SPANISH DIPLOMATIC AND PARLIAMENTARY PRACTICE IN PUBLIC INTERNATIONAL LAW, 1995 AND 1996

This Section was prepared by Dr. C. Jiménez Piernas, Professor of Public International Law and International Relations at the University of Alcalá, and Dr. J. Ferrer Lloret, Lecturer in Public International Law, Dr. M. A. Almeida Nascimento, Dr. V. Carreño Gualde and C. Antón Guardiola, Assistant Lecturers in Public International Law at the University of Alicante, C. R. Rueda Castañón and C. Villán Durán, Staff Members of the Centre for Human Rights (United Nations, Geneva).

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).

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

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

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

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

Spanish Yearbook of International Law, Volume IV 1995–1996, 107-240.

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

a) Gibraltar
b) East Timor

VIII. Seas, Waterways, Ships
1. Fisheries
   a) Algeria
   b) Morocco
   c) Canada

IX. International Spaces

X. Environment

XI. Legal Aspects of International Cooperation
1. Economic Development and Cooperation
2. Assistance to Developing Countries
   a) Ibero-America
   b) Maghreb
   c) Equatorial Guinea
3. International Terrorism
4. Cooperation in Judicial, Criminal and Civil Matters

XII. International Organizations
1. United Nations
   a) Security Council
   b) Financial Issues
2. North Atlantic Treaty Organization
3. Western European Union
4. Organization for Security and Cooperation in Europe

XIII. European Union
1. Enlargement
2. Spanish Presidency of the Union
3. Economic and Monetary Union
4. Cooperation in the Field of Justice and Home Affairs
   a) External Borders. Schengen
   b) Illicit Traffic in Narcotic Drugs
   c) Extradition
   d) Racism and Xenophobia
5. Foreign Relations
6. 1996 Intergovernmental Conference

a) Spain=s Position
b) Common Foreign and Security Policy
c) Cooperation in the Field of Justice and Home Affairs

XIV. Responsibility
1. Responsibility of Individuals
2. Injurious Consequences Arising out of Acts not Prohibited by International Law
3. Responsibility of States
   a) International Crimes
   b) Countermeasures

XV. Pacific Settlement of Disputes
1. Diplomatic Modes of Settlement
   a) Good Offices, Mediation
2. Jurisdictional Modes of Settlement

XVI. Coercion and Use of Force Short of War
1. Unilateral Acts
   a) Peru
   b) Cuba
2. Collective Measures. Regime of the United Nations
   a) Iraq
   b) Liberia
   c) Yugoslavia
   d) Rwanda
   e) Sudan
   f) Peace-keeping Operations

XVII. War and Neutrality
1. Disarmament
   a) Nuclear Arms
2. Export of Arms by Spain to Third Countries
   a) Indonesia

I. INTERNATIONAL LAW IN GENERAL

1. Nature Basis and Purpose

Note: See IV.1 International Status

The Fifth Ibero-American Summit of Heads of State and Government, held in San Carlos de Bariloche (Argentina), 16–17 October 1995, approved a Final Document which declared as follows:

"1. We reaffirm that democracy and respect for the human rights and fundamental freedoms of the individual constitute the basic values of the peoples of Ibero-America;

(...)

8. Consistent with the principles established in the Charter of the United Nations, by the World Trade Organization and in International Law and with the resolutions of the General Assembly of the United Nations, we reject all unilateral coercive measures that affect the well-being of the peoples of Ibero-America, impede free trade and universally recognized transparent trade practices and violate the principles of regional coexistence and the sovereignty of States.

At the present time we are particularly concerned about the regulatory changes being discussed in the United States Congress; these would be quite contrary to the principles that we demand should be applied.

(...)

13. Considering that this Fifth Ibero-American Summit is being held only a few days prior to the celebration of the Fiftieth Anniversary of the United Nations, we wish to reiterate our strong support for the principles and purposes that inspired the creation of the Organization and we solemnly pledge to support it in its irreplaceable role as the forum of preference for dialogue and concerted action between the Ibero-American countries and the rest of the International Community.

(...)".

A year later, at the Sixth Ibero-American Summit held in Santiago and Viña del Mar (Chile) on 10–11 November 1996, the Final Document approved by the Heads of State and Government declared as follows:

"2. We hereby reaffirm our commitment to democracy, the rule of law and political pluralism, respect for human rights and fundamental freedoms, the rule of International Law and the principles of the United Nations Charter, and above all the principles of sovereignty, non-intervention and legal equality of all States, and likewise the right of every people to establish its own political system and institutions in conditions of freedom, peace, stability and justice. These

commitments and principles, ... constitute the foundation stone and the conceptual framework of our discussions, our decisions and the objectives that we have mapped out with respect to governability in the interests of efficient, participatory democracy.

(...)

8. We reaffirm our resolve to contribute to the codification and progressive development of International Law in order to reinforce the rule of law as a rule of conduct in relations between States.

(...)

10. In this connection we hereby express our firm rejection of the 'Helms-Burton' Act passed by the United States of America, which violates principles and rules of International Law and the United Nations Charter, contravenes the principles and rules of the World Trade Organisation and contradicts the spirit of cooperation and friendship that ought to inform relations among all members of the International Community.

Given our concern at the scope of the 'Helms-Burton' Act, which flouts the fundamental principle of respect for the sovereignty of States and constitutes the extraterritorial application of internal law, we therefore urge the Government of the United States of America to reconsider the enforcement of this Act, which is in violation of the principles governing international coexistence.

We further stress the importance of the unanimous opinion expressed by the Inter-American Legal Committee of the Organisation of American States to the effect that the fundaments and the enforcement of this Act are not in accordance with International Law.

(...)".

Finally, in his address to the 40th Meeting of the Sixth Committee of the United Nations General Assembly, speaking on behalf of the European Union the Spanish Representative, Mr. Sánchez, said that he:

"shared and supported the aims of the United Nations Decade for International Law described in paragraph 2 of General Assembly Resolution 44/23: to promote acceptance of and respect for the principles of International Law; to promote means and methods for the peaceful settlement of disputes between States; to encourage the progressive development of International Law and its codification; and to encourage the teaching, study, dissemination and wider appreciation of International Law. The European Union noted with special interest the contributions made in that respect by several international organizations and bodies, such as ICRC for its work on the protection of the environment in times of armed conflict, and the Permanent Court of Arbitration and OSCE, which had reported on initiatives to promote the peaceful settlement of disputes". (UN Doc. A/C.6/50/SR. 40, p. 8).

11. SOURCES OF INTERNATIONAL LAW

1. Treaties

a) Conclusion and Entry into Force

Appearing before the Parliament's Foreign Affairs Commission on 18 June 1996, the Minister of Foreign Affairs, Mr Matutes Juan, explained the reasons proffered by the previous Government for not signing the Treaty for denuclearisation of the African continent and the Government's position on this issue:

> "in the first place, ... it is not my task to explain the reasons why the previous Government did not sign Protocol three of the Pelindaba Treaty, which opened for signature in El Cairo on 11 April last. The reason was probably that at that time a caretaker Government was in office, the *Cortes* had dispersed, and the previous Government may have felt it inappropriate to make that decision. In any event, as soon as the Treaty was opened to signature, Spain issued and distributed a declaration, which our Government naturally subscribes to, in which it reiterated its support for the objectives of the Treaty and its conviction that the establishment of nuclear weapon-free zones – in this case the entire African continent – helps strengthen peace and security. Spain is therefore wholly in favour of this objective and has signed its own resolutions.
>
> ... what the new Government thinks. We are considering what decision to take. ... We are discussing the text and the kind of reservations and declarations that will have to accompany the signature in the event that Spain is able to sign this third Protocol ... Spain has already voluntarily accepted the strictest legal framework currently existing in the field of nuclear issues. Spain guarantees third States that she will not produce nuclear weapons and will use nuclear energy solely for pacific purposes. In other words, our State is a signatory of the non-proliferation Treaty, we have concluded an agreement for total safeguards with the IAEO, ... and in 1985 the Spanish Parliament, ... ratified the decision on nuclearisation of Spain, which had been made in 1981. These decisions were moreover approved by a referendum held in March 1986. This legal framework therefore offers our African neighbours absolute guarantees which are equal or greater in that they apply not only to Africa but to the rest of the world as well ... If we have already given such assurances in Africa and elsewhere, we do not see the need to sigu.
>
> (...)". (DSS-C, V Leg., n. 24, p. 17).

Regarding the Schengen Agreement of 14 June 1985:

> "The Cabinet passed a resolution acknowledging the Decision of 22 December 1994 by the Schengen Executive Commitee regarding the application

of the Convention implementing the Schengen Agreement, signed on 19 June 1990.

As we all know, the main objective of this Convention is the gradual elimination of controls on the common borders of the States that are parties to the Convention, which came into force on 1 March 1994, albeit only as it relates to the creation of an Executive Committee.

On 22 December 1994, the Executive Committee acknowledged fulfilment of all the established conditions by all the signatories of the Convention and decided to bring all the provisions of the Schengen Agreement into force as from 26 March 1995.

This entry into force will only affect Belgium, Germany, France, Luxembourg, the Netherlands, Spain and Portugal, the countries which meet the required conditions. As for Italy and Greece, the other two signatories of the Convention, the Executive Committee will make a new decision once they have fulfilled the prior conditions.

(...)". (DSS-C, V Leg., n. 24).

b) Reservations

In a speech on 25 October 1995, the Spanish representative at the Sixth Committee of the United Nations General Assembly, Mr. Pastor Ridruejo, made the following comments on Chapter VI of the Report of the International Law Commission (Law and practice in respect of reservations to treaties):

"... as the Special Rapporteur proposed in his first report and the International Law Commission has accepted, it is an essential starting point to preserve the system provided in articles 19 to 23 of the 1969 Vienna Convention on the Law of Treaties (and taken up in the 1978 Vienna Convention on Succession of States in Treaty Matters and the 1986 Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations). My delegation firmly supports this point of view. To call into question the regulation of 1969, 1978 and 1986 would be highly prejudicial to the legal security that these matters demand.

We would add, however, that since this system contains a number of loopholes and ambiguities, the task now entrusted to the Commission on the matter of reservations is a useful, meaningful and purposeful one. This purpose is precisely to close these loopholes and clarify these ambiguities, which are essentially the three following:

- effects of non-permitted reservations;
- rules of objections and reservations; and
- precise differentiation between reservations and interpretative declarations and exact determination of the legal effects of the latter.

But what the Commission ought not to address as a single issue is that of

reservations to treaties on human rights. The reason for this, in the decided opinion of my delegation and contrary to the point of view of some international bodies having competence in matters of human rights, is that such reservations are in no way particular and are therefore governed by the general principles of treaty law.

It is of course difficult not to attach great importance to treaties on human rights and enhancement of their effectiveness and universality. In this regard it would be most desirable that no reservations be presented to these treaties, and furthermore that these treaties should be binding on the largest possible number of States. However, this very universality demands the most scrupulous respect for the rules accepted by States as regards reservations to treaties. For if international institutions and bodies having competence in these matters are unaware of such rules and tend to ignore or minimise the effects of reservations, thus disturbing the foundation of consensus underlying all treaty law, then in the final analysis they are not helping the cause of human rights. To the contrary, they are damaging that cause, for the outcome of such an attitude will be to make States reluctant to participate in treaties, like the ones at issue here, which are enforced in terms not accepted by their sovereign will.

We are therefore concerned that, as the Special Rapporteur acknowledged in summarising the debate on the subject that has taken place in the Commission (paragraph 482 of the Report),

'as to the desirability or otherwise of creating a special regime for treaties on human rights, the Special Rapporteur said that the debate in the Commission had not been conclusive'.

Now, Mr. President, I shall move on to the important question of the nature of whatever instrument may emerge from the work of the Commission on reservations. The Special Rapporteurs's Report suggests four possible approaches: 1) a convention on reservations that reproduces in full the provisions of previous conventions on the subject (1969, 1978 and 1986) with any necessary clarifications and additions; 2) one or three additional protocols which do not conflict with those conventions; 3) preparation of a practical guide on the subject for States and international organisations; and 4) a complementary approach consisting of model clauses for guidance of States when negotiating a treaty, for example on human rights. We note the diversity of opinions expressed on this point in the Commission, but given that the regime laid down in the 1969 Vienna Convention is to be respected, our own preference would be for the model clauses formula, on the understanding that several sets of such clauses would have to be drawn up to cater for various kinds of treaty.

(...)".

2. Codification and Progressive Development

Note: See II.1.*b) Reservations*, IV.3 Succession of States

Mr. Pastor Ridruejo also commented briefly on Chapter VII of the ILC Report, particularly concerning the Commission's programme for the long term:

> "... In this respect the Commission indicates two issues: diplomatic protection and the rights and obligations of States as regards protection of the environment. Now, we think it perfectly right that the Commission should address the first of these issues – diplomatic protection – when the time comes, but we think it quite inappropriate for it to commence work on the second issue – legal protection of the environment. It must be borne in mind that in the final analysis the work of the Commission on the subject of "International responsibility for acts not prohibited by International Law" has led it into what are basically environmental protection issues. Only once this latter work is concluded in one way or another should the Commission consider the feasibility of addressing general or particular issues relating to defence of the environment.
>
> (...)".

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

1. Relations between Community Law and Internal Law

On 20 April 1995, the Government made the following declaration in response to a question raised in the Senate regarding article 134 of the Schengen Agreement and its transposition by Spain:

> "Council Directive 91/477 of 18 June 1991 on control of the acquisition and possession of weapons, published in the *OJEC* L 256 of 13 September 1991, was incorporated in Spanish law by Royal Decree 137/ 1993, which approved the Weapons Regulations, and the Ministerial Order of 20 May 1993 approving the European model of firearms card and the model declaration of transfer of firearms by authorised firearms dealers.
>
> Finally, it should be remembered that if any conflict should arise between the said Directive and the Convention implementing the Schengen Agreement, of 19 June 1990, under article 134 of that Agreement, Community Law will prevail in all cases over any regulation promulgated within the Schengen area". (BOCG-Senado.I, V Leg., n. 265, p. 60).

A few months later the Government replied to a question from Congress on the Community directives that are to be transposed to the Ministry of Foreign Affairs, the priority of these and the Ministry's plans in that respect:

"In the process of transposition of Community directives to the Spanish statutes, the role of the Ministry of Foreign Affairs is essentially to provide coordination and impetus among the various Ministries involved, and also to act as a channel to convey to them the various directives for whose transposition they are responsible, and once they are incorporated in Spanish law to notify their transposition to the competent organs of the European Union through the permanent representative in Brussels.

The Ministry of Foreign Affairs is therefore not responsible for the transposition of any Community directive but rather participates exceptionally in some where the matter falls within its purview.

At present there are only two directives in which the Foreign Ministry is competent: 94/10/EC, 23 March 1994, a directive substantially amending Directive 83/189/EC for the second time whereby a procedure is established for informing on matters of technical rules and regulations, for whose transposition responsibility lies with the Ministry for Public Administration, and Directive 94/80/EC, 19 December 1994, which defines the modes of exercise of rights of passive and active suffrage in municipal elections by Union citizens resident in a State of which they are not nationals.

(...)

As it has no direct responsibility for transposition, it is not up to the Ministry of Foreign Affairs to establish the priorities to which it alludes, although it does have a duty to lend the necessary impetus to ensure the incorporation of directives to Spanish law as swiftly and correctly as possible...". (BOCG-Congreso.D, V Leg., n. 266, p. 528).

IV. SUBJECTS OF INTERNATIONAL LAW

1. International Status

Note: See VII.2 Colonies; XIII.4.*a) External Borders. Schengen*

The Minister of Foreign Affairs, Mr. Solana Madariaga, appeared before the Congress Foreign Affairs Commission on 28 February 1995 to report on the Government's position with respect to the intervention of the Russian army in Chechnya:

"...our position is as follows: Firstly, Chechnya is an integral part of the

Russian Federation. No-one has recognised the independence declared unilaterally by Dudayev and Russia has the right to defend her territorial integrity; secondly, none of this means that Russia or anyone is entitled to try and solve what can be described as internal problems by the disproportionate means that have been and are being used in Chechnya. We therefore condemn the use of these methods and we reaffirm that violations of human rights and international humanitarian law cannot be considered internal affairs of a country. And hence, thirdly, we call for an immediate end to hostilities and an effort to reach a negotiated solution – a peaceful solution to the conflict.

(...)

We have put this position into practice in collaboration with the appropriate organs of the OSCE, and it is these mechanisms that have constituted our essential instruments of action.

(...)

... on 3 February the Permanent Council of the OSCE passed a resolution which among other things reaffirmed its support for a peaceful solution to the conflict based on the Budapest principles and respect for the territorial integrity of the Russian Federation and for its Constitution, which was approved by referendum in December 1993.

Secondly, it reiterates our concern at the disproportionate use of force by Russian troops, it once more condemns all violations of human rights and it demands that those responsible be brought to justice.

Thirdly, it demands an immediate cease fire and that the Red Cross be given free access to the region.

And finally, it calls for the initiation of a political process leading to a negotiated settlement based on the principles of the OSCE and the holding of free elections.

(...)". (DSC-C, V Leg., n. 436, p. 13288).

Replying to a parliamentary question on the comments made by the Moroccan Secretary of State regarding the situation of Ceuta and Melilla, the Government made the following statement on 26 December 1995:

"... The position of the Spanish Government regarding Ceuta and Melilla is a matter of public record known to both the Moroccan authorities and Spanish public opinion. These two cities are an integral part of Spanish territory. Therefore, no explanation of any kind has been given to the Moroccan Government and there has been no secret agreement on the subject of Ceuta and Melilla". (BOCG-Congreso. D. V Leg., n. 313, p. 75).

2. Recognition of States

On 11 April 1996, the Presidency of the European Union, on behalf of the Union, made the following Declaration on recognition of the Federal Republic of Yugoslavia by Union member States:

"On behalf of the European Union, the Union Presidency notes with satisfaction the Agreement signed yesterday by the Federal Republic of Yugoslavia and the Yugoslav Republic of Macedonia with a view to establishing bilateral relations and exchanging ambassadors. This development is a major contribution to the peace and stability of the region that was formerly Yugoslavia and opens the door to recognition by the EU member States of the Federal Republic of Yugoslavia as one of the successor States to the Socialist Federative Republic of Yugoslavia.

It will be a matter of satisfaction to the European Union if the Federal Republic of Yugoslavia adopts new measures leading to full normalisation of the country's relations with the international community.

The European Union considers that henceforth the development of good relations with the FRY and the place of the latter in the International Community will depend on the Federal Republic of Yugoslavia adopting a constructive attitude as regards:

- mutual recognition of all the States of the former Yugoslavia, in particular between the Republic of Croatia and the Federal Republic of Yugoslavia;
- material progress in the fulfilment of undertakings made within the framework of the Paris Peace Agreement, particularly as regards cooperation with the International Court;
- an agreement among all the states of the former Yugoslavia on problems of succession;
- full cooperation in implementation of the basic agreement on Eastern Slavonia;
- absolute respect for human rights of minorities and of all refugees and displaced persons to return, and granting of a considerable degree of autonomy to Kosovo as part of the FRY.

The European Union attaches special importance to human rights and the rights of national and ethnic groups. It recalls the undertakings made by the Federal Republic of Yugoslavia within the framework of the Paris Peace Agreement and the approval expressed by that Republic on the occasion of the London Peace Conference with respect to maintaining the current mandate of the Working Group on Minorities and Ethnic and National Communities.

(...)

The European Union believes that the undertakings made within the framework of the Paris Peace Agreement and the assent of the Federal Republic of Yugoslavia to maintenance of the said Group imply acceptance of these principles.

The FRY has been advised of this position. Material progress in the application of these principles will be closely monitored".

On behalf of the European Union the Presidency also made the following Declaration on normalisation of relations between the Federal Republic of Yugoslavia and the Republic of Croatia on 27 August 1996:

"The European Union wishes to express its satisfaction at the Agreement signed on 23 August by the authorities of the Republic of Croatia and the Federal Republic of Yugoslavia on normalisation of their relations, providing for mutual recognition and exchange of diplomatic representatives at ambassadorial level.

This event is a constructive contribution to peace and stability in the region, particularly in view of the intention expressed by both parties to settle any pending issues by negotiation, in line with the United Nations Charter and based on the rules of International Law.

The European Union further expresses its pleasure at the intention expressed by both parties of examining and settling matters relating to the rights of those of their respective citizens who suffered the loss of relatives or personal possessions during the recent conflict.

The European Union awaits with interest the entry into force of this Agreement and the application of its provisions without delay".

3. Succession of States

Note: See II.2 Codification and Progressive Development

In a speech given on 25 October 1995 on the Report of the International Law Commission for the 47th session period, Mr. Pastor Ridruejo, the Spanish Representative on the Sixth Commission of the General Assembly, made the following comments on Chapter III of the Report (Succession of States)

"... as regards the impact of the succession of States on the nationality of legal persons, we would agree with the Special Rapporteur's recommendation that the Commission deal with this separately from the nationality of natural persons, naturally prioritising problems concerning the latter type of nationality. After all, as the Commission has rightly said, it is natural persons who constitute that fundamental element of the State, the population, and it is consequently these persons who are most at risk in the event of succession of States. The problems that a succession of States brings to legal persons are of a different kind, and definitely of less importance.

(...)

The continuity of the nationality of the protected individual. Although the question of the impact of the succession of States on this requirement could be

dealt with in the framework of the study on diplomatic protection – a subject that the Work Group intends to include in its work programme with the approval of the General Assembly – we share the view of the Work Group that the problem has been settled. Since the purpose of making continuity of nationality a requirement for the granting of diplomatic protection is to prevent abuses, a change of nationality resulting from the succession of States must not affect the provision of the said diplomatic protection.

We would further join the Special Rapporteur in stressing how important it is that the Commission determine the precise limitations upon the predecessor State as regards deprivation of nationality of the inhabitants of the territory it has lost and the obligation of the successor State to confer its own nationality on the inhabitants of the territory that has become sovereign as a result of that succession. Whatever light the Commission can shed on these two basic problems will certainly be illuminating.

(...)

Our initial impression is that this should not lead to a proposal for articles which would eventually become a Convention. As to the kind of instrument that may result from the work of the Commission, in principle we would like to see a set of guidelines or model rules that would be useful to States facing problems of nationality arising out of a succession of States. To that end we here declare our willingness to answer any questionnaire that the Commission may draw up.

(...)".

4. Self-determination

a) Sahara

To a query as to its position regarding an International Peace Conference on Western Sahara, the Government replied as follows:

"Since 1976 the Spanish Government has maintained a firm position of principle on the Western Sahara conflict: this is a problem of unconcluded decolonisation requiring a free and fair referendum on self-determination with full international guarantees. Spain supports and has lent full cooperation to the Settlement Plan drawn up by the UN Secretary General and adopted by Resolutions 658, 690, 809 and 907 of the UN Security Council. The Government is confident that under the Settlement Plan the referendum can be held in the very near future once all the requisite steps are satisfactorily concluded.

If all the interested parties should agree to the holding of an International Conference to further the implementation of the UN Secretary General's Settlement Plan, the Government would be willing to offer its support and

cooperation". (BOCG-.Congreso.-D, V Leg., n. 188, pp. 422–423).

