Spanish Diplomatic and Parliamentary Practice in Public International Law, 1997

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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.* 1995 and 1996 (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-Congreso.E** – Boletín Oficial de las Cortes Generales. Sección Congreso de los Diputados. Serie E, Otros Actos (Official Journal of the Spanish Parliament. Congress of Deputies. Series E, Other Acts).

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* BOCG-Congreso.D: With effect from 1–2–97, Series D, Acts of Control and Series E, Other Acts are unified.

** BOCG-Congreso.E: No longer published with effect from 31–1–97.

Spanish Yearbook of International Law, Volume V, 1997

BOCG-Senado.1 – Boletín Oficial de las Cortes Generales. Sección Senado. Serie I, Boletín General (Official Journal of the Spanish Parliament. Senate. Series I, General Journal).

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

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

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

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

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

Index

I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis and Pnrpose

The Seventh Ibero-American Summit of Heads of State and Government held on Margarita Island (Venezuela) on the 8th–9th November 1997, issued a Final Document in which the following was stated:

> "2. The central issue at this meeting of Heads of State and Government bears closely on governability as discussed at the 6th Ibero-American Summit and on our countries' commitment to the defence of democracy, the rule of law, political pluralism, fundamental freedoms and human rights, the principles of sovereignty and non-intervention, the right of all peoples freely to build their own political system and institutions in conditions of peace, stability and justice, and the existence of a fair system of ethical and democratic international relations in conditions of peace and security, within a framework of respect for the principles of international coexistence enshrined in the United Nations Charter.
> (...)".

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

Note: See XVII.1.*a) Nuclear Weapons* and 2. *c) Anti-personnel Land-mines*

a) Conclusion and Entry into Force

In reply to a question in the Senate regarding Spain's participation in the ATOMAL Convention, the Government stated:

> "The ATOMAL Convention is the legal instrument that empowers the US Government to share with its allies information relating to the design, manufacture or use of atomic weapons, and the latter to receive such information.
> (...)
> Spain is the only member of the Alliance that has not signed the ATOMAL Convention. In the absence of a procedure in the *Cortes* whereby the convention can be ratified with sufficient confidentiality, the present provisional arrangement had to be made whereby a list of Spanish citizens with access to ATOMAL information was drawn up; this is updated regularly and is sent periodically to the US authorities and the NATO Security Office. This provisional arrangement guarantees access to ATOMAL information for a select group of persons concerned with Spain's participation in the Nuclear

Planning Group and other groups related to the Alliance's nuclear policy.

The fact that this Convention has not yet been signed and ratified by Spain is therefore due to reasons connected with our internal legislation, there being no provision in our system for parliamentary ratification of agreements classified as secret.

The reasons adduced at the time for not signing were 'technical problems of a constitutional or legal nature', the difficulty being that as classified material it could not be published in whole or in part, while as an International Treaty, Spanish procedure required that it be approved by the *Cortes Generales* and published in the Official State Gazette.

A study of the legal aspects will therefore be needed to devise a means whereby secret agreements can be approved while ensuring adequate protection".

(*BOCG-Senado.I*, VI Leg., n. 217, p. 50).

Some months later the President of the Government Mr. Aznar López addressed the Congress in full session to reply to a question relating to the signing of an international treaty on the suppression of antipersonnel mines:

"Spain has been active – very active – in the international movement that has brought into being a process that will hopefully culminate in the prohibition of the use, manufacture, storage and transfer of antipersonnel mines. The Government has consistently maintained this stance ever since it took office. I may say that it is the Government's firm intention to sign the treaty that has emerged and to help see that it is ratified at the earliest possible moment.

There are two further points that I wish to make. The first is that a period of four years has been set for the dismantling of antipersonnel mines. The Government will do everything in its power to have the treaty ratified so that the destruction of these mines can be completed before the end of these four years.

The second point is a matter of concern for us – we want those manufacturing countries which declined to sign or to attend the conference, and those which expressed reservations, to accede definitively to the treaty, so that the ban is universal. I believe that this is a great service to the cause of peace and the cause of humanity".

(*DSC-P*, VI Leg., n. 103, p. 5170).

b) Reservations

At the 52nd session of the United Nations General Assembly, addressing the Sixth Committee on the International Law Commission report, Spain's representative, Mr. Pastor Ridruejo, had the following to say on the issue of reservations regarding regulatory multilateral treaties, including treaties on human rights:

"The first issue is the form that the result of the work should take. In our

intervention in 1995 we advocated the drafting of sets of model clauses, given the need to preserve the *acquis* of the Vienna Conventions of 1969 and 1986; and we still maintain that idea, although we believe that the clauses in question could be preceded by a practical guide to assist states and international organisations. Nonetheless, it seems fair enough that at the present stage of the work the Commission should have confined itself to the preliminary adoption of a set of conclusions.

The most interesting points in these conclusions are the ones that address the following issues: 1) applicability of the Vienna Convention regime to human rights treaties and 2) the role of monitoring bodies with regard to reservations.

When commenting on the first report by the Special Rapporteur in 1995, we maintained that reservations to treaties on human rights were of course undesirable and that it was important to maintain the full force of these treaties. We added that such reservations nevertheless did not apply to special cases and should therefore be governed by the general principles of treaty law as stated in the Vienna Conventions of 1969 and 1986. And we would also remind the Special Rapporteur that these principles are included in the consultative opinion of the International Court of Justice regarding reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, which is a treaty of the first importance in the field of human rights.

As regards the watchdog and verification institutions established by the treaty that concerns us here, we fully agree with the Special Rapporteur. Such institutions can and should assess the legitimacy and the effects of reservations where their functions so require. Outwith this sphere, however, the treaty is still an instrument of consensus, and such watchdog organisations cannot take the place of States in assessing the admissibility and effects of reservations".

2. Unilateral Acts of States

Regarding the scope of the subject of unilateral acts of States, Mr. Pastor Ridruejo stated as follows:

"My delegation is of the opinion that the question of the law applicable to the resolutions of international organisations is entirely irrelevant to this subject. The issue here is quite a different one which could at most be dealt with as a separate subject sometime in the future, if appropriate.

So-called dependent unilateral acts – acts producing effects within the framework of a treaty – are governed by treaty law and again lie outwith the sphere of independent unilateral acts".

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

Addressing the Sixth Committee at the 52nd period of sessions of the United Nations General Assembly, Mr. Pastor Ridruejo referred to the problem of the extra-territorial scope of national regulations:

> "My delegation wishes to draw the attention of this Committee to the desirability of the International Law Commission starting work whenever possible, but urgently, on a subject of extreme importance – namely marking out the limits that International Law places upon the extra-territorial scope of certain national laws".

IV. SUBJECTS OF INTERNATIONAL LAW

1. Self-Determination

a) Sahara

The situation and the expectations created by the unfreezing of the peace process in the Western Sahara was addressed by the Minister of Foreign Affairs, Mr. Matutes Juan, in the Congress Foreign Affairs Commission on 15 October 1997. In his speech, the Minister said the following:

> "At the present moment, several aspects of the process remain unresolved. First is the appointment of the new special representative of the Secretary General for Western Sahara.
>
> Second are the problems relating to the identification of voters for the referendum. The points of discord on these issues between Morocco and the *Frente Polisario*, which are in principle irreconcilable, blocked the application of the settlement plan. Thanks to the agreements now reached, the two parties have decided not to present, either directly or indirectly, members of disputed tribal sub-fractions and immediate family members for identification, but they may submit individual applications to the Identification Commission. The final configuration of the census of voters is therefore incomplete pending an as-yet indeterminate number of applications, which could raise the final figure to considerably above the Spanish census of 1974.
>
> Three, the return of refugees. Both Morocco and the *Frente Polisario* have agreed to cooperate with the UNHCR to implement the repatriation programme.... According to the settlement plan, those refugees admitted as voters in the referendum must vote in the territory. No other alternative is offered, and therefore their return to Western Sahara will mark a species of point of no return in the run-up to the referendum.
>
> Four, stationing of troops. The Moroccan armed forces will be reduced to

levels as yet to be determined and will be confined in accordance with the provisions of the settlement plan. With the agreement of Algeria and Mauritania as observers of the plan, the forces of the *Frente Polisario* will be stationed in whatever places and numbers that the special representative may decide.

(...)

Five, recognition of the authorities and powers of the United Nations during the transitional period, which under the settlement plan means until the results of the referendum are announced. We believe that the observance of this undertaking will assure complete freedom of opinion and assembly and of movement within the territory, creating an adequate climate for the holding of a free and untrammelled referendum. The parties undertake to accept whatever measures the special representative may order to prevent any favouritism, fraud, intimidation or harassment that could compromise a free referendum. Both parties will have equal access to media through which to broadcast their respective messages on the referendum.

Six, the code of conduct, ... This is a guarantee that the United Nations, with the agreement of the parties, will watch over compliance with the rules of behaviour for an equitable electoral process based on equality of opportuuities and respect for the adversary".

(*DSC-C*, VI Leg., n. 301, pp. 8887–8888).

A few days later, on 20 October 1997, Mr. de Miguel y Egea, Secretary of State for Foreign Policy and the European Union, addressed the Senate Foreign Affairs Commission to reply to a question on Spain's participation in the referendum for the self-determination of Western Sahara:

"Spain will utilise every opportunity furnished by our special relationship with both Morocco and the *Frente Polisario* to provide friendly encouragement to the parties and to stress the importance of reaching a peaceful solution to this conflict....

(...)

It is the Government's view that the only solution to the Sahara conflict is the one sponsored by the United Nations and set forth in the settlement plan. We are therefore one hundred per cent behind the United Nations Secretary General and the UN plan.

... this plan makes no provision for a guarantor country. The only actors are the parties involved, that is Morocco and Mauritania. The fact that there is no guarantor country does not mean that Spain cannot act as guarantor of the settlement when it comes;....

The Government believes that the Sahara dispute arising from decolonisation will only be settled when the Saharan people are allowed to decide on self-determination in a fair and free referendum with all due guarantees.

We have also noted the Houston Agreements with satisfaction and are pressing for maintenance of the MINURSO mandate....

(...)

Spain has made major financial, material and logistical contributions to the MINURSO and is prepared to carry on doing so, as a token of our confidence in the promising new phase ushered in by the Houston Agreements, and of our interest in furthering the just solution we referred to. Such a solution will surely usher in regional stability and the furtherance of peace and prosperity for the peoples of the Maghreb, a matter of special interest to us for many reasons, but for one above all – that is, that our ability to solve many of the serious immigrations problems which we now have depends on the stability and economic prosperity of our neighbours.

(...)".

(*DSS-C*, VI Leg., n. 187, pp. 8–9).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Diplomatic and Consular Protection

a) Diplomatic Protection

Addressing the Sixth Committee of the General Assembly in the 1997 session, the Spanish representative, Mr. Pastor Ridruejo, made the following comments on Chapter VIII of the International Law Commission's report regarding the codification of diplomatic protection:

"3. In the Spanish delegation's intervention in 1995 we stated that we thought the subject of diplomatic protection particularly appropriate as a point from which the Commission could start work. Here we wish to comment on the relevant chapter – Ch. VIII – of this year's report, and particularly the report of the work group set up for that purpose and adopted by the Commission.

For the moment, given that the study of the subject is still at a very preliminary stage, we feel that it is too early to decide the kind of instrument in which the results of this work should be framed.

At the same time we see as absolutely logical the Commission's decision not to tackle the study of claims arising from direct damages caused to one State by another. In such cases there is no diplomatic protection, and hence there is no need to observe the requirements for it. Diplomatic protection only comes into operation to claim reparation of damages directly suffered by nationals. We would also agree that, as in the case of the international liability of States, codification should be limited to a study of what are called the secondary rules. Moreover, it was prudent of the Commission to leave to a later stage the business of deciding whether or not to include the exercise by international organisations of functional protection for their agents and officials.

And finally, with regard to the content of the subject, we believe that an

inventory of materials presented to us by the Commission is an adequate starting-point".

Appearing before the Congress Foreign Affairs Commission, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, explained the Government's position regarding the continuance of the sequestration of the Chilean newspaper *Clarín*.

"We have no reason to believe that the attitude of the Chilean Government is wholly negative. The point is that in order for a claim to be lodged, the defence of these interests must remain within the limits of International Law – in other words, we cannot risk any defect of form that might prompt the Chilean Government to reject a claim, which in the present case would be based upon the Convention on Protection of Investment which has been in force since March 1994 – and I believe the Minister said this... in order to apply this agreement on reciprocal protection and promotion of investments between Spain and Chile which was signed in 1994, according to our Minister's international legal advisers it is absolutely essential that the person seeking the benefit of this agreement prove certain points, which are: one, that he has appealed in vain through the courts of Chile to obtain restitution or at least reparation for the outcome of the sequestration of his property. This point is perhaps something of a grey area and I am naturally open to interpretations... We believe that had a claim been entered prior to 1994, the Convention would not be applicable as its effects are not retroactive, but a claim would have to have been lodged between that time and the present. I recognise that there may be a grey area here..., but the opinion of our legal advisers is that claims lodged prior to the 1994 Convention would render the convention inapplicable; however, once the Convention was signed in 1994, there must be a claim subsequent to the Convention in order to set the machinery in motion.... the other two conditions are met by the owner of the *Clarín* newspaper, Mr. Víctor Pey Casado. The second is that the owner must demonstrate that at the time of sequestration he possessed solely Spanish nationality; we have received evidence from Mr. Pey Casado's solicitor that he renounced dual nationality at the time of General Pinochet's coup d'état, and he would therefore appear to fulfil this requirement. And the third condition is that he currently possess solely Spanish nationality. It seems clear that this is true of Mr. Pey Casado, who currently lives in Spain and is of course Spanish through and through".

(*DSC-C*, VI Leg., n. 147, pp. 4011–4012).

b) Consular Assistance

Addressing the Senate in full session on 17 September 1997, the Minister of Foreign Affairs, Mr. Matutes Juan, explained the actions implemented by the Government in respect of defence, assistance and support for the Spanish citizen Mr. Javier Ferreiro, who is to be tried in Miami (United States):

"On 1 April last, a Spanish citizen, Mr. Ferreiro, was arrested in Miami on charges of violating the 'Trading with the Enemy' Act – not the Helms-Burton Act – which prohibits the export of goods from the United States to Cuba; he was further accused of two other offences, namely money laundering and conspiracy.

In order to proceed with the rigour befitting such important issues, I wish first of all to stress that the three accusations are levelled under internal US laws. This means that, however we view their substance – and in my opinion they are politically bad laws – from a purely formal standpoint their application is strictly territorial, and they are in breach of no national or international requirement as to validity. They are therefore laws that any person on United States soil is obliged to obey.

The fact that the matter has no political implications – and these are not matters to be trifled with – has not prevented the Government from giving it its full attention. The Government has acted along two lines: firstly, the provision of consular assistance to the accused and his family, and secondly political and diplomatic representations at all levels. To be brief, I should simply like to say that the Consul General has been present at all the accused's court appearances, including the latest one on 26 August last. In addition, the Minister of Foreign Affairs has granted Mr. Ferreiro an extraordinary non-repayable subsidy of 4,000 dollars, the maximum amount that can be authorised for exceptional cases.

I would further stress that on 30 April last, I myself intimated to Secretary of State Mrs. Albright the importance that the Spanish Government attaches to this case. Also, I twice interviewed Mr. Ferreiro's daughter, whom the President of the Government also contacted to express his concern over this matter. In a word, the Government has been lending and will continue to lend Mr.Ferreiro the constant assistance and attention that is the right of any Spanish citizen, innocent or guilty, involved in such a ticklish situation, with the added difficulty that these are internal court proceedings instituted by a sovereign, democratic State under the rule of law, which will brook no interference by the Executive in judicial decisions".

(*DSS-P*, VI Leg., n. 54, pp. 2261–2262).

In reply to a parliamentary question, on 6 November 1997 the Spanish Government reported on the number of Spanish citizens under sentence abroad and their situation.

"1. The amount of attention paid to Spanish prisoners is determined not by the density of the prison population, but by the state of the prisons and the means available to prisoners to communicate with family and friends. Thus, countries like those of the European Union do not require such close monitoring as others like Brazil, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Morocco, Pakistan, Peru, Thailand, Turkey or Venezuela.

2. In countries where prisoners require more attention, this need is amply

met; there are periodic visits never more than one month apart. In some cases, like Tangiers, a Consular official makes representations in court and at prisons practically on a daily basis.

3. As in the foregoing cases, the worst situations do not arise in the countries with the largest prison populations but in those with the worst prison systems. Thus for example, the fact that there are only 4 Spanish prisoners in Pakistan does not mean that their situation is better, since prison conditions there are dreadful.

4. In the course of 1996, financial assistance totalling 51,074,931 pesetas was lent to 582 prisoners.

5. Normally the Spanish consular authorities are advised of the detention of Spaniards in their own bailiwicks by the local authorities, provided that the detainee does not expressly forbid such communication. Visiting and monitoring of prisoners is part and parcel of the regular consular function as mentioned above and comes within the provisions of the Vienna Convention on Consular Relations of 24 April 1963".

(*BOCG-Senado.I*, VI Leg., n. 319, pp. 67–68).

2. Aliens

a) Refugees

In reply to a parliamentary question on 16 May 1997, the Spanish Government reported on the number of applications, refusals and grants of asylum and refuge in 1995 and 1996.

"1. With the Law of Asylum Reform Act 9/1994, 19 May, applications for asylum and refugee status are unified. The right of asylum is granted to persons who are recognised as refugees in a single dossier.

2. During 1995, 2,308 applications for asylum were admitted for processing and 3,344 were not admitted.

As regards refusals and grants in 1995, the Inter-ministerial Commission for Asylum and Refugees submitted the following proposals for decisions to grant or deny the right of asylum (it should be remembered that in many cases the decisions apply to applications received previously):

- The right of asylum was granted to 464 persons.
- The right of asylum was denied to 2,486 persons.

During 1996, 4,730 persons applied for asylum in Spain. By 31 December 1996, 1,979 applications had been admitted for processing and 2,688 had been rejected, leaving 63 applications pending the decision whether or not to admit for processing.

As to denials and grants of the right of asylum in 1996, subject to the same rider as for 1995, the numbers were as follows:

- The right of asylum was granted to 23 persons.

– The right of asylum was denied to 1,851 persons".
(*BOCG-Congreso.D*, VI Leg., n. 141, p. 499).

3. Human Rights

a) Disappearance of Spanish Citizens in Argentina

Replying to a parliamentary question on 24 July 1997, the Government explained the steps taken to date with regard to the investigation initiated by the *Audiencia Nacional* into the disappearance of Spanish citizens during the repression in Argentina between 1976 and 1983.

"To date there has been only one case of letters rogatory regarding Argentina being sent to the Argentine authorities, dated 4 October 1996, by Mr. Baltasar Garzón, the judge at *Audiencia Nacional* Court of Instruction No. 5. These letters rogatory requested the institution of an investigation into the disappearance of 330 Spanish citizens during the military regime in that country, and also the summoning of Jorge Rafael Videla, former President of Argentina.

The processing of these letters rogatory was requested under the provisions of the bilateral treaty of extradition and judicial assistance in criminal matters of 3 March 1987 (*BOE*, 17.7.90).

On 15 January 1997, the Argentine authorities rejected the said letters rogatory. The arguments that they put forward refer to articles 28 and 30 of the treaty cited. Both articles provide for a system whereby judicial assistance will be lent only in respect of facts that the requesting authority is competent to judge at the time of the request, and the compliance of the subject of the request is subject to the internal legislation of his country.

Given that the letters rogatory refer to events taking place in Argentina, the Argentine authorities decreed that competence lay only with the local authorities, which authorities, in exercise of their sovereign power, have arrived at a legislative and judicial solution to the issue of disappeared persons. The subject of the letters rogatory is therefore *res iudicata*, one of the grounds included in the cited bilateral treaty (article 9) as sufficient for rejection of a request for judicial assistance.

In December 1986 the Argentine authorities passed an act known as the 'Law of Full Stop' (*Ley de Punto Final*), and in June 1997 the 'Law of Due Obedience' (*Ley de Obediencia Debida*), which in practice constituted an amnesty for persons accused in cases of disappearance.

It is therefore the opinion of the Ministry of Foreign Affairs that in light of the foregoing arguments there are not sufficient grounds to consider that the Argentine authorities are in breach of the bilateral treaty of 3 March 1987.

Spain claims the right to know the truth and would wish that the guilty parties had been punished, but at the same time she must respect the laws of

Argentina that work towards stability and reconciliation in that country. It is well to remember that the report approved unanimously by the Spanish Senate on 1 August 1993 states: 'nor is there any intention of sitting in judgement on a period of Argentine history which only the Argentine people are competent to judge...'.

