attitude".

(...)".

(*DSC-P*, VI Leg., n. 167, p. 8923).

b) Euro-Mediterranean Cooperation

Appearing before the Congress Foreign Affairs Committee on 24 June 1998, the Minister of Foreign Affairs, Mr. Matutes Juan, reported on the outcome of the Spanish presidency at the Mediterranean forum:

"Spain has been very active at all the conferences and meetings that have taken place within the framework of the Barcelona process (sector meetings,

economic meetings, the ministerial conference in Malta) and other ancillary actions, participating and cooperating in events such as seminars, academic conferences or experts' meetings. As you know, we also maintain intense bilateral relations with the countries in the region.

Spain has been active in the Mediterranean Forum and in institutions where there is a dimension of Mediterranean dialogue, including the OSCE, the Council of Europe, NATO or the WEU, as well as the UN and its specialized bodies. We have pressed for renewed Mediterranean dialogue in NATO, which was consolidated at the Madrid Summit, and we have also introduced specific initiatives in some parts of Spain, such as support for sub-regional integration processes. At the second meeting of the Barcelona process, Spain and Italy jointly sponsored a forum on cooperation in agriculture and agricultural industries, to be held at Capri next September. The objective is to identify lines of action that will palliate the food deficit in the Mediterranean basin, to diversify production and to promote ecologically sustainable agriculture and integrated rural development.

Spain is part of the water network, and the Euro-Mediterranean Water Information System (EMWIS); the University of Alcalá and the *Instituto Internacional Sefardí y de Estudios Andalusíes*, with the sponsorship of the Ministry of Foreign Affairs, have organized a second encounter of monotheistic religions in Alcalá de Henares; in March this year Spain financed a seminar, held in Toledo and attended by Israelis and Palestinians, on the importance of Jerusalem for the three great monotheistic religions. Spain is a joint sponsor of the Mozart Foundation project to promote cultural integration of the two sides of the Mediterranean through music. It was a joint sponsor of the meeting at Thessaloniki to encourage the creation of a Mediterranean audio-visual space with major plans for the future. It is a joint sponsor, with the Netherlands, France and Algeria, of a project of dialogue on migratory issues, and was also joint sponsor, with France and Italy, of a series of seminars on police training and cooperation.

In the sphere of Euro-Mediterranean parliamentary cooperation, Madrid is expected to be the venue of the first meeting of the 27 European presidents of parliament. This meeting follows on from the partial meetings at Palermo and Athens and will take place in Palma de Mallorca in March next year. A preparatory meeting was held in Palermo this June.

In fact the basic purpose of all this work in the Mediterranean Forum framework was to prepare a good meeting in Sicily, precisely to prevent a repetition of the deadlock that was reached at the Malta meeting last year. I should say that it served its purpose admirably, for if one thing became clear at the Mediterranean Forum meeting and the subsequent meeting in Palermo, it was that although the Mediterranean process is handicapped by the breakdown of the Middle East peace process, the Mediterranean Forum and the Barcelona process still proved a good source of new initiatives which could help lift the current peace process out of the doldrums. All those present

at these meetings – Arab countries, Israel, the other Mediterranean countries and of course the European countries – therefore partook of a common desire not only to keep the Barcelona process alive, but to keep strengthening it. As I said, this was helped considerably by the preparatory work of the constituent countries in Palma de Mallorca, which was very satisfying for me personally in that it coincided exactly with Spain's presidency of the forum.

(...)".

(*DSC-C*, VI Leg., n. 492, p. 14177).

Again, in reply to a parliamentary question on 13 August 1998, the Government explained the reasons that prevented the signing of a security pact between the European Union and the Mediterranean countries.

"1. A note on terminology: chapter I of the Barcelona Declaration mentioned 'the possibility in the long term of introducing a Euro-Mediterranean pact in order to achieve peace and stability', but this wording was later changed to a 'Charter for peace and stability' in view of the opposition of the Arab countries, for whom the word 'pact' held negative connotations recalling 'pacts' like that of Baghdad.

2. The Barcelona process was conceived by its promoters in the European Union as a long-term global framework which would round out its relations with the associated Mediterranean countries. It was also conceived as a 'post-peace' instrument in light of the then favourable outlook for peace in the Middle East (the Madrid framework and subsequent bilateral and multilateral negotiation processes hinging on the Oslo agreements with the Palestinians), which could greatly assist in the construction of peace through regional and sub-regional cooperation and integration.

3. According to the Barcelona Declaration, the Euro-Mediterranean process was not intended as a substitute for other actions and initiatives in favour of peace, stability and development of the region, but as a means of promoting its success and as reaffirmation of an approach to the Middle East peace process based on the relevant resolutions of the UN Security Council and the principles mentioned in the letter of invitation to the Madrid Conference of 1991, including the principle of peace for land and all that this implies. In a word, although these are two separate but parallel processes, they are inevitably linked and mutually influenced by the philosophy of Barcelona and the political situation in the Middle East.

(...)

4. Since the Barcelona process began, the Arab members have striven to keep the link alive, subject to varying sets of conditions. With the accession of the present coalition government led by Likud and the change it has introduced in the philosophy and implementation of the peace process, the Barcelona approach as outlined above has ceased to be a 'post-peace' framework, as the peace process has effectively come to a standstill and may require redefinition. This has affected the Barcelona process, especially

chapter I, that is the political possibility of a Charter for peace and stability, which from the Arab viewpoint can only be agreed to in the wake of a fair and lasting global solution to the Middle East conflict.

5. The Euro-Mediterranean Conference in Malta could have been a crisis point in the Barcelona process for various reasons. However, the members were induced to consider that the sum of attitudes and interests of all the members involved in the Barcelona process warranted its continuation, and that it should not be blocked by the Middle East peace process even although there was little prospect at present of progress in certain aspects such as the Charter for peace and stability.

6. Thus, in the conclusions of the Ministerial Conference in Malta (April 1997), the 27 EUROMED countries agreed to take note of 'the work of Senior Officials on a Charter for peace and stability in the Euro-Mediterranean region, and instruct them to continue the preparatory work, taking due account of the exchanged documents, in order to submit as soon as possible an agreed text for approval at a future Ministerial Meeting when political circumstances allow'. The Senior Officials of the Barcelona process have continued to work on that basis, focusing on major conceptual aspects relating to stability and security. The aim is to draw up and agree upon a specifically Mediterranean global framework based on the Barcelona objectives. At the same time, discussions continue on the charter.

7. The main objective of the recent *ad hoc* ministerial meeting in Palermo (3 and 4 June 1998) was to evaluate the results achieved in the Barcelona process since Malta, especially as regards cooperation and financial, cultural and social aspects, with a view to reactivating the Barcelona process in general and preparing for the third ordinary Euromed Conference (Stuttgart, April 1999).

8. The concluding statement of the Presidency includes the following reference to the Charter for peace and stability: '[The Presidency] noted the continuing work on the issues of substance, including the concept of global stability and the need to develop common perceptions of the factors that contribute to it. This should contribute to the development of a Charter for peace and stability as foreseen in Barcelona. Senior Officials will take this forward by means of a special *ad hoc* meeting with the aim of making progress before the Stuttgart conference. The results will be considered and decided upon by the Conference of Ministers.

9. In this connection we would draw attention to the positive achievement of the Mediterranean Forum at the fifth ordinary Ministerial Session (Palma de Mallorca, April 1998) in setting the task of laying down basic principles for a future Charter.

10. Very briefly, owing to the special characteristics of the Mediterranean basin, the drafting of a Charter is a long and difficult process, a fact acknowledged by the Barcelona Charter, which continues to work for consensus and collaboration among the member countries.

11. As regards relations between the Barcelona process and the Israeli-

Palestinian track in the Middle East peace process, the *ad hoc* conference in Palermo was not affected by the current downturn in that process. In light of the lessons learned from the Malta conference, a successful move was made to prevent the Middle East Peace Process (MEPP) from paralysing the Barcelona process, one of whose missions at this time of deadlock in the MEPP is to ensure continued dialogue among the member countries. A positive Arab attitude and Israeli prudence combined to limit the negative effects of the MEPP on the Barcelona process, making the Palermo meeting a success in the eyes of countries on either side of the Mediterranean. Both parties have acknowledged the placatory influence of the Euro-Mediterranean relationship".