A number of parliamentary questions were asked in the Congress and Senate on the measures and initiatives to be adopted by the Spanish Government regarding the UN's decision to suspend the Sahara referendum, which were answered by the Minister of Foreign Affairs and the Secretary of State for International Cooperation and Iberoamerica.

On this subject the Foreign Minister, Mr. Matutes Juan, made the following statement to the Senate on 28 May 1996:

"... Spain has special historic ties with the Western Sahara, which is moreover geographically close to the Canary Islands.

Spain maintains excellent relations with the various governments and spokesmen of the region on this particular problem. I should therefore like firstly to stress that the Spanish Government will continue to maintain a position of principle based on the understanding that the Western Sahara is a decolonisation problem and hence can only be settled definitively by the self-determination of the Saharan people in a free and fair referendum guaranteed by the International Community.

Therefore, if, as seems probable, the Security Council finally decides to accept the arguments put forth by the UN Secretary General in his report and suspends the process of identification and census of voters, Spain will not only deem it regrettable but will continue to insist on the importance of speedy resumption of the process and of all the other points in the settlement plan which have been stalled up till now.

(...)

At this moment, if the process is suspended or annulled our first priority must be to maintain the guarantee of the cease fire that has been in force since 1991, for the sake of the stability of the region and to permit the fulfilment of the process that is presently partially in suspense. And I say partially because according to the Secretary General's proposal this interruption entails a major reduction in the UN's MINURSO forces whose task this is.

It is nevertheless true that the military presence of MINURSO will be practically undiminished as regards supervision of the cease fire.

Spain will therefore continue to press and encourage the parties to maintain the cease fire and work towards a solution to the problems that are hindering the furtherance of the process...". (DSS-P, VI Leg., n. 3, pp. 34–35).

In addition, an Official Communiqué on Western Sahara issued by the Spanish Government on 3 June 1996 and addressed to the Secretary General in a letter from the Spanish Permanent Representative to the United Nations, Mr. Yáñez-Barnuevo, declared as follows:

"... The Spanish Government reiterates its traditional position of principle to

the effect that the problem of Western Sahara will be definitively resolved only through the self-determination of the Saharan people by means of a free referendum with international guarantees.

The Government expresses its concern at the suspension of the voter identification operation and the impasse in the settlement process, and underlines the importance of maintaining the climate of harmonious coexistence among the peoples of the Maghreb. In its contacts with the United Nations, the parties and interested countries, the Government will insist on the importance of the cease-fire that has been in force since 1991 and on the desirability of a prompt renewal of the voter identification process and the other aspects of the Settlement Plan, and will encourage them to work in a spirit of compromise for the solution of the present problems with a view to the future of the territory and to the peace and prosperity of the region". (UN Doc. A/51/160, S/1996/418, 10 June 1996).

Again, on 19 June the Minister made the following statement to Congress:

"The Government is not insensitive to this problem. On several occasions the Government has in fact decried the suspension of the voter identification process and has stressed the importance of resuming it as soon as possible. It should be pointed out, however, that the Security Council has not annulled the Settlement Plan, nor has it abandoned its commitment to seeking a fair and lasting solution to the Sahara question by means of the only formula possible – that is, the holding of the referendum in the terms I have mentioned. Therefore, besides keeping up its military presence, the United Nations has decided to maintain a political office in the territory for the purpose of sustaining dialogues with the parties in conflict and neighbouring countries. The Security Council has asked the Secretary General to continue his efforts to unfreeze the Settlement Plan.

In this situation the Spanish Government is doing what it can, promoting initiatives and a climate of dialogue and better mutual understanding among the various parties involved, and it has tirelessly reiterated its traditional principled stance as to its definitive position. It is willing to promote as many initiatives as can be previously arranged with the parties. Given that the situation is in the hands of the United Nations, at this time there is nothing it can do other than offer its good offices, and that is what it is doing". (DSC-P, VI Leg., n. 14, p. 520).

On 20 June 1996 the Secretary of State for International Cooperation and Iberoamerica, Mr. Villalonga Campos, replied to a question in Congress as follows:

"... The Security Council has not annulled the Settlement Plan for the Sahara or the Peace Plan proposed by the UN Secretary General.

Nor has it given up its commitment to seek a fair and lasting solution to the question of the Sahara by means of a referendum on self-determination as set forth in that Plan.

Therefore, as well as keeping up the military presence of MINURSO, it has

decided to maintain a political office in the territory for the purpose of entering into dialogue with the parties and the neighbouring countries.

The Council further asked the Secretary General to continue his efforts to unfreeze the Settlement Plan and declared its willingness to reinforce the MINURSO if the parties involved show evidence of political willingness to carry forward the negotiations.

On the occasion of the adoption of Security Council Resolution 1065, the Spanish Government has reiterated its traditional position, which is that a final solution to the problem of the Western Sahara must necessarily entail the self-determination of the Saharan people through a free referendum with international guarantees.

Spain has therefore firmly supported the United Nations Settlement Plan and the efforts made in recent years by both the Secretary General and the MINURSO.

The Government has therefore expressed its regret at the suspension of the voter identification process and stressed the importance of resuming it at the earliest opportunity.

In its contacts with the United Nations, the Security Council member countries and the various regional actors and interested parties, it will be expressing its concern at the halting of the process for settlement of the conflict ... It is particularly necessary that the cease fire in force since 1991 be observed.

I believe that this is as far as the Spanisb Government can act. In other words, Spain no longer possesses international responsibilities in International Law for the territory of the Sahara – although it does have a moral responsibility for the territory and ties of affection with its population – and hence all that Spain can do is refrain from adopting initiatives that ought to come from the interested parties in accordance with the decisions of the United Nations. Such initiatives are a matter for the parties, and Spain is no longer a party in the Saharan conflict.

What it can do is to pass on the remarks I have just made in its relations with the neighbouring countries, with Mauritania, with Morocco and with the Security Council members.

(...)

... The issue of the Sahara is a delicate one in that it touches sore spots, affects the national security, closely concerns Spanish public opinion and the moral responsibility I referred to earlier, and therefore any action by Spain on this matter must be both discreet and prudent.

...The principles that the Spanish Government has always upheld remain the same: support for the Peace Plan, support for the referendum and self-determination for the Saharan people.

(...)". (DSC-C, VI Leg., n. 31, p. 530).

The Minister of Foreign Affairs, Mr. Matutes Juan, also addressed the Senate on 8 October 1996 in reply to a question on the initiatives to be adopted through the UN in

order to arrive at a solution to the problem of the Sahara:

"... UN Security Council Resolution 1056 of 29 May last ordered the suspension of the voter identification process for the referendum on self-determination of the Western Sahara.

(...)

At the time of this Resolution 1056 and in my address to the United Nations General Assembly, the Spanish Government reiterated its position, which is well known and unchanging, that there can be no final solution to the problem of the Western Sahara without self-determination of the Saharan people by means of a free referendum with international guarantees. For this same reason the Spanish Government expressed its regret at the suspension of the voter identification process and stressed the importance of full resumption at the earliest possible moment.

Furthermore, Spain has been constantly and constructively active through contacts with United Nations officials, with Security Council member countries and with the various regional bodies and interested parties, ...

In its conversations the Government has conveyed ... its concern at the freezing of the settlement process and the importance of avoiding any action that might upset the climate of peace and harmonious coexistence among the peoples of the Maghreb, and it has consistently encouraged the continuation and intensification of these contacts. In this connection it is especially important that the 1991 cease fire be observed, for which purpose the Security Council has decided to keep the MINURSO forces deployed in the area.

In line with the points made by the Security Council, the Government also stresses how important it is that all interested parties should assume their own responsibilities so that the voter identification process and other aspects of the Settlement Plan can be resumed as soon as possible, and it further urges that every opportunity be seized to work in a genuine spirit of compromise towards a solution to the present problems, always with a view to the future of the territory and to peace, stability and prosperity for the region". (DSS-P, VI Leg., n. 14, pp. 396–397).

Finally, in an appearance on 26 September 1996, before the Congress Foreign Affairs Commission, to report on the situation in the Western Sahara, the Secretary of State for Foreigu Policy and the European Union, Mr. De Miguel y Egea, said the following:

".. On the occasion of the adoption of Security Council Resolution 1056, the Spanish Government reiterated its position of principle to the effect that an essential condition for a definitive solution to the problem of the Western Sahara is the self-determination of the Saharan people through a free referendum with international guarantees.

For this reason the Government has expressed its regret at the suspension of

the identification process, and for the same reason the Spanish Government also reiterates at every opportunity and in all forums, the need to resume the identification process and the dialogue between the parties as soon as possible". (DSC-C, VI Leg., n. 61, p. 1304).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Nationality

On 21 March 1995, the Minister of Foreign Affairs, in response to a parliamentary question, reported on the steps taken and planned by the Government in connection with the present situation of Spanish citizens evacuated to the USSR between 1936 and 1942:

"... in 1937, 4,200 Spanish children left the country, not of their own free will but because of the civil war, and travelled to the Soviet Union. These are what the honourable member called... 'war children'. Between 1957 and 1973, a total of 2,300 returned to Spain. They have continued to return since then, too slowly perhaps, and especially since the demise of the former Soviet Union.

In March 1995 – that is, now – there are still 611 Spaniards living in what was the Soviet Union. The vast majority of these are what we call 'war children', and around 10 per cent are what we might by the same token call 'war adults' – that is, persons born before 1921 who accompanied the children whom we are discussing this afternoon.

(...)

I shall very briefly outline the obstacles preventing some of those who have not yet returned from coming back to Spain. These are essentially the following. Firstly, a problem of nationality. The fact that all or most of those children held Soviet passports was quite naturally interpreted by the relevant Spanish authorities as proof that they had acquired Soviet citizenship, and hence in any case the first step would have to be to recover their Spanish nationality, although there are now very few cases still unsettled. Practically every case that has arisen since 1987 has been resolved.

Around 5 per cent of these persons freely expressed their desire not to renounce Spanish nationality and spent that entire time – imagine what this must have been like – with international documents really intended for stateless persons, since they were neither exiles not emigrants, nor did they possess the nationality to which they were naturally entitled until after the resumption of diplomatic relations, when the Spanish Embassy issued them with Spanish passports". (DSS-P, V Leg., n. 10, pp. 3655–3656).

2. Diplomatic and Consular Protectiou

a) Exhaustion of Internal Recourses

On 25 May 1995, the Spanish Government expressed its satisfaction at the decision of the Chilean Supreme Court on the kidnapping and murder of Carmelo Soria:

> "The Spanish Government has been following with the keenest interest the judicial proceedings for the kidnapping and murder of Mr. Carmelo Soria, a Spanish citizen and a functionary of the United Nations Economic Commission for Latin America, in Santiago de Chile in 1976 and wishes to express its satisfaction at the decision handed down by the Supreme Court of Chile yesterday, the 24th, ordering the trial of Messrs. Salinas Torres and Ríos San Martín, as perpetrator and accomplice respectively of the crime of murder.
>
> The Spanish Government believes that this decision marks an important step towards bringing the facts to light, which will make it possible to see that justice is done and to call to account those responsible for the murder of Carmelo Soria Espinosa".

However, on 24 August 1996, the Spanish Government issued the following statement on the Decision by the Supreme Court of Chile to dismiss the Soria case under the amnesty act passed by the Pinochet regime in 1978:

> "... 1. The Government expresses its profound disappointment at a judicial decision which ensures that the perpetrators identified in these proceedings, namely Colonel Guillermo Salinas Torres (retired) and Sergeant José Ríos San Martín (retired), go unpunished for the murder of the Spanish citizen Carmelo Soria Espinosa.
>
> 2. The Government acknowledges the assistance lent by the Government of Chile in reopening this case in the courts.
>
> 3. The Government stresses its willingness, reinforced by repeated representations by Parliament, to help seek fair amends for this crime and will assist the family of Carmelo Soria Espinosa in whatever appeals and other steps may be appropriate".

The European Union expressed the same sentiment in a statement by the Union President on 10 October 1996:

> "The European Union wishes to express its profound disappointment at the decision of the Supreme Court of Chile, based on the Amnesty Act of 1978, to grant impunity to the perpetrators of the murder of Carmelo Soria, Spanish functionary of the United Nations Economic Commission for Latin America and the Caribbean, committed in 1976.
>
> The European Union acknowledges the assistance lent by the Government of Chile in re-submitting this case to the Court. It further acknowledges the efforts of

the Chilean Government to agree on extrajudicial reparation.

The associate countries, Bulgaria, Czech Republic, Cyprus, Estonia, Lithuania, Malta, Poland, Rumania, Slovakia and Slovenia, subscribe to this declaration".

b) Exercise of Diplomatic Protection

In the latter months of 1996 the Spanish Government negotiated with Chile the reparation due to the family of Carmelo Soria. The Chilean Government made an offer of one million dollars to finance a foundation to promote respect for human rights, to bear the name of Carmelo Soria, and the construction of a monument in memory of the Spanish functionary. On 18 December 1996 the Spanish Government replied to this offer as follows:

"On 10 September 1996 the Spanish Government presented an official statement to the Chilean Government in connection with the final decision of the Second Bench of the Supreme Court of Justice of Chile on the 'Soria case', in which it expressed its willingness, reinforced by repeated representations from the *Cortes Generales* of Spain, to help seek 'fair amends for this crime and assist the family of Carmelo Soria Espinosa in whatever appeals and other steps may be appropriate'. On presenting this statement, the Spanish Government expressed to the Chilean Government its willingness to jointly explore any avenue which might lead to extrajudicial reparation for this crime, which has been amnestied by the Chilean Courts.

On 27 September the Chilean Government presented the Spanish Goverument with a proposal of the steps that it wished to take to effect such reparation.

Following intensive negotiations between the two Governments without an agreement satisfactory to the family being reached, the Government of Spain wishes to issue the following public statement:

- The Spanish Government appreciates the final proposal by Chile in as much as it is a serious attempt to arrive, through negotiations between the two Governments, at an extrajudicial solution which would address both the moral and the material aspects of the reparation sought.
- In accordance with the declaration by the Ministry of Foreign Affairs to the effect that the Spanish Government would act at all times in consensus with the Soria family, the Chilean Government's proposal was duly intimated to them.
- The Soria family has advised the Spanish Government that the said proposal does not meet their expectations. The Spanish Government cannot therefore accept it.
- The Spanish Government regrets that the efforts of both Governments to reach a final solution through an extrajudicial arrangement in the context of the excellent relations of friendship and cooperation existing between the

two States should have failed to achieve the desired agreement".

On 10 January 1996 the Government replied to a parliamentary question on the payment of compensation to Spaniards affected by expropriations in Cuba and the Cuban government's debt with Spain:

"2,602 applications for compensation have been submitted, and the right of the claimants to receive compensation has been recognised in 1,424 cases.

The total paid out to date is 5,177,018,977 *pesetas*, as the Cabinet resolved to provisionally suspend the payment of 100 million *pesetas* in view of the fact that several claimants have appealed to the courts.

The remainder up to the sum of 5,416 million *pesetas* provided in the Agreement signed by the Republic of Cuba consists of sums corresponding to claimants who waived their right after this was acknowledged.

Exactly 22 persons have waived their acknowledged right to compensation for a sum total of 138,981,023 *pesetas*.

The information in the hands of the Interministerial Settlement Commission includes the fact that a further 64 waivers were presented in the course of the procedure before the amount to which they would have been entitled was known.

Article V of the Agreement between the Kingdom of Spain and the Republic of Cuba signed in Havana on 16 November 1986 and approved by the Senate on 10 December 1987 states as follows: 'Upon effective payment of the total sum mentioned in article 1 of this Agreement, the Government of Spain undertakes not to present to the Government of Cuba or to an arbitrating tribunal or court any claims lodged by Spanish natural or legal persons in connection with the goods, rights, shares or interests referred to in this Agreement'.

(...)".

3. Aliens

a) Illegal Emigration

On 20 June 1996, in reply to a parliamentary question the Spanish Government reported on illegal emigration of Moroccan citizens and other nationals who cross the Strait of Gibraltar from Moroccan territory:

"... the Government's position as regards immigration is broadly inspired by the Green Paper approved by Congress in 1991, whose basis is the need to articulate active policies in tune with the labour requirements of the Spanish economy and the capacity of our society to absorb that labour.

Spain also ... is an active member of the Schengen Agreement and takes part in Community initiatives relating to the movement of persons and control of access by nationals of third countries.

The Government's concern about illegal emigration manifests itself as the determination to cooperate more fully with Morocco in prevention of illegal emigration. One of the results of this resolve was the Spanish-Moroccan Agreement on movement of persons, transit and readmission of foreigners who have entered illegally, signed on 13 February 1992. Article 11 of this Agreement provides for the creation of a joint committee under the authority of the two Interior ministers. The purpose of this committee will be to settle any cases of litigation that may arise out of the application of the Agreement, to examine forms and criteria of readmission of expelled foreigners and to organise mutual assistance in the development of border control devices, particularly as regards equipment and training of border control personnel.

During the last high-level meeting between Spain and Morocco, both governments agreed to take full advantage of the possibilities offered by this committee and to set it up immediately. In any event ... this approach depends entirely on cooperation, and therefore the aim in this and other fields will be to seek solutions to issues of mutual interest through dialogue, and more specifically to promote collaboration and cooperation between Spanish and Moroccan authorities in preventing this disgraceful and degrading traffic in illegal emigrants". (DSC-C, VI Leg., n. 31, pp. 529–530).

b) Refugees

On 7 February 1995, in reply to a parliamentary question the Spanish Government reported on the persons from the former Yugoslavia who are currently resident in Spain:

"At 24 November last, there were 2,199 persons from the former Yugoslavia resident in Spain.

Of these, 554 have refugee status having come from concentration camps, and 1,645 possess a temporary resident's card which confers automatic entitlement to a work permit.

As regards their inclusion in sheltering programmes, those persons having refugee status are eligible for aid programmes set up annually for all refugees recognised as such by the Spanish State.

Of the persons possessing a temporary resident's card, the vast majority (1,377) came under the auspices of programmes run by NGOs and Regional and Local authorities.

As regards the sheltering of all displaced Bosnians under the government programme, their situation will in principle be temporary; however, those persons who gave been granted political refugee status may remain in Spain even after the conflict has ended.

The philosophy underlying the sheltering of displaced persons through private programmes is that they should remain temporarily in Spain for as long as the

conflict lasts and should be able to return to their own country once it ends. Given the prolongation of the conflict in the former Yugoslavia, the Interministerial Commission for Foreigners has studied a series of measures to facilitate the integration – as a temporary situation – of these people in Spain (particularly as it relates to permission to work and the schooling of children). In any event, the aim is for these people to be able to return to their country once the conflict ends, and in fact some have already asked to return. However, in line with the international undertakings made by Spain and the recommendations of international organisations, the Spanish state will do nothing to encourage people to return while the conflict lasts, although obviously it will facilitate the return of those so requesting.

As regards the programme of shelter for Bosnian Sephardic Jews, the philosophy is to allow them to become integrated in Spain, and even to facilitate the acquisition of Spanish nationality for those who so request.

As to the programme of evacuation of wounded for medical attention in Spain, the philosophy is to evacuate wounded persons for treatment, to release them once treated and to return them to their country so as to be have the same places free for new wounded" (BOCG-Congreso, 7-2-95).

4. Human Rights

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

On 1 June 1995, in reply to a parliamentary question the Spanish Government reported on the posture of Spain with regard to the armed conflict in Chechnya, a region belonging to the Russian Federation:

"The main points of the position maintained by the Government with regard to the conflict in Chechnya are as follows:

The unilateral declaration of independence issued by the Chechen leaders has not been recognised either by Spain or by any other State. Chechnya is therefore still an integral part of the Russian Federation and events there must be treated as a Russian domestic matter.

However, violations of International Humanitarian Law can never be considered domestic matters and hence Spain has criticised the conduct of the Russian Government and troops in Chechnya, at the same time calling for a halt to hostilities and efforts to arrive at a regulated settlement to the conflict.

The Government has been working along both these lines within the Organisation for Security and Cooperation in Europe (OSCE) and the European Union. The OSCE already has a Permanent Mission in Grozny, which besides undertaking humanitarian tasks is seeking to set up contacts between the parties in conflict with a view to the eventual initiation of negotiations. As for the European

Union, on 10 April last the General Affairs Council adopted an important measure to bring pressure to bear, namely freezing of the signature of the interim trade agreement with Russia until such time as there is significant progress on four fronts: establishment of an OSCE mission in Chechnya, a cease-fire, initiation of peace negotiations and removal of all obstacles to the distribution of humanitarian aid.

The first 'condition' ... has already been met, but there is no sign of significant progress on the other three, so that the likelihood is that the measure adopted on 10 April will stand for some time". (BOCG-Senado.l, V Leg., n. 285, p. 37).

On 9 June 1995, in reply to a parliamentary question the Spanish Goverument reported on the position of Spain regarding the attack by the Republic of Turkey on the Kurds in Iraqi territory:

"The virtual coincidence of the start of 'Operation Steel' with the visit to Turkey by the Foreign Minister as part of the 'troika' of EC ministers on 23 March last gave the Spanish Government the opportunity to convey to the Turkish authorities its position on this operation, which coincides with that of the other EC members..

The message sent to the Turkish authorities at that time was twofold:

Firstly, given that there are facets of the present situation which cannot be resolved by a purely military approach, we advocate an integral approach – economic, social and cultural – insisting on democratisation and including respect for human rights, and in particular the cultural and social rights of Turkish citizens of Kurdish origin.

Secondly, Spain respects the sovereignty and territorial integrity of all states in the zone, and hence of Turkey, but also of Iraq. Spain therefore supports Turkey's legitimate right to self-defence against PKK terrorism and understands the need to intervene to root out the PKK sanctuaries occupied through the vicissitudes of the fighting between Iraqi Kurdish factions and the lack of an effective state authority in the zone. However, there are clear limits: the means utilised must be proportionate to the object pursued, the action must be of limited duration – as short as possible – and lastly, during the operation human rights must be respected, the civilian population must not be involved and humanitarian action must not be hindered.

Despite the reply of the Turkish authorities undertaking not to prolong the operation a day more than necessary to accomplish the objective pursued, the Governments of the Union – including the Spanish Government – stressed the urgency of withdrawal. This finally took place on the ninth of last month, which the Government notes with satisfaction". (BOCG-Senado.l, V Leg., n. 288, p. 56).

b) Concluding Observations of the Human Rights Committee

On 3 April 1996, The United Nations Human Rights Committee expressed the following opinion on compliance by Spain with international obligations regarding human rights:

"A. *Introduction*

2. The Committee thanks the State party for submitting, within the allotted time, a report which is in conformity with the Committee's guidelines and for engaging, through its highly qualified delegation, in a constructive dialogue. It notes with satisfaction that the information provided in the report and submitted orally by the delegation has given the Committee an appreciation of the manner in which Spain is acquitting itself of its obligation under the Covenant.

B. *Factors and difficulties affecting the implementation of the Covenant*

3. The Committee notes with concern that terrorist groups continue to perpetrate bloody attacks which result in loss of human life and affect the application of the Covenant in Spain. It also notes the re-emergence of racist and xenophobic theories and behaviour.

C. *Positive aspects*

4. The Committee notes with satisfaction that Spain has come a long way in the promotion of and respect for human rights. In this connection it welcomes the accession of Spain, on 22 March 1991, to the Second Optional Protocol aiming at the abolition of the death penalty.