In this context, the Spanish authorities, through their diplomatic and consular representatives in Argentina, have undertaken countless steps to investigate the fate of individual disappeared Spanish citizens and to try and ascertain the facts despite the tremendous difficulties entailed.

Moreover, the Government is providing assistance to help Spanish victims of the repression or their descendants secure whatever legal advice they need in order to apply for the monetary reparations that the Argentine State is offering in compensation. The Spanish Government also assists in providing guidance for relatives of disappeared persons in making legal representations and in attempting to clarify and solve problems arising in connection with offspring of disappeared Spanish persons who have been adopted by other people.

On his recent visit to Argentina, following interviews with representatives of the Commission for Spanish Disappeared Persons, the Spanish President of the Government publicly expressed a desire that the true history of events in the years 1976 to 1983 be brought to light, and he stated the Spanish Government's intention to support whatever claims the relatives of disappeared Spanish citizens are entitled to, within the framework of Argentine legislation".

(*BOCG-Congreso.D*, VI Leg., n. 170, pp. 294–296).

VI. STATE ORGANS

1. Foreign Service

Appearing before the Congress Foreign Affairs Commission, on 4 June 1997, to reply to a question on the redistribution of Embassies and Consulates, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, stated as follows:

"We are currently undertaking a redeployment operation, that is reallocation of resources. We need to ascertain which representations, missions or consulates are least warranted at the present time in light of changes in our interests, and to identify places where we should open new embassies. As regards possible closure of missions, we need to cut down the enormous network of Spanish consulates general in Europe, whose original brief was to protect the large numbers of people who emigrated to Europe in the aftermath of the Civil War and up to the late 1970s and early 1980s, ... the vast majority of these emigrants have returned to Spain and there is now no emigration to Europe.

(...)

In the second place, we now belong to the European Union, and thanks to European citizenship, Spanish citizens enjoy all the same rights as the citizens of the countries where they live; they are fully protected, they have social security, legal protection, and the same rights as any citizen of the Union. There is therefore less need for diplomatic agents on the spot to lend assistance or provide protection. There are areas with numerous consulates where there were once large concentrations of emigrants, for example in the region of Belgium, where ... there might be four or five consulates general in a radius of a hundred kilometres.

(...)

We need to identify those consulates where there are lower requirements – where the Spanish colonies are smaller and the closure of consulates will cause least problems.

(...)

As regards the criteria for opening of embassies, the allocation of priorities, we see Hanoi and Singapore as priority locations in Asia, and a new consulate general is needed in Shanghai.

Another priority is the upgrading of the Moscow consulate to a consulate general. Why? Because in Moscow visa issues have risen from twelve or thirteen thousand a year to almost 400,000 last year.

(...)

As to embassies, we obviously need to have representations in countries which will become our partners. I therefore believe that we should now be assigning priority to embassies in the three Baltic States Latvia, Estonia and Lithuania. In Slovakia we only have an antenna in Bratislava; we have no embassy in Ljubljana in Slovenia; in Sarajevo, the capital of Bosnia-Herzegovina, we have no diplomatic presence; and we shall eventually have to think of Albania.

As regards other priorities, we believe it essential to open two embassies in the near future, one in the Caucasus and another in Central Asia. A Caucasian embassy could be located in Baku, the capital of Azerbaijan, to cover Georgia, Armenia and Azerbaijan. In Central Asia we are considering that perhaps Almaty, the capital of Kazakhstan, the most important country in the region, could be a suitable location for a diplomatic mission covering Kyrgyzstan, Uzbekistan, Turkmenistan and Kazakhstan – all the major Central Asian republics. These are our immediate priorities for the moment.

We also need to consider some redeployment of consulates in America in response to the growing importance of some cities, such as Vancouver.

(...)".

(*DSC-C*, VI Leg., n. 244, pp. 7021–7022).

Also, on 19 September 1997, the Cabinet approved two Royal Decrees creating Spanish Permanent Diplomatic Missions in the Slovak Republic and the Republic of Bosnia-Herzegovina:

"These are two very similar cases: two Central European territories which have recently become independent states and with which Spain has had diplomatic relations from the outset through multiple accreditations – in the case of Slovakia through the Prague Embassy and in the case of Bosnia-Herzegovina through the Vienna Embassy.

Both countries are among those classified as priority for the opening of new embassies in the Cabinet Resolution of 22 February 1996. The reasons for creating the two embassies are briefly as follows:

1. Slovak Republic.
   - The likelihood of progressive Slovak integration in the main forums in which our foreign policy moves.
   - The rapid increase in trade relations between the two countries, to the extent that the volume doubled last year, suggesting a need for more direct and permanent support from Spain.
2. Bosnia-Herzegovina.
   - To build on the tremendous effort put into the conflict in that country and the credit earned there by Spain. From the outset Spain has been involved in all the initiatives for a political, economic and military solution. Spain still has 1,300 troops and 37 civil guards there in SFOR, plus a frigate and two tanker planes for airborne support. Spain also contributes 46 civil guards to the international police force.
   - To achieve a greater presence and enhanced participation of Spanish companies in return for the substantial economic aid lent by our country.
   - There has been a considerable increase in the number of Spanish visitors and tourists, for whom an adequate support and protection structure is needed.

The cost of opening the two embassies will be funded partly through the closure of the Consulates General at Antwerp, Liège and Valença Do Minho, which is currently in progress".

The President of the Government and the Foreign Affairs Minister intervened in Parliament on several occasions in 1997 to address the question of appointing a Spanish Ambassador to Cuba. More specifically, in an address to the Congress in full session, on 25 June, in reply to a question as to whether the Government believed Spanish interests were furthered by the political decision not to appoint an ambassador to Cuba, Mr. Aznar López, stated:

"In bilateral trade between Spain and Cuba, Spanish exports totalled 51,000 million pesetas in 1995 and 59,000 million pesetas in 1996. Imports from Cuba totalled 11,000 million pesetas in 1995 and 16,000 million in 1996. The balance of trade at present stands at 355 per cent. Neither Spanish trade with Cuba nor Cuban trade with Spain seem to have suffered any great harm. When referring to concrete Spanish interests, we would have to state what specific interests have been damaged by a given policy, for as I say, the figures

for economic and trade relations between Spain and Cuba really indicate exactly the opposite.

As to the matter of the appointment of an ambassador.... There has been no political decision not to appoint one. In light of our overall relations with Cuba, Spain will appoint an ambassador whenever she decides the time is right, all things considered, and again we must not forget that if this situation has arisen, it is because of the withdrawal of the placet to the Spanish ambassador – an absurd, disproportionate and unwarranted act from the standpoint of international politics in any country. The ambassador was naturally eminently qualified to be a good ambassador there for Spain, just as all our diplomatic staff properly look after our interests in Cuba now – interests which are moreover part of the common position of the European Union with respect to Cuba and of the joint declaration of Viña del Mar by all the Heads of State and Government of Ibero-America. That will be the stance of the Government, which will seek gradually to restore normal relations and will continue to defend human rights and freedoms in Cuba...".

(*DSC-P*, VI Leg., n. 95, pp. 4795–4796).

Also, on 19 November 1997, the Minister of Foreign Affairs, Mr. Matutes Juan, addressed the Senate in full session to reply to a question on whether the Government is in a position to appoint a Spanish ambassador to Cuba, in the following terms:

"The reason for the lack of an ambassador in Cuba was the withdrawal of the placet originally granted to the Spanish ambassador Mr. José Coderch. The arguments proffered by the Cubans were absolutely insufficient to warrant such a measure, and this is what caused the present situation, one that the Government neither sought nor desired.

Having said this, the Government is resolved to advance, and is advancing, progressively and correctly towards the normalisation of its relations with Cuba.... I should stress that in the meantime all other aspects of our relations are running quite satisfactorily – that is, trade has clearly increased over the last few years; Spain is continuing her humanitarian cooperation and is in fact working within the European Union to achieve a substantial increase in European humanitarian aid.

In this context the Government intends to request a placet for the new ambassador whenever it judges the time to be right and circumstances so dictate.

(...)

At the present moment, to set a deadline would only weaken Spain's negotiating position.

(...)

The Embassy's relations with the Cuban Government and institutions are likewise proceeding quite normally, with appropriate coordination by the central services of the Ministry of Foreign Affairs.

(...)".
(*DSS-P*, VI Leg., n. 66, pp. 2758–2759).

VII. TERRITORY

Note: See XVII.1. *a) Nuclear Weapons*

1. Colonies

Note: See VIII. 1 Fisheries, XIII. 3 Institutions.

During the 52nd United Nations Session Period, the Spanish Representative on the Special Political and Decolonisation Committee (Fourth Committee), Mr Pérez-Griffo, made the following statement regarding the situation of Gibraltar:

"Despite the undoubted successes of the United Nations in the field of eliminating colonialism, the last survivors of the colonial epoch still remained a focus for the Organisation's attention. There were no panaceas for colonialism. In most cases, colonial peoples had exercised their own right to self-determination, and that principle was equally applicable to most of the remaining territories under colonial rule. Colonies established on the territory of other States were a different matter: there, decolonisation could be accomplished – and there was no alternative – only by re-establishing the territorial integrity of affected States. Gibraltar fell into the latter category. Keeping that last colony on the European mainland did not sit well with contemporary world realities and in particular with the fact that both Spain and the United Kingdom were members of the North Atlantic Treaty Organization and the European Union. Gibraltar, which geographically and historically was an integral part of Spain, was unlike other colonial territories which had been seized by force, in that it had been turned into a military base by the colonial Power. The address to the Fourth Committee by the Chief Minister of Gibraltar should not fool anyone: Gibraltar was a colony of the United Kingdom, although the actual inhabitants of the territory were not a colonial people. The people in question were not the indigenous population, they were the descendants of British settlers and people brought there by the colonial Power to develop trade and service the military base. As a result, the principle of self-determination was inapplicable there. That was the gist of General Assembly Resolution 2353 (XXII) of 19 December 1967.

77. There was a completely clear, settled and unambiguous United Nations doctrine on Gibraltar which in essence treated the decolonisation of Gibraltar as a question of restoring the territorial integrity of a State. General Assembly Resolution 1514 (XV) of 14 December 1960 declared that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country was incompatible with the purposes and principles of the Charter

of the United Nations. In a number of subsequent resolutions, the General Assembly had determined that the principle of territorial integrity was entirely relevant to the question of the decolonisation of Gibraltar. In its Resolution 2429 (XXIII) of 18 December 1968 in particular, the Assembly urgently called on the administering Power to terminate the colonial situation of Gibraltar. Beginning in 1985, bipartite talks between the Governments of the United Kingdom and Spain had been held as provided for in the Joint Statement signed in Brussels. Unfortunately, since 1988 the Gibraltarian local authorities had not taken part. Spain was resolutely in favour of dialogue, and its Government was filled with resolve to continue the talks process in a constructive spirit in the expectation that the talks would put an end to the dispute over Gibraltar.

78. Spain's priority right to sovereignty over Gibraltar in the event that it ceased to be British was discussed in the Treaty of Utrecht itself. Also, the Spanish authorities had repeatedly stated their complete readiness to ensure due respect for the legitimate interests of the inhabitants of Gibraltar and their distinctive way of life as part of a final, negotiated settlement of the dispute that would presuppose the re-establishment of Spain's territorial integrity in accordance with General Assembly resolutions. As the Spanish Minister for Foreign Affairs had noted in his address to the General Assembly, Spain was prepared to make a very generous offer which, once Gibraltar was reintegrated with Spain, would allow the inhabitants of the colony not only to keep their distinctive way of life, but also to improve their economic situation and consolidate their political and legal status".

(UN Doc. A/C.4/52/SR.6, pp. 11–12).

On 28 February 1997 the Foreign Ministry's Diplomatic Information Office issued the following communiqué on Spanish sovereignty over the isthmus of Gibraltar:

"On the pretext of replying to an article on Hong Kong, the British Ambassador has written a letter to the newspaper *ABC* containing statements which the Spanish Government cannot leave unanswered.

Spain only recognises the sovereignty of the United Kingdom over Gibraltar in the terms of Art. X of the Treaty of Utrecht.

As regards the Isthmus, forcible occupation of this land since the 19th century does not entitle the United Kingdom to sovereignty, since under International Law such illegal occupation does not constitute sufficient title and for that reason is not and has never been recognised by Spain, who considers herself the only legitimate holder of sovereignty over that territory.

Furthermore, in the Joint Spanish-British Declaration of 2 December 1987 on use of the airport, and likewise in various meetings of EC institutions, the United Kingdom has acknowledged the existence of a dispute with Spain over the sovereignty of the Isthmus.

The Spanish Government agrees that the problem of Gibraltar between the United Kingdom and Spain needs to be settled through dialogue and believes that statements like the one mentioned do nothing to help create the atmosphere of understanding necessary to arrive at a solution to this dispute".

Replying to a question raised in the Senate as to the outcome of the meeting between the Spanish and British Prime Ministers regarding the Gibraltar dispute, the Government reported as follows:

"On 27 November last, the President of the Government made his first official visit to the United Kingdom. At the meeting the Prime Ministers dealt with numerous issues relating to the European Union, the international situation, and a number of bilateral issues, including Gibraltar.

In the course of the President of the Government's visit to Mr. Major, it was agreed to hold the Tenth Session of the Brussels Process in Madrid on 22 January next and to arrange a preparatory meeting of coordinators.

The President of the Government conveyed to his British counterpart the Spanish Government's firm resolve to include the issues of sovereignty and cooperation in the Brussels Process negotiations. As the Senator knows, from the outset of the Brussels Process only cooperation has brought clear results. So far, none of the issues of sovereignty have been addressed – that is, the return to Spain of the part of the Isthmus illegally held by the British for a century, and the retrocession of the territory ceded by the Treaty of Utrecht.

The Government is confident that this new session of the Process will mark a new British attitude to these negotiations. However, as the Senator knows, Mr. Major's government faces a general election next spring, so that negotiations with the Spanish government will be conducted by the British government that is elected then".

To a question in the Congress of Deputies as to its appraisal of Gibraltar's protest against Spanish policy, the Spanish Government replied thus:

"We reiterate our respect for the freedom of Gibraltarians to demonstrate. Spain obviously does not question that right.

As to the reasons claimed by the Gibraltarians, we must insist that the alleged Spanish harassment does not exist, nor is there any policy intended to curtail the Colony's rights within the European framework, as a territory whose foreign relations are in the hands of the United Kingdom.

The Gibraltarian authorities have lent themselves to an initiative based on the generalisation of two or three border incidents, which are insignificant if we consider the millions of people who cross the border every year, including thousands of Gibraltarians who travel daily to Spain and moreover take their leisure there without problems of any kind.

As to the relations referred to by the Senator, I must insist that the Spanish Government deals with the British Government, the sovereign power in

matters relating to Gibraltar, and that relations with our British friends and allies are excellent, as they were before the demonstration.

Spain remains open to dialogue and cooperation as envisaged in the process initiated by the Brussels Declaration, while naturally maintaining her claim to sovereignty. It is obvious that initiatives like this demonstration contribute nothing to creating the appropriate climate. It is therefore up to the Gibraltarians to consider the consequences of their actions".

(*BOCG-Congreso.D*, VI Leg., n. 174, p. 393).

Also, in reply to a question raised in the Congress of Deputies as to the steps taken to prevent tax fraud by companies registered in Gibraltar, the Government reported:

"The inspections carried out by functionaries of the Financial and Tax Inspection Department in previous years and which have now been prompted among other things by the need for fiscal control and regularisation of cases of tax evasion through tax havens, and Gibraltar is certainly one such haven.

In particular action is being taken in the following areas:

- Inspection of time-share complexes belonging to Gibraltarian companies:

The authorities are investigating and inspecting Gibraltar-based companies which operate time-sharing complexes on a club, share or community basis.

- Inspection of surplus value generated by property conveyances.

Cases of this kind involving conveyance by Gibraltar-based companies are being inspected.

- Inspection of property transfers to resident persons:

We are investigating – and prosecuting in most cases – transactions involving the transfer of properties to Spanish residents by Gibraltar-based companies.

- Inspection of the Special Property Tax on non-residents.
- Inspection of fiscal residence.
- Settlements in connection with the Special Property Tax on non-residents registered in Gibraltar.

Within the framework of the current biennial plan to improve tax compliance and further the fight against tax and customs fraud there are a number of inspection items targeting the use of tax havens in general, and hence these also concern Gibraltar-based companies. They involve the following areas:

- Control of property owning companies (compilation of a census of these, demand for the special tax, taxation of surplus value on property, etc.).
- Verification of other operations with tax havens and cases of international fiscal transparency.

And finally it reported that thanks to the continuity of these inspection initiatives and the steps taken by the Tax Management area, there has been a

downturn in the use of Gibraltarian companies, evidencing the increasing difficulties posed for them by the measures introduced by the Tax Administration".

(*BOCG-Congreso.D*, VI Leg., n. 207, pp. 189–190).

VIII. SEAS, WATERWAYS, SHIPS

1. Fisheries

In reply to a question raised in the Senate regarding the political and administrative representations made by the Spanish Government to the Argentine Government for release of the vessel *Arpón* and whether the Government intends to undertake any international action in defence of the vessel's interests, the Government reported:

"1) Facts:

On 13 May 1997 the Argentine Navy detained the fishing vessel *Arpón* and took it to an Argentine port, where it arrived on 14 May.

The grounds alleged by the Argentine Navy for the detention were that the vessel was found fishing without a permit inside Argentina's Exclusive Economic Zone. News of the detention was immediately relayed by the Spanish ambassador in Buenos Aires.

2) Reactions of the Government:

The Government to date has taken a number of immediate steps.

2.1 Of a technical nature:

It has commissioned and received, in very short order, detailed analyses of the location and the circumstances of the vessel's detention by the Argentine Navy. The Spanish conclusion in light of these analyses was that the *Arpón* had been fishing outside Argentina's Exclusive Economic Zone, going by the limits established by Argentine law.

2.2 Diplomatic:

In view of the foregoing, the Argentine ambassador in Spain was formally summoned and advised of Spain's concern at the detention.

On 30 May 1997, the Spanish ambassador in Argentina formally presented a note to the Ministry of Foreign Relations setting forth fully and clearly the Spanish legal opinion on the detention – effected outside the Argentine EEZ – and demanded the immediate release of the vessel and its crew.

The same opinion was conveyed to the Argentine Naval Prefecture (Interior Ministry) and to the Under-Secretariat for Fisheries.

2.3 Consular:

The Foreign Ministry's Department of Legal and Consular Affairs arranged the repatriation of all persons of Spanish nationality so requiring, up to a total of 22. These persons were further provided with funds for accommodation and transit in Buenos Aires for the purposes of repatriation.

2.4 Political:

In a context of excellent relations between Argentina and Spain, the Government directly conveyed Spain's concern to their Argentine opposite numbers at the very highest level and urged a speedy conclusion to the matter.

Outstanding in this connection was the President of the Autonomous Region of Galicia, who intervened personally with President Menem during his visit to Buenos Aires.

3) Argentine position:

The Argentine authorities accused the *Arpón* of violating the Argentine Fisheries Act 17,500, as amended by Acts 20,136 and 22,018, by fishing inside its Exclusive Economic Zone (Maritime Spaces Act 23,968) without permission. The Argentine authorities that have intervened in the case to date have been interpreting their own Act regarding the limits of their EEZ differently from the Spanish Government and the owners of the *Arpón*.

An administrative Decision of the Argentine Interior Ministry's Naval Prefecture dated 11 June 1997 sanctioned the vessel with a fine of 80,000 US dollars and the confiscation of the fish in her hold and her fishing tackle.

The owners appealed to the competent Argentine court, which on 19 August 1997 ordered the release of the vessel upon presentation by the owners of a deposit or bank guarantee or a bail bond of 100,000 US dollars to cover the fine imposed by the Naval Prefecture and the legal costs.

4) Other measures taken by the Government:

4.1 With the vessel's owners:

Since 14 May last, the Government has maintained close and constant contact with the company through the Ministries of Foreign Affairs and Agriculture, Fisheries and Food, including the interchange of technical and legal information with the Association of Owners of Hake Freezer Vessels (Anamer). These contacts are still going on at present.

4.2 With the Argentine authorities:

In the multifarious diplomatic representations made in Madrid and Buenos Aires since last May, the Government has formally proposed to the Argentine nation the undertaking of bilateral technical conversations to establish a system that precisely delimits the Argentine Exclusive Economic Zone in a manner clearly accessible to Spanish vessels fishing in areas close to that EEZ.

The Ministries of Foreign Affairs and Agriculture, Fisheries and Food are quite ready and willing to work with the Argentine authorities to clarify the limits of Argentina's Exclusive Economic Zone.