(*BOCG-Congreso.D*, VI Leg., n. 314, pp. 420–421).

c) Second Asia-Europe Meeting

In reply to a parliamentary question on 4 June 1998, the Government explained the Spanish objectives at the Asia-Europe Meeting (ASEM 2):

"'Spain's presence at the ASEM 2 Meeting pursued a threefold objective:

1. To affirm Spanish and European interest in enhancing relations with Asia by promoting closer ties between the continents and dispelling erroneous preconceptions regarding Europe and Asia which persist in both continents.

2. To do so particularly in the climate of economic crisis currently affecting several Asian countries.

3. To stress Spain's desire to play a larger economic and cultural role in Asia.

Spain's action to those ends was as follows:

a) Active participation in the central and peripheral issues of the Meeting, and support for the creation of financial channels of solidarity with Asian countries through an European Union Trust Fund with the World Bank and an Asia-Europe Expert Group.

b) An undertaking to participate in the various follow-up activities for Euro-Asian dialogue, particularly in the Vision Group and the Asia-Europe Foundation.

c) Various bilateral meetings with the prime ministers of Japan, China Singapore, Thailand and Vietnam and the president of the Philippine Senate, at which we were able to promote Spanish interests in these countries and address various issues of common interest".

(*BOCG-Congreso.D*, VI Leg., n. 292, p. 293).

12. Cooperation in the Field of Justice and Home Affairs

Regarding the third pillar, in an address to the Joint Committee for the European Union on 10 March 1998, to report on the work programme of the United Kingdom's Presidency of the European Union, the Minister of Foreign

Affairs, Mr. Matutes Juan, referred to the problems arising in this connection over the issue of Gibraltar:

> "The most important initiatives regarding this third pillar in the last few years have come from Spain, both relating to extradition and to a new approach to the right of asylum whereby that right could be upheld but could not be undermined by certain acts of legislation. At present this work is less in the public eye, consisting as it does in seeking implementation of the major agreements that were made at the time – at the instance of Spain as I said. Naturally, Spain has never utilized the Gibraltar problem to hinder initiatives on the third pillar. Whenever there have been initiatives in this sphere, Spain has confined itself to pointing out that Gibraltar is a British territory for which the United Kingdom is responsible as regards foreign relations, and that Gibraltar cannot therefore pretend, in disregard of its dependence on the United Kingdom, to take any kind of decision or action generally reserved for sovereign States. Any other position would of course have seriously prejudiced Spain's legitimate right to eventual recovery of sovereignty. However, Spain has always made it clear that, while maintaining this principle, it has never sought to limit initiatives affecting the United Kingdom or any other initiatives pertaining to the third pillar, which we view as essential to let our citizens see, in political terms which visibly affect them, that European integration is still going ahead.
>
> (...)".
>
> (*DSCG-Comisiones Mixtas*, VI Leg., n. 91, p. 1898).

Regarding the creation of a space of freedom, security and justice as proposed in the Treaty of Amsterdam, addressing the full Congress on 17 June 1998, to report on the Cardiff European Council, the President of the Government, Mr. Aznar López, stated:

> "In Amsterdam the Government spoke for the creation of a single space of freedom, security and justice as an effective and coordinated response to the twofold concern of our citizens about freedom and security. At Cardiff we argued for the need to grasp every opportunity offered by Amsterdam, particularly as regards judicial and police cooperation to combat organized crime. The conclusions acknowledged the need for closer cooperation, and the Council was asked to determine what room there is for greater mutual recognition of judicial decisions. Also, at the request of Spain, the Council reiterated its call on States which have not yet ratified the Convention to do so swiftly in order to facilitate extradition between Member States of the Union.
>
> (...)".
>
> (*DSC-P*, VI Leg., n. 170, p. 9102).

Finally, with regard to integration of the Schengen *acquis* in the Community pillar, in a report to the Joint Committee for the European Union on the Austrian Presidency on 15 October 1998, the Minister of Foreign Affairs stated:

"As regards integration in Schengen, there are obvious difficulties and complications in shifting an issue from the third pillar to the first, but we are getting there. Spain's position has been absolutely open, although at the time we did oppose the adoption of decisions by special majority – especially new members – and we insisted on unanimity, specifically to prevent Schengen being used as an excuse to slip in undesirable members – you all know who I am talking about".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 119, p. 2485).

XIV. RESPONSIBILITY

1. Responsibility of Individuals

Note: See XII.1.*b) International Criminal Court*

a) Establishment of a permanent International Court

Appearing before Parliament on 25 March 1998, the Minister of Foreign Affairs, Mr. Matutes Juan, explained Spain's position on the establishment of an international criminal court:

"Spain has been represented at all meetings of the Assembly working party and is one of a group of like-minded States. This is the group that most decidedly supports the creation of an International Criminal Court and adopts the most progressive line in terms of vouchsafing the court the widest possible powers and enabling it to act more effectively and totally independently. This group is composed of 38 States: all the members of the European Union except the United Kingdom, France and Luxembourg; Canada, Australia, New Zealand, Switzerland and Norway, plus the most significant States in the other geographical groups.

In its desire to see a court created with the widest possible powers, Spain has not lost sight of the need to create an effective court. The international agreement for the creation of this court needs to be ratified by a substantial number of countries, and among them must be the leading movers in the international community. Otherwise we run the risk of creating a body which although probably ideal in theory will be of no practical value. In the first instance, we would favour the introduction of a review procedure whereby such powers can be successively enlarged, whereas the frustration produced in the second instance would probably make a minimally useful body of international criminal justice impossible for many years".

(*DSC-C*, VI Leg., n. 415, p. 12103).

Following approval of the Statute of the International Criminal Court on 17 July 1998, the Minister of Foreign Affairs addressed Congress to explain Spain's position in this regard:

"Overall, the Statute as an instrument is solidly grounded on the latest trends in conventional and customary international law. It draws on the one hand on a large corpus of universally applicable treaties on issues of humanitarian international law and human rights, and on the other hand on the principles of international criminal justice enshrined in the London Charter of 1945 – the same principles which inspired the jurisprudence and the Courts of Nuremberg and Tokyo and have been further developed in the Statutes and the jurisprudence of the international courts for the former Yugoslavia and Rwanda. The Statute regulates a procedure of investigation, indictment and prosecution which respects international guarantees of human rights, with express exclusion of judgment *in absentia* and the death penalty. It further guarantees special treatment for victims and witnesses.

Of course it is not perfect, but we are bound to applaud the effort made to arrive at a compromise which leaves room for different juridical conceptions and different value systems. This is essential to achieving broad-based, and ideally universal support for the future court, which we should not forget will have to act in the name of the international community as a whole. We should also bear in mind that the court as it is presently conceived will be susceptible of improvement, given that the Statute provides for means of amendment, including a reviewing conference seven years after its entry into force. At all events the undertakings given safeguard the goals sought by the States most committed to the project, and therefore the overall outcome still conforms to progressive lines in terms of substantive law, while the organic and procedural conditions permit the establishment of an independent, impartial and effective court.

(...)

Of course the international court is an area in which we would all have liked to go further; however, the further we reached, the less partners we would have attracted. I therefore think that the Government in the end chose the best possible solution, which is a gradual approach. The important thing is to see that the court is created, that it works, and from there to improve it in such a way that it becomes ever more ambitious without losing partners along the way. The Statute preserves the court's essential independence. As you know, before the Rome Conference many countries of considerable international weight sought an arrangement whereby the court could only act by decision of the Security Council, while another group of States sought to avoid any link with the Council. As a compromise solution – to which Spain adhered – it was finally agreed that the court could act unless the Council voted to suspend such action for a year under the terms of chapter VII of the Charter. At the end of that time, the court would be able to resume the action. This is a very good example of the kind of compromises to which I refer. The Spanish administration has of course set in motion preliminary procedures for ratification. The statute is an instrument of great technical complexity and needs to be examined closely to see what implementing

internal legislation may be required – and it will be required. The Government is resolved to put the matter to parliament for authorization as soon as possible, in order to promote early international ratification of the Rome Convention on the statute".

(*DSC-C*, VI Leg., n. 577, p. 16885).