5. The Committee welcomes the fact that efforts have been made to disseminate human rights in schools as well as information on the report to the general public.

6. The Committee notes that the new Law of 15 January 1996 concerning the status of minors should contribute to the application in Spain of the Convention on the Rights of the Child and the relevant provisions of the Covenant, particularly article 23.

7. The Committee welcomes the progress made by the State party in promoting equal opportunity for women in all sectors of public and professional life.

8. The Committee notes with satisfaction that the Criminal Code drawn up in 1995 includes provisions establishing penalties for acts of racial discrimination and xenophobia.

9. Finally, the Committee notes that many decisions in the national courts refer to the Covenant as the legal basis, in conformity with articles 10 and 96 of the Constitution.

D. *Principal subjects of concern*

10. The Committee is concerned at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that

investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence. Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

11. The Committee is concerned that proofs obtained under duress are not systematically rejected by courts.

12. The Commitree expresses concern at the maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the Audiencia Nacional without possibility of appeal. The Committee emphasizes that these provisions are not in conformity with articles 9 and 14 of the Covenant. Again in regard to those two articles of the Covenant, the Committee notes with concern that the duration of pre-trial detention can continue for several years and that the maximum duration of such detention is determined according to the applicable penalty.

13. With regard to the increase in the number of asylum-seekers, the Committee notes that anyone whose application for asylum or for refugee status is denied can be held for seven days prior to being expelled.

14. The Committee deplores the poor prison conditions that exist in most prisons, generally resulting from overcrowding, which deprives those detained of the rights guaranteed in article 10 of the Covenant.

15. Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment N. 22.

E. *Suggestions and recommendations*

16. The Committee invites the State party to take the necessary steps, including educational measures and information campaigns, to avert racist and xenophobic tendencies.

17. The Committee recommends that the State party establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces, and urges it to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately. The Committee suggests that comprehensive human rights training should be provided to law-enforcement officials and prison personnel.

18. The Committee recommends that the legislative provisions, which state that persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, should be rescinded. It urges the State party to abandon the use of incommunicado detention and invites it to reduce the duration of pre-trial detention and to stop using duration of the applicable penalty

as a criterion for determining the maximum duration of pre-trial detention.

19. The State party is strongly urged to institute a right of appeal against decisions of the *Audiencia Nacional* in order to meet the requirements of article 14, paragraph 5, of the Covenant.

20. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces". (UN Doc. CCPR/C/79/Add.61).

VI. ORGANS OF THE STATE

1. Foreign Service

The Secretary of State for International Cooperation and Iberoamerica, Mr. Dicenta Ballester, appeared before the Congress Foreign Affairs Commission on 7 November 1995 to answer a question on the public expression of personal political opinions by the Ambassador, Mr. Ojeda, while in the exercise of his representative functions:

"... An Ambassador of Spain is evidently a citizen who, like any other, is entitled to and can enjoy the rights and freedoms acknowledged him by the Spanish Constitution – including, of course, the right to freedom of expression. However, an Ambassador of Spain is at the same a public functionary and as such must be bound by the hierarchical principle governing administrative organisation.

(...)

Outside of his official functions an Ambassador may say whatever he sees fit; however, while exercising his representative functions he should refrain from expressing personal political opinions, particularly in connection with subjects relating to the politics of the country to which he is allocated. And as to his actions, there can be no question but that an Ambassador must always strictly follow the instructions received from the legitimate Government of Spain whether or not he agrees with them. If he disagrees with them, he has the option – and I would say the moral obligation – to resign. And if he disobeys them he will probably be dismissed for obvious reasons.

(...)". (DSC-C, V Leg., n. 611, pp. 18550–18551).

Several questions were raised in parliament in the years 1995 and 1996 regarding the reorganisation of the Spanish consular administration. For example, on 13 December 1995 the Under-Secretary for Foreign Affairs, Mr. Ezquerra Calvo, appeared before the Congress Foreign Affairs Commission to explain the criteria

informing this reorganisation:

"The basic criterion for reorganisation is to make more economical use of human and material resources with which to serve the Spanish communities abroad. ... the consular network has been extraordinarily dense in European countries in the past, especially those in which there was a massive influx of Spanish emigrants in the late 50s and early 60s and 70s, ... Fortunately, this migratory movement has diminished or even ceased in some cases; the Spanish colonies in Europe have become more settled and hence require ever less welfare services. We have therefore concluded that the number of consulates could be reduced, essentially in European countries of recent immigration, while still providing adequate services to our communities.

(...)

In contrast to the relative decline in the needs of Spaniards in Europe, other needs are arising in other areas overseas. In fact, in the last few years the Ministry of Foreign Affairs has begun to consider the need to deal with problems of tourists who lose their papers, who get lost, die, are robbed and so forth in all sorts of places. In short, what is required is reorganisation.

(...)". (DSC-C, V Leg., n. 639, pp. 19361–19362).

In 1996, the new Under-Secretary for Foreign Affairs, Mr. Carvajal Salido, appeared before the Congress Foreign Affairs Commission to answer a question on the opening and closing of consulates:

"A study is in progress on the redistribution of offices, based on the conviction that the network as it stands is inadequate. The present network is practically the same as it was years ago before the events and circumstances which have transformed the international scene, most particularly in Europe, at a time when there was still a Berlin Wall and a Soviet Union, when the underlying tensions had not surfaced and had not yet caused the emergence of a series of new States.

(...)

This study is based on the conviction of an urgent need to open new embassies in countries and regions where it is essential to reinforce the presence of Spain for political, economic, cultural or cooperative reasons. I refer to Slovakia, Vietnam, Cyprus, Bosnia and Slovenia as the top-priority countries; the second rank would consist of the Baltic Countries, and possibly Kazakhstan, the most important of those springing from the former Soviet Union. A third phase would include Singapore and Azerbaijan.

(...)

We are examining the pros and cons of offsetting the expense of opening these new delegations by closing down some consular offices where circumstances suggest that continued operation may not be warranted. In this connection two service inspectors from the Ministry of Foreign Affairs recently visited seven European consulates – Antwerp, Liège, Lille, Hannover, Genoa, Valença do

Minho and Vila Real de Santo Antonio – in order to evaluate their activity and determine whether they are really necessary;

(...)

What then are the criteria that would prompt a decision to close these consulates? The first of these would be the determination that the activity of these consulates is insufficient in absolute terms to warrant their remaining open.

(...)

There are a number of reasons for this loss of activity. This is largely due to transformation of the traditional functions of consulates. Nationals of the countries where those consulates are situated require no visa to enter Spain; the Schengen Agreements have largely transformed consular functions with respect to foreigners; thanks to European integration, the Spanish communities in those countries are much more integrated in the host country; and the documentation that they require has been simplified.

The second condition that would always be considered in any decision to close a consulate is that this must never leave our nationals unprotected or abandoned. Its functions would be taken over by other consulates. In the case of Antwerp and Liège, this would be the Consulate-General in Brussels; in the case of Lille, it would be Paris; in the case of Genoa it would be Milan; in the case of Hannover it would be Hamburg, and in the case of the two consulates mentioned in Portugal, it would be Oporto and Lisbon.

(...)

Finally, before deciding to close a consulate we look very closely at the rights and expectations of the personnel who work there.

(...)

I wish only to add that the new consulates that we would wish to open are a Consulate-General in Shanghai and a Consulate-General in Moscow, where we have observed a considerable increase in activity. In the case of Shanghai the reasons are trade and the needs of increasing numbers of tourists. In the case of Moscow the basic need is to attend to Russian nationals who are travelling to Spain as tourists in ever-growing numbers and are a considerable source of income for our country.

(...)". (DSC-C, VI Leg., n. 105, pp. 2811–2813).

2. Activities of Autonomous Regions outside Spain

On 26 April 1995, in reply to a question on journeys by regional authorities to third countries, the Government addressed the overseas action of the Autonomous Regions in the following terms:

"Overseas action by the Autonomous Regions, specifically the presence of regional authorities abroad, is a matter of permanent interest to the Ministry of

Foreign Affairs, which works in close cooperation with the Ministry of Public Administration.

The philosophy in this respect is to treat regional activity overseas, when duly coordinated, as a factor of support for State overseas activity which works to the advantage of the Regions themselves.

(...)

Most importantly, a cooperative atmosphere has been established between the top levels of regional government and the Ministry of Foreign Affairs, and consequently in high-level regional overseas initiatives of particular political import, a degree of coordination has been achieved which has generally been found to provide satisfactory results.

This atmosphere is also helping to progress towards better institutional mechanisms of coordination.

(...)

Sectorial Conferences constitute the specific framework set up by law for cooperation and coordination between the Central Administration and the Autonomous Regions through the Ministries responsible for the matters dealt with by the Conferences.

Appropriate mechanisms are also being set up to complete sector coordination by means of an overall coordination that embraces all aspects of overseas action by the Autonomous Regions.

Thus, within the sphere of the European Union the Conference for Affairs Relating to the European Communities acts as an 'umbrella' for the Sectorial Conferences, and within that framework an Agreement was signed last November for internal participation of the Autonomous Regions in EC affairs.

With regard to the general action of the Autonomous Regions, in June 1994, at the proposal of the Ministry of Foreign Affairs, the above-mentioned Conference adopted a resolution to extend the range of subjects coming within its purview.

At the present moment, the Ministry of Foreign Affairs and the Ministry of Public Administration are jointly looking for the best means of putting the said Agreement into practice...". (BOCG-Congreso.D, V Leg., n. 224, pp. 202–203).

3. Multilateral Diplomacy

On 15 September 1995, the Cabinet approved a Royal Decree creating a Permanent Spanish Representative in the Organisation for Security and Cooperation in Europe (OSCE) with headquarters in Vienna.

Besides the normal functions of a Representative in the Organisation for Security and Cooperation in Europe, the Permanent Representative will represent Spain in the Joint Consultative Group for the Treaty on Conventional Forces in Europe and the Consultative Commission for the Open Skies Treaty.

VII. TERRITORY

1. Territorial Divisions, Delimitation

In reply to a parliamentary question on Spain's exercise of her sovereignty over the islands of the Miño Estuary, namely Grilo, Barandas and Pozas, regarding which a problem of delimitation of frontiers could have arisen with Portugal, the Government explained:

> "The islands at the mouth of the River Miño indisputably come under Spanish sovereignty, as shown in a Report drawn up jointly by the International Legal Office of the Ministry of Foreign Affairs and the Army Geographical Service, on 26 March 1991.
>
> This Report was sent to the Portuguese delegation with a Verbal Note on 22 April 1991, thus complying with the provision of point 7 in the Minutes of the Meeting of the International Commission on Limits between Spain and Portugal, held in Madrid in February 1991.
>
> The Portuguese delegation has made no reply to this Report, as a result of which it was not possible to hold the Extraordinary Meeting of the International Commission on Limits between Spain and Portugal to discuss this issue, as had been agreed in February 1991.
>
> The lack of response from Portugal could be construed as acknowledgement of Spanish sovereignty over these islands in the mouth of the River Miño. In view of the absence of a Portugnese response to the said Report, it should have been up to Portugal to propose a study of this issue at the last Meeting of the International Commission on Limits between Spain and Portugal in Lisbon in 1994.
>
> This is one of the issues that will be discussed at the next meeting of the International Commission on Limits between Spain and Portugal". (BOCG-Congreso.D, V Leg., n.87, p. 297).

2. Colonies

a) Gibraltar

In the session of 13 December 1995, the Foreign Affairs Commission of the Congress of Deputies approved the following Bill on the exercise of Spanish sovereignty over Gibraltar, which was submitted by the Socialist Parliamentary Group:

> "... the Congress of Deputies urges the Government:
>
> 1. To prevent any unilateral or other attempts to amend the Statute of Gibraltar by *fait accompli* or secure its consideration within the European Union.

2. To continue to pursue the negotiations begun with the United Kingdom in Lisbon on 10 April 1980, and to maintain the line of the Brussels Declaration of 27 November 1984 which reaffirms that the dispute over Gibraltar must be settled with strict respect for the principle of territorial integrity, meaning the recovery of Spanish sovereignty". (BOCG-Congreso.D, V Leg., n. 287).

Appearing before the Foreign Affairs Commission of the Congress of Deputies on 22 March 1995, the Minister of Foreign Affairs, Mr. Solana Madariaga, reported on the outcome of the meeting in Seville between representatives of the governments of Spain and the United Kingdom on illegal traffic in Gibraltar. At that Meeting the Spanish delegation expressed:

"... its firm resolve to use all legal means at its disposal to combat all kinds of illegal traffic, and its desire that the United Kingdom should also adhere to this objective. The connection, Honourable Members, between tobacco smuggling and drug trafficking is plainly apparent. Hence, if we attack the root of these illegal activities – that is, tobacco smuggling – then we shall also be in a position to move forward and wipe out the drug smuggling. The means by which tobacco and drugs are smuggled into Spain in the Gibraltar area are essentially the same – fast launches operating from the colony. Hence firstly, attention should be focussed as firmly as possible on putting an end to the illegal activities of these boats. The meeting also dealt with aspects relating more specifically to tobacco and hashish smuggling. Within the specific purviews of the two central administrations, issues relating to the financial system were also raised: money laundering, company legislation in Gibraltar – a major issue – and legal assistance. These were the subjects discussed.

What agreements were reached? In the first place, establishment of a system of cooperation regarding the suspicious activities of power-boats. This system is to include not only power-boats doing the Gibraltar-Morocco-Spain-Gibraltar circuit, which are involved mainly in drug trafficking, but also Gibraltar-Spain-Gibraltar, where the activity is related more to the tobacco smuggling rings. The Spanish authorities will report any suspicious movement of power boats to the local authorities of Gibraltar in cases where they have been unable to detain them. The relevant authorities in Gibraltar in any given case will pass on information about the boat and its users, they will open dossiers in which to record all suspicious movements, they will act against the boat and its users, imposing sanctions by whatever means or on whatever grounds may be appropriate – failure to identify themselves, failure to use the proper signals, etc. – and what we might call a red-line or hot-line system will be set up so that this information is passed on as swiftly as possible through whatever liaison officials may be appointed for the purpose.

A second large block will consist of fostering the existing cooperation in connection with joint operations against drug trafficking. The United Kingdom

has also undertaken to inform us about action taken in Gibraltar on the important issue of money laundering, and specifically the transposition of the Directive on money laundering, which we are told by the British was transposed to Gibraltar in December 1994, although we are so far unable to confirm this. Also, within the conventional framework of which both Spain and the United Kingdom are part, the possibility of appointing liaison officers for drug trafficking in the Gibraltar area is being considered, and finally, we shall be considering action on either side of the legal system with a view to improving cooperation in this field. (DSC-C, V Leg., n. 441, p. 1399).

In reply to a question put in the Congress of Deputies on 13 May 1996 regarding proposed policy on Gibraltar following the entry in office of the new Spanish Government, he answered that:

"The Lisbon Declaration of 10 April 1980 and the Brussels Declaration of 27 November 1984 marked the start of a process of negotiation on the issue of the Colony of Gibraltar which the present Government proposes to pursue further. The Spanish position on this matter is as follows: negotiations with the United Kingdom must deal simultaneously with the questions of sovereignty and cooperation for mutual advantage – in other words, there can be no progress in cooperation without progress on sovereignty. The Gibraltar issue must be resolved with absolute respect for the principle of territorial integrity, which means the return of Gibraltar to Spain.

(...)

It is the understanding of Spain that the issue can only be resolved in the framework of the bilateral negotiations currently in progress, and Spain will not therefore allow the United Kingdom to unilaterally change the status of Gibraltar in the EU or other organisations. At the same time, the Government will maintain a clear willingness to dialogue, giving due consideration to all interests involved.

2. The Colony of Gibraltar continues to a large extent to maintain an opaque economy in which income is derived from unfair competition and illegal traffic, which causes considerable economic and social harm to Spain, and particularly to the area surrounding the colony.

Following the denunciation presented to the Commission on 23 June 1995, limited steps were taken; these chiefly affected maritime transport to Spain of smuggled tobacco and drugs in boats based in Gibraltar.

However, there has since been a gradual return to the previous situation...

Despite the latest reforms on banking aspects, the financial system of Gibraltar is still very attractive to capital derived from illegal activities...

Moreover, the opacity of the company system continues to be a hindrance to investigation. The number of companies registered in Gibraltar continues to grow and now exceeds 52,000.

In view of this situation, Spain sees no option but to strengthen its measures to

combat all illegal trafficking related with Gibraltar and to demand more cooperation from the United Kingdom.

Overland routes are also used, including the Border, for money laundering, illegal traffic in precious metals, certain drugs like cocaine, and even tobacco smuggling.

In spite of this situation, it is felt that the time has not yet come to introduce sterner measures such as closure of the Border. Spain is presently waiting to see if the new local authorities of Gibraltar and the United Kingdom take proper steps to put an end to this situation". (BOCG-Congreso.D, VI Leg., n. 34, pp. 132–133).

The Spanish position on the decolonisation of Gibraltar was the subject of more than one intervention by the Spanish Minister of Foreign Affairs at the United Nations General Assembly. In a statement delivered at the 51st Session Period on 27 September 1996, the Minister Mr. Matutes Juan declared that:

"One of the priority objectives of the Spanish Government is the decolonisation of Gibraltar. In its Resolutions, this Assembly has laid down the guidelines for a decolonisation process which, based on the principle of territorial integrity, must be brought to a conclusion through negotiations between Great Britain, the Administrator of the Colony, and Spain, the State in whose territory the colony is situated.

In future the Spanish government will exercise the greatest possible flexibility, but also the greatest possible firmness in its approach to bilateral negotiations with the United Kingdom, the basis for which was laid down by the Brussels Declaration of November 1984, with the clear decision to move forward in a process which would culminate with the restitution of full Spanish territorial integrity while generously safeguarding the interests of the Colony's population, in the conviction of the urgent need to put an end to the anachronism whereby a member State of the European Union possesses a colony in the territory of another member State, friend and ally". (New York, 27–9–96)

Also, appearing before the Congress Foreign Affairs Commission to report on the general outlines of his Ministry's policy on Gibraltar, Mr. Matutes Juan reaffirmed that the Government's objective was and could only be recovery of Spanish sovereignty, of which there are two aspects: the isthmus and the Rock of Gibraltar:

"... The crux of the question is sovereignty, and the British and the Gibraltarians have consistently ignored this key aspect of the negotiation. We do not conclude from this that we are working within the wrong framework or that another framework would ensure a greater measure of success. The problem is not the viability of the process but of the will to negotiate. In this connection, the presence of representatives from Gibraltar will always be welcome. ... Nonetheless, it is also essential that such a presence be constructive. In other words, negotiations must address sovereignty and cooperation simultaneously, and

no *a priori* vetoes can be allowed on any subject...

The fight against illegal traffickers continues to be a primary objective. To that end we shall be stressing the invisible aspects of these activities: tax evasion, money laundering, financing of drug traffic, carrying on of drug traffic and so on. Inter-departmental coordination, which has worked very well so far, will thus continue to be the key to success...

In closing I would like here to mention the status of Gibraltar in the European Union. As a European territory for whose foreign relations the United Kingdom is responsible, the territory ceded by the treaty comes under the provisions of article 227.4, with the following peculiarities arising from the accession of the United Kingdom: it is not part of Common Agricultural Policy, VAT is not applicable there, it is not part of the Customs Union or the Common Trade Policy, and owing to its colonial status its inhabitants are also excluded from elections to the European Parliament. The illegally-occupied part of the isthmus is of course Spanish territory, coming under EC law as a territory under article 227.1 – that is, as a part of Spain.

...In the application of EC law to the Rock, it cannot be ignored, as the Court of Justice has done, that there are limits and peculiar features deriving from the colonial status of the territory and the controversy existing between the two member States over sovereignty. Therefore, Gibraltar is not and cannot be the sixteenth State of the Union and the local authorities of Gibraltar cannot be recognised as legitimately entitled to establish inter-state relations with other member States. ... All issues arising out of sovereignty over the territory are the responsibility of the United Kingdom and not of the local authorities. I refer here specifically to justice, for which competence lies with the United Kingdom regardless of its administrative organisation or the issue of identity cards; the United Kingdom does not issue identity cards to its own citizens, and therefore we cannot accept cards issued by the local authorities of Gibraltar as valid...

Having regard to the *Campo de Gibraltar* and the neighbouring towns, the servitude of the Rock imposes unwanted costs on our citizens, especially the inhabitants of the general area and most especially of La Línea. It is therefore the Government's intention to pay special attention to those sectors where the effects of the Gibraltar phenomenon are most severely felt, particularly infrastructure and services". (DSC-C, VI Leg., n. 115, pp. 3118–3123).

b) East Timor

With regard to the Spanish position on the situation in East Timor, in reply to a parliamentary question the Government explained that:

"Since the formal annexation of the Portuguese colony of Timor by Indonesia in 1976 following the invasion a year previously, Spain, as a member of the United Nations, adheres to the doctrine of that Organisation, which holds that the

decolonisation process was interrupted by the Indonesian annexation and that Portugal is still the mandated administering power in the territory.

At the saine tinne, like the rest of the European Union, Spain holds that the differences between Jakarta and Lisbon must be settled by negotiation and therefore it supports the existing dialogue between the Foreign Ministers of the two countries under the auspices of the United Nations General Secretary.

The latest round of talks commenced this January in Geneva under the chairmanship of the Secretary general of the United Nations, Mr. Boutros Ghali.

At the same time, Spain is closely following the human rights situation iu Timor and has played a significant role in handling the numerous initiatives on the subject proposed by the European Union to the Indonesian Government.

Madrid, 25 January 1995.-The Minister". (BOCG-Congreso.D, n. 190, pp. 104–105).

VIII. SEAS, WATERWAYS, SHIPS

1. Fisheries

a) Algeria

In reply to a question put in the Senate on the Executive's appraisal of the extension of Algerian territorial waters in the Mediterranean opposite the Spanish coast, including areas where Spanish boats used habitually to fish, the Governmeut stated that:

"1. By virtue of Legislative Decree n. 94/13, 8 May 1994, on general rules relating to fisheries, the Algerian Government established a 'reserved fishing zone' beyond and adjaceut to Algerian territorial waters. The extent of this zone is calculated froin the base lines of Algeria's territorial waters, running 32 nautical miles between the niaritime frontier and Ras Tenes and 52 nautical miles between Ras Teues and the eastern maritime frontier. It does not cross the niedian line equidistant between the closest points on the Algerian and Spanish coasts from which the width of the territorial waters are measured in Algeria and in Spain.

Froin the standpoint of the International Law of the Sea, the creation of this reserved fishing zone comes under the institutiou of the exclusive economic zone. From a strictly legal point of view, then, Algeria has every right to establish reserved fishing zoues beyond the 12-mile limit of its territorial waters provided that it does uot cross the half-way line between its own and its neighbours' coasts. Legislative Decree n. 94/13 is therefore perfectly correct accordiug to the International Law of the Sea. However, while the action of the Algerian Government is not actually a violation of International Law, it does constitute a

breach of the agreement implicit among States having Mediterranean coastlines not to create exclusive economic zones. Although Algeria is not the first country to break this implicit agreement (Morocco had already done so some time previously), the Spanish Government has conveyed to the Algerian Government, both bilaterally and as a member of the European Union, its concern at this breach.