So far there has been no response to the Spanish request from the Argentine authorities.

4.3 For the moment no representations have been made to the organs of the United Nations, but such a move is not ruled out for the future".

Since the 1995 fisheries Agreement between the European Union and the

Kingdom of Morocco there have been several cases of detention of Spanish fishing vessels by Moroccan patrols. Replying to a question in the Congress of Deputes regarding these detentions, the Government stated:

"1. Since the Agreement on cooperation in maritime fisheries between the European Union and the Kingdom of Morocco, there have been 23 detentions by Moroccan patrols, '14 during the first year of the Agreement and 9 from 1 December 1996 to date' ....

2. Of the 23 vessels detained, 20 were released upon payment by the owners of the fine imposed by the Moroccan authorities.

The other three vessels were released without any kind of sanction following sojourns in a Moroccan port to verify the allegations.

Payment of the fine imposed by the Moroccan authorities does not entitle owners to any compensation from the Spanish Government. (Some kind of compensation, if appropriate, could only be secured through legal action and an order from the competent court.)

3. As the European Union is a party to the Agreement for cooperation on maritime fisheries, it is up to the European Commission to undertake all necessary representations and verifications in defence of the interests of the Community fishing fleet. The Spanish authorities advise the Commission on verifications and support for any detained vessel.

More specifically, the Ministry of Foreign Affairs, the Spanish Embassy in Rabat and the Spanish Consulates in Morocco have consistently made representations to the competent Moroccan authorities in defence of the interests of any Spanish shipowners and crews involved and have provided all necessary legal and humanitarian support in every case. The most recent instance of this has been the high-level bilateral negotiations carried on in response to the latest detentions.

It must be said, however, that the number of detentions has dropped considerably since the coming into force of the new agreement on cooperation in maritime fisheries between the European Union and Morocco".

(*BOCG – Congreso. D*, VI Leg., n. 125, p. 379).).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

Addressing the 52nd session of the United Nations General Assembly, the Spanish representative, Mr. Matutes Juan, referred particularly to the subject of the environment:

"I would like to underline in this respect the importance that the Spanish Government attaches to environmental matters and our special interest in the problem of desertification, which affects Spain so directly. I wish to note in

this context that my country is presenting the candidature of Murcia as headquarters of the permanent secretariat of the Convention to Combat Desertification. I am convinced that Murcia would be an excellent headquarters, and I therefore ask members for their support.

(...)".

(UN Doc. A/52/P.V.13).

Replying to a question in Congress regarding the Government's expectations as to the suspension of the contribution to the United Nations Environment Programme, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, stated as follows:

"The Spanish voluntary contribution made by the Ministry of Foreign Affairs was 635,000 dollars in 1994, 899,000 dollars in 1995 and 776,000 in 1996.

At the 19th session of the Governing Council of the United Nations Environment Programme, held in Nairobi on 27 January, one of the subjects scheduled for approval was the reform of the UNEP governing structures. The European Union, the United States and a group of West European and other countries favoured the creation of an inter-session body to advise and guide the executive director and help her prepare the work programme and budget... The Group of 77 and China opposed the proposal... The United Kingdom, the United States and Spain announced the provisional suspension of their contributions until the matter was settled.

The Council reconvened on 3 and 4 April, and finally an agreement was reached on structural reform. According to this agreement, a high-level committee of ministers and senior civil servants will be set up as a subsidiary organ of the Governing Council. It will have 36 members, elected for two-year periods on the basis of national representation and will meet at least once a year in Nairobi.

The permanent representatives committee is also retained. Its mandate has been defined and it is to meet four times a year. The problem, then, was one of administrative efficiency, cost reduction and structural reform to improve effectiveness. This objective has been accomplished, and therefore the Spanish Government, through the Ministry of Foreign Affairs, intends to deposit its voluntary contribution for this year as soon as possible. It will be larger than last year's".

(*DSC-C*, VI Leg., n. 185, pp. 5163–5164).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

With regard to conditions for bringing Spanish development cooperation and

assistance up to 0.7% of the GDP, the Minister of Foreign Affairs, Mr. Matutes Juan, explained that:

"The commitment to solidarity made by the Party now in government at the end of 1995 with the representatives of the 0.7 platform, the development NGOs and their coordinating body includes the intention of achieving 0.7 of the gross domestic product during this legislature, provided that this does not prevent our meeting the target for reduction of the public deficit.

The fact that compliance is dependent on this condition, as was clearly stated when the undertaking was signed, is in no way an attempt to slide out of our commitment but is, as you well know, a matter of the responsibility that devolves on governments in general from the necessity of conscientious and rigorous public management, and in our particular case from certain requirements which will determine whether or not we are able to fulfil our commitments in the European Union and occupy a rank and position there consonant with our importance and our will.

(...)

The Government has not abandoned its intention to increase the cooperation budget, but it cannot do so at any price, and certainly not by a means that will make it harder to meet the criteria for European monetary convergence. Nor are we so naive as to set an exact date... for fulfilment of the target figure, which in any case is not a magic number that will somehow guarantee better development for the potential beneficiaries"

(*DSS-P*, IV Leg., n. 32, p. 1305–1306).

Appearing before the Congress Commission on Cooperation and Development Aid, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, reported on the implementation of the 1996 budget for Official Development Assistance (ODA):

"As to budgetary implementation in the area of the Spanish Cooperation Agency, the initial budget for 1996 was 19,061 million pesetas... However, the ODA credit extension mechanism raised the Agency's initial budget, so that the amount finally available was 32,000 million pesetas as compared to the original 19,000 million.

The overall implementation for the whole of the Agency's budget indicates that obligations valued at 26,047 million pesetas were honoured, which represents 86.25 per cent implementation. In light of this figure, I doubt whether the agency's budgetary implementation can be further improved, although we hope to do so in 1997....

(...)

To summarise what I have just told you, the budgetary implementation executed directly by the Secretary of State's Office in 1996 was good; all the budget resources placed at the Office's disposal for grants to NGOs were used up.

As regards the Spanish Cooperation Agency, despite the difficulties arising

from the budgetary structure for approval of extendable credits, it must be said that there was an improvement on previous years...".

(*DSC-C*, VI Leg., n. 169, pp. 4668–4669).

Also, addressing the Congress Commission for Cooperation and Development Aid, the Secretary General of the Spanish International Cooperation Agency, Mr. Espinosa Fernández, reported on the fulfilment of forecasts, commitments and actions set forth in the Annual International Cooperation Plan for 1996 and Official Development Assistance for 1996:

"In Spain we spent 160,315 million pesetas in 1996 on international cooperation for development. This means that ODA represented 0.22 per cent of the gross national product (GNP).

The first thing that the figures tell us is that the total funds allocated to ODA were 4.6 per cent down on 1995 and that the ODA/GNP ratio fell by 2 per cent....

Cooperation for development falls into two broad areas – multilateral and bilateral. From the standpoint of these two components, the results for 1996 tell us the following: multilateral cooperation, at 48,830 million, was down 26.6 per cent on 1995; bilateral cooperation, country to country, at 111,485 million, was up 9.8 per cent on 1995...

Multilateral cooperation ... multilateral cooperation encompasses the quotas and contributions that our country makes to multilateral international organisations but excludes programmes that are implemented directly with the beneficiaries of the aid.

Spain carries on this kind of cooperation through the following channels: 1) contributions to the European Union; 2) contributions to international financial organisations; and 3) contributions to non-financial international organisations. As I said before, the expenditure for 1996 totalled nearly 49,000 million. Contributions to the Union are made as follows:

A) The European Development Fund. The European Development Fund (EDF) is an extra-budgetary organisation whose purpose is to channel the aid that the European Union gives to signatories of the Lomé Convention and to ACP (Africa, Caribbean, Pacific) countries.

The Spanish contribution to the 7th EDF in 1996 was 8,953 million pesetas, that is 6,733 million less than in 1995. The reason for this decrease was that Spain and the other member countries all cut down their contributions to the 7th EDF to take up a European Union cash surplus from previous years.

(...)

In 1996 the Spanish contribution to the EC budget for ODA was 25,132 million pesetas. In reality our contribution was 37,891 million, but the latter figure includes aid for Eastern countries and other miscellaneous expenses that do not qualify as ODA, although they do qualify as aid to countries in transition.

... we also contribute to international financial organisations. Spain's membership of these organisations (World Bank, International Monetary Fund and the big regional development banks like the Inter-American Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, etc.) has now built up a measure of tradition whose practical consequences are that Spain contributes to funds which these institutions channel to developing countries to finance imports and development projects or simply to ameliorate their balance of payments.

Spain's contribution in 1996 was 2,684 million pesetas, considerably less than in 1995. I have already mentioned the reason for this drop – the disbursements to these organisations are not annual but vary according to the calendar drawn up by their governing bodies....

... we also contribute to non-financial international organisations. The purpose of organisations and bodies of this kind is to promote international cooperation in the fields of education, culture, science, work, etc.

Spain contributed a total of 40,983 million pesetas to these institutions, but only 12,061 million pesetas qualify as ODA; this amount represents contributions to multilateral organisations on the *ad hoc* list compiled by the OECD Development Assistance Committee – that is, the FAO, Unesco, UNDP, UN, etc.

Then comes the most important part, which is bilateral cooperation. Bilateral cooperation embraces development programmes and activities involving the donor country, Spain, and either the beneficiary country or a non-governmental organisation devoted to development. Expenditure on bilateral cooperation in 1996 totalled 111,485 million pesetas, that is 9.8 per cent more than in 1995. There are two types of transaction in bilateral cooperation – reimbursable and non-reimbursable.

Reimbursable cooperation consists of loans granted to governments or public institutions of beneficiary countries for the purpose of financing cooperation projects in the fields of education, health, transport, energy and so on.... This heading includes DAF credits. As you know, these credits are tied to the acquisition of Spanish goods and services by the beneficiary, although in special cases they may be classed as credits and financial aids not subject to that condition....

The net disbursement of DAF credits classed as ODA totalled 40,212 million pesetas in 1996, that is 14 per cent more than in 1995....

Non-reimbursable bilateral cooperation embraces all transactions in money or goods which entail no debt for the beneficiary country. This heading includes cancellation of foreign debt, technical assistance, food aid, emergency aid and contributions in support of national or international NGOs. The central administration and regional and local authorities participate in all these cooperation activities with the exception of debt cancellation.

Total expenditure on this item for 1996 was 71,403 million pesetas, that is 8

per cent more than was spent on this type of cooperation in 1995. These funds were used in the following ways:

A) Debt cancellation. These transactions take place upon conclusion of negotiations at the Paris Club on requests for restructuring of the foreign debt of developing countries which find themselves unable to service their foreign debt as contracted. In 1996, Spain cancelled debts of developing countries to the amount of 15,261 million pesetas, that is 100.6 per cent more than in 1995. The countries that benefited from this type of assistance were Honduras, Burkina Faso, Congo, Mozambique and Niger. The largest beneficiary was the Congo, with 13,518 million pesetas of debt cancelled.

(...)

In 1996, a total of 56,012 million pesetas was spent on programmes/projects, that is 4.5 per cent less than in 1995. The bulk of this reduction came from cutbacks in funding for technical, cultural and scientific cooperation.

As regards the relative participation of the various levels of public authority in the implementation of development cooperation programmes/projects, it is worth noting the consolidation of the part played by regional and local authorities in this process – what has come to be known as decentralised official cooperation.

(...)

According to the records of the Annual International Cooperation Plan (*PACI*), decentralised official cooperation in 1996 totalled 17,729 million pesetas. Of this total, 10,688 million was furnished by local authorities. This means that the relative contribution of authorities in 1996 was as follows: central administration, 74 per cent; regional authorities, 15 per cent; and local authorities, 10 per cent. In fact decentralised cooperation now accounts for 25 per cent of all non-reimbursable bilateral cooperation...

Of the total ODA for 1996, decentralised assistance accounted for 11 per cent.

Regional governments contributed 6.7 per cent of all official development aid. Among the regions themselves there was considerable disparity of contributions, but the largest contributors were the Basque Country, Andalusia, Navarra, Catalonia and the Valencian Region, all of which spent more than 900 million pesetas on development cooperation.

(...)

Geographic distribution of bilateral ODA. Sixty per cent of the aid given under bilateral cooperation went to Ibero-America, followed at a distance by sub-Saharan Africa and North Africa with around 15 per cent apiece. Independent analysis shows that the geographic distribution is similar for decentralised official cooperation and the NGO grants programme.

If we consider all bilateral cooperation – that is, if we include DAF credits – we find that the distribution is as follows. The Ibero-American area received 46.6 per cent of cooperation resources, the principal beneficiaries being Ecuador, Bolivia, Argentina, Nicaragua and Peru. North Africa and the

Middle East received 9.4 per cent, the chief beneficiaries being Morocco and the Palestinian Territories. Sub-Saharan Africa received 27.6 per cent, the principal beneficiaries being Congo, Angola, Mozambique and Equatorial Guinea ... Asia and Oceania received 14.7 per cent of bilateral ODA, which consisted chiefly of DAF credits. The chief beneficiaries were China and Pakistan.

As to distribution by sectors, the largest portion of the official aid given under non-reimbursable bilateral cooperation was for social infrastructure and services, which accounted for 37 per cent of the total. This sector encompasses health, population, purification, water supply, government and civil society.

General assistance programmes, which include debt cancellation, accounted for 24 per cent. This marked a considerable increase, the chief beneficiaries of which were, as we have seen, the sub-Saharan countries.

(...)".

(*DSC-C*, VI Leg., n. 270, pp. 7798–7800).

Regarding the situation of joint financing in projects submitted by NGOs in the European Union, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, estimated thus:

"... the system of funding of European Union projects can be highly elaborate, depending on the line. However, the basic line is joint funding of projects – development projects in developing countries and awareness-raising projects in Europe – under which all kinds of Community NGO projects are jointly financed ... the Commission's contribution may not normally exceed 50 per cent of the project and may never exceed 75 per cent, and it is intended for all kinds of projects aimed at improving the living conditions of the beneficiary populations in developing countries.

(...)

As regards the updating of Spanish NGOs, our statistics suggest that there is some lag, which is understandable enough given that our NGOs did not qualify for European funding until 1986. Thus, in the period 1976 to 1993, 26 Spanish non-governmental organisations – 3.9 per cent of the total – received EC funding for 215 projects. This means that they received only 3.85 per cent out of an overall total of 41 million ecu, equivalent to 5.81 per cent of the total for the Union. I can provide you with all these figures. However, since 1993 the Spanish NGOs have been cutting down the gap of previous years,... This year, out of a total of 285 NGOs receiving grants from the Union, 15 were Spanish and we had moved from one to 5.26 per cent for 38 projects, that is 6.34 per cent, and funding totalling 10.8 million ecu. This amount of nearly 11 million ecu represented 8.3 per cent of total EC funding for NGOs as compared to 5 per cent in the previous period, that is higher than Spain's part of the overall EC budget, which as you know is around 6 per cent.

If we look at other countries, obviously the EC States that receive the

biggest shares are the big four – the United Kingdom, Germany, Italy and France at the head. In the case of Italy the figure was in the region of 20 million ecu....

(...)

... the cooperation movement needs to be professionalised and requires not only the impulse to help but also study, training and knowledge. It has become a field in which a simple religious impulse and will are not enough; it entails action carrying a grave responsibility, that of contributing to the development of poorer countries through plans sometimes involving infancy and education – plans that require training and reinforcement of our non-governmental organisations.

One aspect that deserves special mention is the growing capability of our NGOs as they take their place in the mainstream of non-governmental organisations. This also has been, and will continue to be, in part thanks to joint funding.

(...)

Moreover, I believe it is right and proper, for in this way non-governmental organisations remain in touch with civil society. If we create financing mechanisms for non-governmental organisations that operate solely with public funds, then we will turn them into official government agencies with public money...".

(*DSC-C*, IV Leg., n. 320, pp. 9401–9402).

In reply to a parliamentary question on the International Cooperation for Development Bill, the Government reported that:

"1. Spanish development cooperation policy has changed radically in recent years. Spain, once a recipient of foreign aid is now the world's twelfth net contributor.

This change has had certain consequences:

- A major increase in the funds allocated to development cooperation.
- A widening of the geographic scope of our development cooperation and growing diversification of increasingly complex programmes and projects.
- Diversification of the agents of Cooperation: the State Administration is no longer the sole actor but has been joined by other public authorities, non-governmental organisations and other institutions.

2. The 1992 report of the Congress of Deputies on objectives and general lines of Spanish policy on development cooperation and assistance, and the 1994 Senate report on the same subject, both referred to the need for a norm to regulate this set of new elements, which would help eliminate the gaps and snags revealed in practice by our development cooperation. This required:

- Definition of the principles, objectives and priorities of Spanish development cooperation within the overall framework of our foreign policy.

- Creation of a suitable planning mechanism capable of properly defining the principal objectives and evaluating the results of the activities undertaken.
- Definition of an organisational structure for our development cooperation.
- Identification of material and human resources.
- To take into account the social context of cooperation.

(...)

4. All these points are addressed by the White Paper:

4.1 Chapter One defines the legal concept of Development Cooperation and lays down the principles, objectives and priorities of our development cooperation policy, the end purposes being to help in the fight against poverty in its diverse forms and to enhance Spain's international relations.

Also defined are the geographic and sector priorities of our cooperation in line with foreign policy objectives and strategic, economic and commercial considerations.

4.2 Chapter Two creates a planning mechanism on two levels: four-year Master Plans setting forth guidelines on resources, and Annual Plans which would implement the terms of the Master Plans.

4.3 The White Paper defines the governing organs of Spanish development cooperation policy, stressing the role of the *Cortes* in the laying down of basic guidelines and detailing the functions allotted to the Government, the Ministry of Foreign Affairs and other ministries.

It should be stressed that the White Paper also refers to three important collective organs:

- The Council for Development Cooperation, a consultative body consisting of social agents, private institutions and experts.
- The Inter-territorial Commission for Development Cooperation, a body for coordinating and liaising among the various public authorities.
- The Inter-ministry Commission for Development Cooperation, a coordinating office of the General Administration.

4.4 Chapter Four of the White Paper deals with the material resources of cooperation, distinguishing between multilateral instruments (contributions to various international organisations and contributions to EU development cooperation programmes) and bilateral instruments (resources managed by the Finance Ministry according to its own rules, and resources managed by the Foreign Ministry, linked to programmes and projects for social development of beneficiary populations).

On the human resources side, Chapter Five deals with the personnel working for the General State Administration in the field of Official Development Cooperation.

4.5 Finally, Chapter Six addresses cooperation in a social context, implementing the Government's resolve to foster the activities of Non-

Governmental Development Organisations for Development (NGDOs) and other social agents operating in this field through grants and tax incentives subject to current regulations.

The White Paper also refers to Voluntary and Alternative Social Service (substituting military service) as channels for development cooperation activities. It concludes by proposing that the public authorities in various ways promote awareness in Spanish society of the problems that affect developing countries.

In conclusion, this White Paper reflects a broad political consensus on development cooperation, and there is therefore every likelihood of all the parliamentary groups agreeing on the overall content.

It also satisfies the Government's desire to create a legal instrument that accurately echoes the social reality of Spain and will hence provide a suitable framework in which the energies of that society can be effectively channelled into activities with a high solidarity content, which are of undoubted importance for domestic policy and at the same time enhance Spain's presence on the international scene".

(*BOCG*, n. 174, 12.9.97, pp. 167–168).

Appearing before the Congress in full session to discuss the International Development Cooperation Bill, the Minister of Foreign Affairs, Mr. Matutes Juan, argued in favour of:

"... numerous equally important factors, of which I will mention only the following: the major increase of funds allocated to development cooperation over the last few years – in fact, twenty years ago Spain was a net receiver of aid and is now a major donor. Secondly, the expansion of the geographic scope of our development cooperation and the increasing diversification of programmes and projects. And thirdly, the appearance of new actors in the field of cooperation; the State Administration is no longer the only protagonist, but has now been joined by the public authorities on other levels, by non-governmental organisations and by other social agents.

The Government is aware of this situation and the attendant social demand and has therefore submitted a bill to the *Cortes* proposing an appropriate legal framework for our cooperation which takes into account both the quantity and the quality. The current bill incorporates the essential principles of development cooperation based on a broad consensus. It has been drafted bearing in mind not only the opinions of the various ministerial departments involved in this field but also the Congress and Senate reports already mentioned, the recommendations of the OECD Development Assistance Committee and the points of view of civil organisations involved in development cooperation.

The bill does not deal exhaustively or in detail with all aspects relating to cooperation, but rather proposes a regulatory framework laying down general guidelines, many of which will require implementing legislation....