2. Responsibility of States

Addressing the Sixth Committee on Chapter VIII of the International Law Commission Report on the responsibility of States at the 53rd Session of the UN General Assembly, the Spanish representative, Mr. Pérez Giralda, commented:

"My delegation is firmly convinced that this long process ought to culminate in a draft Convention, for the responsibility of States is of crucial importance for the functioning of International Law, and the establishment of broadly accepted binding regulations in that respect would be of considerable help in reinforcing legal certainty in the relations between States. It is no accident that in a decision passed on 25 September 1997 on the matter of the Gabcíkovo-Nagymaros proposal, the International Court of Justice referred to some articles of the ILC Project as authorized formulations of norms of Customary International Law. We would therefore concur with the opinion expressed in the Commission's report to the effect that the doubts voiced as to the desirability of arriving at an International Treaty rather than practical guidelines are due less to a lack of acceptance of most of the rules governing responsibility than to a basic problem which has hampered discussion of this proposal for many years – namely, the distinction established in article I9 regarding international crimes and offences.

In previous sessions the Spanish delegation has taken the view that the distinction is valid in Law in that, as we have argued, 'it exists not only in the doctrine but also in the sociology of international relations'. After all, the international community does not react in exactly the same way to breach of a clause in a trade treaty, for example, as it does to serious, large-scale and persistent violations of human rights. At the same time we have stressed the difficulty involved in securing sufficient institutional guarantees to determine in Law the distinction between a crime and an offence, so that there is a danger of the notion of 'international crime' being manipulated politically and becoming an obstacle rather than an instrument in the service of international peace and justice. Today, in light of the reactions of numerous governments to the Draft Proposal, we are forced to admit that this effort to advance International Law lacks sufficient support among States to form the basis of a Convention open to all. As the Special Rapporteur's report rightly points out, we need to decide whether we want to resolve the deadlock in the process so far and seek a new way forward that will receive the necessary support and consensus.

In this context, the five alternatives proposed by the Special Rapporteur and debated by the Commission clarify the situation and invite us to choose a path, in the hope of finding a way of bringing this work to a conclusion. The Spanish delegation wishes to make known its preference for the second solution, that is replacement of the expression 'international crime' by a term like the one proposed by the Special Rapporteur, namely 'exceptionally serious unlawful act'. The advantages of this solution are firstly that it avoids a connotation of Internal Criminal Law that is incompatible with some legal systems which do not recognize criminal liability of legal persons in general and much less of States. But in addition to a change of terminology, the new approach would make it necessary to establish a scale of consequences for different categories of unlawful acts, which are not defined in sufficient detail in the proposal as it stands.

(...)".

3. Reparation

On 5 March 1998 the Commission investigating transactions in gold from the Third Reich during the Second World War published the following report:

"Royal Decree 1131/97, 11 June, provided for the creation of a Commission to Investigate Transactions in Gold from the Third Reich during the Second World War. Its members were:

President: Enrique Múgica Herzog. Members: José María de Areilza, Francisco de Cáceres, Vicente Javier Fernández, Mauricio Hatchwell, Pedro López Aguirrebengoa, Antonio Marquina, Pablo Martín Aceña, José María de Palacio. Secretary: Fernando de Galainena.

Article 1 of the Royal Decree provides that the Commission shall submit a report on the matter to the Government. In the Preamble, the Government states its desire to elucidate the transactions that took place during that period of history with a view to informing the Parliament and public opinion.

The deliberations and the work of this Commission and its research team, under the direction of Commission member Professor Martín Aceña, consisted in examining and appraising the contents of the principal Spanish public archives (Prime Minister's Office, Ministry of Foreign Affairs, Bank of Spain, General Archives of the Administration, Customs Department, etc.), which contain documents relating to gold transactions between Spain, Great Britain, Germany, Switzerland, Portugal and other countries during the Second World War.

The Commission took into consideration the 'Eizenstat Report' by the US State Department, the reports of the British Foreign and Commonwealth Office and the Tripartite Commission on Gold, and the proceedings of the International Conference in London (2–4 December 1997), with the participation of 40 countries and 7 NGOs. It also contacted international

Jewish organisations such as the World Jewish Congress and the B'nai B'rith, and likewise the US State Department and the National Commission of Portugal... All these bodies were invited to assist and participate in the work of the Commission in the spirit of transparency that informed it at all times.

The Commission came up with a collection of data and findings which, as in any study based on historical research, could require amendment later on should subsequent research produce different results. On the basis of these data, the Commission arrived at a number of conclusions, as follows.

Data and Findings:

One. The state of the Spanish economy following the Civil War (1936–1939), which left Spain in ruins, its road and rail networks badly damaged, with neither gold nor currency reserves and without sufficient fuel or foodstuffs, deteriorated further with outbreak of the Second World War immediately after. Recognized as neutral by the main contenders, Spain reaped what advantages there were in such a posture, possibly obliged by force of circumstance, although it also entailed the drawbacks of isolation and precarious equilibrium.

Two. Replacement of Bank of Spain gold reserves, which had disappeared in circumstances confirmed by historical research, was essential in order to support our currency and guarantee credits against currencies with which to purchase urgently needed fuel and food supplies abroad.

Three. As a neutral country, Spain purchased from either side, but mostly from Germany in view of its debt for the war and other materials supplied to Franco's side during the Civil War, which the government of the Third Reich estimated at over 212 [million] dollars at the rates of the time.

Four. Trade between Spain and Germany operated through a periodically revised clearing system which obviated payment in currency. Machinery and arms were exchanged for strategic minerals, such as wolfram, pyrites and iron, and the balance in favour of Spain was 76 million dollars.

Five. Trade relations with Switzerland during the Second World War consisted mainly in the supply of machinery, chemicals and pharmaceuticals in exchange for Spanish foodstuffs and overland and seaborne transport services. As to Spanish-Swiss financial relations, Switzerland granted Spain credits (6 million dollars in 1938–39 and 5.2 million dollars in 1942).

Six. Trade with Great Britain, Spain's principal pre-war customer, slumped not only because of German pre-eminence, but also because of the hazards of maritime traffic. Britain's main concern during the war years was to acquire more strategic materials from Spain and thus prevent the Third Reich from acquiring them. Supplies of wheat, oil and cotton from the United States were contingent on Spain's behaviour towards the Reich.

Seven. Spanish gold purchases, totalling 67.4 tons with an updated value of 765 million dollars, were channelled through the *Instituto Español de Moneda Extranjera* (*IEME*), which was created in 1939. Most of this gold (38.6 tons) was purchased from Swiss banks. The balance, in descending order, came

from the Bank of England (14.9), the Bank of Portugal (9.4), the German Transatlantic Bank (2.5), the *Banco Exterior de España* (1.4) and the International Payment Bank (1.4). All purchases were in ingots of various different origins.

Eight. These figures differ considerably from those in the Eizenstat Report, which gives a total of 85 tons, subsequently raised to 122.8 tons in a second version, according to which 72% came from Nazi plundering of Jews – all based on contemporary reports and appraisals. These differences could arise from the inclusion of gold entering Spain in transit to Portugal or to shipments to German organisations in Spain, which are not to be confused with gold acquired by Spain as reflected in the accounts of the *IEME*.

Nine. The *IEME* made only three direct gold purchases from German institutions during the war. These were successively 2.5, 1.4 and 3.4 tonnes. Some other gold entered Spain by diplomatic pouch (1.5 tonnes) for opaque funding of the German Embassy, and an estimated 12.8 to 16.1 tonnes was smuggled in, possibly to finance purchases of wolfram and other strategic minerals, but none of these were official purchases certified by the *IEME*.

Ten. As to international gold trafficking, especially through Swiss banks, in 1943 the Allies warned neutral countries that part of the gold came from plunder and confiscation of individuals and companies by the Axis governments in occupied countries, and that they would be obliged to return that part once the war ended. In 1944, the US Treasury Secretary issued the 'Gold Declaration' declaring illegal all transfers of gold stolen by the Axis powers, and Spain was a siguatory of that declaration.