2. So far the application of Legislative Decree n. 94/13 has not given rise to any incidents with the Spanish fishing fleet. The Algerian authorities have not prevented fishing in the waters identified by the Legislative Decree, nor have there been any detentions of Spanish vessels. Nonetheless, as many as 100 Spanish vessels, mainly from the provinces of Almería and Murcia could be affected. And in addition there are vessels (very difficult to enumerate) which trawl in Moroccan waters, given that in this kind of fishing it is practically impossible to prevent the nets drifting from one country's territorial waters to another's while the vessels trawl.

Madrid, 9 January 1995.-The Minister". (BOCG-Senado-I, V Leg., n. 220, pp. 84–85).

b) Morocco

In reply to a question from a Senator on the Government's appraisal and forecasts regarding the Moroccan Government's order to Spanish vessels fishing in its grounds to quit them, on the grounds that they lacked licences when the Moroccan Government had refused to issue them after payment had been made, the Government explained that:

"The reason why the Spanish fleet that fishes under the auspices of the European Union/Morocco Agreement returned to port was Morocco's refusal to issue the licences to operate during the period commencing on 1 October in good time.

The Moroccan decision was made in response to the lack of Agreement in the third round of conversations for the medium-term revision of the fishing Agreement, held in Rabat from 12 to 14 September. The origin of this lack of Agreement was the flat refusal of Spain and the European Commission to accept Moroccan claims.

On 13 October, a fourth round of talks commenced in Brussels to try and conclude the review process. There, the Spanish government asked the European Union to make release of the licences an absolute prerequisite for any progress in EU-Moroccan contacts.

The European Commission seconded this request, and the licences were released on the date mentioned, followed by the signing of a verbal process or act". (BOCG-Senado.I, V Leg., n. 217, p. 41).

Also, in reply to a question in the Senate on the representations that the Government has made to the Moroccan authorities to prevent seizures of Spanish fishing boats like the incidents of 10 November 1994 in waters of the Strait of Gibraltar, the Government reported that:

"1. From the very outset the Spanish authorities remained in contact with the Moroccan authorities to seek a solution to the problem of the seizure of four Spanish vessels *Triana, Mariflor, Romana* and *Siempreama Begoñakoa* in the Strait. Representations were made through the Consulate in Tangier and the Embassy in Rabat and by the Ministry of Foreign Affairs to the Moroccan Embassy in Madrid. On the night of the 10th, a functionary of the Spanish Consulate-General in Tangier, the port to which the vessels had been taken, was able to visit the crews. On the morning of the 11th, the Consul General visited the vessels and made a number of representations to the Moroccan authorities, finally culminating in the release of the crew.

As soon as it learned of the events, the Ministry of Foreign Affairs instructed our Embassy at Rabat to make representations to the Moroccan authorities in order to secure the release of the vessels. In obedience to these instructions, the Ambassador contacted the Ministry of Fisheries and the European Director of the Ministry of Foreign Relations. The Counsellor for Agriculture, Fisheries and Food did the same at the Ministry of Fisheries. Similar representations were made at the Moroccan Embassy in Madrid.

The separation of Spanish and Moroccan territorial waters is not clearly defined in the zone where the incident took place, and therefore in principle both sides tolerate fishing in these waters. Seizures are very rare.

The transcription of the coordinates at which the vessels were located suggests that they were fishing in Spanish waters, and on that basis the Spanish Government issued a protest to its Moroccan counterpart, stressing the traditional tolerance with which the activities of vessels of both countries are treated in the zone with a view to preventing the repetition of incidents like this one.

The incident sparked off by the seizure of the Spanish fishing boats has caused the Spanish Government, despite the tradition of tolerance in the Strait for vessels of both countries, to look at the possibility of reinforcing its habitual security measures in the zone.

2. The Navy will undertake the surveillance of Spanish waters in the Strait maritime area, with ten patrol boats operating from various bases and marine surveillance aircraft.

Madrid, 6 March 1995.-The Minister". (BOCG-Senado.I, V Leg., p. 28).

With reference to the entry and navigation of Moroccan patrol boats in Spanish territorial waters around the mouth of the Port of Ceuta and at other points, the Government considered that:

"The Government permanently guarantees the free exercise by Spanish

fishing boats of the right to fish in Spanish territorial waters. The Government furthermore is in full exercise of the functions inherent in the sovereignty of Spanish territorial waters.

Regarding the incident which took place in the first week of November 1994 in Spanish territorial waters at Ceuta, we wish to stress the following points:

- The fact that the Navy did not intervene does not mean that there was no intervention by the Spanish security forces. The action of the Civil Guard caused the Moroccan patrol boats to quit our waters.
- At all events the Moroccan Forces acted unlawfully within Spanish territorial waters. In this counection the Director General for Africa and the Middle East lodged an official protest with the Moroccan Ambassador on 7 November 1994 at the action of the Moroccan patrol boats in violation of Spain's sovereign rights.
- Also, the Ministry of Defence has a patrol boat permanently stationed at Ceuta, and the patrol vessels of the Straits Maritime Zone make regular stopovers there during surveillance missions.

Madrid, 14 March 1995.-The Minister ". (BOCG-Congreso.D, V Leg., n. 211, p. 135).

c) Canada

Regarding the incidents that took place throughout 1994 and since as a consequence of Canada's decision to illegally arrest Spanish fishermen fishing in international waters, appearing before the Congress Foreign Affairs Commission to explain these arrests and the positions defended by Spain and the European Union with a view to the immediate release of the fishermen and their vessels, as well as other measures to prevent the repetition of such a situation in future, the Minister of Foreign Affairs, Mr. Solana Madariaga, explained that:

"... From the outset the Spanish reaction, as conveyed to the Government of Canada, to our partners in the European Union and to third countries, distinguishes between the fisheries aspect and the commission of a very serious violation of International Law perpetrated by the Canadian vessels.

As regards the question of fisheries, our position is that the objection procedure provided in the NAFO – that is, in the agreement unanimously adopted by the European Union – is perfectly legal, and hence the possibility that the vessel, Spanish in this case, was fishing within the autonomous quota mentioned earlier is also perfectly legal. We have never rejected the possibility of having talks with Canada on this issue, but these conversations cannot supersede the appropriate legal framework, which is the NAFO Convention, and of course cannot take place if there is an incident of the kind that occurred on the stated dates.

This act of seizure constitutes a very serious violation of International Law, which compels both the Union and also Spain at a bilateral level to adopt

measures in response to the unlawful act committed by Canada. Our bilateral action is oriented in various directions – bilaterally and multilaterally to the Union and towards third countries which are members of NAFO, in order firstly to make other countries fully aware of the gravity of the acts committed. Thus, immediate representations were made by all our Ambassadors to European Union countries, resulting in a clear condemnation of these acts through the Union's own mechanisms. The COREPER (Committee of Permanent Representatives) met over the weekend and on Monday 13, and the outcome was a condemnation consisting of the following basic points: Firstly, Canada has committed a serious violation of International Law. Secondly, the Union demands the release of the vessel as a prerequisite to initiating talks with Canada. Thirdly, the Union reserves the right to review its relations with Canada and to take appropriate retaliatory action wherever possible.

(...)

... 1 should like to explain to the Honourable Members what, in our opinion and that of the Commission, should be done on four points: Firstly, the restoration of legality as regards the vessel, that is the return of the bail and the fish that was unloaded. Secondly, the introduction of adequate control measures within the framework of the NAFO, of which both the European Union and Canada are members. These measures must necessarily be adopted on a multilateral basis. Thirdly, an apportionment of catch quotas that will ensure that the overall TAC of 27,000 tounes agreed for the purposes of conservation is not exceeded, and at the same time for the Union to receive, within this TAC, the part due it in recognition of its historic presence there and of the fact that these are international waters where the coastal State has no right to preferential status. And Fourthly, repeal of the legislation aimed against the European Uuion. Otherwise a sword of Damocles would forever hang over the vessels of the Union.

(...)

... 1 should like to say to the Honourable Members that 1 believe the European Union has demonstrated remarkable cohesion on this matter. This is the first time that the European Union has spoken with a single voice throughout a conflict, without even a single formal qualification from any of the member countries". (DSC-C, V Leg., n. 460, pp. 1406–1408).

In a letter dated 31 March 1995 addressed to the Secretary-General, the Spanish Permanent Representative to the United Nations, Mr. Yáñez-Barnuevo, denounced the arrest of the Spanish fishing boat Estai and other similar incidents and gave notice of his country's intention to settle these disputes by peaceful means in accordance with the United Nations Charter, announcing that to this end Spain will bring an action against Canada at the International Court of Justice:

"On instructions from my Government, 1 have the honour to inform you that in recent weeks situations of tension have occurred on the high seas in the North-

West Atlantic between fishing vessels flying the Spanish flag and Canadian patrol boats, and that these have involved the use of force on the part of the latter.

In particular, I wish to refer to the fact that on 9 March 1995 the fishing vessel *Estai,* flying the Spanish flag, was arrested in international waters by Canadian patrol boats using armed force. Both the fishing boat and the crew were taken to the port of St. John's, where they were detained until their subsequent release on bail. It should be emphasized that when paying the bail, the owner of the detained vessel made an explicit statement of non-recognition of the jurisdiction of the Canadian courts.

Subsequent to these incidents, various acts of harassment by Canadian patrol boats of Spanish fishing vessels operating on the high seas have taken place, including a serious incident on 26 March in which the nets of the Spanish fishing vessel *Pescamar* 1 were deliberately cut by a Canadian patrol boat.

These actions, which constitute a flagrant violation by Canada of International Law and of the Charter of the United Nations, have caused serious harm to Spanish citizens and in some cases have endangered their lives and physical integrity, a situation to which the Spanish Government has reacted by immediately making the relevant protests through the diplomatic channel, while fully reserving its rights and its claim to the corresponding compensation for the damage and injury sustained.

As an additional means of defending its nationals, the Spanish Government has decided to send two units of the Spanish Navy to the area where the incidents took place to protect Spanish vessels engaging in their activities under the protection of the principle of freedom of the high seas and in conformity with the applicable regulations established by the competent international organizations.

In addition, as part of the Spanish Government's firm intention to resolve international disputes by peaceful means in accordance with the provisions of the Charter of the United Nations, on 28 March 1995 Spain filed the relevant complaint against Canada with the International Court of Justice, seeking its ruling and the restoration of the rights violated". (UN Doc. A/50/98, S/1995/252, 31 March 1995).

Also, in reply to a question from a Senator on the measures adopted and planned by the Executive in connection with the illegal detention of the Spanish fishing boat *Estai* by the Canadian Navy, the Government highlighted the following:

"– Denunciation of Canada to the Court at The Hague for violation of International Law, with a request for reparation of the damages caused to the Spanish State and to the persons involved. The action is based on the principles of International Law which the Government believes to have been breached by the Canadian State, namely:

a) Principle of exclusive competence of the State regarding ships flying their flag on the high seas.

b) Principle of freedom of navigation on the high seas (outside the 200 mile limit).

c) Principle of freedom to fish on the high seas.

d) NAFO Cooperation Convention.

e) Geneva Convention on the High Seas of 1958 and UN Convention on the Law of the Sea, 1982

– The Government will also make use of the forums of the International Maritime Organisation (IMO) to make known Spain's position regarding the breach of International Law by Canada.

– Another measure is the dispatch of patrol boats to support the Spanish fleet. This action commenced on 10 March with the dispatch of the Patrol Boat Vigía, which was subsequently followed by a further two.

– On the bilateral front, Spain terminated our Agreement on the suppression of visas.

Madrid, 26 May 1995.-The Minister". (BOCG-Senado.I, V Leg., n. 288, p. 22).

Regarding the action proposed by Spain against Canada for the above-mentioned incidents, the Report of the International Court of Justice presented to the General Assembly of the United Nations contains the following passages:

"On the 28 March 1995, the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the *Estai*, sailing under the Spanish flag.

142. The Application indicated, *inter alia*, that by the amended Act 'an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the Regulatory Area of the Northwest Atlantic Fisheries Organization (NAFO), that is, on the high seas, outside Canada's exclusive economic zone'; that the Act 'expressly permits (article 8) the use of force against foreign fishing boats in the zones that article 2.1 unambignously terms the 'high seas'; that the implementing regulations of 25 May 1994 provided, in particular, for 'the use of force by fishery protection vessels against the foreign fishing boats covered by those rules ... which infringe their mandates in the zone of the high seas within the scope of those regulations'; and that the implementing regulations of 3 March 1995 'expressly permit [...] such conduct as regards Spanish and Portuguese ships on the high seas'.

143. The Application alleged the violation of various principles and norms of International Law and stated that there was a dispute between Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious

infringement of the sovereign rights of Spain.

144. As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

145. In that regard, the Application specified that:

'The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2 (d), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act) does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which, going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of International Law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own declaration (para. 2 (c) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against International Law set forth above.'

146. While expressly reserving the right to modify and extend the terms of the Application, as well as the grounds invoked, and the right to request the appropirate provisional measures, the Kingdom of Spain requested:

'(a) that the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;

(b) that the Court adjudge and declare that Canada is bound to refrain from any repetition of the complained-of acts, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and

(c) that, consequeutly, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship *Estai* flying the flag of Spain and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of International Law;'.

147. By a letter dated 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court

manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2 (d) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court.

148. Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time limits.

149. Spain chose Mr. Santiago Torres Bernárdez and Canada the Honourable March Lalonde to sit as judges *ad hoc*.

150. The Spanish Government subsequently expressed its wish to be authorized to file a Reply; the Canadian Government opposed this. By an Order of 8 May 1996, (*Reports 1996*, p. 58) the Court, considering that it was 'sufficiently informed at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation by them of other written pleadings on that question therefore does not appear necessary', decided, by 15 votes to 2, not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

151. Judge Vereschetin and Judge ad hoc Torres Bernárdez voted against; the latter appended a dissenting opinion to the Order.

152. The written proceedings in this case were thus concluded". (UN Doc. General Assembly, Official Records, Fifty-first Session, Supplement n. 4 [A/51/4]).

Regarding the problems surrounding the catches taken by the Spanish fishing fleet in the NAFO grounds, in answer to the reply from a Member of the Popular Party, the Minister for the Presidency explained that the Government's position was:

"In the Government's view, we have here a twofold conflict. One issue is the amount of the catches that the Spanish fleet may take in the NAFO fishing grounds; another issue, and a much more important one in the Government's opinion, is observance of a series of principles of International Law which hold and will continue to hold not only in the NAFO fishing ground but in all other fishing grounds located in international waters or in waters of countries which allow our fishing boats to operate.

As I said this afternoon in this House, in the final analysis, if Spain were to give way on the application of these international principles we should be putting at risk a large proportion of our fleet's fishing activity, and that we believe is the point at issue here. In this respect I wished to underline in this House the Government's well-known public position – that is, that the fishery agreements

among the various countries involved in this sector should continue to apply.

Secondly, that does not mean to say that we do not intend to question the quota within the TAC. We shall definitely be questioning it, and in that respect, as I said before, I believe the resolution reiterated this morning by the Agricultural Commission of this Congress of Deputies is both relevant and positive. After all, this afternoon and tomorrow we are initiating negotiations in which resolutions of this kind can only serve – as the Honourable Member so rightly pointed out in his speech – to strengthen Spain's position". (BOCG-Cortes Generales.A, V Leg., n. 139, p. 7385)

Also, appearing before the Joint Committee for the European Union to report on the Agreement between the European Union and Canada on regulation of the fishing of Greenland halibut in NAFO waters, the Minister of Foreign Affairs added that:

"Spain has always viewed the restoration of legality as having two sides: on the one hand the initiation of proceedings against Canada with the International Court of Justice, as was also suggested to the Government – and the Government had already adopted this position – by the parliamentary groups, attacking what we view as the fundamental issue: the Canadian legislation that allowed its forces to act outside the 200 mile limit.

The Spanish complaint was filed on 28 March at The Hague, and at this point I would add that only States may litigate before the Court. In this case the duty lay with us and not just the European Union, as the State whose flag was flown by the vessel on which the Canadian legislation was enacted. This was the primary line of action.

On a secondary level, the restoration of legality is achieved with certain interconnected elements of a legal nature, which in our opinion constitute, all together, a necessary prior condition to reaching an agreement with Canada before embarking on a discussion of the quotas for 1995 and succeeding years. And that is what was done. Although I allude briefly to some of them at other points in this address, I would like here to list what in my opinion are the substantive elements. These are as follows.

One. Dropping of the charges against the Spanish vessel *Estai* and restitution of the bail paid and of the cargo or its value to the shipowner.

(...)

Two. Annulment of the regulation issued by the Canadian Government allowing action against Spanish and Portugnese vessels outside the 200 mile limit. I refer here to the Decree of 3 March 1995 in implementation of an Act on coastal fisheries.

Three. The maintenance and non-subordination of Spain's action before the International Court of Justice.

Four. Another aspect which we also think important and the Honourable Members also raised: the multilateral nature or the effective multilateralisation of the Agreement.

(...)

Fifthly, we wish to avoid a situation in which the application of the control system, on however provisional a basis it was adopted by NAFO, could be tantamount to what we want to avoid in any event – that is, that it should serve as an undeclared moratorium on the presence of Spanish vessels in the zone. As you know, that was one of Canada's most obvious intentions.

And sixthly, to prevent Canada unilaterally determining what is left for the Spanish to fish during the remainder of 1995.

In our opinion these objectives have been achieved in the Agreement, and apart from the actual discussion of future quotas, they constituted the essential elements of the negotiation. As I already said, without first clearly defining this series of questions, the Agreement could not have been concluded. The conclusion in this respect is therefore unambiguous: that is, on all these points the European Union has obtained the satisfaction that it sought for its legitimate aims". (DSCG-Comisiones Mixtas, V Leg., n. 72, pp. 1461–1462).

Analysing the Agreement between the European Union and Canada in an attempt to put an end to the fishing dispute, the Minister of Foreign Affairs, Mr. Solana Madariaga, asserted that the Agreement was pragmatic and that it should enable Spain not only to fish today, but also to fish tomorrow. Moreover:

"Honourable Members, the sphere of fishing is beset by tremendous problems, today, tomorrow and yesterday, because the general tendency is for coastal States increasingly to seek to extend their waters beyond the 200 mile limit. If you care to look back, and this you know, you will see that the entire process of extension to 200 miles was an extremely painful one, a very hard experience which we hope will not be repeated. We must therefore prepare for that. I sincerely believe that, given the present state of the New York conference on in-between stocks, where one of the fundamental issues in debate is precisely that an agreement has previously been reached blocking the possibility of extending coastal rights beyond 200 miles, this is an important sign for the European Union and for international relations.

We have defended our principles with the greatest tenacity and the greatest possible pressure. From the standpoint of the quotas that we will be able to fish, we have also maintained reasonable quotas in relation to our historic catches. And looking to the future, we have also succeeded in achieving stability for our fishing capacity and hence assured the possibility of continuing to fish in these waters today and tomorrow.

That is what we have done, in the same spirit as throughout 1994 we made it possible for Spanish fishermen to operate in waters from which they had unfortunately been expelled many years before. This will continue to be the position of the person now addressing you – that is, I, the Minister of Foreign Affairs, and I repeat, have been and feel responsible for every step that has been

taken in this negotiation as far as my authority extends, which is quite far, and that in this case it was to me that the honour fell of saying the last word before the agreement was signed". (DSCG-Comisiones Mixtas, V Leg., n. 72, pp. 1472–1473).

IX. INTERNATIONAL SPACES

Note: See VIII.1.c) *Canada*

X. ENVIRONMENT

Note: See XIII.2 Spanish Presidency of the Union

The Final Document of the Fifth Iberoamerican Summit held at San Carlos de Bariloche (Argentina) in 1995, contained a reference to protection of the environment, laying particular stress on the hazards attendant on nuclear testing:

"... 7) We deeply deplore all nuclear tests, in particular the ones recently carried out in the Pacific Ocean.

Any test of this kind constitutes a potential risk to health, safety and the environment. We call upon all States to cease these tests. We urge all countries to conclude a Treaty for the total prohibition of nuclear tests, by no later than June 1996. Until such time as the Treaty comes into effect, we issue a general call to respect the precautionary principle set forth in the Declaration of Rio de Janeiro on the Environment and Development and the commitment of the nuclear states to act in accordance with the principles and objectives approved during the Conference on Review and Extension of the Non-Proliferation Treaty.

(...)".

The Final Document of the Sixth Iberoamerican Summit, held in Santiago and Viña del Mar (Chile) in 1996, also referred to the need to achieve sustainable development:

"... 4. We confirm our conviction that the Rio Declaration on the Environment and Development and Agenda 21 adopted by the United Nations Conference on the Environment and Development in 1992 laid down the principles of sustainable development. Therefore, we not only commit ourselves to such efforts but we also call on international organisations to take an active part in the organisation and follow-up of tasks to ensure that the All-American Summit on Sustainable Development, to take place in Bolivia on 7 and 8 December 1996, becomes a

backbone for national and international initiatives in this field, so that economic, social and environmental objectives are approached in an integrated fashion. We further underline the importance of having sufficient resources to finance the plan of action that is adopted at that Summit.

(...)".

In reply to a question on the measures that it plans to adopt through the European Union to prevent dumping of refuse in the sea by Gibraltar, the Government reported:

"Spain has been making and continues to make strenuous representations to achieve the cessation of all environmentally harmful activities in the Bay of Algeciras and the *Campo de Gibraltar* area.

Firstly, the Spanish Government has conveyed to the authorities in the United Kingdom its grave concern at the pollution generated by Gibraltar and has demanded that they honour their obligations as party to the international conventions for the protection of the Mediterranean. This issue has been raised at every meeting in the process of negotiation on the Gibraltar dispute.

Secondly, the protection of the environment is one of the issues in which the European Community is competent, and Spain has therefore made representations to the Commission of the European Communities, urging it to take steps under article 169 of the European Community Treaty to ensure that the United Kingdom, which is responsible for Gibraltar in the European Community, honours the obligations incumbent on it under the Treaty of Rome. As a result, the Commission has sent the United Kingdom a formal request, which is the first formal phase in proceedings for infringement which could culminate in formal proceedings before the European Court of Justice for breach of Community Law.

The Government is following these proceedings closely to ensure that a satisfactory conclusion is reached which entails fulfilment of the environmental obligations imposed by Community Law. To that end it intends to continue pressing the Commission to speed up the proceedings as much as possible. Nonetheless, should the need arise it does not rule out initiation of the procedure provided in article 170 of the European Community Treaty". (BOCG-Congreso.D, V Leg., n. 258, p. 96).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Economic Development and Cooperation

In the appearance of the Secretary of State for International Cooperation and Ibero-

America, Mr. Villalonga Campos, before the Congress of Deputies Commission on Cooperation and Aid for Development on the basic outlines of non-governmental cooperation and organisation, the following aspects were highlighted:

"In the first place, we need to achieve a mimimum degree of basic continuity in Spanish cooperation and development policy, to promote quality over quantity in the context of shrinking budgets, to be more strict in the execution of spending and in the control and monitoring of cooperative initiatives financed from the budget. We need to make an effort to raise levels of dialogue and association with other public and private institutions having competence in matters of cooperation for development, promotion of democracy and respect for human rights in southern countries, application of principles and guidelines generated by forums of multilateral cooperation, particularly the OECD Development Aid Committee, the proceedings of the summits of El Cairo, Copenhagen and Rio, and the summits of Ibero-American Heads of State, which are also basic elements that will inspire the cooperation policy promoted by the Secretary of State.