In conclusion, ... I should say that we have sought to draw up a legal instrument that effectively reflects the reality and the wishes of Spanish society and will thus constitute a suitable framework through which to channel our society's energies into truly meaningful activities in the context of the universal struggle against poverty".

(*DSC-P*, IV Leg., n. 112, pp. 5668–5669).

2. Assistance to Developing Conntries

a) Ibero-America

Appearing before the Senate Commission on Ibero-American Affairs to report on the Ibero-American community of nations and its consolidation following the Summit of Heads of State and Government, the Secretary General of the Spanish International Cooperation Agency, Mr. Espinosa Fernández, explained:

"Ibero-America, the Mediterranean and Europe are the three cornerstones of our foreign policy. Of these, Ibero-America is undoubtedly the most important for historical, cultural, linguistic and also sentimental reasons, and indeed Spanish foreign policy cannot be understood in isolation from the Ibero-American dimension. It is well to remember here that article 56 of our Constitution assigns to the King the position of supreme representative of the Spanish State in international relations, with an interesting addendum, to wit: 'especially with the nations of our historic community'. This article should not therefore be taken as a mere declaration of intent but as a genuine constitutional mandate.

What makes the relations between Spain and Ibero-America special is not simply the fact of over three hundred years of shared history, but also the fact that Ibero-America is the West and is therefore closely tied to Europe and to Spain in particular.

(...)

So, from this viewpoint it can be readily understood how important for us is the process of Ibero-American Summits of Heads of State and Government which, as the heading of this intervention indicates, is making a fundamental contribution to the consolidation of the Ibero-American Commumity of Nations.

In five hundred years of coexistence and over one hundred and seventy of independence, the Ibero-American family had never before achieved a meeting of Heads of State and Government. Today, we can say with satisfaction that there have now been six such meetings, the first in Guadalajara in 1991 and the latest in Viña del Mar last year.

What objectives does our country pursue in this process?

With regard to the purpose of these encounters, the President of the Government has cited four objectives:

- To build up an ever closer and more fruitful relationship among our countries and consolidate our collective identity.
- To improve the living conditions of our fellow citizens and the level of development of our societies through international cooperation rooted in the principle of co-responsibility.
- To provide a forum for reflection on the challenges and threats that endanger the cohesion and the balanced development of our societies.
- To provide a proper channel through which to share our political viewpoints vis-à-vis the challenges faced by the world as a whole.

Preparations for the Seventh Ibero-American Summit, which will take place on Margarita Island, Venezuela, are well under way, and the venues for forthcoming summits are fixed up to the year 2002. Next year will be Portugal, 1999 will be Cuba, 2000 will be Panama, 2001 will be Peru and 2002 will be the Dominican Republic.

However, the important thing is not the timing but to ensure that these summits produce useful results.

(...)

One of the founding principles is what we might call the 'code of conduct', drawn up in the wake of the Madrid Summit of 1992. This reaffirmed the commitment to representative democracy and respect for human rights and basic freedoms as cornerstones of the Ibero-American Community. It is only by safeguarding these values that the internal political, economic or social problems arising in these countries can be overcome. It further emphasises that dialogue and negotiation among all powers and collaboration among all social sectors, free from external interference, is the best way to strengthen democratic systems and prevent the kind of putsches that can lead to authoritarianism.

In addition, there is worrying evidence of certain tendencies and attitudes in favour of ignoring the founding principles and imposing solutions by force, something that cannot be allowed within the framework of Ibero-American conduct. For this reason the code rejects any attempt to in any way alter the institutionalised democratic order in our countries.

(...)

... one of the most visible aspects of the summits is cooperation. As the Ibero-American summits started to become institutionalised in 1991, a new page in cooperation among our countries was begun, within the broad framework of these meetings of Heads of State and Government which have been held ever since.

Ibero-American cooperation should be one of the mechanisms – the most tangible one – whereby these high-level meetings produce a material effect on citizens and societies, helping to advance their development and that of our identity as an Ibero-American community.

This cooperation has two principal features: it is an instrument which embraces most Ibero-American countries and at the same time it is an

instrument of the conferences of Heads of State and Government through which to implement initiatives that lend substance to our community and to the political will to strengthen the ties among the various different countries.

(...)

The cooperation flowing from these summits has a number of salient features: it includes all Ibero-American countries; its purpose is to reinforce the sense of Ibero-American identity as distinct from the rest of the world; it seeks to strengthen ties of solidarity among the component countries; it requires the active participation of a good number of countries to be effective; and it neither replaces nor overlaps with other forums of cooperation among our countries, for example at bilateral, regional or multilateral level.

This cooperation has to supply the content of the framework constituted by the resolutions of the conferences of Heads of State and Government, so that our citizens can see some of the actual effects flowing from the summits.

With regard to the legal framework, from the outset the summits took a series of cooperation programmes under its umbrella. To these were added numerous other initiatives presented by the various countries at successive conferences, but there was no body in charge of selection, management and monitoring. As a result the initiatives were highly dispersed as they were introduced at the successive summits, and there was no machinery to implement or still less finance them.

In light of this shortcoming, the Fifth Summit, held at Bariloche, adopted a Cooperation Convention within the framework of the Conference, and this has now become effective following signature by the various countries.. The Convention was published in the *BOE* on 3 April 1997, and its 'Operator's Manual', binding on us all, was published in the *BOE* of 23 September the same year.

Article 2 of this Cooperation Convention expresses the determination to reform the identities of the Ibero-American countries through the active participation of the members in common cooperation programmes that will strengthen their common ties of solidarity and promote a common dimension.

It further consolidates *de iure* the network of heads of cooperation whose task is to identify and prepare new programmes and to ensure that those already in existence function properly.

(...)

Thus, with the entry into force of the Cooperation Convention within the framework of the conferences, this cooperation body has established its credentials through the following programmes.

First in order of seniority is Ibero-American educational television. This is a programme designed to support the various different educational initiatives of the member countries by means of audiovisual broadcasts. It is also intended to serve as a channel for the diffusion of other Ibero-American Summit programmes. Spanish Television's international channel transmits two hours of special programmes daily. The satellite link is Hispasat and the

EFE News Agency is one of the main contributors to production. The two hours of broadcasting are divided into three bands covering subjects of cultural or educational interest, teacher training and advanced university-level training.

(...)

The second oldest is the MUTIS scholarship programme for cooperation in the development of doctorate programmes.

Within the area of further training of human resources, this programme, which commenced in 1993, is devoted to the training of researchers through actions targeting PhD students and direction of PhD theses. It allows doctorate programmes to be implemented in a coordinated fashion at two or more Ibero-American universities and facilitates the mobility of PhD students writing their theses for short periods of time compatible with their research.

(...)

The third oldest is the programme for literacy and basic education for illiterate adults. It is currently being implemented in four countries: Dominican Republic, El Salvador, Honduras and Nicaragua. Both Panama and Paraguay have applied to receive the cooperation offered by this programme. At the same time, countries like Costa Rica, Uruguay and Cuba are offering technical resources or personnel to help in its implementation, although it is up to the beneficiary countries whether or not they accept the teaching personnel from the offering country. The work consists essentially in literacy programmes timetabled to fit in with work. The ultimate aim is to eradicate illiteracy and thus help facilitate the integration of the various different social groups in these countries.

(...)

The fourth is the Programme of Scientific and Technical Cooperation for Development (CYTED). Its purpose is to foster collaboration and cooperation in pursuit of scientific and technological results that can be transferred to production systems and which positively affect the economic development of society.

The sixth programme is the 'Indigenous Fund'. This is a public international organisation created by virtue of a constituent convention signed in 1992 as a consequence of the Madrid Summit. Spain has allocated the Technical Secretariat of the Indigenous Fund two grants totalling 46,730,000 pesetas.

(...)

Seventh is the Programme of Cooperation for the Development of National Educational Quality Assessment Systems..

(...)

Eighth is the Ibero-American Programme for Common Design in Vocational Training ....

The ninth and last is the Ibero-American Programme of Modernisation of Educational Administrators, known as 'Ibermade'. Its purpose is to provide a

framework of ongoing training for persons occupying or earmarked to occupy executive positions at the various different levels of the educational administration. The programme favours the professionalisation, qualification and mobility of educational administrators. It is run by the OEA and the *AECI* has contributed 39 million pesetas".

(*DSS-C*, IV Leg., n. 190, pp. 2–6).

On 27 November 1997, the Minister of Foreign Affairs, Mr. Matutes Juan, appeared before the Congress Foreign Affairs Commission to report on the results of the Seventh Ibero-American Summit of Heads of State and Government organised around the theme 'ethical values of democracy'. As the Minister explained, the Summit Declaration consists of three differentiated parts. With regard to cooperation, the Declaration considers that:

"International cooperation is of itself a real ethical tie linking our societies. It should embrace the full spectrum of Ibero-American public and private institutions; it should follow the principles of broad participation, shared responsibility and effectiveness; and it should have objectives in order to achieve real advances and tangible results. In the course of the successive summits, a number of programmes have been adopted which lend substance to this cooperation and which are characterised by their diversity, by the variety of sources and means of implementation, and by individual difficulties in securing funding. Prominent examples of these are Ibero-American educational television, the MUTIS scholarships, the programme of adult literacy and basic education, and the CIDEU, an indigenous fund which has been considerably reinforced by this summit. New initiatives were approved in the spheres of culture, preservation of our common history, and small and medium enterprises. These new programmes are promotion of reading, Ibermedia, the Ibero-American Archives and Ibercyme".

(*DSC-C*, VI Leg., n. 344, p. 10175).

b) Cuba

Appearing before the Senate Foreign Affairs Commission, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, explained the Government's reasons and the economic and financial measures it had adopted to support investment by Spanish companies in Cuban enterprises.

"...the ultimate aim of Spanish policy towards Cuba – and we have stated this repeatedly – is to favour a non-violent transition to a democratic system that respects human rights and to a set of economic structures that will halt the deterioration of the living conditions of the Cuban population.

According to the European Union's common position on Cuba as approved on 2 December last, there is every probability that the transition will be a peaceful one if the present regime itself initiates such a process or makes it possible...

In the view of economists, the recovery of the Cuban economy over the last three years has been very precarious; it has been financed by short-term borrowing on highly onerous terms and cannot therefore carry on indefinitely. And at the same time there are beginning to be signs that it could be halted or even reversed if bolder measures are not taken, including at the very least the authorisation of small and medium enterprises. This analysis is shared by a former Finance Minister and member of the previous Government.

(...)

The common position later adds that in order to facilitate a peaceful change, the Union will remain willing, through its Member States, to undertake specific actions of economic cooperation in support of the aperture that is currently under way. In the hope that at some point the Cuban Government will propose to resume some slight measure of political and economic liberalisation, the immediate objective of Spanish policy will be to help create the necessary basic conditions to ensure that when it does come, the transition is carried though without violence.

I should say that Cuba today is a totally unarticulated society, lacking any social tissue between the all-powerful state and the individual. In Cuba there are of course no political parties, but neither is there any enterprise, association or institution that does not depend – to a greater or lesser extent but decisively in all cases – on the State. Given these conditions, a future collapse of the regime with no organised alternative to take its place, could lead to a scenario of chaos and anarchy that cannot be resolved except at a tremendous social cost.

(...)".

(*DSS-C*, IV Leg., n. 118, p. 16).

In reply to a parliamentary question on the projects of cooperation with Cuba that it has set in motion since May 1996 and intends to set in motion in 1997, the Government explained:

"Last June the Spanish Government decided to limit cooperation with and assistance to Cuba to humanitarian aspects. As a result of this policy decision, there was a change in the orientation of Spanish cooperation with Cuba, and this was implemented by the Spanish International Cooperation Agency (*AECI*) in coordination with the Spanish embassy and the Technical Cooperation Office in Havana.

Over the second half of 1996 we undertook a review of activities, identifying those that could continue under the new policy guidelines for Cuba and those that did not fit in and would therefore have to be suspended. Following a detailed study of the programmes and projects in progress, it was decided to suspend the following activities:

- Programmes for development of the financial and tax administration.
- A course in information technology for business management.

It was decided to continue the following projects:

- Programme of food and humanitarian aid. Under this programme Cuba has received 1210 tonnes of powdered milk, to be distributed by the NGO Cáritas Cuba, and 3667 kilos of medicaments to help alleviate the shortages affecting the Cuban population and the suffering caused by Hurricane Lily.
- A grant for rehabilitation of the building that is to house the future Spanish Cultural Centre.
- It was also decided to maintain Cuban participation in all applications for assistance in the Ibero-American sphere, such as the *AECI*'s general scholarship programme, MUTIS scholarships, the IBERCOMET programme, etc.
- Strategic Urban Development Plan.

Part of the budget originally allocated to the above-mentioned suspended actions has been diverted to an educational programme in collaboration with the Centre for Studies in Advanced Technology (*CETA*). Under this programme it was decided to deliver the following courses on scientific/technical and health subjects and training activities: course on 'update of theory and practice in viral hepatitis in children and adults'; 'Ibero-American course in hydraulic engineering applied to water supply systems'; and 'start-up of a centre for studies in urban agricultural and post-harvesting'.

In accordance with the Spanish Government's new policy of cooperation with Cuba, which is intended to help the people of Cuba without strengthening the institutions of her political regime and within the framework of the common position adopted on this issue last November by the Member States of the European Community, cooperation with Cuba will continue subject to the following general criteria:

1. Maintenance of food and humanitarian aid provided there are guarantees of direct distribution to beneficiaries by independent Non-Governmental Organisations".

(*BOCG-Congreso.D*, n. 158, pp. 127–128).

Again, appearing before the Congress Commission on Development Cooperation and Assistance, the General Secretary of the Spanish International Cooperation Agency, Mr. Espinosa Fernández, reported on humanitarian aid to Cuba:

"As you know, from the moment it came into power, the Government declared that under no circumstances would it deviate from the course of solidarity with Cuba, and still less humanitarian assistance. It might be well to recall that from June 1996 up to the present, Cuba has received 1,643 million pesetas in bilateral humanitarian cooperation in the broadest sense. I believe that this figure speaks for itself. And why? Because if we compare with the years 1993, 1994 and 1995 we will find that this cooperation has neither decreased nor remained static but has in fact increased by over 180 per cent.

This may be – and please excuse the repetition given that I have already stated this, perhaps unduly, and if so I apologise to the president – because the food aid for the years 1995 and 1996 was not sent in due time and this Government found itself obliged either to set it aside, since it was not its responsibility, or else to recover it by means of a credit extension and circulate it in 1997, which was what in the event it was decided to do. And so, I repeat, humanitarian aid has neither stagnated nor decreased, but has in fact more than doubled. For your information, the instructions I have from the Office of the Secretary of State and from the Minister – that is, directly from the Government – are to carry on with this policy of food aid, and that is what we intend to do. Any emergency, medical or other kind of assistance is a priority in this region as in any other, and we shall continue to support it and we shall continue to do the best we can and know how. Sometimes we fail not through lack of will but perhaps through lack of capacity.

As regards more detailed issues, 21 million have been distributed on this level through calls for proposals from NGOs, and 45 million through permanent open channels; 39 million in emergency assistance for Hurricane Lily; 360 million for food aid A (I say A to distinguish it from B, which follows); 225 million in food aid B, which is currently in progress – and so on up to the figure of 1600 million. I think this total is the key figure, which clearly demonstrates that the Popular Party Government has neither limited nor frozen humanitarian and emergency assistance to the people of Cuba but has in fact increased it".

(*DSC-C*, VI Leg., n. 361, p. 10660).

c) Lomé Cooperation

Appearing before the Commission on Development Cooperation and Assistance to report on the Government's evaluation of the modifications introduced in the Lomé Convention and the role of Spanish cooperation with African, Caribbean and Pacific States, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, stated:

"As you all know, European Union cooperation with ACP countries (ACP) is currently regulated by the Fourth Lomé Convention. Unlike its predecessors, which lasted five years, the Fourth Lomé-EC Convention, signed in Lomé on 15 December 1989, is to have a duration of 10 years.

Negotiations for review of the Convention commenced in M'bane (Swaziland) on 20 May 1994 and concluded in Brussels on 30 June 1995 after the Cannes European Council meeting approved the allocation of the 8th European Development Fund. The Fourth Lomé review was signed in Mauritius on 4 November 1995 while Spain occupied the presidency of the Union. This Convention introduced new clauses affecting three areas. Firstly, political and institutional issues: incorporation of a democratic clause allowing the suspension of cooperation in the event of violation of human

rights, democratic principles and the rule of law, as an incentive to pursue these courses; secondly, commercial issues: considerable improvement of the highly advantageous conditions of access for ACP products to the EC market; and thirdly, greater flexibility in other issues of procedures for programming of aid and direct budgetary assistance within the framework of structural adjustment.

During the Spanish presidency, the 8th EDF internal financial agreement was approved, and on 29 November last so were the internal regulations of the 8th EDF, which are due to come into force shortly.

And finally, it is worth noting that four EC countries have now ratified the revised Lomé Convention. As for Spain, following ratification by this House, it is now with the Senate. Once it has passed through this stage, it is hoped that the Convention will come into force during the first third of 1997.

Our country first participated in the Lomé system during the implementation of the 6th EDF, which covered the period 1985-1990. The 6th EDF achieved some improvement of the system plus a considerable increase in financial aid, which rose from 4636 to 8150 mecu, that is 6.6 per cent of the total. The percentage of total contracts awarded to Spanish companies was only 1.2, placing Spain eighth of the twelve Member States.

In the 7th EDF, which financed the first five-year period of Lomé IV (1990-1995) with a total of 10,800 mecu, we contributed 645 mecu, that is 5.89 per cent of the total, and our companies were awarded 3.19 per cent of the contracts, placing us sixth out of the twelve members.

At the present moment the 8th EDF, which covers the period 1996-2000, has yet to come into force, and so, in order to meet current outgoings – specifically for the running of the industrial development centre – authorisation is now being negotiated for some members to use unallocated 7th EDF funds on the understanding that once the 8th EDF comes into force, the 7th EDF will be reimbursed from there.

As the fifth contributor in order of size, Spain's share would be 750 mecu, that is 5.84 per cent. The largest shares would be paid by France (3120 mecu) and Germany (3000 mecu).

Of the total 8th EDF funds (12,967 mecu), 11,000 mecu will go to the ACP countries, largely in the form of grants. The major items among these are the grants reserved for funding of programmable national aid (6200 mecu), transfers (1800 mecu) and grants to support structural adjustment (1400 mecu).

I dare say there is no need to remind you that the main problem for Spain in the field of EC cooperation with the ACP countries is the low level of our returns...

And finally, we are devoting special attention to the programming as regards the countries belonging to our own cultural sphere or where our presence in trade or cooperation is greatest (Dominican Republic, Equatorial Guinea and Portuguese Africa among others).

The Commission, which has already approved the distribution of programmable resources for the 8th EDF, allocated 196 mecu to the Dominican Republic in the form of programmable assistance as compared to 85 mecu from the 7th EDF. With this increase it is hoped to put an end to the discrimination hitherto suffered by the Dominican Republic – and indeed the island – in the drafting of national guideline plans. Outwith the framework of Lomé IV, the Dominican Republic is receiving funds from the EC budget as financial aid and as projects with NGOs and the EIB (15 mecus) for risk capital and subsidised loans.

Equatorial Guinea for its part is one of the ten countries which will not be notified of a guideline amount. It is however planned to set up a reserve of 1207 mecu for countries to which aid has been suspended.

And finally, Angola is to be allocated 161 mecu and Mozambique 214 mecu.

The Overseas Countries and Territories (OCT) are not forgotten by the 8th EDF, which allocates them 135 mecu in grants and 30 mecu in the form of risk capital.

Next I should like with you to give a brief assessment of the European Union's development policy in the ACP region, with particular reference to Spanish interests. But first of all I should say – and this is a most important and necessary point – that if we want a better system then we need to acknowledge a glaring truth – that is, after twenty years of the Lomé Convention, the results have been disappointing. The competitiveness of the developing countries has diminished, conditions of access to the EC market have worsened and we have witnessed progressive deterioration of the terms of trade accompanied by growth of the gap between North and South.

(...)

As regards the programming of cooperation, criticisms have been levelled at the Convention's provisions on cooperation management to the effect that they are extremely complicated, highly bureaucratic and are the cause of the considerable delay in implementation of development programmes.

(...)

Changes in the Lomé Convention should continue along the lines described earlier in connection with returns. Such a revision of the Lomé Convention must take into account the following elements. Firstly globalisation, the logic of which is obvious from the viewpoint of the European Union as distinct from the viewpoint of the Member States. In principle Spain accepts the logic of globalisation but is at pains to prevent over-emphasis on the less advanced countries to the detriment of allocation of resources to Latin America, Ibero-America or the Mediterranean countries, none of which are LDCs (less developed countries).