Eleven. Following the German surrender, on 5 May 1945 the Spanish government accepted Resolution 6 of the Bretton Woods Conference, which required neutral countries to hand over all public and private properties in their territories which belonged to the Axis nations. This led eventually to the Convention of 10 May 1948 between the governments of Spain, France, the United Kingdom and the United States, and subsequently also to the Convention between Spain and the German Federal Republic in 1958.

Twelve. The Allies asked the Spanish government for full details of gold purchases since 1939. Members of the Allied Control Commission examined the accounts of the *IEME* and the gold reserves in the vaults of the Bank of Spain. They identified only eight ingots for restitution, and these were handed over to the Commission, which acknowledged legitimate Spanish ownership of the rest. The Spanish government was thus able to trade this gold in Swiss, American and British banks.

Conclusions:

I. On the basis of the foregoing data and findings, which are always subject to amendment in the light of subsequent research, with regard to monetary gold transactions recorded by the *IEME*, the sole competent authority at the time, the Commission found no evidence to support a presumption of liability for illegal trading in Nazi gold by the Spanish State during the period in question.

The involvement of the Spanish State in such transactions was legally unimpeachable and was dictated by the difficult circumstances of the time. Spain had just emerged from three years of civil war, with an economy reduced to subsistence and lacking in all the essentials, particularly foodstuffs, machinery and fuel, all of which was further aggravated by its isolation in a time of world war which was immediately succeeded by the 'cold war'.

These circumstances vindicate Spain's legal and moral reasons for conducting the gold transactions referred to, and the Allies understood this when the envoys of the Allied Control Commission asked to examine the *IEME* accounts and the Bank of Spain reserves on the ground, after which these were freely negotiable at foreign banks.

II. Having established the absence of any liability attaching to the Spanish State and having completed its mandate under Royal Decree 1131/97, 11 July, the Commission considered it was its duty to issue these Conclusions and to express its agreement with the growing body of current opinion in the international community, where the Holocaust is again becoming an issue.

Therefore, bearing in mind Spain's policy of friendship towards the Sephardic communities, the Commission recommended that, as a democratic institution responding to the humanitarian feelings of the Spanish people, the Government should provide whatever assistance it deems most appropriate to the World Sephardic Organisation, to which many Spanish citizens belong".

XV. PACIFIC SETTLEMENT OF DISPUTES

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Acts

Note: See XIII.11.*a) Cuba*

a) Kosovo

Appearing before Parliament on 18 June 1998, the Spanish Minister of Foreign Affairs, Mr. Matutes Juan, explained Spain's position regarding the Kosovo conflict:

"From the outset, the Spanish government has strongly condemned the terrorist acts of the Kosovar organisation, but at the same time it considers that responsibility for the aggravation of the situation lies chiefly with the Belgrade authorities and their disproportionate repressive response, which has caused the loss of innocent lives. We do not question the Belgrade government's legitimate role in combating an organisation which has been attacking Yugoslav citizens of both Serb and Albanian origin for the past

three years, but the disproportionate use of force in police and military actions is unacceptable. This lack of proportion has been even more evident in the operations carried out in the last few weeks in areas close to Albania. The deaths of innocent civilians, the large-scale destruction of private property and the forced exodus of refugees is neither acceptable nor warranted in the context of an operation defined as anti-terrorist. The Belgrade government bears a degree of political responsibility: the KLA came into being and was consolidated in a political atmosphere created in 1989 by the suppression of the Statute of Autonomy enjoyed by Kosovo under the Yugoslav Constitution of 1974. The reduction of Kosovo to the status of a mere Serb province immediately raised fears that this heralded an attempt by Serbia to dominate the rest of the country. That fear was one of the reasons in the complex web of factors that led to the collapse and dismemberment of the former Yugoslavia.

The radicalization of the Albanian community in Kosovo is therefore a response to a clearly unjust, unilateral and disproportionate measure. We are sensible of the attempt to suppress the difference and do away with the national and cultural heritage of the Albanians of Kosovo, and we have therefore stood out in their defence. We do not accept the bland assertion of the Serbian government and the Federal government that Kosovo is a purely internal issue. The indiscriminate use of violence by the security forces and the consequent death of innocent civilians and destruction of property is not and cannot be considered a purely internal affair.

Moreover, the international community has reacted to the fact that the behaviour of the Belgrade authorities has been identified as the main cause of the present crisis, and therefore economic sanctions have been imposed on the Republic of Serbia and the Federal Republic of Yugoslavia. The lifting of these sanctions depends on a number of actions which the Belgrade authorities have been asked to take. These actions are listed in the Declaration approved by the Cardiff European Council and are basically four: firstly, to stop all operations by the security forces affecting the civilian population and to withdraw security units used for civilian repression; secondly, to enable effective and continuous international monitoring in Kosovo; thirdly, to facilitate the full return to their homes of refugees and displaced persons and unimpeded access for humanitarian organisations; and fourthly, to make rapid progress in the political dialogue with the Kosovo Albanian leadership.

(...)

You ask me what steps have been taken, and the answer is practically all steps possible in the economic field, all kinds of sanctions. The European Union, and naturally also Spain as an active member, has proposed a moratorium on public export credits, that there be no CSCE credits for Serbia and prohibition of the sale of any material that could be used for internal repression, terrorist activities or simply violence. A number of individuals responsible for acts of repression have been identified and the identification of others has been requested; these persons will be denied entry to European

Union territory in the event that there is insufficient evidence for their indictment before the International Criminal Court created for the purpose. On 31 March, the UN Security Council passed Resolution 1160, which further establishes an embargo on arms sales to the Federal Republic of Yugoslavia. The European Union had already placed an embargo on arms to the former Yugoslavia following the Dayton accords, and Spain has adhered firmly to the established policy on this matter. It was resolved recently to freeze the assets of the Serbian government abroad, and it was decided to prohibit any new foreign investment in Serbia. It was further agreed to take the necessary steps to prohibit flights, an issue which also entails complications. As you know, under the ICAO Treaty and other treaties on international transport, the prohibition of a company's flights requires notice well in advance and reciprocity, and a resolution of the UN Security Council is required before a sanction can be imposed which prohibits Yugoslav companies from landing at European airports. That is the measure we intend to adopt and the appropriate procedures are now in motion. All possible pressure has been brought to bear. There have been military manoeuvres and they have been told that this is the final warning.

(...)

The only international institution that can make military action legal is the UN Security Council. The rest are security organisations, be it NATO, the WEU or any other alliance or coalition that may be formed. The only body that can legally sanction military action is the Security Council, where the permanent members have the right of veto".

(*DSS-C*, VI Leg., n. 314, pp. 3–7).

b) Cuba

On 3 June 1998, the Minister of Foreign Affairs reported to Parliament on the agreement between the European Union and the United States regarding the extra-territorial application of United States laws to Cuba, Iran and Libya:

"One of the main issues addressed at the annual European Union-United States summit on 18 May was that of the differences between the parties – the USA and the EU – regarding extra-territorial US laws. The source of these is not the United States Government or the Clinton Administration but the US Congress, which has passed these laws against the wishes and recommendations of the Administration and is determined to maintain them. At all events, the summit approved five political documents, including two which are binding. Note that I say political documents, that is which do not affect the exclusive competences of the European Community. These documents are: one, a declaration on principles of transatlantic political cooperation; two, an understanding on disciplines to be applied to investment; three, an understanding on contradictory requirements or conflicts of jurisdiction; four, a US undertaking on application of the D'Amato Act; and five, a

unilateral declaration by the European Union – and this is very important – on the binding nature of the negotiated deal. We shall return to this point later.

According to these documents, the United States acknowledges that Title three of the Helms-Burton Act should not be applied. It has further undertaken to secure the authorization of Congress to waive Title four of the Act, which the law does not permit it to do at present. That is also very important. We are talking to the Administration, which is bound by a law passed by Congress that authorizes it not to apply Title three, and in the commitments I referred to, it undertakes not to apply Title three; however, as the Administration is not authorized to refrain from applying Title four, it has undertaken to obtain authorization from Congress not to apply it. The United States has also undertaken not to apply the sanctions provided in the D'Amato Act for investment in energy in Iran, and to consider non-application in the case of Libya. The presence of President Clinton at the summit obviously lends more credence to these undertakings. Moreover, on 25 May, last Monday – that is, a week later – the General Affairs Commission of the European Union issued a declaration showing that the Union remains absolutely firm in its demand that the cited Titles of the Helms-Burton and D'Amato Acts not be applied.