The key element in the design of cooperation policy will be the international cooperation act...

The future act will establish a definitive legal framework for our cooperation in development and will address the regulation of the basic questions raised by the present situation in this field.

(...)

The constitutional framework that guarantees the coordinated action of the various different agents operating in the sphere of cooperation will be based upon organs some of which already exist and which it is desirable to maintain in light of their proven utility. A case in point is the Interministerial Commission for International Cooperation, known as the CICI...

In some cases the act will reorient other existing organs. One example is the Council for Cooperation in Development, whose clearly positive achievements include successfully organising the participation of the principal agents from civil society who deal with cooperation in development, while other aspects have received less encouragement, perhaps due to a certain lack of definition in the role that it is supposed to perform in the web of our cooperative work...

The act will create new organs in those cases where this is absolutely necessary, as for example in coordination of decentralised official cooperation. The resources of the autonomous communities and local bodies accounted for over 14 per cent of total bilateral Spanish aid in 1995...

To this end it is intended that the future act will create an organ of inter-territorial cooperation embracing all territorial bodies and serving as a permanent channel of contact and coordination.

The creation of this organ would be accompanied by other measures intended to harmonise the action of decentralised official cooperation with that of the State.

In this connection it is planned to create a registry of non-governmental organisations, a long-held aspiration of several official bodies having competence for cooperation and the subject of several parliamentary questions in the last legislature. It is also planned to set up a unified data base of projects of cooperation in development.

Another aspect that the future act should address is coordination with reimbursable cooperation...

The planning of cooperation -- which will be regulated under the future act -- will rest on two basic foundations: the pluri-annual plan and the annual plans for cooperation in development...

The existing Annual Plan of International Cooperation will be succeeded by two annual plans: a budget plan and an assessment plan. At present the planning and assessment office is working to perfect the methodology on which the drafting of annual plans will be based. The methodology is based on planning and assessment techniques inspired by the logical framework system sponsored by the European Union and have been tried out by other cooperation agencies from countries close to Spain...

So far I have mentioned the two subjects that I consider crucial and whose regulation will constitute the purpose of the future act: the institutional structure and the planning methodology. However, there are other material aspects such as definition of geographic and sectorial priorities and priorities regarding types and instruments of cooperation, regulation of the legal regime for cooperation service personnel, etc. These will also be addressed by the new act, which is thus intended to be the cornerstone of our development cooperation policy.

The new legal and institutional structure that will be proposed in this legislature will be oriented at all times towards defending the quality of cooperation and transparency of management. And of course it will also be part of its purpose to define the objectives of our cooperation more precisely in terms of sectorial and geographic priorities". (DSC-C, VI Leg., n. 47, pp. 932–935).

In his appearance before the Senate Ibero-American Affairs Commission to report on the Outcome of the Sixth Ibero-American Summit held in Chile on the general policy lines to be followed by his department and the budget forecasts for cooperation programmes, Mr. Villalonga Campos estimated:

"As regards the second part of the document, relating to cooperation arising out of the Ibero-American Summits, I wish to stress the importance at this Sixth Summit of three new programmes in the list of programmes in progress. These are the Programme of Cooperation for Development of National Systems for the Evaluation of Educational Quality, the Ibero-American Programme for Common Design of Vocational Training, known as IBERFOP, and the Ibero-American Programme for Mobilisation of Education Authorities, known as IBERMADE. The first of these was introduced on the initiative of Argentina, and the other two

on the initiative of Spain.

This second part also stressed the Spanish contribution. I would like to highlight the first paragraph, which calls for the development of structures and the mobilisation of the necessary human and financial resources so that the execution of the cooperation programmes will be effective and the results palpable. This idea is crucial to progress in the development of a truly Ibero-American cooperation as opposed to cooperation by Spain with individual Latin American countries. Throughout the work of this Sixth Summit it was a specific objective of Spain to achieve more active participation by the Ibero-American countries in the cooperation programmes emerging from the Summit. This effort is now producing results and in fact several countries have already joined the programme currently in progress, with specific commitments to the contribution of financial and human resources.

As an example of how the Ibero-American Summits stimulated not only cooperation in general throughout the Ibero-American area but also regional cooperation, the Final Document approved by the Sixth Summit contains a paragraph, also proposed by Spain, which calls for the rapid set-up of an electrical interconnection system among the countries of Central America. In the course of the successive summits, and particularly at this Sixth Summit, it has become increasingly clear that the specific nature and the complexity of cooperation business will require special attention in future, given that multiple and sometimes heterogeneous desires and approaches have to be coordinated on the ground in the Ibero-American area. Therefore, in order to help clarify what methods and objectives to follow in future cooperation deriving from these summits, Spain proposes to host a meeting of the heads of cooperation from the 21 Ibero-American countries at the centre belonging to the Spanish Cooperation Agency in Cartagena de Indias". (DSS-C, VI Leg., n. 67, pp. 3–4).

To a question from a Senator of the Socialist group on budget provisions for 1997 and action proposed to foster bilateral cooperation with Ibero-American countries with which Spain has cooperation and friendship agreements, the Government replied that:

"Bilateral cooperation with Ibero-America is founded not on a model of isolated projects, but on programmes and mutual undertakings. This lends cooperation a more formal structure, aimed at generating growth with social cohesion. It is not a question of approaching the problems of development through projects with defined boundaries and limited participation by receiving agencies, but rather of fitting external contributions into national development plans.

This new approach, which we might call 'contractual', has taken concrete form in the structure of the Joint Commissions for Cooperation set up between Spain and the Ibero-American countries with which she has General Cooperation and Friendship agreements. The Commissions bring the various different

programmes together in five broad subject areas:

1. Institutional modernisation and reform of the State.
2. Support for the productive sector.
3. Education, training and qualification.
4. Humanitarian cooperation and aid through NGOs.
5. Cultural cooperation.

These are the different areas of bilateral cooperation with the Ibero-American countries, and particularly with those whose level of development is comparatively low and where most Spanish aid is concentrated (Peru, Bolivia, Ecuador, Guatemala, Honduras, Nicaragua, El Salvador, etc.)

From a budgetary standpoint, in 1996 the Institute of Ibero-American Cooperation had an initial budget of 5,570 million pesetas, but a further 5,186 million of credit extension is now awaiting approval.

For 1997, The Spanish International Cooperation Agency will set aside 20,507 million for official development aid, out of a total of 26,168 million – that is, a substantial increase on the current year (more or less 70%)...". (BOCG-Congreso.D, VI Leg., n. 88, p. 56).

2. Assistance to Developing Countries

a) Ibero-America

Appearing before the Senate Foreign Affairs Commission on 27 April 1995, the Minister of Foreign Affairs, Mr. Solana Madariaga, reported on the visit to Central America and the cooperation projects agreed with Honduras, El Salvador and Nicaragua:

"During this visit, the Minister of Trade subscribed two global programmes of economic and financial cooperation for a value of 13,000 million in El Salvador and 8,000 million in Honduras. In Nicaragua the types of agreements already in place for the period 1993 to 1995 were reviewed.

(...)

The aspect that I wish to discuss here is cooperation. As you know, the change of orientation in the budget forecast for development cooperation activities, promoted by our society as a whole, has prompted us to look more closely at the instruments for management of cooperation and to promote new formulas for this. Cooperative relations between Spain and Ibero-America, and specifically with the countries I refer to here – that is, the Central American countries – demand the presence of local institutions, so that these countries themselves can be the true engines of development, through their own professional people and their own social organisations. In El Salvador, for example, a Joint Hispano-Salvadoran Fund has been set up with the participation of the Spanish Ministry of

Cooperation, which will be managing bilateral cooperation projects".

Appearing before the Foreign Affairs Commission of the Congress of Deputies to answer questions on the policy of aid to the Cuban Government pursued by the Spanish Government, the Secretary of State for International Cooperation and Ibero-America, Mr. Dicenta Ballester explained:

"This policy is pursued strictly within the framework of the basic Convention on scientific and technical cooperation signed by Spain and Cuba in September 1978. In March 1982 a Convention was signed for cultural and educational cooperation which laid down the guidelines followed in the Cabinet resolution of December 1987 on distribution of aid among Latin American countries. As you well know, Latin America is still the first recipient of Spanish aid and cooperation. It was within this legal and general framework that the Minutes of the Meeting of the Joint Commission on Hispano-Cuban cooperation were signed in November last year. These Minutes record the undertakings whereby we are committed, as far as our cooperation budget allows, to carry out cooperation for the three years following November 1994 subject to the parameters set forth in these minutes. These undertakings to furnish aid to the Cuban Government are based on priorities in four areas: The first is international restructuring; the second is training of human resources; the third is modernisation of productive sectors; and the fourth is humanitarian aid.

(...)

The second area – training of human resources – involves four types of action. Firstly, the organisation of intensive theoretical and practical courses for postgraduates in Spain. Second is the delivery of courses, seminars meetings on economic and social subjects in peripheral areas of Cuba. The third type consists of exchanges of experts in the fields of scientific, technological and cultural research, and the fourth is the offer of grants and university programmes such as inter-campus programmes and programmes of university-enterprise relations. This is a second area in which intensive theoretical and practical courses for postgraduates in Spain and courses and seminars in Cuba have received a budget of 150 million *pesetas*, while the budget for university and university-enterprise relations, postgraduate grants and offers of open, permanent aid has yet to be determined.

The third area is modernisation of productive sectors and infrastructure. The allocation for this is 100 million *pesetas*. The agreed targets for support in this area focus on biotechnology, tourism and civil aviation, plus upgrading of urban environments of special historic and artistic value through advisory services, assistantships, donations of capital goods and so on.

The fourth area is humanitarian aid. The allocation in 1995 was 180 million *pesetas*, and the minutes of the Joint Commission contain a commitment to direct food aid, to consist in the dispatch of powdered milk for sale by local authorities at

local prices to hospitals and infant institutions; these sales generate funds which are devoted to financing cooperation projects designed to increase food safety in Cuba. In this sector there are also plans to send medicaments to hospitals and to the Cuban Red Cross, via either the Spanish Embassy or NGOs.

The fifth area of aid to Cuba is support for cooperation and cultural exchanges". (DSC-C, V Leg., n. 611, pp. 18553–18554).

Furthermore, in relation to this topic, the Secretary of State stated that:

"The humanitarian situation in Cuba has been deteriorating in recent years according to reports from UN agencies like the World Food Programme of UNICEF. For example, livestock production has fallen by 77% in the last few years, so that now only a tenth of the powdered milk produced in 1989 is produced today. According to a recent UNICEF study, this means that half of all Cuban children aged between 6 and 12 are anaemic.

Spain has granted a substantial amount of humanitarian aid in recent years, chiefly in the form of consignments of food and medicaments. This direct aid is supplemented by aid channelled through International and Non-Governmental Organisations. Furthermore, as a member of the European Union, Spain supports aid for the Cuban people in this crisis situation in all Community forums.

The Minutes of the last meeting of the Joint Hispano-Cuban Commission, held in Havana on 9 November 1994, record an undertaking on humanitarian issues made by the Spanish delegation:

'The Spanish delegation intimated to its Cuban counterparts its willingness to maintain, and increase as far as possible, the donation of powdered milk for the infant population, the supply of which would be carried on by the Spanish Agency for International Cooperation (*AECI*) and/or Non-Goverumental Organisations.

The two delegations agreed to establish a counterpart fund for the value of the food aid, in pesos in 1994, and 80% Cuban pesos and 20% other currencies in 1995. This fund will be used preferentially to support agriculture and livestock and will be administered by a joint committee consisting of a representative of the Ministry of Foreign Investment and Economic Collaboration and a representative of the *AECI's* Institute for Ibero-American Cooperation.

The Spanish delegation also expressed interest in maintaining medicament arrangements on similar levels to previous years.'

In fulfilment of that undertaking, the decision of the Presidency of the Spanish International Cooperation Agency on countries to receive food aid in 1995 – dated 22 February – allocated Cuba 180 million pesetas.

The Foreign Ministry's Spanish International Cooperation Agency has also devised a kind of humanitarian aid for Cuba, consisting in a subsidy to the *Hermanos Ferrer de Blank* school in Havana for the purchase of school materials and cleaning, to affect the pupils of the year 1995--96.

As to the aid channelled through the European Union in 1994, consignments

of humanitarian aid were sent to a value of 10m ecu, chiefly in the form of food and medical and hospital materials, plus a further 350,000 ecu aid to alleviate the effects of cyclone Gordon.

Humanitarian aid to remedy deficiencies is being carried out by twelve European Non-Governmental Organisations (mainly Spanish, French and Italian), and the Spanish International Cooperation Agency is providing coordination, support and distribution of assistance. Before this global European Union plan came into being, the *AECI* carried out a survey to identify needs in March 1994. The principal conclusions were as follows:

1. Shortage of medicaments is one of the factors that most seriously affect health, along with the need to reinforce hygiene and provisioning of hospitals.

2. There has been an increase in mortality through nutritional deficiencies, and these, together with the lack of fertilisers, phytosanitary products and seeds, have reduced agricultural output.

In view of this difficult crisis situation, Spain will continue to lend the requisite aid to the Cuban people.

Madrid, 5 April 1995.-The Minister". (BOCG-Senado.I, V Leg., n. 263, pp. 75–76).

Appearing before the Foreign Affairs Commission of the Congress of Deputies to report on the general policy lines of his Department, the Minister of Foreign Affairs, Mr. Matutes Juan, stated categorically on Cuba that:

"Setting aside the problem of cooperation and relations with Cuba, the Government, like the International Community, and in particular the European Union, considers the Helms-Burton Act inadmissible and intrinsically unacceptable – and President of the Government, Mr. Aznar made this clear to Vice-President Al Gore – in as much as it introduces elements of extraterritoriality which are inadmissible in International Law and indeed in any theory of Law. This has been conveyed firmly and explicitly to the Vice-President of the United States

.

(...)". (DSC-C, VI Leg., n. 18, p. 144).

Speaking in parliament during a debate on relations between Spain and Cuba, Mr. Matutes Juan stressed that:

"...Spanish policy on Cuba – and on this point the Government has been quite clear from the outset, as has the Popular Party which, contrary to the claim of the speaker, announced it throughout the last general election campaign – the Government's objective is threefold: firstly, to sustain a dialogue with the Havana Government; secondly, to encourage and promote peaceful transition towards a democratic regime in Cuba, meanwhile promoting more respect for human rights and the introduction of reforms designed to extend the fundamental freedoms of Cuban citizens; and thirdly, to maintain the Spanish Government's firm

commitment to defending the interests of Spain and of all Spaniards having ties of one kind or another with Cuba.

From the outset the Government resolved to maintain relations with the various different sectors of Cuban politics and society, setting up the necessary contacts with the Cuban Government and authorities, but also with other actors and other representatives of Cuban society who are not always able to express themselves freely.

(...)

The spirit of this common position can be summed up as a threefold postulate: first, dialogue as a vehicle of relation; second, a firm stand in demanding respect for democratic principles; and lastly, maintenance of humanitarian and educational aid through NGOs and church organisations and modulation of political and economic cooperation in response to the minimal reforms being introduced by the Cuban regime. This common position is also informed, as the Honourable Members will understand, by a concern to spare the people of Cuba more suffering than they are already experiencing.

(...)

I would stress that respect for human rights, as I said before, is an essential component of all the cooperation agreements signed by the European Union with third countries, including the Lomé Convention countries, Africa-Caribbean and the Pacific, which generally have the lowest standards in terms of quality of life and respect for the rules of democracy.

Put very succinctly, the data underlying this issue are as follows...

(...)

...and we had asked the Cuban Government to commence reforms – not even to complete them – and if such reforms entailed the adoption of some of these freedoms, then in principle we would be satisfied and would even be willing to sign a cooperation agreement.

(...)

But we are not talking about human rights only with respect to Cuba, with or without the Americans, but about the whole world. Article 366 bis of the Lomé Convention states that failure to respect human rights will cause the immediate suspension of the Convention. The Lomé Convention was sigued by the European Union under Spanish Presidency in November 1995. Article 1 of the Agreement with Mercosur, signed in December 1995, also under Spanish Presidency, states: Internal and international policies are inspired by respect for democratic principles and fundamental human rights as set forth in the Universal Declaration of Human Rights. Later, article 35 states: Failure to comply with article 1 will cause automatic suspension of the Agreements. When the Honourable Member, speaking on human rights, referred to whether we ought to be more or less firm on the question of the family, I was not clear finally as to whether the approach is any different. The fact is that when Spain presided over the European Union, she quite

rightly promoted these principles and respect for these fundamental values exactly the same in South America as in Lomé or third countries, because we also signed an Agreement with Nepal in which these same principles are reflected .

(...)". (BOCG-Cortes Generales, VI Leg., n. 48, pp. 2419–2420).

b) Maghreb

Speaking before the Senate Foreign Affairs Commission in reply to a question on the meeting between the President of the Spanish Government, Mr. Aznar López, and King Hassan Affairs of Morocco, the Foreign Minister, Mr. Matutes Juan, outlined Spanish policy on cooperation with Morocco:

"Permanent liaison committee. A permanent hot line has been established between the two Foreign Ministries. The purpose is twofold: on the one hand to provide a measure of centralisation in communication between diplomatic authorities in order to facilitate rapid attention to any matter that might affect our relations, and on the other hand to co-ordinate the administrative action of the different public bodies in either country.

Averroes Committee. It was agreed that this group, which will consist of official representatives and personalities from civil society in both countries, should preferably be operative by the end of the year. This committee, whose formal inauguration is planned for 18 October next in Granada, will be in charge of promoting mutual understanding and knowledge between the two peoples, as a means of helping break down collective suspicion and prejudice.

Parliamentary friendship group. It was deemed desirable to set this in motion as soon as possible, although it may have to wait until after the elections in Morocco.

On the question of defence, both parties expressed satisfaction at the progress in cooperation but decided to enhance this by promoting contacts at various levels in this sphere.

Moroccan debt to Spain. Meetings of the technical work groups were held as decided in the high-level meeting, to discuss mechanisms that may help reduce the burden of this debt.

The ratification of the signature of the financial protocols was approved by the Cabinet on 2 August last. This Protocol covers the period 1996–2000 and will provide the Kingdom of Morocco with credit facilities of 150,000 million *pesetas*, of which about 60,000 million will be FAD credits. This credit is intended to finance public economic and social development projects by Morocco, projects to support the private sector and joint ventures or partnerships; it will also provide financial support for development of the northern provinces of Morocco through the Paidar and other sectorial projects.

On the fixed Strait's link, the possibility was mooted of a subsequent meeting of the Moroccan and Spanish Public Works Ministers upon conclusion of the

study phase of this major project. A visit to Madrid by the Moroccan Public Works Minister is in fact planned for the end of this month.

Electrical interconnection. The Ministers discussed the need to speed up this matter, which is a high priority for Morocco and which the Spanish Government is ready to set in motion. A meeting is in progress today which will hopefully give the go-ahead to the project once the modifications required by Spain to render it viable are made.

Information technology. It was agreed that the Moroccan Communication Minister will travel to Spain to discuss various aspects of cooperation on information, relating to both radio and television, through definition of joint action programmes and co-production projects or programme broadcasting agreements.

(...)

In the coming months it is planned for the Joint Commission on Cooperation to meet in Rabat. The meeting will be attended by the Spanish Secretary of State for Cooperation and the Chairman of the *Instituto Cervantes*.

Legal cooperation. The tasks leading up to the signature of five agreements on legal cooperation continue. These five agreements are: assistance to detainees and transfer of sentenced persons; legal assistance in civil, administrative and mercantile cases; legal assistance in criminal cases; extradition; and legal aid in acknowledgement and execution of decisions on custody of minors, visiting rights and return.

Cooperation in agriculture and fisheries. The Ministers exchanged impressions on the need to increase this cooperation, not only of an official kind but with a view to identifying complementary elements in private activities of this kind in the two countries.

In conclusion, I believe that the fact that the President's first foreign visit was to Morocco constituted a political gesture to which the Moroccan side attached great significance. I wish to stress that besides being a gesture, the visit was, as I have just reported, a highly fruitful one which covered numerous aspects of our relations .

(...)". (DSS-C, VI Leg., n. 35, pp. 5–6).

c) Equatorial Guinea

Regarding our policy of cooperation with Equatorial Guinea, the Director General of Foreign Policy for Africa, Asia and the Pacific, Mr. Fernández-Cavada, told the Congress Foreign Affairs Commission that:

"It is the Government's understanding that our policy towards Equatorial Guinea, like most aspects of our foreign relations, should be a State policy that addresses the interests of Spain.

(...)

On 13 December last year, ..., the director general of Foreign Policy for Africa and the Middle East reported ... on the position and the role of the Spanish Government in this respect...

I would remind the Honourable Members of three objectives on which the present Government is entirely in agreement. Firstly, maintenance of correct diplomatic relations with the Guinean Government; secondly, continued encouragement for the process of transition to democracy by means of dialogne between Government and opposition, in a gradual and peaceful way; and thirdly, vigilance over respect for human rights with a view to improving the situation in this field.

(...)

There are two sides to Spanish cooperation in Equatorial Guinea: cooperation carried on directly, and decentralised cooperation, carried on by non-governmental organisations and financed by the State. Direct cooperation focuses chiefly on education and health, although there are also less important programmes addressing culture and production. Decentralised cooperation is likewise basically oriented towards humanitarian and care projects in health and education, both highly sensitive sectors because of their critical situation and the evident failure of the Guinean Government at present to devote any resources to them.

Our cooperation with Equatorial Guinea has been generous. Until 1993, around 2000 million *pesetas* a year was allocated from the national budget to cooperation with Guinea. This cooperation has been gradually improved to remedy errors committed at the outset. As a consequence of events in 1993 which caused a crisis in our relations with Guinea, the previous Government decided to cut back and restructure cooperation. Nevertheless, it decided – very rightly in my opinion – to maintain cooperation in the crucial sectors of health, education and culture. In 1995 the cooperation budget was 1904 million *pesetas*, of which 655 million (in round figures) was administered by decentralised cooperation – that is, by various NGOs – and the remainder up to 1904 million was administered by the Spanish Administration.

There were six areas of action: administration, health, education, culture, productive programmes and institutional support. In the ordinary allocation process conducted by the Office of the Secretary of State for International Cooperation and Ibero-America this year, Equatorial Guinea was the country that benefited most from subsidies. The non-governmental organisations working in Guinea have received a little over 600 million *pesetas*, which clearly indicates that Guinea is still a priority target of our cooperation, and on the basis of the extended 1995 budget, the direct cooperation budget this year will be similar to last year's, that is around 1000 million *pesetas*. To these amounts we should add other sums that will be approved in the extraordinary allocation process in the next few days. The amount allocated then is expected to be around 100 million *pesetas*.

The present government believes that we ought to carry on with those cooperation programmes that directly benefit the people of Guinea in the areas cited...

For our Government, the type of cooperation and the effort undertaken by Spain will depend at all events on the internal situation in Equatorial Guinea, and also of course on our bilateral relations with Guinea. Besides helping to alleviate the health and education problems of the Guinean people, our cooperation can also exert influence in other ways so as to facilitate the desired democratisation process..