Secondly, the Lomé reform must also take into account Spanish interests as regards foreign policy and cooperation policy. Whatever model is eventually agreed for Lomé must also serve these interests. Over the last

year, the outlines of EC policy regarding the Mediterranean have been clearly defined and adequate financing has been made available. Ibero-America is therefore the area that needs to be watched most closely when it comes to negotiating the various possible alternatives open to the Member States in changing the model of cooperation with the ACP countries.

(...)

It seems inevitable, then, that the model will be altered, at least in theory. Let us consider the possible alternatives in a preliminary approach based on the new ideas in the green paper. First of all, as regards geographic scope we can envisage two basic options, each of which can further be subdivided into two: to maintain the existing model or to dismantle the group of ACP countries... The latter option involves retaining a common core Lomé system for all the ACP countries and separate treatment on the basis of separate criteria for different possible groupings – regional groups, countries grouped by development indicators, or groups based on the political and economic situation of the ACP countries. A case apart is South Africa, where there is a different approach consisting in the establishment of a free trade area if the South African authorities decide to accept the EU offer.

(...)

Secondly, as regards spheres of cooperation, a new model must place more emphasis on respect for human rights, democratisation of institutions and good government, and more resources must be allocated to cooperation in new sectors. There are some sectors of growing concern for Europe, like the environment, which are addressed in the existing Lomé Convention but for which there is no specific allocation of resources. The result is that the governments of the ACP countries prefer to devote their resources to other ends.

And finally, there are other spheres of particular interest to Spain, such as combating drug trafficking, migratory problems and the reception of illegal immigrants by ACP countries, or the prevention of conflicts which are not covered by the existing model and which in Spain's view ought to be included in the next convention,

Thirdly, with regard to trade cooperation, since the WTO (World Trade Organisation) Marrakesh Agreement, it is becoming increasingly difficult to maintain the existing special trade regime, which could well eventually be declared incompatible by the WTO...

Fourthly, as regards programming and procedures, it will be necessary to prioritise strategy on cooperation procedures and to achieve a coherent set of instruments smaller in number and to stress the central role of the national guideline plan.

Fifthly, regarding the agents of cooperation, the Lomé Convention provides that all cooperation is to be carried on between governments. The Lomé IV revision allowed for more cooperation of non-governmental organisations and the private sector, but no direct link was established between the Commission and these potential agents.

Sixthly, there is the principle of partnership, which is the cornerstone of the cooperation model established by Lomé. This principle is manifest in all aspects of the Convention, starting with the actual convention negotiations...

Having set forth all these complex considerations, I should stress that it is early days yet to try and define what Spain's position will be, among other reasons because this involves not only issues of development cooperation policy, but also trade policy and foreign policy including our relations with the other Member States. It is because of this complexity that the negotiation is taking place in the General Affairs Council and not the Development Cooperation Council.

But as I have already noted, the Lomé model is not especially favourable to Spanish interests either in terms of geographic composition or returns to Spain. Having said that, on a preliminary general approach – and I stress that this is simply a first approach – the Spanish position would be along the following general lines:

As regards geographic scope, the best model is a common core – Lomé – with specific treatment based on levels of development. Moreover, explicit provision must be made for the incorporation of Cuba whenever it acquires a democratic regime, again in accordance with the common position. It is also desirable to examine the possibility of extending the system applied to the Caribbean region to Central America or other areas of Ibero-America such as Peru, Bolivia or Ecuador, ... Such an extension of the system to certain Ibero-American countries is one of the goals that we will be pursuing during the process of reforming the system; ...

As to trade preferences, the best option is to universalise the system of generalised preferences, if necessary accepting a review of them so that the ACP countries do not lose their existing level of preferences.

As regards spheres of cooperation, we have to insist, in the interests of Spain, on the need to attach political conditions to aid. We need to strengthen cooperation within the framework of the third cornerstone and demand from the ACP countries cooperation in the struggle against drugs and agreements for readmission of illegal immigrants.

(...)

With regard to funding, in 1999 the European Union will have clarified its financial prospects for the following five years. We need to globalise the funds that are devoted to EC foreign policy and tie our generosity towards the ACP countries through the European Union to the Mediterranean countries and the Latin American countries. The budget debate needs to be addressed, and as I have already said, our first reaction should be opposition, while reserving the right to change our position in light of whatever format the new Lomé model begins to take on".

(*DSC-C*, VI Leg., n. 169, pp. 4673–4678).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

a) Reform of the Charter

Addressing the Congress Foreign Affairs Commission on Spain's position regarding reform of the United Nations and the UN Security Council, on 15 October 1997, the Minister of Foreign Affairs, Mr. Matutes Juan, spoke as follows:

"The UN Secretariat has undertaken a process of internal discussion aimed at better adapting its internal structure to new needs. This process culminated on 16 July last with the presentation of a report with very clear proposals on reforms for the Organisation. The chief merit of this set of proposals is that it embraces both general reform of the Organisation's administrative structure and more broad-based proposals to enable the Member States to make maximum use of the Organisation itself. However, the Secretary General avoids addressing particularly sensitive issues which are the exclusive province of the Member States, such as reform of the Security Council and the current scale of quotas.... Spain supports these initiatives by the Secretary General.

As to reform of the Security Council, four years ago Spain presented a proposal to raise the number of non-permanent Security Council members by between six and ten. These new seats would be allocated to a given group of States that are most to the fore in the work of the Organisation, especially in peacekeeping and international security roles, and priority would be awarded to those States that have an especially important role in the execution of these tasks by reason of their particular population profiles and their material contributions to the United Nations. The States belonging to this group would take turns occupying the new seats allocated them, in a previously established order. The purpose of this proposal was twofold: firstly to guarantee the regular presence on the Security Council of a category of States which lack a permanent seat and hence can only sit on the Council very occasionally, and secondly to play an active part in the tasks of the Organisation. A further aim was to save this group having to compete for the non-permanent seats already allocated to the various regional groups, and also to provide better access to non-permanent seats for smaller states which have hitherto had difficulty in acceding to non-permanent seats as they have to compete with larger states.

In addition, Spain presented a proposal to limit use of the veto by the existing permanent members of the Council on actions that have to be approved within the framework of Chapter VII of the Charter.... This is intended to prevent abuse by permanent members and to make this body function in a more democratic manner that accords better with the present

structure of the International Community... . Subsequent to this Spanish proposal there was one from the United States to allocate a number of new permanent seats, further proposing that in view of all the run-up to the Assembly, the reform should be rushed through in these terms. Thanks to the concerted and well-argued opposition of Spain, Italy and other countries, the discussion was left pending, such a decision was not taken, and there is no likelihood of it happening. The main argument used by Spain was that a reform of such importance as that of the United Nations ought to be approved by a large majority, and if possible by general consensus of all States.

(...)".

(*DSC-C*, VI Leg., n. 301, pp. 8879–8880).

This position was defended by Mr. Matutes Juan at the 51st session period of the United Nations General Assembly, on 26 September 1997:

"I will now present the view of the Spanish government on the main aspects of the overall reform process.

I shall begin with the reform of the Security Council. The reform of the Security Council is a most sensitive task, involving an amendment to the Charter; it must therefore be undertaken carefully, without haste and on the basis of the broadest possible agreement. It must promote greater cohesion among the Organisation's members and not create tension and suspicion among them.

An increase in the number of members of the Security Council, and particularly of permanent members, is a much more contentious issue than the improvement of the Council's working procedures. The category of permanent members of the Security Council was created in historical circumstances which no longer apply. Furthermore, the enlargement of that category could create more problems than benefits. Therefore, we consider it wisest in the present situation to limit enlargement to the category of non-permanent members.

Current proposals for enlarging the permanent membership of the Security Council introduce formulas which tend to meet the legitimate interests of a few States, but fail to resolve serious problems raised for the vast majority of members of the Organisation, and so they cannot be positive for the United Nations as a whole.

As far as the veto is concerned, we propose that it be limited to situations involving Chapter VII of the Charter. In any case, proposals for the creation of permanent seats, with postponement of discussion as to whether these seats would or would not have the veto, are not very realistic.

(...)".

(UN Doc. A/52/PV.13).

And finally, the question of equitable representation on and increase in the membership of the Security Council was addressed by the Spanish representative, Mr. Arias, who made the following declaration:

"Important differences continue to exist on fundamental issues in the reform process of the Security Council.

On the one hand, we have achieved significant progress in the discussion of measures conducive to improving the working methods and transparency of the Council's activities. On the other hand, the difficulty of finding a basis for wide support for an increase in the membership of the Council has become evident. It is particularly difficult to reconcile the interests of the Member States or a group of Member States with regard to the category of permanent members. In this context, we must consider, at this stage, limiting enlargement to the category of non-permanent member.

There is virtual unanimity among Member States that enhancing the working methods of the Security Council and the transparency of its work is a very important element of the reform process of the Council.

It will also be necessary to pursue the consideration of compromise formulas on the question of reform of the decision-making process of the Security Council, including the veto. Spain has presented a specific proposal on this matter. On the basis of the distinctions established in article 27 of the Charter, we propose a differentiation of three types of Council decision: procedural matters, which would be adopted by absolute majority; substantive matters not related to Chapter VII, which would require a special qualified majority, without the right of veto; and substantive matters related to Chapter VII, which would require the same special qualified majority, but with the possibility of exercising the right of veto.

On several occasions, Spain has stated that the reform of the Security Council is a very complex matter that should be addressed thoughtfully through a process of dialogue leading to a common understanding among all Member States. In a matter as important and consequential as this, we must avoid any temptation to set time limits on this process.

Conscious of the importance of the process of Security Council reform, Spain joined the group of countries that sponsored draft resolution A/52/L.7, which has been submitted under this item. The draft resolution does not attempt to define specific modalities for a possible enlargement of the Council, but seeks to preserve the requirements necessary from a procedural standpoint to ensure that this reform achieves the necessary legitimacy.

In reaffirming that the reform of the Security Council must not be subject to an imposed time-frame and must be carried out on the basis of a general agreement, we seek not to hinder this process, but, on the contrary, to reflect the feeling of the great majority of the delegations that in a matter of such relevance, all the Member States should be provided with an opportunity to contribute fully to the deliberations, with a view to commanding the widest possible support for the reform of the Security Council.

At the same time, in our consideration of this issue, it is imperative that we conform strictly to the provisions and spirit of the Charter, particularly article 108, given the extraordinary nature and implications of any decision that

might be adopted with Charter amendment implications. A resolution defining the general framework of Council enlargement, even without specifying some of the elements involved or including textual amendments to the Charter, would have specific effects on the eventual nature of the reform and enlargement of the Council.

Can one seriously consider that a reform such as that upon which we are embarking – a significant revision of the Security Council, a decision that will have a critical effect on the future of this Organisation – can be undertaken without the support of at least two thirds of all Member States? From a legal point of view, we would be violating the Charter; from a political point of view, it would be an absurdity. Thus, such a resolution should fully respect the procedure laid out in article 108 of the Charter.

I wish to reiterate Spain's support for an increase in the membership of the Security Council that would make it more representative and more balanced and democratic, while at the same time maintaining a composition that allows for efficiency and speed in its deliberations and decision-making processes. Spain considers that such an increase would allow a more frequent presence on the Council of those States that contribute most significantly to the work of the Organization, in particular to the maintenance of international peace and security. These States could contribute even more to such purposes and could participate more often in the deliberations and decision-making of the Council.

We have not only the opportunity, but also the obligation to pursue this process without creating new divisions among Member States, so that we can gain the widest possible support for the reform of the Council. Only in so doing will we ensure the legitimacy of that reform".

(UN Doc. A/52/PV.63).

2. North Atlantic Treaty Organisation

a) Enlargement

With regard to the enlargement of NATO, on 24 March 1997, the Government replied thus to a question raised in the Senate:

"The enlargement of NATO to take in the democratic States of Eastern Europe is not an isolated process but is only one of a set of measures for the construction of a new European security system.

(...)

The Alliance in principle accepts the incorporation of all democratic East European States, which will enjoy all the rights provided by the Treaty, but they will also be bound by the obligations that this involves, such as the principles, policies and procedures accepted by all NATO members, or democratic control of their armed forces (which must be clearly subordinate

and answerable to the democratically elected authorities and must not constitute an autonomous power centre capable of influencing political life). Therefore, willingness and ability to adapt will be key factors determining the acceptance of new members.

From the outset, internal NATO studies have stressed a number of fundamental points:

1. The Alliance is not directed against the interests of any country. The Alliance will continue to be a purely defensive organisation whose basic objective is to defend peace in the Euro-Atlantic area and to ensure the security of its members.

2. Two key elements of cooperation on security will be maintained: the North Atlantic Cooperation Council, as it is or in the newly-planned form of the Atlantic Association Council which will replace and strengthen the former; and the Association for Peace.

3. NATO itself reserves the right to decide on enlargement. This will not happen *en masse* but will entail a case-by-case study of applicants.

4. The security interests of countries like Russia and the Ukraine will be taken into account. One of the key aspects considered will be the establishment of constructive relations with these countries.

In this context, what the Alliance plans to do is to invite all countries that have applied for membership and are in a position to comply with the rights and obligations entailed to initiate the accession process... and at the same time, if possible, to reach an agreement with Russia for stable, constructive relations based on mutual trust.

The attitude of the Spanish government has always been favourable to the enlargement of NATO as long as this takes place... through a steady, prudent process that takes full account of all the interests involved, as a means of augmenting the stability and security of Europe".

(*BOCG-Senado.I*, VI Leg., n. 174, p. 87).

The question of enlargement of the Alliance was also addressed by the President of the Government, Mr. Aznar López, appearing before the Congress in full session, on 17 July 1997, to report on the Madrid summit of NATO Heads of State and Government:

"The most important decision of the summit was the invitation extended to Poland, the Czech Republic and Hungary to commence negotiations culminating in their accession to the treaty.

(...)

We feel confident that the accession of these three new members can be formalised before the 1999 summit.

(...)

The invitation to the three countries mentioned to initiate accession negotiations was followed up by explicit confirmation that the Alliance is still open to the incorporation of new members who meet the requirements. In any

event, the important thing is that we have succeeded in arriving at the necessary consensus around a common denominator.

Like other allies, Spain worked hard in the days leading up to and during the summit to achieve this allied consensus on the issue of enlargement. We are sympathetic to the applications of Romania and Slovenia because we believe that their accession will help spread the stability lent by the Alliance to the Balkan and Mediterranean area. This view was shared by all the member countries, as the final declaration acknowledges.

(...)

The founding act on relations between the Alliance and Russia, signed in Paris on 27 May last, has clearly demonstrated that NATO promotes security based on cooperation in Europe and recognises Russia's essential contribution to that security. The aim now is to develop these relations.

(...)

Russia is essential in order to guarantee the stability of Europe, and for that very reason we need to redouble our efforts to foster an atmosphere of trust.

(...)

The summit also established a special relationship between the Alliance and the Ukraine ... This reflects the importance that Spain and the Alliance as a whole attach to maintaining the independence, territorial integrity and sovereignty of the Ukraine.

(...)

The summit also stressed the need for the Alliance to pay more attention to dialogue and cooperation with the Mediterranean countries. In this way we can help generate a climate of confidence and stability in the region, thus complementing the work done in other forums like the European Union's Barcelona process or the contacts established in the WEU and the OSCE. At the prompting of Spain, the summit decided to enhance the relations that NATO has maintained with Israel, Egypt, Jordan, Morocco, Mauritania and Tunisia through the creation of a Mediterranean cooperation group whose task would be to coordinate these relations, foster them and place them at the highest political level.

(...)".

(*DSC-P*, VI Leg., n. 98, pp.4920–4921).

Finally, the report on fulfilment of the Motion regarding the enlargement of NATO, approved by the Senate in full session on 18 March 1997, stated as follows:

"The signing of the Founding Act on relations between NATO and Russia in Paris on 27 May last and the decision of the NATO Heads of State and Government, announced in Madrid on 8 July last, inviting Poland, the Czech Republic and Hungary to commence negotiations for accession, fully meet the terms set forth in the Senate motion.

Spain has been a firm supporter of eastward enlargement of the Alliance. And following painstaking analysis of the various factors involved in enlargement, Spain has backed the candidatures of Poland, the Czech republic and Hungary in the conviction that their accession will contribute to our common security.

Also, with Spanish support, the Madrid Declaration clearly conveys the message that the doors of the Alliance will remain open to new enlargements, and it specifically states that the process will be reviewed in 1999 on the 50th anniversary of the Treaty of Washington. I this connection the Declaration specifically mentions Romania and Slovenia, acknowledging the progress that both countries have made. Spain is sympathetic to the candidatures of Romania and Slovenia, considering as she does that both meet the entry requirements and that their accession will help to inject the stability generated by the Alliance in the Balkan/Mediterranean area.

In any event, as hosts to the Summit we are also satisfied at the direction the enlargement process is taking. We have achieved the necessary consensus for difficult and highly consequential decisions.

(...)

At the same time, the ground for those decisions has been successfully cleared so that the stability of Europe will not be affected... A key factor in this connection has been the understanding reached with Russia.

The signing of the Founding Act on NATO-Russian relations in Paris on 27 May last demonstrated that the Alliance promotes a genuinely cooperative kind of security in Europe and acknowledges the importance of Russia's contribution to European security. In the process of defining a new framework for relations between the Alliance and Russia, Spain has always been in favour of endowing it with a solid content.

The Founding Act contains the parameters for a relationship based on shared democratic values, on the overcoming of continental divisions and in shared security....

The objective now is to develop these relations and endow them with meaningful content. The cooperation with Russian forces in the NATO operations in Bosnia is a good example of what can be achieved.

(...)".

(*BOCG-Senado.I*, VI Leg., n. 302, p.10).

b) Military structure

The organisation of NATO's military structure and Spain's participation in that structure originated a variety of Government statements in Congress in the course of 1997. In this context, on 6 March 1997, the Government replied as follows to a parliamentary question on the command that the Canary Islands would belong to under the integrated NATO military structure:

"1. The defence of the Canaries, as an integral part of the national territory, is

the exclusive responsibility of Spain, and therefore the islands will always remain under Spanish military command. It is NATO doctrine that the security and defence of a nation's territory is the responsibility of that nation, which additionally enjoys the extra strength and the support of the common defence policy provided by NATO.

In the new NATO military structure, which is currently under negotiation, a further principle has been introduced whereby a nation's territory will not be divided by any boundary, so that it always comes under a single allied command.

The Government is determined that whatever option is eventually agreed upon, the Canary Islands will be included in and will depend on an allied command situated in Spain.

(...)".

(*BOCG-Congreso.D*, VI Leg., n. I12, pp. 241–242).

A few months later, in reply to a question on the tightening of security in Ceuta and Melilla, the Government stated:

"Full Spanish participation in the Alliance's new military structure will undoubtedly enhance not only our security but also our dissuasive capacity. This will benefit the security of Ceuta and Melilla, which lie on the periphery of the NATO area in a zone of paramount strategic importance.

The protection of seaborne lines of communication across the Strait of Gibraltar and its approaches is subject to what decisions are made as to the relationships between the sub-regional commands and the component commands of equal level. It is Spain's wish that a NATO command located in our territory be responsible for protecting the sea lanes across the Strait of Gibraltar and its approaches. She also wishes to participate in any other NATO commands that have some responsibility or influence in respect of this task".

(*BOCG-Congreso.D*, V Leg., n. 164, p. 92).

Also, the President of the Government, Mr Aznar López, addressed Congress in full session on 22 December 1997 to report on the agreement reached regarding the new NATO military structure:

"The two meetings held on 2 of this month by the Minister of Defence and on the 6 of this month by the Minister of Foreign Affairs mark the culmination of a crucial stage in the Alliance's history – that is, the stage of internal and external adaptation whereby it has been transformed from a Cold-War defensive organisation into a security organisation for Europe and the Western world in the 21st century. These two meetings and the agreements concluded there also signal the end of a process of normalisation of Spain's position within the Alliance. Our nation is now prepared to take a full and active part in the new organisation...

All in all we may say that the end of 1997 brought a close to two parallel

processes. One is the transformation and adaptation of the Alliance as a whole. The other is the part concerning Spain, which having collaborated decisively in this transformation, now finds that the new NATO fairly addresses her own security concerns and enables her to make a significant contribution to collective security and international stability.

(...)

The internal reform of the NATO structures comprises three elements: a new command structure, combined/joint task forces, and a European security and defence identity.

(...)