According to these agreements, which are political rather than legal, the situation of investments in expropriated properties is as follows: Firstly, all past investments in expropriated properties are exempt from any sanction. Secondly, investments made as from 18 May 1998 in properties which were once illegally expropriated are not prohibited, but it is accepted that they will not receive official support. Thirdly, no future investments will be allowed in assets that are expropriated in breach of International Law, where there is no-one who seeks to foster investments in breach of International Law. Fourthly, the governments of the United States and the European Union countries will not in future provide government economic support as an incentive to investments in properties expropriated in breach of International Law. Both parties undertake that their bilateral agreement will be enshrined in a legally binding multilateral agreement on investment. It is thus acknowledged that there exists no legal compulsion, and it is stated: that as this is a political agreement, we undertake to enter into a multilateral agreement on investment which will be legally binding. In other words, the understandings mentioned before are therefore strictly political and not enforceable in law. ... This is part of the understandings of the European Union as opposed to the Community, the only body having an international legal personality, and hence the only body than can enter into legally binding international agreements. In other words, the legal personality belongs to the Community not the Union; the signatory is the Union, which does not possess an international legal personality.

The undertaking is therefore a political one which allows us to evaluate the

real intention of the United States to strictly honour those political agreements to which it has pledged itself. Both understandings concern matters which are the province of the Member States, and it is the latter which will apply and implement them; both refer to the regulation of property which article 222 of the Treaty of Union does not prejudge. In other words, it is not the province of the Community: It does not regulate issues of economic policy; rather, investments affected by the understandings are intended basically for the purpose of establishing companies or providing services. The Court of Justice of the European Union has established that the Community is not exclusively competent to enter into agreements with third States concerning such freedom of establishment or access to service markets. In a word, there is no legal commitment attaching to Spain, only a political commitment linked to the political commitment made by the United States. It seems clear that the very existence of the Helms-Burton and D'Amato Acts, whether sanctions are effectively imposed or not, as has been the case for European companies so far, has hitherto constituted a strong disincentive to invest in Cuba, Iran and Libya. In making investment decisions, businessmen need to have a clear time horizon, which up until now was never guaranteed for more than six months, which as you know was the dispensation granted by the US Administration especially in the case of Cuba. There can be absolutely no doubt at all that this agreement ushers in a far better situation that hitherto. On the one hand, there is an express link between the effective application of disciplines to investments in confiscated properties and the non-imposition of sanctions; and on the other hand, in the case of past expropriations, these disciplines do not prevent any investor from embarking on future projects. They will not be entitled to official incentives, but they will not be penalized. Let us not forget that we are not dealing with investment in Cuba in general, but only investment in assets expropriated in breach of International Law and so considered by all those whose duty it is to impose the disciplines. This is a political undertaking, within a political framework, which includes a strengthening of cooperation in aspects on which both parties agree (combating of terrorism, support and legal security for democracy and defence of human rights), and a concerted effort to promote these objectives".

(*DSCG-Comisiones Mixtas*, VI Leg., n. 107, p. 2211).

c) Sudan and Afghanistan

On 21 August 1998 the Government released the following communiqué on the action taken by the United States in Sudan and Afghanistan:

"The Spanish government wishes to express its support for the United States government in its action against terrorist bases in Sudan and Afghanistan.

Spain will always stand by its allies in the fight against international terrorism".

Appearing before the Congress Foreign Affairs Committee on 28 October 1998, the Secretary of State for Foreign Affairs and the European Union, Mr. de Miguel y Egea, explained Spain's position with regard to the US bombings of Sudan and Afghanistan:

"First of all, you will all recall that at least 12 US citizens and around 250 of other nationalities died of indiscriminate violence in the brutal attacks on the US Embassies in Nairobi and Dar es Salaam on 7 August last. The US reaction that followed, with strikes on very specific targets in Khartoum and Afghanistan on the 20th of the same month were strictly linked to these attacks. The Spanish government verbally supported the US strikes against terrorist bases in Sudan and Afghanistan and declared that Spain would always stand by its allies in the fight against international terrorism.

The Minister, Mr. Abel Matutes, said, and I quote: 'the US action in attacking terrorist bases in Sudan and Afghanistan is legitimate insofar as they have proof that these countries have in fact been implicated in the attacks in Kenya and Tanzania'. The Minister's support has two fundamental bases. Firstly, as allies of the United States, it is our duty to lend such support in all cases where there are no obvious reasons not to do so. The preamble to the North Atlantic Treaty states that the Atlantic alliance rests upon the resolve of the parties to safeguard freedom, the common heritage and civilization of its peoples, founded on the principles of democracy, individual freedoms and the rule of law. The member countries therefore resolved to combine their efforts, among other purposes for the conservation of peace and security. This principle of mutual support among allies arguably justifies our refraining from demanding specific evidence and our comprehension at the omission of prior consultations which would have weakened the surprise effect. The second base is the international community's commitment to the fight against international terrorism and the fact that Spain has a priority national interest in its eradication.

(...)

The Spanish government supported the use of legitimate defence by the United States as argued by the permanent US representative at the United Nations in the Security Council on 20 August last, citing article 51 of the Charter of the United Nations as it relates to individual self-defence. This article establishes that nothing in the Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

According to the generally-accepted interpretation, article 51 is to be understood as limiting the use of force to the exceptional event of response to a previous armed attack. Under article 51, the action may be justified as a legitimate response to an armed attack, consisting in this case in the prior attacks on the Embassies in Kenya and Tanzania.

In this case the strike in Sudanese and Afghan territory was based on the

support and overt tolerance vouchsafed by these States to the perpetrators of the said attacks. In their declarations, the US authorities also mention that the governments of Sudan and Afghanistan were given repeated prior warnings, in compliance with the rule that all diplomatic means of resolving a conflict must first be exhausted. The United States government took the decision to launch these strikes on the basis of credible and convincing evidence, accumulated over a long period of time, that the facilities attacked and the individuals and organisations associated with them constituted a clear and imminent threat to the well-being and safety of United States citizens and interests.

(...)

Both the Sudanese government in the case of minorities in the south of the country and the Afghan government, apart from numerous other crimes, are indisputably guilty of crimes of genocide against populations in their own countries. And I am not referring to such trifles as respect for human rights, which of course does not exist in Sudan or Afghanistan. But at the same time I am surprised that anyone can defend these countries, which are openly linked to international terrorism and flout all the rules of humanity in the way that they conduct affairs in their own territories, and that Spain should come in for criticism when all it has done is to express support for an act of immediate response to attack, an act of legitimate self-defence in the case of a terrorist attack".

(*DSC-C*, VI Leg., n. 553, p. 16055).

2. Collective Measures. Regime of the United Nations

a) Spanish participation in peacekeeping operations

On 25 November 1998, the Minister of Foreign Affairs, Mr. Matutes Juan, reported to Congress in full session on Spain's participation in international peacekeeping missions:

"Since Spain first took part in a peacekeeping mission in 1989, our country has become progressively more involved in operations of this kind and now has 1808 troops seconded to them. The fact is that in the new climate of international relations that emerged with the end of the cold war, it became necessary to step up the number of United Nations interventions to keep the peace. The United Nations has tended to delegate the execution of such operations to regional organisations and multinational forces, subject to the prior approval of the Security Council. This applies to the SFOR missions in Yugoslavia and the multinational protection force for Albania, to which Spain contributed 500 men. Spain's presence in that area, which is already considerable, will be augmented in the near future by participation in OSCE operations in Kosovo and the dispatch of 25 new Spanish observers.

Regarding your question on qualitative aspects, I should say that the nature of peacekeeping organisations has been changing; they have become more multidimensional and now encompass not only military actions but also civil police work, observation of elections, human rights and preventive diplomacy, whereby they do a great service not only to world peace but also to the principles of democracy, respect for human rights, justice and freedom".

(*DSC-P*, VI Leg., n. 199, p. 10705).

b) Iraq

On 17 December 1998, the Minister of Foreign Affairs reported to Congress on the latest developments in Iraq:

"Although Spain has no direct part in the military operations against Iraq, a major crisis has arisen once again, and I believe it both appropriate and necessary that the government address this Committee.