In recent months following the change of Government in Spain, there have been a number of high-level contacts, and although this Commission is probably aware of them, 1 would like to give an account of them here...

Bearing in mind our concern about political developments, one priority subject of study is the inclusion in any future cooperation of a section devoted to cooperation for institutional development. Briefly, this would entail modifying our cooperation by undertaking, over and above primary assistance, a programme of aid for consolidation of Guinean democratic institutions, evidently with the intention of furthering this transition process.

In order to carry forward this undertaking, we need the Guinean Government to be willing to collaborate in this field, and the whole will be closely tied to some clear commitments from that government on the opening up of politics in Guinea. Prior experiences in programmes of support for democratic transitions are now being analysed, including those in which the United Nations has taken part through the UNDP.

(...)". (DSC-C, V Leg., n. 35, p. 67).

3. International Terrorism

Regarding measures to eliminate international terrorism, the Spanish Representative on the Sixth Commission of the United Nations General Assembly, speaking on behalf of the European Union, stated that:

"The Union wished to reiterate its support for the Declaration on Measures to Eliminate International Terrorism; no motive or cause, however legitimate it might seem, could in any circnmstances justify the perpetration of acts of terrorism. Unfortunately, since the adoption of Resolution 49/60 there had been numerous acts of terrorism throughout the world, involving loss of life, abductions and damage to property. The European Union categorically condeimied such acts.

5. The European Union fully supported the Secretary-General's proposals for carrying out, within available resources, the tasks entrusted to him in the Declaration, and hoped that he would soon have at his disposal the necessary information, including replies from States.

6. The European Union maintained its firm position that in order to combat international terrorism effectively, international coordination of the efforts made by States was required. Furthermore, the struggle against terrorism must be carried out in accordance with International Law, and with full respect for human rights and fundamental freedoms. The European Union believed that since States were legally responsible for the protection of human rights, violations of the international human rights instruments could not be attributed to illegal groups or to individuals.

7. A priority in international cooperation against terrorism must be to secure the highest possible level of participation by States in international instruments on the subject, and it would therefore be desirable for States which had not yet done so to ratify the relevant conventions so that persons guilty of terrorist crimes would not be able to find refuge anywhere in the world.

8. International cooperation against terrorism should also include the exchange of information with a view to preventing acts of terrorism and ensuring the apprehension and prosecution or extradition of the perpetrators of terrorist acts. Within the European Union, the Maastricht Treaty contained provisions aimed at combating terrorism through cooperation among member States in the areas of justice and internal affairs.

9. The European Union reiterated its unequivocal condemnation of terrorism as a grave offence against the international community, and its support for international action to eliminate terrorism". (UN Doc. A/C.6/50/SR.6).

4. Cooperation in Judicial, Criminal and Civil Matters

Note: See XIII.4.*b) Illicit Traffic in Narcotic Drugs*

On behalf of the European Union, the Spanish Representative on the Third Committe of the United Nations General Assembly presented a brief résumé of the action taken by the Union in the field of crime prevention and criminal justice:

"21. The European Union supported the proposal of the Commission on Crime Prevention and Criminal Justice that States should be invited to elaborate, in conjunction with United Nations institutions and other relevant bodies, strategies for crime prevention which could be adapted to local circumstances. It also welcomed the Commission's recommendation that the United Nations should continue and develop its activities in the areas of research, exchange of information, training and technical cooperation in order to develop strategies for the protection of the environment by means of criminal law. It welcomed the Commission's proposals for gun control and firmly endorsed the measures recommended by the Commission with regard to children as victims or perpetrators of criminal acts and the prevention of violence against women. It

urged the Commission to continue exploring ways of increasing its efficiency, and hoped that it would focus its work on its priority areas, which were particularly suitable for cooperation within the United Nations system.

22. Among the increasingly numerous and complex questions which were being submitted for consideration by the Commission on Crime Prevention and Criminal Justice, the European Union attached particular importance to international cooperation and technical assistance in the field of crime prevention and criminal justice; the fight against organised transnational crime; the control of the proceeds of crime; violence against women; violence against children, including international trafficking in minors; the role of criminal law in the protection of the environment; and the prevention of urban crime.

23. Since the work of the Commission on Crime Prevention and Criminal Justice was closely related to that of the Commission on Narcotic Drugs, the European Union appealed to those bodies to increase coordination in areas of mutual concern. Similarly, it fully supported efforts to strengthen cooperation and coordination between the Commission on Crime Prevention and Criminal Justice, the Commission on Human Rights, the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, and it called for cooperation between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch. The European Union was concerned that the means at the disposal of that Branch were not sufficient in terms of its mandate and the growing number of requests for technical assistance it was receiving. At the same time, it noted with satisfaction that the Branch was cooperating closely with other United Nations bodies whose activities could supplement its own. It accordingly endorsed the Commission's appeal to all United Nations orfans, in particular UNDP and UNDCP, to include issues relating to crime prevention and criminal justice in their activities. Lastly, it welcomed the contribution of the United Nations programme on crime prevention and criminal justice to United Nations peace-keeping and peace-building operations and emergency assistance activities: that contribution could be of significant assistance in re-establishing the rule of law and in institution building.

24. In 1995 the European Union had adopted an action plan to combat drugs which addressed the three key elements of the drug problem: reduction of demand, action to combat illicit trafficking and international action against drugs. Actions to reduce demand included measures in the areas of health, education and culture, including a five-year public health community action programme for the prevention of drug addiction. To combat illicit drug trafficking the member States of the European Union had adopted new measures to prevent diversion of chemical precursors; measures had also been taken to implement the European directive on money laundering, and a number of cooperation activities involving judicial, customs and police authorities had been organised in the framework of the community strategy to combat the illicit manufacture of and traffic in drugs.

At the international level, the action would aim at developing cooperation between European Union countries and third world countries with a view to controlling drug supply. The planned measures would be world wide in scope because they took regional priorities into consideration, in accordance with the Global Programme of Action adopted by the General Assembly in 1990. Thus, for example, since 1992 the European Community Generalised System of Preferences had been helping member countries of the Andean Pact and the countries of Central America in their combat against drugs by exempting from all taxes industrial products and some agricultural products which they were exporting to Europe.

25. At their First Meeting, held in Brussels on 26 September 1995, the Ministers of Justice and Home Affairs of the European Union and the Ministers of the Andean Group responsible for the fight against drugs had committed themselves to bilateral regional cooperation in drug matters. The European Commission had been authorised to negotiate with Member States of the Organisation of American States an agreement to prevent the diversion of precursors, and the Justice and Home Affairs Council had approved a draft action programme on judicial cooperation in the fight against international organised crime in cooperation with the countries of Central and Eastern Europe and the Baltic States. The Dublin Group continued to exchange information with other countries, and a joint European Union/South African Development Community (SADC) conference on illicit drug trafficking in South Africa would be held from 30 October to 3 November 1995 in Mmabatho, South Africa.

26. The European Union fully supported the United Nations comprehensive strategies, which called for joint and balanced action in the various fields including supply and demand reduction, promotion of alternatives to a drug-based economy, and prevention of money laundering, illicit drug trafficking and the diversion of chemical substances for use in manufacturing narcotic drugs. It was prepared to give due consideration to the recommendations contained in the report of the Executive Director of UNDCP on the implementation of General Assembly Resolution 48/12.

27. For the future, the European Union welcomed debate on how best to maintain and consolidate the pledges made by the international community to combat the drug menace. The solution might be to work for universal ratification of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, full implementation of the United Nations Global Programme of Action and thorough integration of the results of recent United Nations meetings on that issue. In the coming years, efforts should be focused, above all, on strengthening the implementation of the Convention and the Plan so that significant progress could be achieved by the year 2000, which would mark the end of the Global Programme of Action. Milestones along that path would be the 1996 meeting of the Commission on Narcotic Drugs and the future high-level

segment of the Economic and Social Council, which would help determine whether consideration should be given to new mechanisms for intergovernmental consultations on the fight against drugs, including a world conference.

28. The European Union fully supported the role of UNDCP as coordinator of international efforts to combat the drug problem, and welcomed the results of the meeting of its administrative committee, held in Vienna in the spring of 1995. UNDCP should coordinate its activities with those of other relevant United Nations orfans so that the latter could take drug abuse issues fully into account when developing and implementing their programmes and projects.

29. The European Union welcomed UNDCP efforts to improve cooperation between Member States and international organisations in the suppression of illicit drug trafficking by sea, through the strengthening of the provisions of article 17 of the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. As for the Fund of the United Nations International Drug Control Programme, the members of the European Union noted with concern that fewer resources had been allocated to it during the biennium 1994–1995 than in the previous biennium, and asked all Member States to contribute to the Fnnd, whose action they firmly supported". (UN Doc. A/C.3/50/SR.13).

XII. INTERNATIONAL ORGANISATIONS

1. United Nations

Note: See II.2 Codification and progressive development; XII.3 Western European Union; XVI.2.*f) Peace-keeping Operations*

a) Security Council

With regard to the position of Spain on the question of equitable representation on and increase in the membership of the Security Council, the Spanish representative, Mr. Yáñez-Barnuevo, declared as follows at the 57th plenary meeting of the United Nations General Assembly:

"(...)

There is consensus on the principle of expanding the Council, but not on its total membership or its composition. Spain favours a moderate increase in the number of members of the Council to a total of 21 to 25 members. This would make it possible to improve the representativeness of the Council by making it more balanced and democratic, while at the same time maintaining a composition

consistent with the requirements of efficiency and speed in deliberation and decision-making.

Spain believes the increase should incorporate a system providing for a more frequent presence in the Council of States with weight and influence in international relations and with the ability and desire to make a significant contribution to the maintenance of international peace and security and to the other purposes of the United Nations, in accordance with Article 23 of the Charter. In this connection, special reference should be made, *inter alia*, to Member States' contributions of troops and other personnel to Peace-keeping Operations.

This would not mean creating a new category of members of the Security Council, since the States enjoying a more frequent presence would periodically be subject to election by the General Assembly, as are the other non-permanent members of the Council, so that the democratic legitimacy of such members of the Council would always be duly guaranteed.

Any expansion of the Security Council will inevitably mean a change in the majority required for decision-making. On the basis of the provisions of Article 27 of the Charter, a distinction in this respect could be drawn between three types of decisions: first, decisions on procedural matters; secondly, decisions relating to substantive issues outside the framework of Chapter VII of the Charter, which are essentially questions relating to the peaceful settlement of disputes; and, finally, decisions within the framework of Chapter VII, which entail recourse to coercive measures.

Decisions in each of these categories would require a different majority: the more important the decision to be taken, the greater the required majority. Thus, the so-called right of veto of the permanent members would be applicable only in the third category of decisions, those adopted within the framework of Chapter VII of the Charter.

(...)". (UN Doc. A/50/PV.57).

b) Financial Issues

On 26 September 1995, during the Spanish Presidency of the European Union, the President of the Union Council, the Spanish Foreign Minister Mr. Solana Madariaga, addressed the 50th period of sessions of the United Nations General Assembly on behalf of the European Union, with particular reference to the funding of the Organisation:

"... the grave financial crisis affecting our Organisation ... seriously endangers the capability of the United Nations to act and is a matter of deep concern to the European Union.

(...)

The solution of the Organisation's financial crisis is a primary objective for the European Union, which in aggregate is the largest contributor both to the ordinary

budget and to the budgets for Peace-keeping Operations..

For the European Union, the main cause of the parlous financial situation of the United Nations is the lack of political will to fulfil the financial obligations acquired by member States upon signing the United Nations Charter. By 30 June last, the member States of the European Union, conscious of their political commitment to the objectives of the Organisation, had contributed just over 50% of the total of quotas collected for the funding of the ordinary budget and the budgets of Peace-keeping Operations.

(...)

This constructive attitude has been brought by the European Union to the tasks of the High Level Work Group commissioned to examine the financial situation of the United Nations. Our objective is to reach a consensus agreement, as soon as possible and preferably during the present session period, on concrete measures to improve the Organisation's financial situation.

(...)

Among other things, these measures should include the possibility of a review of quota scales in order to define as precisely as possible the principle of ability to pay and incentives and disincentives to encourage fulfilment of the obligations of all member States as provided in the Charter.

The European Union considers that a solid and viable financial base is an absolutely essential prerequisite for considering action to revitalise, strengthen and reform the United Nations system.

(...)

I should like to remind this Assembly, as an example of the European Union's commitment to United Nations Peace-keeping Operations, that not only is the Union as a whole the largest contributor to the Operations budgets – of which it provides 37% of the total – but it is also the largest contributor of personnel. The European Union reiterates this real and firm commitment to the Organisation's peace-Keeping efforts.

(...)".

2. North Atlantic Treaty Organisation

Spain's participation in the Atlantic Alliance prompted various interventions in Congress. On 7 February 1995, to a parliamentary question regarding Spain's ties with the military structure of NATO, the Government replied in the following terms:

"Any information to the effect that Spain has become part of the military structure of NATO is quite unwarranted and untrue.

(...)

Our Armed Forces have always participated in the collective defence of the Alliance absolutely in accordance with the premises of the referendum on our

joining NATO. There is no intention to alter this in the slightest, and therefore any allegation of Spanish integration in the military structure of that Organisation is quite groundless". (BOCG-Congreso, Serie D, V Leg., n. 188, pp.310–311).

Subsequently, on 19 June 1996, the President of the Government Mr. Aznar López addressed parliament to reply to another question as to whether it was planned to submit any modification of the form of Spain's participation in NATO to a referendum:

"The Government's commitment as stated in the investiture speech – and I quote – is to promote Spain's active participation in the process of adapting the Atlantic Alliance to the new world situation, and to support the extension of the European security space to the new democracies of Central and Eastern Europe.

(...)

On the 3rd of this month the Atlantic Council met in Berlin, first with the Foreign Ministers and then with the Defence Ministers of the NATO member countries. There is a clear determination to adapt the Atlantic Alliance to a new situation, a new world in which the objectives have changed. There must be changes in structures, the dimensions of countries' participation must change in line with a completely new situation in which all the countries once belonging to the former Soviet bloc wish to joint the Atlantic Alliance. It seems rather absurd for Spain not to adapt her own position accordingly, if she considers it necessary, and therefore the Government will pursue the greatest possible degree of parliamentary consensus on this new Atlantic Alliance, an alliance at the heart of which, for the first time, is the European defence identity, a commitment that is likewise widely shared by this House.

(...)". (DSC-P, VI Leg., n. 14, pp. 511–512).

Also, in Congress on 24 September 1996 the Government replied to a question on the review of forms of participation in NATO:

"...The Government is committed to promoting Spanish participation in the process of renewal of the Atlantic Alliance that began at the July 1990 Summit and was subsequently advanced at succeeding meetings, particularly the January 1999 Summit and the meetings of last June.

As a consequence of the change in the political and strategic situation of Europe and the emergence of new risks, NATO has taken on new missions and commitments and has become a political instrument for cooperation that works for peace and stability throughout the Continent. This situation is now favouring the possibility of enlarging the Alliance to take in new members once belonging to the defunct Warsaw Pact, who now wish to consolidate their membership of the bloc of countries that share the values of democracy and freedom to which they have recently acceded.

In the process of building the European political union, a way is being sought

of endowing the European Union, through the Western European Union, with a Common Defence Policy that can lead in the future to a Common European Defence. The aim is to equip Europe with ways and means of carrying out operations agreed on by the Europeans, with European forces and under European command, without duplicating NATO military structures in the Western European Union.

At the Berlin and Brussels Atlantic Council meetings last June it was agreed that NATO would supply the necessary mechanisms and procedures by means of a new military structure that could carry out European operations under the political control and strategic direction of the Western European Union.

This new military structure, which also entails changes in the political structures of the Alliance, must be smaller and more flexible. All members of the Alliance would participate and it should be able to take in any new members without further change. This new structure must serve to carry out both traditional collective missions (article 5 of the Treaty of Washington) and the new missions (both of which are known as the WEU's Petersberg tasks and Peace operations, Crisis Management operations and other eventualities) that NATO has acquired and can be performed outside the area.

If Spain is a full member of the European Union and the WEU and the NATO military structure becomes the instrument whereby the Europeans are enabled to put into operational practice common actions decided within the Union through the WEU, than Spain cannot be left out of this genuinely new structure and carry on with a form of participation different from that of all the other allies and WEU members.

(...)". (BOCG-Congreso.D, VI Leg., n. 46, pp. 115–116).

Finally, on 5 November 1996, the Government presented the following Communication to Congress on Spanish participation in the renovated Atlantic Alliance:

"The profound changes at the close of the last decade in Europe have wrought a radical change in the security panorama of the Coutinent. With the end of the Cold War, the division into two antagonistic blocs is no more.

We are entering a new era in the history of Europe, in which a security system is being defined that will transcend former limits, will enable each country to play a part in accordance with its importance and will make it possible to confront newly emerging hazards on a basis of effective cooperation among the various different states and security organisations.

(...)

The construction of this new European security architecture comes at the same time as a phase of progressive integration, one of whose objectives is to achieve a European security and defence identity.

In this context, and given that the Atlantic Alliance remains a crucial factor for

guaranteeing freedom, democracy, peace and stability in a changing world, we as allies confirm its full validity. To render it effective, at the London Summit in 1990 we embarked on a profound and far-reaching process of transformation to adapt the organisation's political and military structures to the new situation.

Initially we proceeded to modify the Alliance's strategy, which was defined at the Rome Summit in 1991. This evolved from a position of collective defence against a potential large-scale attack to a new configuration suited to the tackling of new, lower-intensity hazards in multiple forms. As a result the numbers of these forces were substantially reduced and they were made more flexible and mobile.

Together with this, in obedience to the needs of the new strategic panorama, we decided to take on new missions for the Alliance, focussing on readiness to carry out peacekeeping and crisis management operations mandated by the United Nations or the OSCE, in partnership with non-allied countries.

(...)

At the same time we initiated the opening of the Alliance to cooperation with countries in Central and Eastern Europe by creating the North Atlantic Cooperation Council, designed to serve as a forum for political consultation and cooperation with our erstwhile adversaries.

(...)

Also, the Alliance has recognised that security in Europe is closely associated with the security of the Mediterranean, and in this light the 1994 Summit resolved to consider measures to promote dialogue, understanding and a will to trust among the countries of the region, with a view to reinforcing their stability.

No less important has been the process of progressive development, within the Alliance, of the European Security and Defence Identity conceived at Maastricht ... the allies are now designing the mechanisms necessary to equip the Western European Union – in its role as a component of the defence of the European Union –with the resources and command structures necessary to carry out operations under its own political control and strategic direction.

(...)

In a word, in these last five years the member States of the Atlantic Alliance have wrought a complete renovation, shifting the emphasis on to the political aspects of organisation and opening the doors to cooperation with the other countries on the continent for the prevention of conflicts and the management of crises.

(...)

The fundamental objectives and missions of this new Alliance are in line with the basic orientation on peace and security that is achieving growing consensus among most of the parliamentary forces of our country.

For al these reasons the Government fully supports the process currently under way in the Alliance and, as already announced in the investiture speech, it aims to

assure Spain an active part in the adaptation of an Organisation whose goals and objectives are shared by most of the groups in this House.

At the present moment the process is entering its decisive phase. In the coming months the allies have to complete the adaptation of the internal structures, make definite arrangements for extension to the Eastern countries and define with Russia a special relationship involving consultations and cooperation in the sphere of security.

In this final phase it will be especially important to define a new structure in line with the Alliance's new orientation, which should reflect the strategic situation in Europe today, should be effective for the performance of the new peacekeeping missions and to that end should allow the full participation of all present and future allies. The aim, then, is to establish a new single multinational command structure that is smaller and more flexible, will strengthen the transatlantic link and will also serve, through the design of a European component, for operations decided on and carried out under the political control and strategic direction of the Western European Union.

Spain therefore now has the opportunity to take full part in a more European Alliance...

It is the Government's opinion in this respect that such participation ought to be founded on the logical assignation of operational and command responsibilities to Spain in consonance with her military contribution and political weight.

On such a basis the Government proposes to take the necessary steps to enable Spain to participate fully in the definitive arrangement of the Alliance's new structure. Such participation will not bind us beyond the additional commitments in respect of those acquired by our country upon signing the Washington Treaty, nor will it alter the terms of the authorisation originally vouchsafed by Congress for that accession.

(...)" (BOCG-Congreso.E, VI Leg., n. 60, pp. 3–4).

In reply to a question raised in Congress as to the characteristics of the future military structure of NATO, the Government stated:

"The recent meetings of Foreign Ministers in Berlin and Defence Ministers in Brussels have spelt a great step forward and a fresh impulse for the process of transformation of NATO. There it was resolved that efforts should be directed towards assuring the military capacity to carry out any kind of mission by means of a single, renewed Multinational Command Structure that will enable all allies to participate fully in proportion to their contribution.

The structures envisaged need to be more flexible and the forces more mobile, and they should also allow for the participation of members of the Partnership for Peace (PFP) in specific operations, and likewise for future enlargements.

With regard to the development of the European Defence Identity within NATO, there has been an important advance in the establishment within the actual

Military Structure of procedures that will allow WEU operations with NATO support and the identification of support resources with dual NATO/WEU utility. This means that in future the Europeans will be able to use the New Structure to carry out operations under the political control and the strategic direction of the WEU.

(...)". (BOCG-Congreso.D, VI Leg., n. 43, p. 333).

In an address on 13 November 1996, the Government replied to a question raised in the Senate on who will have the Gibraltar command in the event of reform of NATO structures:

"Spain is taking an active part in studies currently going on within the Atlantic Alliance aimed at moving from a large, rigid and static military structure designed to respond to a large-scale attack, to a lighter, more flexible form in which numerous subordinate GHQs will disappear.

In this new strategic context there are no military reasons why the allied command at Gibraltar, which is located in the colony, should continue to form part of the new military structure. This has been tacitly admitted by the NATO military authorities, in whose studies this command level is not considered necessary for the prosecution of the Alliance's new missions.

In recent years there has been withdrawal of military forces from the British base in Gibraltar, so that this base has significantly lost strategic value, especially if we compare it with the potential strategic capacity of the Spanish bases and facilities in the south of Spain.

Full participation of the Spanish Armed Forces in the new NATO structure will mean that the Strait of Gibraltar zone can be controlled by Spanish NATO Commands based at Spanish GHQs and facilities.

For all those reasons, the Ministry of Defence believes that, given the loss of strategic value of the Gibraltar base to NATO, the activities and missions of a future NATO command in the zone will be carried on without the British base.

In any event, in the negotiations for the design of a new structure, the Spanish Government will be approaching the full participation of our Armed Forces in such a way as to avoid the problem of the allied command at Gibraltar resurfacing in an artificial way. This will not prevent the UK from continuing to use their facilities in the colony for their own national military requirements". (BOCG-Senado.I, VI Leg., n. 87, p. 8).

With regard to the enlargement of NATO, the Government replied thus to a parliamentary question:

"(...)

From the outset Spain has given clear support to the idea of enlargement and has sustained the thesis that all Central and East European countries should be able to

be candidates for enlargement and accession to the Alliance once they meet the essential requirements for membership.

It has further been Spain's position that the enlargement process should be progressive and not precipitate, that it should be carried out in a transparent manner, in such a way as to guarantee the objective of augmenting the security and stability of Europe as a whole.