The Atlantic Alliance will be completely overhauled to bring it into line with present and future security conditions, so that the division of the continent is overcome and its military effectiveness is assured. To this end the Alliance has pursued three basic goals in its internal adaptation. The first is to achieve greater flexibility, and a decisive factor in this has been the shortening of chains of command and the development of what are known as component commands. The second is to extend its sphere of action, enabling it to intervene in formerly outside areas where... conflicts and hazards that could affect the security of its members occur.... The third is to modulate the options for action, so that between peace and defensive military action against an aggressor there would be room for peace support and humanitarian operations – all without prejudice to the traditional function of collective defence and without endangering the cohesion among the allies. For this reason, throughout this process of internal adaptation, stress has been placed on the multinational element.... All commands in the structure are multinational, since their task is to prepare, devise and direct the operations that the Alliance as a whole carries out in fulfilment of whatever mission it is decided to undertake. The GHQ located in Spain, headquarters of an allied command, will therefore be multinational, with the proviso that the officer in command and a majority of the other officers will be Spanish.

(...)

The second element in the internal reform is the combined/joint task forces, CJTF.... With these new task forces it will be possible to plan and assemble modular forces, comprising multinational units and capable of tackling mission of widely-varying intensity and substance.

(...)

And finally, the third element of the internal transformation is the determination to give the European security and defence identity a higher profile within the Alliance... Since 1996, relations between the European Union, the Western European Union and the Atlantic Alliance have been clearly defined. NATO became the cornerstone of security but would furnish the Europeans with whatever elements were needed for them to conduct WEU operations without the participation of our American allies.

(...)

The Spanish Government considers that the steps taken in the direction of materialising the European security and defence identity are very important. One measure of this is the appointment of a deputy commander of the European strategic command, endowed with significant powers and capacitated to conduct Western European Union operations, and above all the way that this marks a growing tendency towards a role of European military responsibility both inside and outside NATO.

All in all, the reform of the NATO military command structures has entailed a complete overhaul of organisation layout and established procedures. In this way NATO has not only succeeded in meeting the defensive needs of its members, but it has also equipped itself with the necessary elements to enable it to play a fundamental role in achieving stability and maintaining peace in areas riven with conflict.

(...)

We have negotiated and helped to create a new, enlarged and reformed Alliance to which we can now make an active contribution as trustworthy allies while enjoying the full benefits of collective security guarantees.

(...)

Spain has been allocated command and operational responsibilities consonant with her military contribution and political weight, particularly in areas of the Atlantic and Mediterranean which are strategically important to us. A new joint sub regional command is created in Madrid, whose responsabilities include not only the entire national territory, but also those which have traditionally formed part of our area of interest.

(...)

We are also guaranteed a part for Spanish military personnel in the European and Atlantic strategic command GHQs, in the neighbouring Oeiras and Brunssum regional commands, and in the southern region command at Naples. The GHQ located in Spain will be commanded by a Spanish general.

(...)

The Canary Islands, which were hitherto under the Atlantic command (Saclant), now come under a command located in Spain and not in Norfolk Virginia, thus reaffirming their European status. In an exception to the new command structure, the Alliance has transferred the responsibility for proposing article 5 operations in a given area to a sub-regional command – that is, the command situated in Spain – through the southern regional command at Naples. Thus, the Spanish command is now responsible for proposing article 5 operations in an area encompassing the 12 miles of Canary Island territorial waters plus a further 50 miles from there out – that is, a total of 62 miles or 118 kilometres, an area covering 19,000 square kilometres and bordering the African continent. And again exceptionally, the Spanish command is authorised while exercising its responsibilities to liaise directly with the Atlantic strategic command for operations in the Atlantic.

Also, by shifting the boundary between the strategic commands to the

Ayamonte meridian and scrapping the Gibraltar sub-command, the approaches to the Strait have been brought within a coherent strategic unit...

For all these reasons, the Government is now in a position to announce Spain's decision to participate fully in the new command structure on an equal footing with the existing members and new members acceding to the Alliance in future. It has therefore been decided to initiate a purely technical process wherein the requisite adaptive measures will be taken so that whenever the new structure is activated, Spain is in the same position as the other allies.

(...)

The Spanish command will have the same tasks and responsibilities as any other of the same level, although it will obviously be oriented towards our own security concerns... One particular advantage that Spain can bring to the Alliance is a special understanding of issues concerning allied security as it relates to North Africa. Spain today is the point where two lines intersect – an east-west axis between the Atlantic and the Mediterranean, and a north-south axis between the western world and North Africa".

(*DSC-P*, VI Leg., n. 129, pp. 6772–6774).

Finally, the President of the Government appeared before Congress in full session to reply to the question of Spain's aspirations in the recent Hispano-Portuguese Agreement on the military structure of NATO:

"The Government has been pursuing and continues to pursue the necessary steps for Spain's full integration in the new command structure of the Atlantic Alliance. There were some points of disagreement with Portugal regarding Spain's new arrangement, but these have happily been resolved.

Firstly there is the extremely important issue of the change in the boundary between strategic commands in the Iberian Peninsula, which has been moved from the Barbate area in the Province of Cádiz to Ayamonte....

Secondly, ... the Canary Islands come fully under Spanish command, rather than simply the boundaries of the islands plus their territorial waters. The zone comprises the Canary Islands and their territorial waters plus 50 miles, which means we have integral defence of the Islands under the Spanish sub-regional command, further embraced by the European strategic command.

In addition, in those areas where coordination is required between the European and the Atlantic strategic commands, the Spanish sub-regional command is authorised to liaise directly with the Atlantic strategic command, which means that Spain's presence in the Atlantic is further strengthened.

(...)".

(*DSC-P*, VI Leg., n. 106, p. 5354).

3. Council of Europe

Addressing Congress in full session, on 12 November 1997, in reply to a question concerning the reform of the European Human Rights Commission agreed at the Second Summit of the Council of Europe, the Minister of Foreign Affairs, Mr. Matutes Juan, stated as follows:

"The Council was created nearly 50 years ago in a Europe divided by opposing political systems where the social and political situation was completely different from what it is today. The Council of Europe now has the inspiring task of reorganising its own structures in order to respond to the new reality in our continent – the task of creating a European Council representing forty States, a Council which embraces 400 million people and which therefore needs institutions that are more rapid and effective than the ones created several decades ago.

... One of the principal regulatory instruments of the Council of Europe is the European Convention on Human Rights.

(...)

The recently approved Protocol 11 merges the Commission and the Court into a single body, the Court, which will proceed on a permanent basis in the form of committees, chambers and grand chambers. The Court will accept applications from private individuals without the prior consent of a Member State. There is also a new figure, the Commissioner for Human Rights, complementing the single Court by taking executive action on the ground. The Commissioner may well become an essential instrument in the action of the Council of Europe, ensuring prompt intervention in cases of violations and disputes. This will help promote respect for the rights established under the Convention.

Finally, the Spanish Government believes that these reforms will enable the Council of Europe to move with the times and enhance the degree of protection that it provides for the rights of each and every European citizen".

(*DSC-P*, VI Leg., n. 114, p. 5832).

XIII. EUROPEAN UNION

1. Enlargemeut

Replying to various parliamentary questions tabled in the Congress Foreign Affairs Commission on 10 December 1997, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, defined Spanish policy regarding enlargement of the European Union:

"The Commission's own opinions acknowledge that at this time none of the candidate countries meets the requirements laid down in Copenhagen, and we therefore believe that it is not right to differentiate among them at the outset

of negotiations, particularly given our conviction that the negative political consequences of excluding certain countries as the Commission proposes would far outweigh any possible advantages.

This being so, our country believes that accession negotiations should commence with all countries which in the Council's view meet the political conditions. As far as Spain is concerned, simultaneous commencement of negotiations does not necessarily mean that conclusion must also be simultaneous. The pace of the negotiations and the timing of accession for successful candidates should depend on the degree of readiness and the progress made by each candidate country.

(...)

We agree with the proposal provided that, as the Commission sustains, this leads to reconciliation of the objectives of intensification and enlargement. Under no circumstances can Spain accept the waiving of Community policies simply in order to cut the costs of enlargement.

In our view the enlargement negotiations must be based, as on previous occasions, upon the *acquis communautaire* existing at the present time, and it would be quite wrong to seek to alter that *acquis* to suit such enlargement. The principle of maintenance of the *acquis communautaire* must be kept clearly in view when addressing the policy of economic and social cohesion. This is absolutely fundamental for us, and in no event must the financial requirements linked to enlargement be met through a reduction of the effort to favour less developed regions in the existing Union. I think that Spain's position is clearly defined by these considerations and by the political need to proceed to enlargement subject to the timing we have mentioned.

(...)".

(*DSC-C*, VI Leg., n. 352, pp. 10399–10400).

Again, addressing the Congress in full session to report on the European Council meeting in Luxembourg on 12 and 13 December, the President of the Government, Mr. Aznar López, once again raised the issue of enlargement of the European Union:

"Spain has fought for enlargement in such a way as to include as many candidates as possible, subject to no conditions other than meeting a few simple political and economic criteria. We have been against making the decision to initiate enlargement subject to restrictive financial conditions, and in the end it is our position, shared by other countries, that has won out. I therefore believe that the outcome of the Luxembourg Council has been good and positive for Spain. I say this because the enlargement that we have just launched will speed up the transformation of countries joining the Union. With the certain prospect of joining the European Union at a future date, these countries will complete their political and economic transitions in a matter of years, at which point they can start sinking roots in the Europe of freedom as their values, culture and history entitle them.

(...)

The Government is particularly sensitive to the East European countries, and for that reason we have strongly supported the commencement of accession negotiations with the largest possible number of candidates, as was agreed.

(...)

Spain has the satisfaction of having seen the European Council adopt the formula of openness to all candidates that she had espoused from the outset. As the conclusions state, this will be an inclusive, evolving process, and each of the eleven candidate States will progress at its own pace, according to its own state of readiness.

Nonetheless, it is essential that progress in enlargement be accompanied by progress in the process of European integration.

(...)".

(*DSC-P*, VI Leg., n. 127, p. 6660).

Regarding the possible accession of Turkey, the President of the Government stated as follows:

"As regards Turkey, Spain's position is that the Union should evaluate her legitimate aspirations on the basis of the same objective criteria as are applied to those of the present candidates. The conclusions accept this approach in so far as they expressly confirm Turkey's capacity to be considered for membership of the European Union and state that her application will be considered on the basis of the same criteria as are applied to other candidates. Given that Turkey does not at present meet these conditions, a strategy is being defined to facilitate her progress towards membership of the Union.

(...)

The Government will do everything in its power to promote initiatives like those included in the conclusions to encourage and sustain Turkey's resolve to become part of Europe. What the Union proposes is to bring Turkey more firmly into the customs union, provide financial assistance including participation in pre-accession programmes, and help Turkey to gradually assimilate the *acquis communautaire*".

(*DSC-P*, VI Leg., n. 127, p. 6661).

2. Free Movement

In light of the repeated attacks on Spanish agricultural products by French farmers seeking to appropriate by force the market share gained by Spanish exporters, and given that the Commission lacks the resources to sanction the conduct of Member States which fail to guarantee free circulation, in reply to a question put to Congress in full session on 4 June 1997, the President of the Government, Mr. Aznar López, detailed the steps that the Government intends

to take at the Amsterdam Summit in defence of the free movement of goods and citizens within the European Union:

"The Government has tabled a proposal at the Inter-Governmental Conference to the effect that when a Member State fails to comply with the regulations on guarantee of circulation in the internal market, the Commission may decide to impose an economic sanction or a punitive fine on that State. Such action by the Commission needs to be pressed, with some kind of legal guarantee that is free of the loopholes currently existing in the Community legislation".
(*DSC-P*, VI Leg., n. 90, p. 4440).

3. Institutions

Appearing before the Congress in full session on 26 June 1997 to report on the European Council meeting of 16 and 17 June in Amsterdam, the President of the Government, Mr. Aznar López, highlighted Spain's position on institutional reform of the constituent Treaties:

"The Spanish position in the institutional sphere. Firstly, as regards the Committee of the Regions, practically all of the Spanish proposal for strengthening of this Committee has been retained, thus endowing it with more administrative autonomy and reinforcing its consultative faculties, especially in connection with cross-border cooperation. Secondly, in the decision on the specific weight of each Member State in European institutions, particularly the Council and the Commission, a solution has been reached which although not entirely satisfactory does protect Spain's interests in Europe as it is at present with fifteen countries and with a view to its enlargement. This means, then, that on the initiative of Spain, the Ioannina compromise is extended until the reform is agreed, so that our country's relative weight in decision-making by a majority is preserved through the requirement of an extra effort before any group of States having 23 votes is left in a minority. At the same time, the principles that must be respected in the future institutional agreement prior to enlargement are laid down. One of these is the compensation of countries facing the loss of a commissioner through enlargement. And finally, the conference recognised that within the context of institutional reform, Spain is a special case for which an adequate solution must be found before enlargement takes place. Thus, the Member States have accepted that it is necessary to maintain the delicate balance achieved by Spain in the negotiations for her accession in 1986.

(...)

One of the chief novelties of the Treaty of Amsterdam is the introduction of flexibility as a tool in the start-up of what is known as closer cooperation, both in the community pillar and the third pillar.

The text finally agreed upon reflects in good measure Spanish concern to

prevent the use of this mechanism from undermining solidarity, the basis of European integration, and the unity of the internal market. Spain will keep watch on European institutions to ensure that flexibility is put to proper use and does not become a means of watering down the content of integration or unfairly facilitating enlargement through the creation of hard cores in some areas which exclude or prejudice certain members purely because their state of economic and social development is different".

(*DSC-P*, VI Leg., n. 95, p. 4764).

In reply to a parliamentary question on 3 December 1997 regarding the opening by the Gibraltarian executive of a representative office for European institutions in Brussels, the Government stated as follows:

"At the beginning of September 1997, the government of Gibraltar announced that it would be opening a representative office in Brussels to deal with European institutions.

Gibraltar is obviously entitled to set up an office in Brussels of a private legal nature, just as there are myriad lobbies or offices representing interests of all kinds, including the regional or local variety.

However, an office of that kind cannot be set up as a public office nor can it be recognised as such by EC institutions.

(...)

Gibraltar has no voice of its own in the Union. Its relations are conducted entirely through the United Kingdom, which is responsible for ensuring compliance with EC law in the territory.

The Spanish Government has made the appropriate representations along these lines to its Community partners. On the 30th of last month Spain's permanent representative in Brussels wrote to the General Secretary of the Commission of the European Union, Mr. Carlo Troján, making the Spanish position quite clear".

(*BOCG-Congreso.D*, VI Leg., n. 212, p. 282).

4. Subsidiarity

Replying to various parliamentary questions in a full session of the Senate on 22 October 1997, the Minister of Foreign Affairs, Mr. Matutes Juan, explained the reasons for the Government's refusal to sign the Declaration on the principle of subsidiarity which was annexed to the Treaty of Amsterdam:

"At the root of the position on the principle of subsidiarity defended by the Spanish government during the Inter-Governmental Conference at which the Treaty of Amsterdam was negotiated was the need to retain article 3.b) of the Treaty unchanged and the inclusion of the relevant elements and essential principles from the Edinburgh Declaration in the form of a protocol.

Our position was shared by most of the Member State delegations and was

eventually incorporated in the new Treaty of Amsterdam. The inclusion of the content of the Edinburgh Declaration on subsidiarity in the form of a protocol is also extremely important for the development of this principle in that it endows the principle with a legal value which it hitherto lacked.

The Spanish governmcnt's position on this issue is at one with that approved by the Joint Congress/Senate Commission for the European Union, set forth in a pronouncement of 26 December 1995 and a report of 29 May 1997.

This report states literally that there should be no acceptance of proposals that open tlie door to renationalisation of Community policies or any proposal that would entail amendment of article 3.b) of the Treaty".

The Declaration on the principle of subsidiarity signed by Germany, Austria and Belgium does no more than reflect the position maintained by these three countries during the Conference. It is a simple Declaration involving only three countries and diverging from the position defended by Spain and the vast majority.

(...)

These three countries are major net contributors to the European Union, whereas Spain is a net beneficiary of the Community budget, and so it is only natural that they should wish to renationalise many of these policies and thus reduce their contributions. It is equally in Spain's interest to sustain the *acquis communautaire*, and likewise of course the principle of adequate means for Community policies.

(...)

In this connection I should like to clear up the existing misapprehension to the effect that the refusal of Spain and eleven other delegations to subscribe to that declaration implies opposition to the possibility of the Autonomous Regions taking part in European decision-making bodies. It should be remembered that it was this government that made it possible for the Autonomous Regions to take part in committees of the Commission where important decisions are made".

(*DSS-P*, VI Leg., n. 60, p. 2529).

5. Enro-Mediterranean Conference

Appearing before the Congress Foreign Affairs Commission to explain the Government's position regarding the Second Euro-Mediterranean Conference scheduled to take place in La Valetta on 15 and 16 April, the Secretary of State for Foreign and European Union Policy, Mr. de Miguel y Egea, said the following:

"The Barcelona Conference created a new multilateral framework based on the spirit of association for relations between the European Union and the Mediterranean countries. The enhancement of relations between the

European Union and its Mediterranean partners is reflected in the establishment of global cooperation through regular and more intense political dialogue, more economic and financial cooperation and upgrading of the social, cultural and human dimensions, These are the three central ideas underpinning the Barcelona process... . As we see it, Barcelona was the beginning of a process that has brought success to the Union's Mediterranean policy. Spain made a special effort during her presidency, precisely because we realised that this was the way to bring to fruition all the work that had been done not only to strengthen the framework of Mediterranean cooperation and the financial package, but also to give it political content and ensure its continuity... It is my belief that the holding of a new inter-ministerial conference in Barcelona indicates the consolidation of the process that commenced amidst such enthusiasm in 1995, during the Spanish presidency.

(...)

On the bilateral side, much has been achieved since the Barcelona Conference. The customs union with Turkey has been in force since 31 December. Although pending ratification, Agreements of Association with the PLO benefiting the Palestinian National Authority have been signed. Negotiations with Jordan and Lebanon are nearing conclusion, and an agreement with Egypt is in the process of negotiation. We have also initiated rounds of negotiation with Algeria and exploratory contacts with Syria. In other words, the policy of partnership or association agreements with other Mediterranean countries... which complement, or indeed constitute the backbone of the Barcelona process, is well under way.

Spain has been an active participant in all these multilateral activities and has also contributed much to the negotiation of bilateral agreements... From a political standpoint, the framework created by the Barcelona process is of great interest to all the parties concerned – to the European Union, and likewise to all the countries involved in the Mediterranean, and particularly the peace process... What we need to do now is make the most of this second ministerial conference to keep the broad principles of Barcelona alive and define future priorities. We believe that the political dialogue should be strengthened and deepened on all the issues of common interest that were raised at the Barcelona Conference. We must keep working in the sectorial conferences, above all to identify areas where there are common elements such as the environment, waters, fisheries, energy and industry... We need to enhance the cultural, social and human dimension in order to achieve more balanced development of the people of the Mediterranean. It is also important, and necessary, to encourage cooperation and move forward on the issue of institutionalisation".

(*DSC-C*, VI Leg., n. 185, p. 5151).

6. Economic and Social Cohesion

Appearing before the Congress in full session to reply to a parliamentary question, the Minister of Foreign Affairs, Mr. Matutes Juan, referred to the policy that the Government will adopt to defend Spanish interests in the European Union in the face of the German/Dutch proposal to abolish the Cohesion Fund for countries acceding to the monetary union:

"At this moment the debate has come to a halt.

(...)

This issue was also debated in the European Commission. An attempt was made to abolish the Cohesion Fund, but in the end it was resolved to continue it regardless of whether or not a country is included in the top group of the monetary union. This is because the Cohesion Fund was not created to straighten out the public finances of the poorer States in the Union with a view to entry in the monetary union; it would be absurd and also false to suggest that Spain has reduced her deficit and her inflation thanks to the money received from the Fund. The purpose of the Fund is perfectly clear, as are its defining conditions, namely to finance infrastructure and environmental projects in countries whose gross domestic product is less than 90 per cent of the Community average. Any other general or particular conditions whose addition is suggested, for example that to receive finance from the Cohesion Fund a country cannot be a member of the Monetary Union, is neither in the Treaty of Union nor in the background regulations. Therefore, the Spanish government's position is and will remain one of clear and firm opposition to any further attempt along these lines".

(*DSC-P*, VI Leg., n. 121, p. 6374).

Appearing before the Senate Foreign Affairs Commission on 30 June 1997 to report on the impact that the plans for regulation adopted at the Inter-Governmental Conference in respect of structural and cohesion funds will have on Spain's Autonomous Regions, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, placed special emphasis on the importance of the Treaty of Amsterdam in this connection:

"Firstly, in general terms the *acquis communautaire* in respect of structural and cohesion funds remains intact. At the same time, it should be said that in those cases where certain Treaty amendments have affected this body of doctrine, which we as a country are keen to preserve, in my opinion the effect has been positive in every case.