'... The Spanish government regrets and deplores the fact that force has had to be resorted to as a consequence of Iraq's failure to comply with the Security Council Resolutions on the work of the international arms inspections teams in Iraq. Similar statements have been made even by Arab governments, some of which have naturally expressed complete disagreement with the warlike acts undertaken by the United States and the United Kingdom. Be it said that it has been impossible for these inspections to proceed even minimally normally because of the Iraqi government's persistent unwillingness to facilitate them.

(...)

The Spanish government particularly regrets this situation given that, like the rest of the international community, it has always advocated a diplomatic solution, based on dialogue, to the problems that have beset relations between Iraq and the United Nations. The crux of the matter is the Baghdad government's lack of any real willingness to comply with the obligations imposed upon it by UN Security Council Resolutions and those that it has agreed to on several occasions with the United Nations Secretary General.

(...)

In response to the Iraqi decision of 5 August to suspend cooperation with UNSCOM, on 9 September the Security Council unanimously adopted Resolution 1194 condemning that decision and demanding that Iraq set aside its decision and cooperate fully with these bodies. A series of political and diplomatic exchanges ensued in an attempt to persuade Iraq to comply with the Security Council resolution, which it was bound to do under the United Nations Charter. Nonetheless, on 31 October Iraq announced an end to all cooperation with UNSCOM, demanding that its president, Richard Butler, resign and that the delegation be reconstituted.

Baghdad announced that it would abide by its decision until such time as

the Security Council should examine Iraq's right to have the embargo lifted. Iraq further prevented the permanent supervision teams from carrying on their work. This work consists in ensuring that those facilities where material has been destroyed or permanent military equipment exists remain under control. This was not allowed either.

(...)

The eventual result of these refusals to comply was yesterday's resort to force ....

Upon being informed of the outbreak of the conflict, Spain expressed solidarity with its allies, as is natural and consistent with the standards of conduct of this and previous Spanish governments.

(...)

Nevertheless, I should like to stress that in order for diplomacy to work, Iraq must first comply fully with the obligations imposed on it by the Security Council, to which it freely acceded. Let me recall that resolution 687 established a cease-fire, suspending the previously-existing situation in which the Security Council had authorized the use of force against Iraq and imposed a number of conditions for such a cease-fire. Therefore, in the view of the belligerents, Iraq's refusal to comply with these conditions is tantamount to non-compliance with the cease-fire arrangement established by Resolution 687. The Spanish government regrets that the flagrant breach of these obligations by Iraq should have led to the use of force, but it considers that Iraq must bear the fundamental responsibility for this situation by dint of having refused to comply with these Resolutions. This position is shared by the vast majority of our partners and allies.

The Spanish government has urged the government of Iraq to cooperate fully with the inspection arrangements established by the Security Council. I can assure you that neither the government nor the people of Spain are indifferent to the suffering of a people with whom we have had ties throughout history. It is the only way to put an end to this suffering, the only way to restore normal relations between Iraq and the rest of the international community, as Spain has repeatedly called for – I would remind you that Spain was the first country in the Western community to reopen its embassy in Iraq some two years ago. However, the obligations regarding disarmament must be complied with. Once the Iraqi government meets these conditions, the Security Council must commence an overall review of the sanctions regime with a view to abolishing them. In the meantime, it is Spain's view that Iraq should be allowed to receive the imports authorized by the Sanctions Committee and to make full use of the oil for food arrangements approved by that Committee. I wish to make it clear that the objective of Spain – and we believe of the international community as well – is to insist on full compliance with these obligations. I should stress that none of these obligations pursues objectives or purposes that could be interpreted as interfering in Iraq's internal affairs or as a threat to its territorial unity or integrity, which Spain

strongly supports. At all events, as the UN Secretary General declared yesterday, it is clear that for the next few days there will be a continued need for diplomatic initiatives in the area, within the framework of the United Nations, to achieve once more a peaceful outcome to this situation, an outcome that will prevent force having to be used again and will help lead to an eventual settlement.

(...)".

(*DSC-C*, VI Leg., n. 595, p. 17358).

c) Libya

Replying to a parliamentary question on 28 October 1998, the Secretary of State for Foreign Affairs and the European Union explained Spain's position regarding embargo measures imposed on Libya:

"The embargoes currently in force against Libya include a total air embargo except for humanitarian flights approved by the UN Sanctions Committee: that is, an embargo on arms, munitions, military or police vehicles and equipment, a reduction in the number and category of personnel on Libyan sub-consular diplomatic missions, and restriction or control of movements of Libyan personnel; freezing of Libyan financial assets abroad, and a ban on the supply to Libya of certain items of equipment for use in the transportation of hydrocarbons and in refining; also, material for aircraft and airports, and the provision of insurance, engineering and maintenance services in respect of aircraft of Libyan nationality.

Resolution 1192, which was approved on 27 August in response to a joint UK/US proposal that the two Libyan suspects be tried at The Hague under Scots Law and by Scottish judges, confirms the current sanctions regime and once again urges the Libyan government to comply with the pertinent Resolutions of the Security Council.

Although bilateral relations between Spain and Libya are good, Spain considers itself bound to observe international legality as enshrined in the Security Council Resolutions I have referred to. Spain has therefore strictly observed the terms of the resolutions comprising the sanctions regime and considers that the adoption of Resolution 1192 offers Libya a good opportunity to recover its place in the international community by means of specific gestures.

(...)

Libya is undoubtedly a very important element in the Mediterranean, the Maghreb, the Arab world and Africa. It must be approached in all its dimensions, given that these four contexts – the Mediterranean, the Maghreb, the Arab world and Africa – are important to Spain. That is absolutely clear. We are fully persuaded that Libya ought to recover its status as a normal member of the international community ... Spain has always advocated the inclusion of Libya in the Barcelona process ... At the recent United States/

European Union summit on extraterritorial law systems, the D'Amato-King-Kennedy Act and the Helms-Burton Act, Spain was the only country to propose that the waivers currently being negotiated for Iran be applied to Libya as well. The reaction of the British Presidency was highly negative, but nonetheless Prime Minister Blair defended it with President Clinton and Libya was included in the list of countries eligible for exception from extraterritorial application in respect of loopholes in the provisions of the D'Amato-King-Kennedy Act. I believe that this gesture, reflecting Spain's commitment to helping Libya find its place in the new international context, was greatly appreciated by the Libyan authorities and demonstrates once again that as well as urging Libya to comply with the UN Resolutions, we are defending Libya wherever we can, and not least in the Mediterranean process".

(*DSC-C*, VI Leg., n. 553, p. 16080).

XVII. WAR AND NEUTRALITY

1. Disarmament

a) Anti-personnel Landmines

On 9 September 1998, the Director General for the United Nations, Security and Disarmament, Mr. Garrigues Flores, reported on the interpretive declaration made by Spain on ratifying the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Landmines and on Their Destruction:

"Spain has been an active participant in the collective effort by the international community to get rid of anti-personnel landmines ever since the May 1996 amendment of Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices.

(...)

In line with this mandate, Spain became a firm supporter of the Ottawa process which culminated in the Convention, signed by the Secretary of State Mr. Ramón de Miguel in the Canadian capital in December 1997. At the end of December last year, the Cabinet tabled a bill in Parliament for the total prohibition of anti-personnel landmines and arms having similar effects, which I believe will be passed very soon.

I should stress that this bill places Spain in the vanguard as regards compliance with the Ottawa Convention; while the Convention requires four years for the destruction of anti-personnel landmines, the bill provides for the destruction of Spanish mines in less than three years – that is, over a year and a half before the Convention requires. Spain has been active in the European Union in favour of renewing common action to press for a political drive by

the Union for universal acceptance of the Convention and for financial action.

The Government wishes Spain to be one of the first 40 countries needed for the Convention to enter into force. To date, 36 States have ratified, and therefore it will not be long before we stand as one of the first 40 countries to do so.

(...)