Spain has also stressed the need to foster a special relationship between the Alliance and Russia and to pursue an ambitious programme of dialogue and cooperation that, without granting her any right of veto, will take due account of Russia's peculiar character and dispel any fear of isolation or marginalisation.

And finally, considering that not all candidates will accede to the Alliance in the first phase, Spain is in favour of drawing up a broad programme of political and military cooperation within the framework of the Partnership for Peace". (BOCG-Congreso.D, VI Leg., n. 87, p. 289).

On 17 September 1996, the Government explained its position with respect to the development of the WEU and its adaptation to the decisions adopted by NATO at the Berlin meeting:

"The decisions adopted by NATO at the Berlin meeting in relation to the future operational development of the WEU concerned the identification and possible utilisation of NATO resources, capacities and command structures suitable to enable the WEU to carry out operations under its own control and strategic direction.

In order to accomplish these objectives, it is essential that the WEU urgently define the profiles of missions that will be carried out in future and establish with NATO whatever means of coordination are necessary to that end.

It is therefore unlikely for the moment that the allied decisions of Berlin will entail any acceleration of the WEU's operational development beyond the outcome of the decisions adopted at the ministerial meetings in Lisbon, Madrid and Birmingham (Situation Centre, Planning Cell Intelligence Section and so on).

To the contrary, the work already initiated by the various organs of the Western European Union focuses mainly on the conceptual definition of missions, standard approaches and exercises of the WEU for which the Alliance should provide the support agreed in Berlin.

(...)

Our contribution to this will be in line with the support that we have always given to the development of a European security and defence identity that is compatible with the strengthening of the transatlantic link.

(...)". (BOCG-Congreso.D, VI Leg., n. 43, p. 333).

3. Western European Union

Note: See XIII.2 Spanish Presidency of the European Union; XIII.6.*b) Common Foreign and Security Policy*

In reply to a parliamentary question in the Senate, the Government explained its position with regard to the role that the WEU can play in harmonising the positions of the Alliance and the European Union in connection with relations with the Russian Federation:

"For some time now the Spanish Government has been stressing the need for the various European and transatlantic organisations having competence in the field of security to establish a special relationship with the Russian Federation.

This position stems from an awareness of the evident importance of Russia for world and continental security, and from the conviction that through such a special relationship the Western countries can help Russia to become more stable and consolidate its democracy.

Viewed in this way... it seems desirable that relations between the Russian Federation and the Western European Union on security matters should be approached globally, taking advantage of the possibilities in this sense of each of the organisations alluded to before (the European Union, the OSCE, the Atlantic Alliance and the WEU). The initiation of a political dialogue between Russia and the European Union, the development of a system of cooperation with Russia within the framework of NATO..., or approval by the OSCE of the Russian initiative to undertake a study on European security for the 21st century – these are the kinds of action envisaged by such a global approach.

As an element of defence of the European Union and a means of strengthening the European side of the Atlantic Alliance, the Western European Union obviously cannot be left out of such an arrangement.

(...)

On 7 March, therefore, the Council of the WEU approved the general principles upon which to build a system of dialogue and exchange of information between the WEU and Russia on security matters. These principles are briefly as follows:

- The general objective of this relationship is to establish a dialogue and an exchange of information on matters of common interest between the WEU and Russia, at the same time avoiding any duplication of the work of other forums.
- In order to be able to accomplish these objectives, periodic consultations are envisaged between the permanent representative of the country currently presiding over the WEU and the ambassador of the Russian Federation in Brussels.
- Also envisaged are encounters between the WEU authorities and members of the Russian Government, visits by the secretary-general and representatives of

the WEU Presidency to Moscow, and other lower-level contacts between representatives of the Organisation Secretariat and members of the Russian embassy in Brussels. It is also planned to arrange contacts through the Moscow Embassy of the country currently in the President's chair.

– It was resolved to pursue an active policy in Russia to inform about the development of the European security and defence identity; the WEU Institute of Studies in Paris has been instructed to award priority in its work to contacts with Russia, and the WEU Parliamentary Assembly is being encouraged in any efforts that it may make to establish contacts at a parliamentary level with members of the Russian legislature.

Madrid, 12 April 1995.–The Minister". (BOCG-Senado.I, V Leg., n. 268, p. 45).

Subsequently, on 28 April 1995, the Government explained the role that the WEU can play within the framework of a security policy affecting the Mediterranean region as a whole:

"... The Mediterranean area is one of the cornerstones of Spanish foreign policy. Spain's relations with the Maghreb countries, and with the southern shore of the Mediterranean in general are a priority. We consider that the economic prosperity of that region is of the utmost importance to the security of Europe.

Spain therefore seeks to consolidate and intensify dialogue and cooperation between our European partners and the Mediterranean countries, to which end she encourages any initiative that will help to increase security and stability in the area.

In this connection Spain has presented concrete proposals in the various forums of which she is a member, particularly the EU, the WEU, the OSCE and the NATO.

Within the framework of the WEU, Spain has promoted the establishment of a framework of dialogue with North African countries, which has been progressively developed since 1992 with a twofold objective: firstly to contribute to the stability of the Mediterranean through direct contacts for the exchange of information and opinions with the countries on its southern shore on security issues of mutual interest; and secondly to complement within this sphere the relations that the European Union maintains with these countries in the political, economic and other spheres.

In accordance with the current mandate,... this dialogue:

– Is carried on with five countries – Algeria, Egypt, Mauritania, Morocco and Tunisia – but it may in future be extended to other Mediterranean countries not belonging to the Organisation.

– The dialogue is carried on through separate contacts with each of them, on a six-monthly basis at various levels diplomatic,... government experts... and

academic.

- The dialogue concerns information on WEU activities and the exchange of opinions on security issues of common interest, but it could be extended to new areas in the future.

Spain is playing a major part in inspiring and fostering this dialogue in accordance with criteria generally shared by our European partners:

- The action of the WEU in this field is inspired by a global concept of security which embraces political, economic, social, cultural and other aspects of importance for the stability of the region, along with other issues relating specifically to defence.
- As an element of EU defence, it is the WEU's task to deal with these last aspects, thus complementing the efforts of the Union in other spheres.
- However, the WEU's approach should neither be a military one nor be based on a strategy of confrontation with supposed threats from the south.
- To the contrary, the WEU countries believe that the best way to protect our security and that of the Mediterranean region as a whole is precisely to maintain a dialogue.
- Moreover, it is the intention of the WEU that this dialogue should serve first and foremost to promote principles that will contribute to the security and stability of the Mediterranean as a whole. Of these principles, the WEU places special emphasis on the following:

  Peaceful settlement of conflicts.

  Transparency of military activities and doctrines.

  Non-proliferation of weapons of mass destruction and of the means of deploying them.

  The need to prevent the stockpiling of conventional weapons beyond what is strictly necessary for defence.

  Spain plans to make use of her Presidency of the WEU in the second half of 1965 to advance further in this dialogue, but without altering the present format which is still quite recent. For the longer term, we believe that in addition to initiatives in other forums, the WEU could also contemplate some concrete measures to foster cooperation with countries on the southern shore of the Mediterranean.

  (...)". (BOCG-Senado.I, V Leg., n. 271, p. 45).

On the occasion of Spain's Presidency of the WEU in the second half of 1995, on 18 May 1995 the Foreigu Minister Mr. Javier Solana Madariaga addressed Congress to explain the objectives and priorities of the Presidency which Spain will be occupying along with the Presidency of the European Union:

"... This coincidence will involve a greater effort for Spain and will require meticulous preparation... to assure the success of the enterprise. We must ensure

coordination on two fronts. Firstly, coordination of the Spanish organisations whose task it is to discharge the presidential duties, most importantly between the Ministry of Defence and the Ministry of Foreign Affairs. And secondly we also have to coordinate with our allies in the Western European Union, particularly with the country currently occupying the Presidency, namely Portugal, and with the country that will occupy the Presidency in the first half of 1996 – the United Kingdom ... the objectives and priorities that Spain sets for her Presidency of the Western European Union will logically be determined by how we apply our own political understanding of the nature and functions of the Western European Union to the present state of evolution of the organisation. ... our understanding is founded basically on two principles. The first is that the process of European integration will not be complete until there is a genuine security and defence identity; ... the second is that we must therefore seek to convert the Western European Union into a genuine element of defence of the European Union. This will facilitate the accomplishment of the objective set forth in the Maastricht Treaty and the appended declaration regarding the Western European Union, which envisages the gradual development of a genuine European security and defence identity through the definition at a future date of a common defence policy that could eventually lead to a common defence... compatible with the Atlantic Alliance. Our period in the Presidency of the Western European Union will thus be guided by that political understanding.

(...)

What are the priorities of our Presidency?... these fall conveniently into two blocks: objectives of a political nature and objectives of an operational and functional nature... Political objectives. The system designed at Maastricht is basically set forth in article J.4 of the Treaty and in the appended declaration regarding the Western European Union. Both documents record mandates for review in preparation for the 1996 Intergovernmental Conference. The prime political objective of the Spanish Presidency is therefore to prepare the contribution of the Western European Union to the 1996 Conference on the basis of a review of the application to date of the provisions of the Treaty of Union, and particularly the declaration I mentioned earlier.

(...)

The Spanish contribution will be based on an in-depth analysis of three fundamental areas into which the declaration falls: firstly relations between the Western European Union and the European Union; secondly relations between the Western European Union and the Atlantic Alliance; and thirdly operational functions of the Western European Union itself. The purpose of this analysis will be to evaluate the progress and the experience acquired from 1991 to the present and to consider what future options each area contains. In any event there can be no doubt that, looking forward to the Intergovernmental Conference, the most important aspect of this evaluation will be that concerning relations between the

European Union and the Western European Union, albeit the central item on the Conference agenda is to consider what amendments to propose for the Treaty of Union, and particularly article J.4 as it relates to the European security and defence identity. It will then be essential to raise the issue of the future of institutional relations between the two organisations, and it will hence be necessary to examine all the options available.

There are essentially three options: one would be to make defence an integral part of the Treaty of European Union by merging the European Union and the Western European Union. This would entail adding to the new Treaty of Union articles establishing a system of collective defence and security guarantees similar to those provided in article 5 of the Washington Treaty and the amended version of article 5 of the Brussels Treaty, which presently applies to the Western European Union.

At the opposite end of the scale is the option to maintain the *status quo* whatever happens, that is, to ratify the system as set forth in the Treaty of Maastricht... These are two extreme options, between which there is a whole range of intermediate possibilities. These would include maintaining the independent personality of either organisation in the meantime but at the same time promoting gradual convergence through arrangements for increasing interaction of the defence of those countries politically willing to do so, leaving the merging of the Western European Union into the European Union open as a possibility for the future. At all events it is my understanding that Spain ought to seek a balance on this point between the harmonising of positions and the need to move forward on the unanimously desired European security and defence identity. This then is our first political objective.

The second is to reach a conclusion on the debate in the Western European Union on the new security conditions in Europe, which was included in the French proposal to draw up a White Paper on the issue.

(...)

As well as the political objectives I have just mentioned, our Presidency must address important operational and functional objectives.

As regards functional objectives, I would cite four priorities. One, we believe it is necessary to improve the functioning of the Permanent Council through more effective and more frequent support from the organs that prepare its debates and its decisions – the secretary, the planning cell and the various work groups, in which we believe the personnel of the permanent delegations need to participate more.

The second functional objective is to improve the structure and the operational efficiency of the ministerial councils.

(...)

Next, we propose to boost the process of gradual transformation of the Institute of Security Studies into a kind of European academy of security and

defence.

(...)

The fourth functional objective is to improve the development of relations between the Council and the Parliamentary Assembly of the Western European Union.

(...)

To accomplish these objectives, the Government hopes to receive the cooperation of all the parliamentary groups in the understanding that our Presidency of the Western European Union is a matter of State policy.

(...)". (DSC-C, V Leg., n. 498, pp. 15129–15131).

4. Organisation for Security and Cooperation in Enrope

Note: See VI.3 Multilateral Diplomacy

To a question in the Senate on 21 April 1995 as to how the effectiveness of the OSCE can be enhanced to contribute to the security of Europe, the Government replied as follows:

"The Government is fully persuaded that the OSCE has an important role to play in augmenting the stability and security of our continent.

Its importance lies in the fact that... the OSCE is a regional agreement within the meaning of Chapter VII of the United Nations Charter and hence constitutes an important link between European and world security.

(...)

Another feature we would emphasise is that the OSCE is the only European security organisation in which all the European countries, plus the United States, Canada and the States emerging from the break-up of the Soviet Union, are included on equal terms. In other words, it is the pan-European forum *par excellence.*

Not only that, but the OSCE is an organisation that addresses all the complex facets of security, viewing security as a global concept that embraces not ouly military aspects, but also the humanitarian and economic dimensions.

(...)

At the same time, because the OSCE is pan-European, it permits the negotiation of measures of trust and arms control on a continental scale, thus contributing to the creation of a homogeneous Europe-wide security space.

Moreover, the OSCE is emerging as the most suitable vehicle for preventive diplomacy, leaving the undertaking of military operations to other security organisations. That is why in the conclusions of the 1992 Helsinki Summit it states that the OSCE may take advantage of the resources and possible experience and

knowledge of existing organisations like the European Union, NATO and the WEU, and may therefore ask them to furnish resources to support it in its peacekeeping activities. This notion of complementariness addresses the need to avoid the overlapping use of institutions and thus strengthens them.

(...)

On this basis, the Spanish Government and the other participating countries are determined to make full use of the potential of this organisation and to strengthen its contribution to security and European stability so that it performs a central function in promoting a common security space based on the principles set forth in the Final Act of Helsinki.

To that end the Summit of Heads of State and Government held in Budapest on 5 and 6 December last adopted a number of measures, now partially implemented, including the following:

- To support the continued activities of the High Commissioner for National Minorities and to augment his resources. The participating States further undertook to redouble their efforts to apply his recommendations.
- The participating States also undertook to furnish the human and financial resources necessary to carry out the observer missions that the OSCE sends to certain areas of conflict on our continent.
- It was decided also to reinforce the OSCE Office of Democratic Institutions and Human Rights.
- The OSCE will cooperate increasingly with the United Nations, with European organisations and with other regional and transatlantic organisation, but avoiding duplication of effort.
- Finally, the OSCE declares its willingness to act as depositary of freely-negotiated bilateral and multilateral agreements and arrangements and to supervise their application. It is worth remembering in this counection the decision of the signatories of the Stability Pact to transfer to the OSCE the tasks of surveillance and application of any agreements that may be concluded within that framework.

Madrid, 11 April 1995.-The Minister". (BOCG-Senado.l, V Leg., n. 266, p. 34).

XIII. EUROPEAN UNION

1. Enlargement

Addressing the Congress of Deputies in full session on 20 December 1995 to inform on the Madrid European Council, the President of the Government, Mr. González

Márquez, explained the criteria for the enlargement of the European Union to take in the Eastern, Southeastern or Central European countries that have already signed partnership agreements:

"The talks were difficult and the, let us say, enlargement countries were extraordinarily appreciative of the agreements reached on the last day of the Council. The first key element of these talks is set forth clearly in the conclusion document. The enlargement of the European Union cannot have a negative effect on the *acquis communautaire* or on common policies. In any event, it should strengthen the European Union's aim of integration rather than separate it into a sort of free exchange zone. This was one of 109 other recommendations made by the Parliament at the Joint Congress-Senate Commission for the 6-month Spanish Presidency.

The date for beginning negotiations with Cyprus and Malta has been confirmed. As the Honourable Members will recall from the information on 4 July, that date will be six months after the end of the Intergovernmental Conference. If the forecasts for the development of the Conference prove to be correct, this means that the enlargement negotiations will begin early in 1998, at least with respect to Cyprus and Malta. It has also been decided to step up the pre-accession strategy. That is, to make the most of the period from now to accession time to carry out the institutional reforms needed to bring these countries into line with the policies that make up the European Union *acquis*. The Commission has been asked to draw up three reports between now and then... The first is to ensure that the assessments continue – and the first of these has been made on the impact of the common agricultural policy of the enlargement – on the impact on all EU policies of what enlargement to take in the Central, East and Southeast European countries may entail. The second report the Commission has been asked to prepare is a joint document on enlargement; not only with opinions on each of the countries that aspire to join the European Union, but also a joint document on the basis of which the Council can decide on a global negotiation strategy, although negotiations must be carried out country by country. The idea is to have an overall view of what enlargement involves. And the third – and I think this one is decisive for us as a country because it will raise a problem with far-reaching consequences – is a study of the problems of funding, the multiyear European Union funding that must come into force in 1999, bearing in mind the possible impact of enlargement to the Central and Eastern European countries on this financial perspective.

(...)

At the European Council we decided that until negotiations begin, that is, until the Council is able to assess which countries are in a position to begin negotiations once the Commission has issued its opinions on each of them, all the countries should be treated objectively and equitably, using exactly the same criteria.

(...)

It has further been decided to make an effort so that the first negotiations begin at the same time as the negotiations with Cyprus and Malta and, naturally, we have pointed out and discussed at length with the Central and Eastern European Countries and Cyprus and Malta that negotiations will be conducted individually with those objective criteria and on the basis of the merits of each case.

(...)". (DSC-P, V Leg., n. 193, p. 10236).

Later, on 19 June 1996, the Minister of Foreign Affairs Mr. Matutes Juan, outlining his department's European policy to the Joint Commission for the European Union, referred to Spain's position with respect to enlargement:

"...the challenge awaits us of enlarging the European Union to take in the countries of Central and Eastern Europe and Malta and Cyprus. Enlargement to these countries is an aim to which Spain is fully committed and one that has far-reaching consequences for both the prosperity and the stability of the entire continent, and in order to implement it the Government will defend the consolidation of the EU's structures and policies, which have been the keys to its success. Therefore, we will actively defend the current acquis and the improvements that need to be made in the framework of the Intergovernmental Conference to guarantee the current EU's capacity to take in these new member States.

Therefore, it is our belief that the Union should have sufficient resources to cope with such an ambitious programme. This will be the core of our arguments when the system of own resources is renegotiated, together with the financial perspectives for 2000 and thereafter.

(...)". (DSCG-Comisiones Mixtas, VI Leg., n. 7, p. 16).

He likewise pointed out that the enlargement of the European Union requires an institutional reform:

"As regards institutional reform, the number of members of the Commission, this body will not be able to function when there are 25 countries with 33 members, because it will no longer be an executive, but rather a parliament. The current balance should be maintained. Therefore, it will be necessary to study what happens with foreign policy, with the rules of unanimity, the rules of qualified majority, the third pillar to which I referred earlier". (DSCG-Comisiones Mixtas, VI Leg., n. 7, p. 32).

2. Spanish Presidency of the European Union

Note: See XIII.5 Foreign Relations

On 2 March 1995, the Minister of Foreign Affairs, Mr. Solana Madariaga

appeared before the Joint Congress-Senate Commission for the European Union to report on the work of the Union on the 1995 perspective, putting special emphasis on the objectives of the Spanish Presidency:

"I will classify the priorities of our Presidency into four main areas, which are the following: the first context, to achieve a strong economy in the European Union that generates employment. I think this is the major challenge for us all, both for Europe and for Spain, and continues to be the basic concern of all the governments and the Commission.

(...)

This is the purpose of the structural reforms being put into practice within the Union and what the White Paper on competitiveness, growth and employment, which has been called the Delors Package, is about. This would therefore be our chief priority, and in this respect we are in line with all the EU members, for whom this is a number one priority.

In our opinion, the second Spanish priority should be to promote a new strategy of prosperity and peace in the Mediterranean, by starting up a new dialogue between the European Union and the Mediterranean, which will take place in Barcelona at the first Euro-Mediterranean Conference.

(...)

The third priority will be to strengthen relations between the European Union and Latin America. Logically, Spain enjoys a privileged relationship with Latin America and we would like the European Union to share this... During our Presidency we will endeavour to conclude new agreements with Mercosur, with Mexico – despite the difficulties Mexico is currently experiencing – and Chile, and, if possible, we want the Union to approve a sufficient volume of resources to strengthen financial and technical cooperation and the loans of the European Investment Bank to Latin America with a view to 2000.

The fourth priority, to give a brief description, would be to prepare the 1996 Intergovernmental Conference where the foundations for the Europe of the 21st century are going to be laid. It will fall to us Spaniards to chair the reflection group, the group of delegates of foreign ministers which will prepare the conference, and in September there will be an informal meeting of Heads of State and government also to start considering the future of Europe, in the framework of the meeting of heads of government.

I have made this four-point division without yet speaking of what the Presidency of the Western European Union will entail, which, for the first time is going to coincide with the Presidency of the European Union. That is, during the second half of the year we are going to have the twofold responsibility of presiding over both institutions, the Western European Union and the European Union". (DSCG-Comisiones Mixtas, V Leg., n. 66, p. 1369).

On addressing in depth the objectives of the Spanish Presidency of the European

Union, the Minister referred to Mediterranean issues:

"I will now comment on what should, perhaps, be our greatest concern, the issues relating to the Mediterranean. To make the Mediterranean an area of peace, stability and prosperity will be the priority goal we will work towards achieving. Strengthening relations between the European Union and the Mediterranean will be one of Spain's and the European Union's chief priorities and it will be our responsibility to chair the first Euro-Mediterranean Conference, to be held in Barcelona.

During the 7–12 February last, the first visit of the troika to the Middle East took place. This visit enabled us to establish contact to ascertain how the Intergovernmental Conference is perceived from this highly sensitive part of the Mediterranean. I can say that throughout these six months we will continue to promote EU action relating to the Mediterranean, endeavouring to ensure that the peace process progresses as quickly as possible in our relations with the Middle East, because it would be a major stumbling block for the Euro-Mediterranean Conference were this peace process not to run smoothly.

The Spanish Presidency should give impetus to this new Mediterranean strategy that Spain has proposed in past years and which the Commission has adopted in a recent communication that basically states the following: The long-term possibility has been established of a free-exchange zone for industry and services in the region, an essential step – the creation of a Euro-Mediterranean area of peace and stability and the approval of new cooperation instruments. Therefore, we are speaking of three different planes on which we will have to promote action and draw conclusions at the Conference. This Euro-Mediterranean partnership must be accompanied by financial aid, in our opinion a substantial amount in the region of 5,000 million ecus – that is the position of the Commission and which we support – and which, as the Honourable Members know, was laid down in the conclusions of the Essen Council, as agreed at the Edinburgh Council.

The Ministerial Conference, which will be held in Barcelona on 27 and 28 November 1995, will be an essential element of this EU strategy. The Honourable Members will be wondering what countries will be invited, and this is a crucial issue. The fifteen member States will naturally be invited, and all the EU's Mediterranean partners. The following matters will be addressed at the meeting: political dialogue, stability and security, economic and financial cooperation, cultural and educational cooperation, the problems raised by drugs, emigration and associated social problems. I should say that the Conference must be prepared in close collaboration with these partner countries. I will begin a round of visits to those countries so that this Conference is not an isolated event in a process. We would like this Conference to mark the beginning of a process of relations between the European Union and the Mediterranean. I may say that the tenacious work of Spanish diplomacy – though not exclusively Spain – has achieved

something that was once a dream for us all: the raising of the awareness of all the member countries with respect to the Union's southern border. The Southern countries of the European Union have always been concerned about issues relating to their border, the Southern border. The Central and Northern European countries are more remote from this Southern border and, as is well known, are more concerned about the Eastern border. The persistent work of the EU countries that are most concerned about the Mediterranean has been successful in spreading this concern to the fifteen EU members". (DSCG-Comisiones Mixtas, V Leg., n. 66, p. 1371).