The impact of the instruments for economic and social cohesion in the structural funds and the territories affected has therefore been limited. At no time has there been any move to modify the element of economic and social cohesion, a basic premise of the Treaty of Union, in which the new draft of article B defines balanced economic and social progress throughout all the Community as an objective of the Union.

Nonetheless, as a cornerstone of the Agenda 2000, the Inter-Government Conference has been crucial in that it introduces the possibility of a review of financial prospects in anticipation of enlargement ...

(...)

I would like here to make the point that the institutional reforms approved in the Treaty of Amsterdam to some extent affect the entire *acquis communautaire* of structural and cohesion funds.

The new Treaty introduces reforms in the regulation of the European Parliament's participation in the decision-making process. At the Inter-Governmental Conference, Spain defended the view that everything to do with article 130-D, the article that refers specifically to structural funds, should remain subject to favourable opinion in the Parliament... on this point we were successful, in that the Treaty of Amsterdam reflects the Spanish position.

(...)

However, as regards article 130-E (application of the European Regional Development Fund decisions) and article 125 (application of decisions relating to the European Social Fund), the existing cooperation procedure deriving from article 189-C will be applied, thus affecting decisions as to the application of these funds. On these issues, the Spanish delegation felt that the European Parliament should not be denied the possibility of taking part in codecision procedure, given that the decisions involved did not entail any great risk. As a result, articles 130-E and 125 were made subject to codecision procedure.

There are a number of amendments relating to decision-making in the Council which will also affect the funds in that they provide for the possibility of a qualified majority for the passing of all matters relating to article 227.2, which is the one that regulates the permanent statute of the ultraperipheric regions.

And finally, as regards executive decisions relating to the European Social Fund, it is provided that the European Parliament must consult the Committee of the Regions on matters coming under article 125. There are therefore minor institutional amendments that affect structural funds..

As regards geographic application, there are two amendments that directly affect Spanish regions... the Autonomous Regions of the Canary Islands and the Balearic Islands. Article 130-A, which underpins the entire concept of economic and social cohesion, now contains explicit reference to island regions, to the effect that the Community must reduce the differences in development of the various regions. And making the point even clearer, the Treaty of Amsterdam contains a declaration, proposed by the Spanish delegation, which refers to island regions and expressly acknowledges that these island regions suffer structural disadvantages arising from their isolated nature...

As for the ultraperipheric regions, the new wording of section two of article

227 specifically mentions structural funds, which are included in the list of spheres in which the Council may introduce measures to establish special conditions for application of the Treaty. This constitutes a major success in that the Treaty incorporates an article relating to ultraperipheric regions... I should stress that the Council may act in different spheres such as fiscal policy, free zones, public aids and conditions of entitlement to structural funds, subject only to the general proviso that such action must not endanger the integrity and the coherence of the Community legal system.

The base positions from which any modifications regarding any future provisions for the application of structural Community initiatives will be approached are clearly positive as regards the Canary Islands Autonomous Region, the only one affected by the new article 227.2".

(...)".

(*DSS-C*, VI Leg., n. 168, pp. 3–4).

7. Foreign Relations

a) Middle East

Appearing before the Congress in full session on 17 December 1997 to report on the European Council meeting of 12 and 13 December in Luxembourg, the President of the Government, Mr. Aznar López, highlighted the European Union's relationship with the Middle East:

"Within the framework of the Union's external relations, the Council also discussed our attitude to the conflict in the Middle East. All the member countries, including Spain, are extremely concerned at the breakdown of the peace process. The European Union has long been unstinting in its efforts to help arrive at a fair and lasting global peace agreement. Such was the general consensus on the status of this process at present.

(...)

Our own active commitment has generated two concrete initiatives in whose success we are particularly interested as Spaniards and as active participants in the Union's external policy: the code of conduct and the permanent security committee. The purpose of these instruments is to anticipate tensions arising from the kind of unilateral measures or acts of terrorism that so hamper and prejudice negotiations and contacts between Palestinians and Israelis.

The European Council also approved a declaration marking the fiftieth anniversary of the Universal Declaration of Human Rights, recalling that the Union is founded upon the principles of freedom, democracy and respect for fundamental human rights and freedoms. On this occasion the Union took the opportunity to announce a renewed and more active policy in the field of respect for human rights... It goes without saying that Spain, whose foreign

policy stresses the firm defence of freedom and the promotion of relations with democratic regimes, wholeheartedly subscribes to the philosophy that inspired this commemorative declaration".

(*DSC-P*, VI Leg., n. 17, pp. 6662–6663).

8. Economic and Monetary Union

Appearing before the Congress in full session to report on the European Council meeting held in Luxembourg on 12 and 13 December, the President of the Government, Mr. Aznar López, referred to the positions maintained by Spain on economic and monetary union:

"This Council meeting has succeeded in further advancing the process of European integration, particularly with the adoption of a number of decisions that remained pending regarding the functions of what is known as the Euro-X, whose task will be to coordinate economic policies among the countries that accede to the single currency. The European Council has noted the principles and forms of strengthened economic coordination among the partner States in the single currency, and between these and the States that do not yet qualify for membership of the euro.

(...)

Spain supported recognition of something that is not only a right but a necessity – that is, that the euro countries meet together to discuss issues that concern them. At the same time, Spain sought to mediate so that the "out" countries receive information about the Euro-X and can be present at these meetings where the issue under discussion so requires in specific cases.

The conclusions of the Council Presidency thus substantially reflected a position also shared by Spain and other countries, defending the existence of an informal group consisting of the euro countries linked by the specific ties arising from the existence of a common currency, a central bank, a monetary policy and an exchange rate".

(*DSC-P*, VI Leg., n. 17, pp. 6661–6662).

9. Cooperation in the Fields of Jnstice and Home Affairs

Appearing before the Congress in full session to report on the European Council meeting held in Luxembourg on 12 and 13 December, the President of the Government, Mr. Aznar López, made special reference to cooperation in the fields of justice and home affairs:

"The conclusions of the Council meeting on Justice and Interior affairs show that the foundations are already being laid for the area of freedom, security and justice defined at Amsterdam, with the finalisation of two conventions – one on cooperation between customs authorities and another on jurisdiction, recognition and execution of decisions on marital affairs. This last will have a

considerable effect on the lives of the Union's citizens. At the same time, the Council noted the substantial advances achieved in the application of the action plan in combating narcotics in Latin America and the Caribbean, an initiative resolutely backed by Spain from the outset".

(*DSC-P*, VI Leg., n. 127, p. 6662).

Again, appearing before the Congress in full session on 25 June 1997 to report on the European Council meeting held in Amsterdam on 16 and 17 June, the President of the Government, Mr. Aznar López, explained the reforms proposed in this sphere:

"One of Spain's priority objectives throughout the Conference was to maintain and develop the Union as an area of freedom, security and justice. The first manifestation of such underpinning of freedom, security and justice in the Union is the establishment of respect for fundamental rights and the principle of non-discrimination as the keystone of the construction of Europe.

Effective protection of human rights is assured by two important legal mechanisms. The first of these, a Spanish initiative, is the European Convention on Human Rights, under the jurisdiction of the Luxembourg Court.

It is further provided that any Member State failing to honour its commitments in this respect may have its rights as a member of the Union suspended.

The second provision of the Treaty of Amsterdam in this respect is the actual creation of an area of freedom, security and justice where free circulation of persons is guaranteed while appropriate measures are introduced for the control of borders, immigration, combating crime, asylum and prevention. To this end, in the space of five years the Union will introduce measures designed to abolish internal borders and organise a common policy for the control of external borders, asylum, immigration and protection of the rights of nationals of third countries. One important step along this road is the integration of the Schengen Agreement in the framework of the European Union... Specifically in the case of Spain, the Treaty guarantees the maintenance of controls on movement of persons coming from the United Kingdom and possessions administrated by the UK in the Union, such as Gibraltar, at any entry point to Spanish territory and for an unlimited period of time.

One essential adjunct to this common policy on freedom of circulation, which includes common treatment of applicants for asylum from third countries, is the adoption of a common approach to asylum applications from European citizens. Spain takes the position that the institution of asylum cannot be manipulated so as to evade the course of justice, bearing in mind that within the bounds of the Union fundamental rights are better protected and hence there can be no good reason for seeking asylum.

And finally, the Treaty of Amsterdam provides a satisfactory solution to

Spain's firm demand in this respect, in that it includes a protocol acknowledging that the Member States of the Union are safe countries of origin for all legal and practical purposes relating to asylum.

The solution adopted in the protocol provides a triple safeguard against groundless asylum applications within the framework of the Union: a legal safeguard founded on mutual recognition that all Member States are safe for all purposes relating to asylum applications; a political safeguard founded on the obligation to inform the Council of all applications accepted for processing (this reverses the burden of proof by assuming the legitimacy of the complainant State's position); and a procedural safegnard in that any asylum application from a national of a Member State to another Member State is considered manifestly groundless. This last will speed up the processing of claims and prevent the manifest procedural fraud that is encouraged by the current delays.

Spain's purpose in submitting her proposal was to place on record that the situation as regards respect for fundamental rights in the European Union was such as to render largely meaningless the right of asylum as it stood up till now. It was essential that this institution be brought into line with the reality of Europe in view of its manipulation by members of terrorist groups.

This area of freedom and security is completed by the strengthening of police and judicial cooperation to deal more effectively with crime. Spain is a firm defender of such strengthening and considers that the results as set forth in the Treaty are a great step forward. I would draw particular attention in this respect to the strengthening of Europol, which will henceforth be able to undertake operational functions in coordination with national police forces, thus guaranteeing that the area of freedom does not work to the benefit of those engaged in unlawful activities".

(DSC-P, VI Leg., n. 95, pp. 4761–4762).

In reply to a parliamentary question on 24 April 1997 regarding the abolition of the right of asylum within the European Union, the Government explained its position thus:

"The Spanish government does not share the points of view put forward by the UNHCR in its document on the European Council's proposal regarding political asylum, where it adopts a stance counter to the abolition of the right of political asylum inside the European Union for EC citizens.

The members of the European Union are all democratic States under the rule of law, and all are committed to respect for human rights.

(...)

Article F.1 of the Treaty on European Union as it now stands requires Member States to have systems of government based on democratic principles.

We may therefore take it that the reasons or circumstances justifying the institution of political asylum have ceased to exist among the members of the

Union. According to article I, paragraph a), point II of the Geneva Convention relating to the Status of Refugees, such reasons or circumstances are that a person has 'well-founded fears of persecution by reason of race, religion, nationality, membership of a specific social group or body of public opinion, such that the person feels obliged to reside outside his country of nationality because he is unable or unwilling to accept the protection of that country'.

From a legal standpoint the Spanish proposal is perfectly compatible with the International Law currently in force, since in any case under article 41 of the Vienna Convention on the Law of Treaties, it can be adapted to the Geneva Convention on Asylum as it relates to relations between Member States of the Union in such a way as to make it clear that the Treaty on European Union establishes an area of protection of fundamental rights which entails national treatment of all Union citizens, so that an asylum application submitted by a Union citizen cannot be accepted for processing.

The government does not share the UNHCR's opinion that the abolition of the right of asylum could remove protection in the event of political persecution in the European Union.

Article F.2 of the TEU refers to respect for fundamental rights by the Union in accordance with the European Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. Moreover, the jurisprudence of the European Court of Justice has consistently maintained that fundamental rights are part and parcel of the general principles of EC law, respect for which is guaranteed by the Court of Justice.

We would also recall that article 25 of the Rome Convention mentioned above, to which all Member States are parties, allows any individual, non-governmental organisation or group of private individuals considering themselves victims of a violation of fundamental human rights and freedoms as recognised by the Convention to file suit against the State responsible with the Strasbourg Human Rights Commission. Furthermore, the Court of Justice at Strasbourg is the superior court in such instances.

Aside from supranational courts, in the event of isolated cases of unlawful persecution or violations of human rights, all Member States possess internal avenues and legal procedures through which to insist on compliance with the law.

The government likewise disputes the UNHCR's opinion that abolition of the right of asylum would not affect crimes committed by terrorists.

I say this because while in light of the foregoing considerations one might reasonably think that asylum for nationals of Member States should have ceased to exist as being unnecessary, the fact is that there are still cases of Union citizens seeking asylum for purposes which negate the nature of asylum as an institution. I refer to applications for asylum whose purpose is to paralyse for as long as possible a request for extradition by a court, which cannot be considered while the asylum application is pending.

The government maintains its position at the Inter-Governmental Conference, namely to propose a reform of the Treaties that does away with asylum for nationals of Member States".

(*BOCG-Congreso.D*, VI Leg., n. 133, pp. 276–277).

XIV. RESPONSIBILITY

XV. PACIFIC SETTLEMENT OF DISPUTES

1. Diplomatic Modes of Settlement

a) Good Offices, Mediation

Addressing the Security Council on 10 January 1997, the Spanish representative, Mr. Laclaustra, highlighted Spain's role in the solution of the civil conflict that has afflicted Guatemala for the last forty years:

"On 29 December 1996 the Government of Guatemala and the *Unidad Revolucionaria Nacional Guatemalteca* (*URNG*) signed the Agreement on a Firm and Lasting Peace, bringing an end to a brutal conflict and opening a new page in the history of Guatemala. On that date the full set of peace Agreements entered into force, having been concluded following a negotiation process in which the parties, assisted by the valuable moderation of the United Nations and the support of the Group of Friends, demonstrated their firm commitment to peace.

The time has now come to implement the Agreements reached and to apply the will of the parties and the wish of the entire people of Guatemala to lay the foundations for a firm and lasting peace, which must be ensured through the continued support of the International Community, and of the United Nations in particular.

The Agreement on the definitive ceasefire, signed in Oslo, is one of the pillars that will ensure the building of peace in Guatemala through the verification of the ceasefire, the separation of forces, disarmament and the demobilization of the *URNG* combatants. The mechanism for the verification of this Agreement and for the other agreements signed between the parties has been entrusted to the United Nations.

In his report of 17 December 1996 and its addenda of 23 and 30 December, the Secretary-General underscores the need to deploy United Nations military personnel through authorization by the Security Council of an additional military component of 155 personnel for a period of three months for the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA).

The draft resolution before the Security Council, sponsored by Spain together with the other members of the Group of Friends, will authorize that deployment and will make it possible for the achievements of the Negotiating process between the parties to begin to have concrete results on the ground.

The Security Council, with the decision that it is preparing to adopt today, must once again exercise the primary responsibility for maintaining international peace and security conferred upon its members by the United Nations Charter. In this way, the presence of United Nations military observers in Guatemala will make it possible to verify the implementation of the Agreement on the definitive ceasefire and for Central America to become a conflict-free region of true peace, freedom and democracy.

My delegation wishes to stress Spain's readiness to participate in the exercise of this collective responsibility by making an important contribution of its own troops to this military component of MINUGUA.

The firm commitment to the peace process that my country has shared with the other members of the Group of Friends remains fully intact in this new and hopeful stage of reconciliation, reconstruction and development that is beginning in a climate of peace, freedom and democracy for the people of Guatemala. The participation of the President of the Spanish Government, José María Aznar, in the signature ceremony of the Agreement on a Firm and Lasting Peace, and the bilateral cooperation that my authorities have decided to increase considerably in pursuit of our assistance to Guatemala, are solid evidence of that commitment.

I wish to conclude by recalling that Madrid was host to the signing, on 12 December 1996, of one of the important agreements between the parties: that is the agreement on the basis for reintegration of *URNG* in the political life of the country. On that occasion, my country also sponsored a forum for reflection on reinsertion and demobilization in Guatemala, which made it possible to put forward ideas and proposals to ensure that the International Community was in a position to meet the requirements of the parties and the immediate needs for the implementation of the peace accords in that crucial aspect".

(U.N. Doc. S/PV.3730, p. 8).

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Collective Measures. Regime of the United Nations

a) Iraq

On 27 December 1997, in rely to a parliamentary question the Spanish Government explained Spain's position regarding the sanctions imposed on Iraq by the Security Council:

"The origin of the latest crisis has been Iraq's unilateral refusal to continue collaborating with the UNSCOM in the terms set forth in Security Council Resolution 687, announced on 29 October, expulsion of US members of the Commission from its territory and the threat to shoot down any aircraft flying over its territory on missions relating to the Commission. It should therefore be remembered that the situation has arisen from a serious Iraqi breach of an obligation under international law as provided in Chapter VII of the United Nations Charter.

The purpose of the deployment of forces by the United States and other Security Council members is therefore to oblige Iraq to continue complying with UN resolutions, particularly those intended to guarantee the total neutralisation of Iraqi weapons of mass destruction and Iraq's capacity to produce such weapons. The Security Council has repeatedly called on Iraq to facilitate the work of the experts from the UN Special Commission (UNSCOM) that has been assigned this difficult task in view of the obstacles regularly raised by the Iraqi authorities.

In view of this situation, on 12 November the Security Council unanimously passed Resolution 1137 ordering new sanctions which prohibit Iraqi functionaries and members of Iraq's armed forces who have been involved in hindering the work of the UNSCOM from travelling outside of their country. The same resolution also expresses the firm intention to adopt whatever additional measures may be required to force Iraq to withdraw its decision to impose conditions on cooperation with the UNSCOM.

(...)

The only way to put an end to the embargo is for Iraq to comply in full with the obligations placed on it by the Security Council resolutions. The Spanish government expresses its satisfaction at the success of diplomatic efforts to deal with the latest crisis. At the same time, the Spanish government deeply regrets the suffering that this crisis and the prolonging of international sanctions is causing to the Iraqi people. We are therefore making all possible representations to persuade the Iraqi authorities to cooperate with the international inspection bodies so that they are able to certify Iraqi compliance with the obligations imposed by the UN Security Council, thus making it possible to lift the sanctions as swiftly as possible".

(*BOCG-Congreso.D*, VI Leg., n. 226, pp. 203–205).

b) Albania

Appearing before the Congress Foreign Affairs Commission on 8 May 1997, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, reported on the Albanian crisis and the action taken by the Spanish Government.

"The government's decision to intervene in the conflict was motivated first and foremost by a desire to alleviate the troubles of a country prostrated by a

crisis... Spain has consistently supported all initiatives of solidarity with European countries, particularly East European countries, despite the fact that Spain has very few interests in Albania. There were practically no Spanish nationals there, and the few that there were were immediately repatriated with Italian collaboration. We have no investment, and we are not even represented, as we have no embassy in Tirana. There is therefore no room for the slightest suspicion that Spain is intervening to protect some immediate economic interest; this is an act of solidarity with a people who find themselves in an extremely serious situation of institutional breakdown. There is no civil war in Albania, it is simply that the people have generally lost confidence in their institutions.

In the second place ... the Spanish government has made this decision, which is costly and entails risks, as a gesture of solidarity with Italy. We are aware that our Mediterranean neighbour and friend, Italy, is the country that has borne the brunt of this crisis. She called on the Community for support, but this was not forthcoming immediately. Spain wished to respond almost instantly to what we saw as the Italians' need for support to create a multinational force to carry out this Security Council mandate.

(...)

There was even talk of reinterpreting the UN Security Council mandate to allow the *Coalition of the willing*, as it was called, to start performing functions not strictly covered by the UN mandate – i.e., policing, guarding of frontiers or even collection of arms. That is one of the great problems of Albania at present. There must be more than half a million handguns and assault rifles in the hands of the general population.

(...)

I should like to explain what our position was... The countries in this multinational force wish that there be no conflicting interpretations of the UN mandate, and therefore that mandate is clear in the sense that the multinational force is there to help ensure that humanitarian aid reaches the people it is intended for, not to carry out police functions, not to guard frontiers, and not to do anything not in the Security Council mandate. We believe that police functions should be carried out by the Albanian police, and there are programmes there to provide assistance, support, reinforcement, finance and training".

(*DSC-C*, VI Leg., n. 212, pp. 5839–5840).

A few months later, appearing again before the Congress Foreign Affairs Commission on 5 November 1997, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, once more reported on the situation in Albania.

"The current situation in Albania must be dealt with entirely by the Albanians. The multinational forces have withdrawn and international aid does no more than supplement their own efforts to attain political stability

and undertake economic reconstruction. The process is now under way and not only has the International Community, with the European Union at its head, established a common posture regarding Albania within the framework of a common exterior policy on security, but also a meeting of the International Community was convened calling on all countries in any way involved or wishing to become involved in the future economic and political reconstruction of Albania. The meeting was held in Rome on 17 October. Practically all of the European Union countries, most of the international organisations within and without the orbit of the United Nations, the International Monetary Fund, the European Bank for Reconstruction and Development, and other countries outside the region, like Russia and the United States, acquired a political commitment to help the government of President Fatos Nano, who was present at the meeting, tackle the country's economic reconstruction.