... It has been decided that Spain ought to make an interpretive declaration upon depositing its ratification of the Ottawa Convention with the UN Secretary General. The proposed declaration ... will read as follows: With regard to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Landmines and on Their Destruction drafted in Oslo on 18 September 1997 and presented for signing at Ottawa on 3 December 1997, it is the understanding of the Kingdom of Spain that the participation of the Spanish Armed Forces or Spanish nationals in military activities jointly with the armed forces of countries other than signatories of the Convention does not contravene article 1.1.c) on the obligation not to assist, encourage or induce participation in an activity prohibited by the Convention.

... Under article 1.1.c) of the Ottawa Convention, the States Parties undertake never to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention.

Without deviating from the letter or the spirit of the Convention, the fact is that this article is worded in such a way as to allow different interpretations as to what may or may not constitute assistance, encouragement or inducement of one kind or another. However, too broad an interpretation would prevent us from fulfilling our commitments in many cases, since any type of action or omission by our country in favour of a non-Party State could be interpreted as assistance, encouragement or inducement.

I should like to make it clear that no-one is proposing a reservation to the Ottawa Convention, a possibility excluded by article 19, but simply to agree on one of the various possible interpretations of article 1.1.c) in order to establish that the mere fact of participating in military activities alongside forces from non-Party States does not constitute a breach of that article. Non-infringing activities arising in the context of such participation are not included in the general prohibition in article 1.1.c), and in that light the terms assistance, encourage or induce are interpreted. Indeed, by the very fact of belonging to an alliance or taking part in an a multinational operation or manoeuvre, units from States Parties participate in all kinds of operations alongside non-Party States which may exercise their right to use anti-personnel landmines in these operations. 'The mere fact of participation, collaboration, coordination and lending of support to non-Party States could come under the prohibition in article I.1.c) in situations where the forces of States Parties do not actually do anything that contravenes the Convention.

It has thus been found that the international application of the Ottawa Convention in combination with other international political/military commitments acquired by Spain could present problems, and all the more so given that some of the States most prominent in the use of anti-personnel mines have announced their intention not to observe the Convention. More specifically, within the North Atlantic Treaty Organisation, Spain has acquired a number of political defence commitments, the prime example of which is article 5 of the Treaty of Washington.

(...)

As it happens, two of our allies, Turkey and the United States, have stated that they are not in a position to accede to the Convention, while a third, Greece, having signed the Convention in Ottawa, is doubtful as to ratification. In all forums, and this forum in particular, Spain and other allies are seeking to persuade these countries to ratify the Ottawa Convention. As to the countries invited to join NATO, all three have now signed the Ottawa Convention and have expressed clear willingness to ratify it as soon as possible.

However, as long as Turkey, the United States and Greece fail to ratify the Convention, a situation which could last at least five years, there will be complex problems of functioning and interoperability in NATO, problems in the planning of operations, of joint and combined working of general staffs, of participation in operations, manoeuvres, exercises and other military and security activities, all of which directly affect the security of Spain and the Atlantic Alliance. A good example, but by no means the only one, is that the Ottawa Convention allows anti-tank mines with anti-handling devices but prohibits mixed anti-tank/anti-personnel systems which some non-party allies have in stock and intend to keep using.

(...)

... It goes without saying that similar situations may arise outwith NATO, in United Nations or OSCE peacekeeping operations or in multilateral or bilateral exercises or manoeuvres, all circumstances in which States Parties participate alongside non-Party States. The operational structure in such cases is different from NATO's, but it is possible for non-Party States to use anti-personnel landmines.

(...)

At the same time I should stress that Spain is not the only country to have felt the need to protect its armed forces and to restrict the scope of article 1.1.c). Indeed, Spain will not be the first signatory to make an interpretive declaration of this kind; they have been made by countries surely beyond suspicion of seeking to water down the Ottawa Convention, and even promoters of the Convention like Canada, which made such a declaration at the time of ratification in Ottawa on 3 December 1997, or the United Kingdom which did so quite recently. Other allies are considering taking a similar step. Our allies have decided to make these declarations for the very

same reasons as we did – that is, to render their firm commitment to total elimination of anti-personnel landmines compatible with their commitments as members of NATO.

Finally, at the risk of repeating myself, I should like once again to make quite clear that this declaration is in no way intended to diminish or water down the obligations imposed by the Ottawa Convention, which Spain fully accepts. To the contrary, it is intended to set realistic and appropriate bounds on the sweeping provision of article 1.1.c) which will enable our country and the members of our armed forces to honour their commitments as conscientiously and effectively as hitherto without compromising our armed forces or at worst finding ourselves immersed in complex legal disputes.

(...)".

(*DSC-C*, VI Leg., n. 506, p. 14619).

b) Nuclear Weapons

On 29 May 1998, the Presidency made the following statement on behalf of the European Union regarding the nuclear tests carried out by Pakistan:

"The European Union is concerned and disappointed at news of the nuclear test carried out by Pakistan. As in the case of the Indian nuclear tests, the European Union condemns this action, which goes against the desire expressed by the 149 signatories of the Comprehensive Nuclear Test Ban Treaty to put an end to nuclear testing and to reinforce nuclear non-proliferation world wide. The Indian nuclear tests have seriously destabilized the region, and the Pakistani tests only aggravate the situation.

At the time of the Indian nuclear tests, the European Union made it clear to Pakistan that any nuclear testing by it would be detrimental to its own security. The Union therefore urged the government of Pakistan to practise moderation and now deeply regrets that its call has gone unheeded.

The European Union remains fully committed to the Comprehensive Nuclear Test Ban Treaty and the Non-Proliferation Treaty, which are the cornerstone of the world system of non proliferation and are an essential stepping-stone to nuclear disarmament. The European Union attaches particular importance to peace and stability in southern Asia and is deeply concerned at the threat posed thereto by the proliferation of nuclear weapons and missiles. We urge Pakistan and all other countries in the region to refrain from further tests and from the deployment of nuclear weapons and ballistic missiles. We particularly urge Pakistan and India:

to sign the Comprehensive Test Ban Treaty and initiate ratification procedures;

to become actively involved in the opening of negotiations in the framework of the Geneva Disarmament Conference, with a view to signing a treaty that prohibits the production of fissile materials for nuclear weapons;

- to impose strict controls on the export of material, equipment and technologies included in the basic list of the nuclear suppliers' group and the list of dual-use goods and in the annex to the protocol for control of missile technology;
  to undertake not to assemble nuclear devices, not to deploy them aboard vectors and to halt the development and deployment of ballistic missiles capable of carrying nuclear warheads.

The European Union will follow the situation closely and will take whatever steps are necessary in the event that Pakistan and India refuse to abide unconditionally by international non-proliferation agreements, particularly the Comprehensive Test Ban Treaty and that they do not commence ratification procedures. We also urge Pakistan and India to commence talks to address the roots of the tension between them and to strive to achieve a climate of mutual trust rather than confrontation".

2. Exportation of Arms

On 30 September 1998, the Secretary of State for Foreign Affairs and the European Union reported to the Congress Defence Committee on the Spanish proposal regarding a Code of Conduct for Arms Exports:

"Like all international instruments, the Code of Conduct is the outcome of a consensus, that is not a unanimous agreement but may sometimes be an agreement reached through a lack of active opposition; some countries, including us, were not at all keen on the proposal but eventually did not oppose it since we felt it was better than nothing. It may not satisfy the aspirations of some – including the Spanish Government – but at least there is no denying that it constitutes a major advance in the direction of greater control, transparency and self-restraint in European arms exports. The European position on this issue is undoubtedly the most advanced in the world, which is in itself an achievement in that we have initiated a path which others will hopefully follow. The pioneering role of the European Union has been acknowledged even by the Congress of the United States, by far the world's largest exporter, with around 50 per cent of the world trade and market in arms. The proposal presented is intended to introduce a code of conduct, both internal and international, which is based upon and closely resembles the Code approved by the European Union.

Admittedly the Spanish government would have welcomed more progress in certain areas, and the Government's desire in this sense is shared by all the political groups. Among the areas in which we would have liked to see more progress is the system of notification where a State authorizes an exportation essentially the same as one previously prohibited by another State. In the language of the arms trade, this is known as undercutting. Spain, along with most of the Member States, held that all the other partners should be advised

multilaterally of such undercutting to broadcast the fact that a country is indulging in this practice. However, a monetary criterion prevailed whereby such authorization is intimated only to the State that first refused it, as set forth in the third operative provision.