(...)

A commitment was made to contribute 75 million pesetas to this fund, so that Spain not only has contributed to the multinational force but is now furnishing money for this fund through the Spanish International Cooperation Agency. And of course our Cooperation Agency and our non-governmental organisations will be on the lookout for means of cooperating in any programme devised hereafter for the reconstruction of Albania".

(*DSC-C*, VI Leg., n. 325, pp. 9631–9632).

c) Great Lakes Region (Rwanda and Zaire)

Appearing before the Congress Foreign Affairs Commission on 12 March 1997, the Secretary of State for International Cooperation and Ibero-America, Mr.Villalonga Campos, explained the Spanish Government's position on possible armed intervention in Rwanda:

"... The Foreign Minister has expressed support for a multinational intervention force with a humanitarian mission ... It is also important to stress that Spain has never raised the possibility of armed intervention in Rwanda. The possibility considered has always been to intervene in the eastern provinces of Zaire ... which border with Rwanda, Burundi and Uganda. I should also like to make it clear that Spain has never favoured anything other than intervention by military forces for the purpose of ensuring efficient delivery of humanitarian and emergency aid to refugees and populations displaced by the internal warfare in eastern Zaire. The International Community has never to date considered military intervention for the purpose of separating the combatants or re-establishing peace in the zone.

Having said this, it is also obvious that any Spanish contribution to solution of the humanitarian and political crisis still reigning in the Great Lakes region should be made within the context of the efforts being made by

other countries and international organisations dealing with the conflict, particularly the European Union and the United Nations. Unilateral actions would be ineffective besides lacking in practical or political sense. The multinational force whose deployment was considered should therefore be organised with all due respect for International Law. In such operations, apart from the political considerations there are a number of essential requirements to be met. More specifically, this means having the authorisation of the UN Security Council and the consent, and moreover the cooperation, of the parties involved.

Security Council Resolutions 1078 and 1080, which were passed last November, authorised the organisation of a multinational force in the region. This authorisation fulfils the first requirement. What was not obtained was the consent of the countries in the region, particularly Zaire but also Rwanda, Burundi, Uganda and Tanzania. In the absence of the requisite conditions for deployment of a multinational force, authorised in this case by the Security Council, any other kind of action would lack international legitimacy and would constitute a serious breach of the principles that govern the relations between states.

Moreover, it must be remembered that in November, when the operation was mooted and initial preparations to set up the multinational force began, the prime objective was to secure the delivery of humanitarian aid to the refugees. Although the multinational force was never deployed, it did have the virtue, in combination with other factors of course, of prompting some positive changes in the area, specifically the sudden mass return of a large proportion of the refugees to their country of origin – that is, Rwanda. This did away woth one of the fundamental reasons for sending a multinational force.

Having explained these considerations regarding the dispatch of a multinational force, I feel bound to refer to the situation and prospects of the conflict in the Great Lakes region at this moment.

Naturally, the International Community, and in particular the European Union countries and the United States, are following developments closely in the civil war in eastern Zaire. The information that we have at present suggests that there is no likelihood of either side gaining the upper hand.

The general opinion is still that the only way out of the crisis is through a cease-fire and the commencement of negotiations between the Kinshasa government and the Kabila rebels, and for the less immediate term a broad regional conference for the purpose of bringing stability to the Great Lakes region.

The interest of the International Community in the situation there has been reflected in the work of the European Union's special representative, Mr. Ajello, and particularly the Security Council's recent approval of Resolution 1097 – of which you are of course aware – adopting the Sahnoun Plan, so called after the UN Secretary general's special envoy for the great Lakes,

which organises the bases for pacification of the conflict in five points.

The points set forth in the Sahnoun Plan, which has the full support of the International Community, are as follows: an immediate cease-fire, withdrawal of all foreign forces including mercenaries, respect for the territorial integrity of Zaire and the other States in the region, protection of refugees and access to these for the supply of humanitarian aid and resolution of the crisis through dialogue, initiation of an electoral process in Zaire and convening of a regional conference.

(...)

And finally I should like also to mention humanitarian aid, since maintenance of such aid is another key condition for reaching an end to the present crisis and preventing as far as possible the emergence of a new crisis.

(...)

... through 1996 and up to the present moment, Spain has contributed over 1,100 million pesetas to the Great Lakes region in emergency aid and cooperation programmes. This is a good measure of the solidarity offered by Spain, in the concrete form of willingness to create a humanitarian multinational force, and the amount of cooperation that Spain has actually given in the Great Lakes region.

(...)

Clearly a coherent policy towards the Great Lakes region must take into account the practical fact that we cannot go into the Great Lakes region alone, we need some company. I cannot say whether you believe France is bad company, but I would ask you who is good company in the area and what State with the capacity for military intervention does not have interests in the area or in the Great Lakes region. The blocking of the solution proposed by Spain, which was the only coherent one from a humanitarian and ethical standpoint for a conflict that has still not come to an end, given that the return of a large proportion of the refugees does not remove the suffering of hundreds of thousands of refugees still remaining in Zaire and now threatened by a civil war between government forces and the rebel forces of Kabila – as I say, the blocking of this situation and the failure of the International Community to unblock it as called for by Spain and the non-governmental organisations, and also the Socialist Group, has been caused by a clash of interests in the area or by the divergence of analyses among the major powers ... The analysis of the Great lakes conflict by the major powers is by no means unanimous.

All this forces us to face a reality, and that is that once again the situation in Africa is being viewed through the prism of neo-colonial interests, in inverted commas. The disappearance of the two great power blocs with the end of the cold war has led to a new division of spheres of influence in Africa, and this often prevents the International Community from reaching general consensus on what to do in Africa. Curiously, all this has shown the

ineffectiveness of the United Nations and the International Community as regards putting an end to the humanitarian conflict in the Great Lakes".

(*DSC-C*, VI Leg., n. 168, pp. 4638–4639).

d) Former Yugoslavia

Appearing before the Congress Commission on cooperation and development aid on 3 November 1997, the Secretary of State for International Cooperation and Ibero-America, Mr. Villalonga Campos, reported on Spain's participation in the Reconstruction of Bosnia-Herzegovina.

"..., the problem of the return of approximately 2,300,000 displaced persons inside Bosnia or refugees outside its borders still remains unsolved. It is estimated that around 250,000 people have returned to their homes, but only a tiny number have returned to their places of origin where these are controlled by authorities belonging to another community. The result is the emergence of what are known as local councils in exile, whose functioning presents a new challenge for the International Community.

(...)

On the basis of a preliminary appraisal of the damage caused by the war, estimated at more than 80,000 million dollars, the World Bank has calculated that a priority reconstruction programme would require funding of around 5,100 million dollars for the first four years.

(...)

The donor countries and institutions made a firm commitment to grant Bosnia almost 2,000 million dollars of aid in 1996, thus exceeding the objectives set for that first year. Given the magnitude of the disaster situation in Bosnia, it was difficult to assign priorities in the list of necessities presented by the international institutions.

(...)

From the outset Spain's political, military and economic effort has far outreached what one might have expected given the history of our relations with this region. The Spanish reaction is prompted on the one hand by a desire to act as a European country helping out a European neighbour, however remote, but it also stems from the strong feeling of solidarity evoked in this society by the tragedy brought daily to our homes by the media, which have performed an essential task in making the brutality of this conflict known. The generous desire of Spanish society to collaborate with Bosnia has been channelled through various initiatives, private and collective, local and regional.

The main effort of the central government has been channelled through our armed forces and diplomatic corps. There are currently nearly 1,600 soldiers there, Spanish warships have been constantly involved in operations in the Adriatic, and Spanish warplanes patrol the skies of Bosnia and have even seen military action on occasions. The Civil Guard also has undertaken and

continues to undertake missions in Bosnia. This presence has entailed a major economic effort, totalling over 100,000 million pesetas. The logistic and organisational effort has also been considerable and sadly has cost the lives of 17 Spanish soldiers. Nonetheless, the generous work of our troops has earned general support from Spanish society, the respect of the other NATO countries, and above all the respect of the populations where they are deployed, to whom they have managed to bring effective and disinterested succour.

(...)

In a first stage prior to the conference of donors, Spanish action, channelled essentially through the Spanish International Cooperation Agency, consisted basically in the dispatch of humanitarian aid. Between 1992 and 1995 aid valued at nearly 2,900 million pesetas was sent to Bosnia, peaking in 1993 when humanitarian aid totalled 1,230 million pesetas. This aid was largely channelled through Spanish NGOs or was administered in collaboration with international organisations for assistance in situations of conflict, like the UNHCR in the case of the refugee population.

Later on, in 1996, at the most crucial point in the reconstruction process, in the two conferences of donors Spain, conscious of the message that the International Community ought to be sending to the principal parties involved, announced a commitment that year to contribute a generous 17 and a half million dollars – about 2,200 million pesetas – in the form of a non-repayable donation to Bosnia. Of that amount, approximately 600 million pesetas was used to finance projects in health, social care or rehabilitation of small social or educational infrastructures, which are being implemented by Spanish NGOs.

(...)

At the same time, it was decided to channel the bulk of the Spanish contribution, some 1200 million pesetas, through an international organisation that had been set up by the European Union and various Member States including Spain, under the auspices of the UNHCR and had been operating in Bosnia for some years – the International Management Group, IMG. In a memorandum of understanding that I had occasion to sign along with the IMG's general manager, the organisation guaranteed total flexibility both as to the assignment of our contribution to priority sectors and as to what companies should implement the projects, it being agreed that they should all be Spanish.

(...)

Going on the assumption that international action in Bosnia will continue to be needed, for 1998 the department which I head plans to implement several projects for a total value of 750 million pesetas in energy, health, education, sanitation and other sectors".

(*DSC-C*, VI Leg., n. 320, pp. 9392–9395).

XVII. WAR AND NEUTRALITY

1. Disarmament

a) Nuclear Weapons

Appearing before the Congress Foreign Affairs Commission on 8 May 1997, the Secretary of State for Foreign Policy and the European Union, Mr. de Miguel y Egea, reported on Spain's position regarding accession to Protocol III of the Pelindaba Treaty on denuclearisation of the African continent.

"... in Cairo on 11 April 1996, the Treaty of Pelindaba was signed – the picturesque name comes from a town in South Africa – whose purpose is to achieve the denuclearisation of the African continent...

Over the last few months we have closely examined the Pelindaba Treaty and its protocol III and have reached the conclusion that Spain ought not to sign in view of the drawbacks involved in signing the Protocol.

(...)

The Treaty of Pelindaba, which is the concrete expression of that will, consists of a main body, four annexes and three protocols. Protocols I and II are open to signature by countries possessing nuclear weapons, the first being a renunciation of the use of nuclear weapons against any State that is a party to the Treaty, and the second a prohibition of nuclear testing in the area coming under the Treaty of Pelindaba. Protocol Ill is open to signature by Spain and France as states having territorial possessions in the area.

As regards signature of the Treaty, Protocols I and II were signed by China, the United States, the United Kingdom and France as countries possessing nuclear weapons, and France further signed Protocol III as a country possessing territories in Africa. More recently, on 5 November 1996, the Russian Federation also signed Protocols I and II. Spain is therefore the only State called upon to sign, as having possessions in Africa, which has not done so.

(...)

Protocol III is open to signature by Spain and France as States having territorial possessions in the area, as established in article 1, which provides as follows: Each party to the Protocol undertakes to apply the provisions set forth in articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Treaty in the territories that are *de jure or de facto* (here I must point out a reservation which is far from trivial for anyone undertaking legal analysis of international texts, and that is that the English version, which is the one generally used for formal analysis, does not read *de jure and de facto*, but *de jure or de facto*, as I say, no trifling nuance) under its international responsibility and lie within the nuclear weapons-free area of Africa, and to ensure the application of the safeguards stipulated in annex II of the treaty.

Of the articles listed, Spain would be affected largely by those establishing

connections with organisations or treaties from the African continent, particularly article 13 and section 4 of annex II of the Treaty, which establish an obligation to submit an annual report to the African Nuclear Energy Commission with information sent by the International Atomic Energy Organisation on its inspection activities in the territory of the signatory concerned.

The Commission, whose composition and functions are regulated in articles 12 and 13 and annex III, is manned by the States which are parties to the Treaty, not to the Protocols which would be the case of Spain. Its members include a chairman, a deputy chairman and an executive secretary, the latter appointed by the secretary general of the OAU.

From the standpoint of Spanish non-proliferation policy, the Treaty and Protocol III plainly agree fully ... with our national position. Spain has ratified the Treaty on Non-Proliferation of Nuclear Weapons, the famous NPT, and has signed a general safeguard agreement with the Vienna-based International Atomic Energy Organisation (IAEO). That means that our country has renounced the production of nuclear weapons and has undertaken to use atomic energy solely for peaceful purposes.

Moreover, by decision of the Congress of Deputies in 1981 and 1985, decisions upheld in the consultative referendum of 1986 and also on the occasion of the decision to integrate Spain in the NATO military command structure, it is prohibited ... to install, store or introduce nuclear weapons in Spanish territory.

And finally I should like to add that, as we made clear through the European Union in recent common declarations, Spain strongly supports the agreement reached on the International Atomic Energy Organisation's programme of strengthening of safeguards, known as 93+2, which will most likely be approved by the organisation's board of governors when it meets this coming May. The purpose is to approve an additional protocol that strengthens the inspection capabilities of the IAEO so that no new cases like that of Iraq and the Democratic People's Republic of Korea can arise without the organisation knowing about it.

... as regards the banning of nuclear tests, last September Spain signed the Treaty for a total ban on nuclear testing. Nor does any of this clash with our membership of NATO or our signing of any other international treaty ... the commitments and obligations acquired by Spain place her in the front line of the countries seeking to prevent the proliferation of nuclear weapons in particular and weapons of mass destruction in general.

The Treaty as such does not therefore add anything new or contain any additional provision or guarantee that Spain has not already accepted for all of her national territory – including the Canary Islands, Ceuta and Melilla, of course. Our view is, then, that to sign the Pelindaba Treaty raises political problems of another kind deriving from the influence of the Organisation of African Unity in this treaty.

The Treaty implies that the Canary Islands are a part of the African continent and thus grants the OAU some kind of right to take an interest in and opine on these islands. I think this House is well aware of the Spanish government's position regarding all the OAU's suggestions and claims in respect of the Canary Islands, and of our policy in the sense that the Islands are an integral part not only of Spain but also now of the European Union and the Atlantic Alliance. We therefore cannot and must not allow any contradiction of this kind.

The formula used in article 1 of Protocol III, referring to an undertaking to apply the treaty provisions in territories of which the country concerned is in *de jure* or *de facto* possession is practically identical to the formula used in United Nations documents to define territories subject to decolonisation. I think this merits some comment..

Moreover, on the map in annex I of the Treaty, which defines the territory falling within the nuclear weapons-free zone of Africa – that is, the Pelindaba Treaty zone – neither Ceuta nor Melilla nor the Chafarrinas nor the Rocks are marked. This omission could be interpreted as questioning our sovereignty over these Spanish territories.

The map does of course show the Canary Islands as African territories. What is more, to sign would imply inspection of Spanish territories by the African Nuclear Energy Commission, which as I have said is controlled by the OAU ... the responsibility for applying safeguards throughout Spanish territory lies with the IAEO and EURATOM, both solid, competent organisations which brook no political interference. Spain is a part of the IAEO, and in respect of EURATOM we come under the safeguards of the European Union, of which Spain, including all her national territories, is a member.

And finally, the secretary general of the OAU is the depositary of both the Treaty of Pelindaba and the Bamako Convention; to become bound by these treaties would encourage others to claim that our territories are politically African.

For all these reasons, after careful weighing of the pros and cons of signing Protocol III, it has been decided that the best position as regards Spanish interests is not to sign and to so advise the Organisation of African Unity....

The government trusts that this line of action will be understood and approved by all the parliamentary groups, to whose sense of responsibility we appeal while stressing that the government's decision is based on considerations of state policy and has no bearing whatsoever on our policy on nuclear weapons and non-proliferation".

(*DSC-C*, VI Leg., n. 212, pp. 5849–5854).

2. Export of Arms

a) In General

On 11 September 1997, the Diplomatic Information Office of the Ministry of Foreign Affairs issued the following communiqué:

"The following embargos on exportation of arms, ordered by the UN Security Council and the EU, are currently in force:

- Afghanistan: Ban on the supply of arms and munitions to all parties in conflict (S.C. Res. 22–10–96).
- Angola: Ban on the supply of arms, related material and military assistance to UNITA (S.C. Res.1–6–93 and S.C. Res. 15–9–93)
- Iraq: Ban on the supply of any product, including arms and any other military equipment (S.C. Res. 6–8–90).
- Liberia: Ban on the supply of any product, including arms or any other military equipment (S.C. Res. 6–8–90).
- Libya: Ban on the supply of all kinds of arms and related material, including the sale or transfer of arms and munitions, military vehicles and equipment, paramilitary equipment for the police and spare parts therefor; ban on the supply of all kinds of materials and patents intended for the manufacture and maintenance thereof; ban on the supply of technical assistance or training in relation to the supply, manufacture, maintenance or use of such articles (S.C. Res. 31–3–92).
- Rwanda: ban on the sale or supply of armaments and any kind of related material, including arms and munitions, military vehicles and equipment, paramilitary equipment and spares (S.C. Res. 17–5–94 and S.C. Res. 16–8–95).
- Somalia: General and total ban on the supply of armaments and military equipment (S.C. Res. 23–1–92).

2.– Ordered by the European Union:

- Afghanistan: Embargo on exports of arms, munitions and military equipment (Common Position 17–12–96).
- China: Embargo on arms trading (European Council Decl. 27–6–89).
- Iraq: Embargo on sales of arms and other military equipment (Decl. 4–8–90).
- Iran: Confirmation of the policy of the European Union Member States not to supply arms (EU Decl. 29–4–97).
- Libya: Ban on the exportation of arms or other military equipment (Foreign Ministers Decl. 14–4–96).
- Myanmar: Decision to refuse the sale of any kind of military equipment originating in the countries of the European Economic Community (General Affairs Council Decl. 29–7–91).
- Nigeria: Embargo on arms, munitions and military equipment (Decl. 20–11–95).

- Sudan: Embargo on arms and military equipment (Decl. 15–3–04).
- Ex-Yugoslavia: Establishment of an embargo on exportation of arms and military material (Decl. 5–6–91).
- Ex-Yugoslavia (Slovenia and Macedonia): Embargo on arms, munitions and military equipment (Decl. 26–2–96).
- Zaire: Embargo on sales of arms (Decl. 7–4–93).
- Various Countries: Ban on the exportation of arms or other military equipment to countries clearly involved in sustaining terrorism (Political Committee 27–1–86).
- Great Lakes Region: The Political Committee resolved that the Member States of the European Union should take steps to prevent the supply of arms to the parties in conflict (13–3–97)".

b) Iran

In reply to a parliamentary question on 28 October 1997, the Government explained Spain's position on the sale of arms to Iran.

"Spain's position regarding authorisations of arms sales to Iran is in line with the measures adopted by the Member States of the European Union.

Since the declaration by the Netherlands presidency on 10 April 1997 which registered the existing concern about Iran's involvement in terrorist activities, the EU Member States have been applying new restrictions on arms exports. On 29 April 1997, the EU General Affairs Council announced 'confirmation of the EU member countries' policy not to supply arms to Iran'.

Therefore, in pursuance of these coordinated policies Spain has adopted a number of measures to deny not only any applications for export licences, but to rescind any licences issued prior to 29 April, and even prior to 10 April".

(*BOCG-Congreso.D*, VI Leg., n. 195, p. 58).

c) Anti-personnel Land-mines

Replying to a parliamentary question on 28 October 1997, the Spanish Government explained Spain's position regarding the conference on anti-personnel mines.

"In Oslo, Spain, as a full member, played an active and constructive part in accomplishing the purpose of the Conference. The Spanish delegation maintained a position consistent with these objectives and with the defence of her national interests. In line with these criteria, proposals were put forward with the ultimate aim of enabling as many countries as possible to accede to the Convention in order to make the ban on anti-personnel mines universal. This was achieved without losing sight of humanitarian considerations in a Convention whose purpose is to put a swift and decisive end to the proliferation of anti-personnel mines.

The Spanish government will sign the document emerging from the Oslo

Conference and will press for the Treaty to be ratified and come into force as early as possible. Spain is further committed to the destruction of mines in our country within a maximum of four years and to de-mining in other countries. Spain has already contributed more than 100 million pesetas to de-mining programmes in Africa and Central America".

(*BOCG-Congreso.D*, VI Leg., n. 195, p. 71).