I should also say a few words about another of the major issues in negotiation of the code of conduct, that is the instrument of approval. There were two points of view. One was that it should be included as one of the common positions in article J.2 of the Treaty of Union, and the other that it should be a Council resolution. The difference seems trivial at first sight, but in fact it is important in that it determines whether the Code is to be legally binding and enforceable through the Court of Justice or is to be no more than a political obligation. The Spanish government, which had of course gone further ahead on its own, thanks to the stimulus of this House's green paper of 18 March last year on arms trading and exportation, had already included the criteria approved by the European Councils of Luxembourg and Lisbon, and the successive amendments, in its internal legislation, specifically article 9.3 a) of the regulation governing foreign trade in defence and dual-use material.

The Spanish government had already introduced measures to render the Code of Conduct legally binding in Spain as soon as it was approved. However, in the debate with our partners, most Member States considered it premature to make the code legally enforceable through the Court of Justice, and therefore it was approved as a Council resolution ... apart from expressing our disappointment, we have no wish to exaggerate or to belittle the importance of the code and the means used to introduce it. In societies like those of Europe, where public opinion is well informed and sensitive to all these issues, governments are in fact just as much or more obliged to honour the political commitments in the code than if they could be prosecuted by the court of justice. Let us not delude ourselves – in alert and sensitive societies, political pressure is often even more effective than a court decision.

There were a number of other issues on which our views were not adopted by the majority. Spain proposed that section b) of criterion 4 be expanded to take in cases where one State uses illegal force to occupy a territory to which another State has more right. It was not possible to introduce this criterion owing to the absolute opposition of one of our partners in the European Union. The Honourable Members will excuse me if I am not more explicit; as you know, negotiations in the sphere of foreign policy and common security of Member States are confidential, and I cannot therefore say which State it was; however, one was sufficient to defeat the proposal.

The Spanish delegation in the relevant work group supported a proposal by another Member State to add a reference to the defence of democratic institutions in criterion 3, but again this was not included in the final draft.

(...)

We should not forget that the Code affects an area of State competence

which has not been transferred in the treaties, and it would be neither possible, nor indeed desirable, to force a State to go further than it is prepared to. Until such time as the common defence referred to in article J.7 of the Treaty of Amsterdam is either adopted or discarded, any decision with regard to the exportation of arms must be unanimous. Therefore, as long as there is no unanimity, nothing can be approved, for in this field there is no decision by special majority.

Although the final outcome is not everything that the Government and the political parties represented here could have wished, it is a giant step forward on a path whose ultimate goal I believe we are all clear about in political terms.

(...)".

(*DSC-C*, VI Leg., n. 521, p. 15018).

In reply to a parliamentary question on 6 November 1998, the Government reported on the exportation of arms to Turkey:

"1 and 2. The Government has authorized exports of arms to Turkey and, having analysed each case, does not rule out doing the same again. In the opinion of the Spanish government and the governments of most European Union members, exports of arms to Turkey are entirely compatible with the European Union's Code of Conduct on arms exports. Let us take the eight criteria one by one:

Criterion 1: No sanctions have been imposed against Turkey by the UN Security Council, the Organisation for Security and Cooperation in Europe or the European Union. There is nothing in the Nuclear Non-Proliferation Treaty, the Convention on Bacteriological and Toxin Weapons or the Convention on Chemical Weapons – of all of which Turkey is a full member – that prohibits the exportation of Spanish arms to Turkey. There is no undertaking within the framework of the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) or the Wassenar Arrangement – and Turkey is a member of two of these non-proliferation regimes, Wassenaar and MTCR – that prevents us from exporting to Turkey. And finally, the Government neither has authorized nor will authorize exportation of anti-personnel landmines to Turkey or anywhere else.

Criterion 2: There is nothing to suggest that Spanish arms exported to Turkey will be used for purposes of internal repression. Nevertheless, the Government does believe that the human rights situation in Turkey could be improved, as the Court of the Council of Europe at Strasbourg has declared in some sentences following convictions in specific cases. This is so because as a member of the Council of Europe and as a signatory of the treaties on the protection of human rights adopted within the Council, Turkey has accepted the strictest international obligations existing in this field. Membership of the Council and these treaties place human rights obligations upon Member

States which are far stricter than those that apply in the international community at large. It is in this context that one must consider the Turkish breach of its international obligations in respect of human rights.

Likewise, as a candidate for full membership of the European Union, for the purposes of such membership Turkey is judged on human rights issues by more exacting standards than are applied to countries which are not candidates. This is only natural, since the European Union places stringent demands on its own members in this respect. However, one cannot judge a country by the same standards in its capacity as a candidate for membership and as a member of the international community at large. In this connection we should point out that the competent bodies of the United Nations – the Human Rights Commission – or the European Union – the Council – have never established serious violations of human rights in Turkey.

Criterion 3: The Government does not believe that Spanish exports of defence material could cause or prolong armed conflicts in Turkey or aggravate existing tensions or conflicts. The arms sold by Spanish companies to Turkey are used for the country's external defence.

Criterion 4: Maintenance of regional peace, security and stability. The Government considers that a secure and stable Turkey can be an influence for peace, security and stability in such volatile regions as the Balkans, Transcaucasia or the Middle East. Turkey has no territorial claims on other countries.

Criterion 5: Arms exports to Turkey obviously contribute to the security of a friend and ally – Turkey is after all a member of NATO and one of our allies.

Criterion 6: In the view of the Government, Turkey's attitude to terrorism, the nature of its alliances and its respect for International Law all count in favour of the authorization of arms exports to that country.

Criterion 7: The Government has no reason to believe that the end user of Spanish arms exported to Turkey can be other than the Turkish armed forces and security forces. That is what appears on the mandatory certificates of final destination. Turkey possesses the legislative, administrative and technical means – as accredited at the time of its accession to the former COCOM and confirmed upon its accession to the Wassenaar Arrangement – to ensure that there are no unwanted diversions.

Criterion 8: Spain's modest arms exports to Turkey constitute no obstacle to the sustainable development of the country. Macroeconomic data suggest that the rest of its arms imports are unlikely to present an obstacle either.

In a word, the exportation of arms to Turkey does not enter into any of the eight criteria in the Code of Conduct. There are many criteria which favour such exports. Suffice it to recall that under article five of the Treaty of Washington whereby NATO was founded, Spain and Turkey are obliged to defend one another. Most of our partners and allies in the EU and NATO sell military material to Turkey.

3. In the last five years, Spain has exported defence material valued at 23,857 million pesetas to Turkey. The bulk of this figure reflects exports which are not strictly speaking defence material, in that it includes the sale of CN-235 transport aircraft and parts. These transports are exported from Spain without any device or modification for military use; they are therefore treated as civil aircraft and should not by rights be included in defence material sales statistics. However, they are included in the statistics of defence material exports because the exporting company applied for and received export licences as such.

4. According to the current legislation, any company applying for a licence to export goods or services subject to prior licensing requirements for Turkey would have to meet the following requirements:

a) In the case of weapons of war: A Final Destination Certificate, with an undertaking, signed by the competent authority in the importing country, not to re-export the goods without first receiving the express consent of the Spanish government.
b) In the case of other defence materials: International Certificate of Importation, like other eountries in the former COCOM.
c) In the case of dual-use goods or technologies: Declaration of Final Destination.

5. The object of the Prime Minister's visit to Turkey was not the operation we referred to but to reaffirm the relations of friendship and cooperation existing between Spain and Turkey.

6. Between Spain and Turkey there is a sincere and open dialogue as is proper with States which are friends, partners and allies, and this dialogue does not of course exclude issues relating to respect for human rights and the strengthening of democratic institutions. In his recent visit to Turkey, the Prime Minister pointed out that in seeking to become a member of the European Union, Turkey is subject to the same conditions as any candidate, including respect for human rights.

7. Spain has signed the Treaty creating the International Criminal Court and is currently in the process of ratifying it. The Government is making representations at all levels to persuade as many countries as possible, including Turkey, to sign the Treaty.

8. The Prime Minister expressed a desire that Turkey comply as soon as possible with the conditions required for accession to the European Union; these conditions include full protection of the human rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights".

(*BOCG-Congreso.D,* VI Leg., n. 342, p. 110).