The Minister referred to the need to seek greater stability and security in Europe as one of the priorities of the Spanish Presidency:

"I will therefore go on to priority number two: ...under the French Presidency an exercise of preventive diplomacy will come to an end, which we could include under the heading of what has been called the Stability Pact aimed at those Central European and Baltic States whose problems of minorities and borders are an obstacle to concluding agreements of good neighbourliness between each other and with their neighbours. Together with the list of bilateral agreements and declarations, the Stability Pact will culminate in a conference to be held very shortly in Paris, on 20 and 21 March. And the OSCE (Organisation for Security and Cooperation in Europe) will be recommended to monitor and implement those agreements. Logically, during the second half of 1995, it will be up to us to carry on with this important task of preventive diplomacy.

The chief goals of our Presidency in this security issue, which is twofold since we will also hold the Presidency of the Western European Union, can be divided into the following groups.

As regards strictly European Union affairs, Spain will attempt to deepen the cooperation achieved in the field of common foreign and security policy in security issues, and particularly through the following points.

First, through greater use of coordination mechanisms within all organisations and international conferences, as laid down in article J.2 of the Treaty.

(...)

Second, greater application to security questions of the system of joint CFSP actions, which were established in article J.3 and, as far as we understand, till now have only been used in the field of security in relation to the extension of the Non-Proliferation Treaty. We would like to extend this to other broader fields". (DSCG-Comisiones Mixtas, V Leg., n. 66, p. 1369–1370).

After the European Stability Pact was signed in Paris, on 16 May 1995 the Government explained the advantages of this Pact for Spain in reply to a parliamentary question raised at the Senate:

"1. The Stability Pact is aimed at the countries of Central and Eastern Europe

and the Baltic States, whose problems of minorities and borders can have a negative effect on the stability of the European continent, as the Yugoslavian conflict has shown.

Stability in Europe benefits Spain as much as the other signatory countries.

2. The Pact has already had positive consequences. With the exception of the Czech Republic, all the other participant countries have undertaken, by means of the Pact, to sign treaties of good neighbourliness with their neighbouring countries. Some of these agreements, such as those between Hungary and Romania and Estonia and Russia, were signed before the final Paris Conference and must be concluded shortly, since these countries have pledged to continue with contacts and negotiations.

Likewise, the monitoring of the implementation of these agreements has been entrusted to the OSCE and the continuity of this innovative exercise of preventive diplomacy is thus assured. The OSCE will also intervene at the request of a party or when any of the ten principles of the Helsinki Act is breached in the implementation of the agreements.

Therefore, the Government of the Nation regards the European initiative of preventive diplomacy as highly positive and consider that the results obtained so far and the solution of continuity that the Pact has found in the OSCE are encouraging.

3. The Minister of Foreign Affairs headed the Spanish delegation that attended the International Opening and Closing Conferences that were held in Paris. The Minister of Foreign Affairs likewise signed the Stability Pact on behalf of the Spanish Government.

4. From the outset, Spain has backed the French initiative and has taken an active role in the final stage of negotiations of the Pact. The exercise of preventive diplomacy and the structure of regional round tables are innovative methods that evidence the European Union's and with it Spain's concern to spare no efforts to make Europe a stable continent.

This joint European action meets the objectives of Common Foreign and Security Policy enshrined in the Maastricht Treaty. Spain has backed and taken an active part in this initiative.

Madrid, 28 April 1995.-The Minister". (BOCG-Senado.l, V Leg., n. 279, pp. 61–62).

The Minister of Foreign Affairs likewise referred to the Government's twofold responsibility of presiding over the WEU and the EU during the second half of 1995 in his address of 2 March 1995 to the Joint Commission for the EU:

"...it will be incumbent on our Presidency, for the first time, to preside over both institutions at the same time. We will be obliged to boost the contribution of the Western European Union to the 1996 Intergovernmental Conference.

(...)

The Spanish Presidency should promote the completion of the White Paper begun by Portugal and also give impetus to the position that the Western European Union will have with respect to the European Union. It will also be up to us during the Presidency to define the European Union's contribution to the debate on the Organisation for Security and Cooperation in Europe... We will have to continue with the relations between the European Union and the countries known as the CEECs, because it will be the second half of the year when the so-called structured dialogue will be set in motion. The structured dialogue with these countries was started up through the French Presidency, with no more than two or three meetings, and it is our job to give a greater boost to this relationship or structured dialogue between the European Union and the Central and Eastern European countries. During our six-month Presidency the partnership councils with Poland and Hungary will take place". (DSCG-Comisiones Mixtas, V Leg., n. 66, p. 1371).

Lastly, another issue that the Minister regarded as essential during the Spanish Presidency was the environment:

"As for the environment, the work of the Council will focus on what has been called sustainable economic growth, which Europe has adopted – growth that respects the environment and must be reflected in the review of the Fifth Environmental Action Programme. This Programme will include matters of interest to Spain, such as reforestation and combating desertification.

(...)

Other important issues are giving a new direction to community strategy on the reduction of CO2 emissions and improving energy effectiveness in the framework of the Convention on Climatic Change. Two elements on Spain's position that I would like to underline are first, the introduction of the eco-rate... from our point of view, this should be done on a voluntary basis and in keeping with the conclusions of the Essen European Council; second, the equal distribution among member States of the burden of achieving the target and the desirable stabilisation of CO2 emissions by 2000. This is going to be one of the major topics of debate of the European Union even more than before, if such a thing is possible, with the presence of the new Northern members, who, as you know, are particularly sensitive to these issues". (DSCG-Comisiones Mixtas, V Leg., n. 66, p. 1374).

3. Economic and Monetary Union

Appearing before the Congress in full session on 20 December 1995 to report on the European Council held in Madrid on 15 and 16 December, the President of the Government, Mr. González Márquez explained the decisions adopted on Economic

and Monetary Union:

"The Economy and Finance Ministers disclosed an important document that accurately defined the scenario for proceeding to the third stage of Monetary Union. Nonetheless, some fairly important issues have yet to be resolved; issues which having proved conflictive at the Ecofin Council, had to be settled at the European Council. I will concentrate on three of these issues, which are substantive. The first is the name of the currency. It has finally been agreed that the currency in which negotiable instruments are expressed from 1999 will be called the euro.

The second of the decisions adopted by the Council concerns when the decision on which countries go through to the third phase of monetary union should be taken. There has been a certain amount of debate over the past six months between the countries that wanted the decision to be made before the end of 1997 – and, therefore, on deficit, inflation or interest-rate forecasts for 1997 itself, though these were only forecasts – and the countries that wanted the decision to be taken in the early months of 1998 and therefore on the basis of real 1997 data. This second proposal was successful and the European Council has agreed that as early as possible in 1998 it will be decided what countries will make up the initial core of monetary union and, accordingly, what countries meet the Treaty requirements for convergence criteria.

The third of the problems that had been discussed without reaching any agreement was how to go about creating sufficient critical mass so that the currency would be meaningful from 1 January 1999. This has been resolved by deciding that negotiable instruments will be issued in euros from January 1999 onwards. Thenceforth, the euro will take the place of the ecu and the basket of currencies will disappear and become a common currency. The currency will come into force for all citizens as the currency in circulation from 1 January 2002". (DSC-P, V Leg., n. 193, p. 10233).

Likewise, on 18 December 1996, the President of the Government, Mr. Aznar López, reporting to the Congress in full session on the Dublin Council held on 13 and 14 December, referred to the backing given to European Economic and Monetary Union:

"With respect to the issues of Economic and Monetary Union, I wish to point out that we European political leaders have given our firm support to the process and a clear and encouraging sign to European citizens and the international markets. This support has materialised following confirmation that the introduction of the single currency, the euro, will take place on 1 January 1999. Furthermore, the Council has promoted monetary union by reaching an agreement on the three issues which, according to the mandate established at the Madrid European Council, had to be approved. Specifically, these are the agreements on budgetary discipline, once monetary union has commenced, and, finally, the legal status of the future European currency: the euro.

(...)

With respect to budgetary discipline, once monetary union is a reality, it should be borne in mind that fiscal discipline is a key element in ensuring economic stability... The existence of a common currency makes it particularly necessary to coordinate the budgetary policies of the countries that adopt this currency.

(...)

This year, technical experts from the European Union countries, directed by their respective Finance Ministers, have been working on the proposal to adopt regulations on budgetary supervision and discipline, as well as the procedure to follow in the event of excessively high budget deficits. These regulations constitute the so-called stability and growth pact. It should be noted that the aim is not only to ensure economic stability but also economic growth... stability and growth are perfectly compatible terms... there is no conflict at all between macroeconomic stability and budgetary discipline, on the one hand, and vigorous and sustained economic growth accompanied by job creation on the other.

(...)

The stability and growth pact will be based on two essential pillars: on the one hand, the existence of a multilateral mechanism for supervising budgetary aspects. The member States will thus be obliged to submit their medium-term budget targets to the Council every year. We will therefore all be supervising each other. The countries that make an effort to keep their expenditure in check will exert pressure on those that do not. This is not a policing mechanism, but rather an early warning device to detect deviations from the budgetary target and, if necessary, to make recommendations for taking measures, and, moreover, a device that will deter countries from running into what are considered excessive budget deficits. More specifically, this deterrent mechanism will consist of sanctions. A budget deficit will be regarded as excessive when it surpasses 3 percent of an economy's gross domestic product, and only in circumstances that are considered exceptional may this limit be surpassed without sanctions being imposed.

Although the procedure lacks the automatic sanctioning that some States originally proposed, this is a rigorous pact and only in the case of a substantial fall in the growth of the economy will it be possible to consider that a budget deficit is not excessive. If sanctions are imposed, these will initially consist of a deposit without interest and, if the deficit situation persists, they will be replaced by a fine". (DSC-P, VI Leg., n. 51, pp. 2549–2550).

Regarding the countries not included in the first phase of EMU, in his address on 20 December 1995, Mr. González Marquéz stated that:

"... It has been decided... that the conditions will be the same as those established in the Treaty on European Union for countries that enter in the first phase or the first wave of those that belong to the European Union. Therefore,

there is a guarantee for those countries which, for reasons of accumulated debt, deficit, interest rates or otherwise, are unable to join the first phase... of Monetary Union. They therefore have the guarantee that further conditions arising from the so-called stability pact are not going to be required of them; rather, they will join in exactly the same conditions as the first countries, the initial ones". (DSC-P, V Leg., n. 193, p. 10234).

On 18 December 1996, the President of the Government Mr. Aznar López referred to this matter once more:

"The currencies of the countries that do not join the euro at the initial stage could move in a single fluctuation range. The size of this range and the systems for intervening to protect exchange-rate relations between currencies will be similar to current ones. In addition, from the institutional point of view, there will be a new player in the whole process of fixing exchange-rate relations – the European Central Bank, which will share with the Commission and the European Council the responsibility of supervising the new monetary system". (DSC-P, VI Leg., n. 51, p. 2550).

4. Cooperation in the Field of Justice and Home Affairs

a) External Borders. Schengen

Note: See IV.1 International Status

In reply to a parliamentary question raised at the Senate on 25 May 1995, the Government spoke of defining the European Union's external borders:

"1. The definition of the European Union's external borders is an issue that affects the third pillar of the Treaty on European Union and has still not been decided on in the framework of Cooperation in the field of Justice and Home Affairs.

The actual definition of an 'external border' is currently being debated by the working groups who are preparing the meetings of the Council of Ministers of Justice and Home Affairs, and there are no advanced proposals on this matter.

However, with respect to the Convention implementing the Schengen Agreement, which has been in force since 26 March, the external borders are in fact defined.

In the south of Spain, the posts established for crossing external borders with respect to the Schengen area are:

– Maritime borders, the seaports of Algeciras and Almería.

– Land borders, the customs checkpoint and police control point at La Línea de la Concepción. This is not a border post strictly speaking, but rather a

checkpoint, since it does not fit the description of a border as acknowledged by Spain according to the Treaty of Utrecht, and this has been noted in the decisions of the Schengen Executive Committee that affect the location of these posts.

– Aerial borders are the airports of Málaga, Seville, Almería, Granada and Jerez de la Frontera". (BOCG-Senado.I, V Leg., n. 281, pp. 32–33).

As for whether Ceuta and Melilla are included in the scope of the Schengen Agreement, the Government stated on 26 December 1995 that:

"The third clause of Spain's Treaty of Accession to the Schengen Agreement contains a Declaration relating to the special regime for movement to Ceuta and Melilla from Moroccan territory. In section e) of the Declaration, the system of double checks that existed before the implementation of the Schengen Agreement is safeguarded.

This second check at points of sea and air connection to another destination within Spanish territory is intended to ensure that passengers continue to meet the conditions laid down in article 5 of the 1990 Convention, whereby they were authorised to enter national territory at the passport check at the external border'.

The existence of the system of double checks is justified on two counts: first, it facilitates transit between the cities of Ceuta and Melilla and Moroccan territory and second, the specific customs treatment for Ceuta and Melilla as established in Protocol 2 of Spain's Treaty of Accession to the European Communities.

It follows from this that Ceuta and Melilla are indeed included in the scope of the Schengen Agreement". (BOCG-Congreso.D, V Leg., n. 313, p. 75).

b) Illicit Traffic in Narcotic Drugs

In reply to a parliamentary question raised at the Senate, on 25 May 1995 the Government explained the measures adopted by the European Union to fight against illicit traffic in narcotic drugs:

"1. In general, on 31 December 1990 the European Economic Community ratified the United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

However, it has yet to be ratified by Austria, Belgium and Ireland; the first two countries have not yet joined the 1971 Convention.

Therefore, not all European Union countries have harmonised all their regulations on these matters. Nonetheless, it is significant that the harmonisation of legislation with the dictates of the international conventions and treaties of the United Nations, and in particular the provisions of the 1988 Vienna Convention specifying certain features that are equivalent for all countries in the fight against drug trafficking, is gradually taking place.

Irrespective of this, the European Union has taken some decisive measures as

regards legislation, organisation and strategy. The ratification of the Treaty on European Union (Maastricht Treaty) has made it possible to establish a drugs control with a legislative basis that did not exist in the treaty establishing the European Economic Community, the Treaty of Rome, or in the Single European Act.

The Maastricht Treaty, which came into force in November 1993, provides for the possibility of an integrated approach and the adoption of specific provisions to control drugs.

In April 1994, the Council of Europe set up a European Centre for Drugs and Drug Addiction, which is based in Lisbon.

The European Union also has an action plan for combating drugs for the five-year period from 1995 to 1999, and in June 1994 set up the Europol drugs unit to combat this illicit traffic. This is a centre for information on and analysis of drug trafficking, which enables the police and customs officials of all countries to combine efforts.

2. With respect to the last question raised, on 4 March the European Council adopted a joint action pursuant to article K.3.2.b) of the Treaty on European Union.

The Drugs Unit that has been set up will act as a non-operational team in charge of exchanging and analysing information and data, wherever this affects two or more member States and relates, among other things, to illicit drug trafficking. This joint action entered into force on 20 March, the day it was published in the *OJEC*.

There is no record of the Court of Justice of the European Communities having been granted jurisdiction in this matter. However, this could take place through a convention signed by the European Countries.

The European Parliament adopted various resolutions on drugs in 1987 (on border and drug checks, on measures to combat synthetic drugs and on the process of parliamentary resolutions on combating drugs), published in *OJEC*, n. C 13, of 18 January 1988.

There is also the Commission's communication to the Council and the European Parliament on a European Union action plan for 1995–99 to combat drugs (Com. 94/234/2).

This is not an exhaustive list but it does indicate the involvement of the European Union, and particularly the European Parliament, in the field of drugs". (BOCG-Senado.I, V Leg., n. 281, pp. 33–34).

c) Extradition

On 21 April 1995, in reply to a question raised at the Senate on intergovernmental cooperation on extradition, the Government explained the improvements made in this field, particularly by the Schengen Group:

"For over a year now the Council of the European Union and, specifically, the working group on simplifying extradition, has been drawing up an agreement to facilitate the implementation of the 1957 European Convention on Extradition for the member States of the European Union.

The Schengen Group also pursues the same goal in a more immediate way, reflected in Chapter IV of the Convention implementing (arts. 59 to 66), effective implementation of which began on 26 March for the member States who had signed the Agreement.

For this purpose, some articles of the aforementioned Convention of the Council of Europe will be amended or completed, respecting the application of broader provisions in keeping with bilateral agreements in force between contracting parties.

Also, in the Final Act of Accession to the Convention implementing the Schengen Agreement, the member States undertook to waive the use of any reservations and declarations made with respect to the European Convention on Extradition insofar as they are incompatible with the Schengen Agreement, in order to remove as many obstacles as possible to its implementation.

The aforementioned reservations mainly relate, among other things, to suspension of lapse in the requesting country and the requested country. At present, in the Schengen countries a request for extradition may be refused if the criminal liability has ceased to exist for any reason contemplated in the legislation of the requesting party but not in that of the requested country.

The abolishment of this reservation removes an obstacle to international cooperation in this field.

Another new feature amounts to the commitment by the Schengen member States to grant each other extradition of persons prosecuted by the judicial authorities of the requesting party for offences relating to VAT on specific consumption and customs duties.

It will not be possible to deny extradition on the grounds that the legislation of the requested party does not levy the same rate of taxes or excises or does not have the same type of regulations.

Furthermore, France is bound by the Schengen Agreement specifically to grant extradition, even if the related punishment for the offence in the requesting country were less than two years. This favours all member States since the period is now down to one year, pursuant to the European Convention and, in the case of Spain, to our law on passive extradition.

Another new feature is the waiver of the benefit of the rule of specialty already incorporated in our passive extradition law, with prior consent of the interested party.

By means of the Strasbourg-based system of common information, known as the Schengen Information System (SIS), into which the data sent by the different member countries are fed from their own interconnected systems, data are

currently being entered on persons wanted for arrest for the purpose of extradition at the instance of the judicial authority of the contracting party requesting the extradition pursuant to article 95; that is, the conventional method of requesting preventive custody for the purpose of extradition has been replaced by a description fed into the SIS, which is a very significant advance as it can speed up the procedure considerably.

The Schengen Information System has likewise been tested with satisfactory results and is therefore now technically ready to come into operation. The System now contains all the essential data (relating to article 95, as mentioned; article 96, non-admissible aliens; article 97, missing persons; article 98, witnesses, persons summoned, etc.; article 99, vehicles, etc.) and further data will be progressively entered in future. In this respect, all the States which took part in the tests, including Spain, fulfil the requirements for the protection of personal data.

The last obstacle to the implementation of the Convention implementing the Schengen Agreement is thereby removed.

Madrid, 17 April 1995.-The Minister". (BOCG-Senado.I, V Leg., n. 226, pp. 31–32).

Appearing before the Joint Commission for the European Union on 19 June 1996 to give an outline of his department's policy the Minister of Foreign Affairs, Mr. Matutes Juan, stated that he was in favour of creating a single judicial area in the near future:

"It is a priority that Spain is putting on the table. If there is a single market for economic matter, it makes sense that there should also be a single area for judicial, civil, commercial and criminal matters... . We want there to be an extradition agreement without right of political asylum within countries that meet very high standards; we want it to be enough for the requesting country to ask for extradition, not for both the extraditing and extradited country to have to do so, in a manner of speaking; it should be enough for one of the two to make the request or, if not, for the other to compensate if two of them are required to agree; and clear and explicit membership and collaboration with an armed organisation should be sufficient grounds. The same goes for the fight against drug trafficking and all forms of organised crime that are likely to pose an increasing threat. In the field of law enforcement it is clear that the Europol Convention is a major step forward". (DSCG-Comisiones Mixtas, VI Leg., n. 7, p. 30).

d) Racism and Xenophobia

Appearing before Congress, on 11 December 1995, to give a current assessment of the work of the Spanish Presidency of the EU, the Minister of Foreign Affairs, Mr. Solana Madariaga, stated the Union's determination to fight against racism and xenophobia:

"As regards the third pillar, that is, the field of justice and home affairs, the European Council will attempt to reach an agreement on joint action in the fight against xenophobia and racism and on a protocol on the interpretation of the Europol Convention by the Court of Justice of Luxembourg. A report by the expert group on drugs is likewise being submitted to the European Council, as is the stage report on the feasibility of what we have called the European observatory of racist and xenophobic phenomena by the consultative commission on racism and xenophobia". (DSCG-Comisiones Mixtas, V Leg., n. 98, p. 1949).

5. Foreign Relations

Note: See XIII.2 Spanish Presidency of the European Union

On 11 February 1995, the Minister of Foreign Affairs, Mr. Solana Madariaga, assessed the work of the Spanish Presidency of the EU, placing particular emphasis on the impetus given to the EU's foreign relations:

"... We have done important work in practically all geographic areas: the European Union's relations with Central and Eastern Europe, the content we have given to the structured dialogue with the countries of Eastern and Central Europe, the general conclusions on the future of relations with Russia and the preparations... for the rebuilding of the former Yugoslavia.

In the Mediterranean region, I think that the adoption of the Barcelona Declaration and its working programme by the Euro-Mediterranean Conference of Barcelona deserves to be highlighted.

Regarding Latin America, you will recall the agreements with Mercosur and the approval of the conclusions on the future of cooperation up to the year 2000 in a region that is especially close to us.

With respect to the United States, I should underline the signing in Madrid of the new Transatlantic Agenda and the adoption of an action plan with the United States, which I also believe is a fundamental ingredient of our Presidency.

Finally... as regards Asia and the ACP countries, I would mention our preparation of the conclusions of the March 1996 Euro-Asia Summit, relations with China, which we approved only a few days ago, and the signing of the review of the IV Lomé Convention, which was one of the goals of our Presidency". (DSCG-Comisiones Mixtas, V Leg., n. 98, p. 1948).

The Minister went on to give an account of the work undertaken at the General Affairs Council during the Spanish Presidency, starting with cooperation in the Mediterranean. He underlined the Euro-Mediterranean Conference of Barcelona held on 27 and 28 November 1995:

"The Barcelona Conference is the beginning of a process with far-reaching

consequences: ultimately the establishment of a Euro-Mediterranean partnership characterised by several issues. Firstly, peace and stability through the adoption of a series of principles that establishes standards of behaviour, both internally within States and regionally. Secondly, an effort to achieve greater democracy through a commitment to respect human rights, fundamental freedoms, cultural diversity and pluralism of all countries that share this sea. Thirdly, greater openness of markets. As the Honourable Members will recall, we set as a goal the gradual establishment of a free trade zone between all these countries by 2010. Fourthly, greater solidarity through the increased aid that the European Union intends to allocate and already allocates to its Mediterranean partners. And lastly, mutual understanding through the fostering of cultural and human exchange, thereby dispelling prejudices that unfortunately still pecsist.

The continuity of the process set in motion at Barcelona is guaranteed by the holding of subsequent periodic meetings, not only of Ministers of Foreign Affairs –which there will undoubtedly be – aimed at supervising the implementation of the declaration and defining actions that enable its goals to be achieved. The first meeting of these ministers will be held in the first half of 1997 in a country on the southern shore, which has not yet been designated". (DSCG-Comisiones Mixtas, V Leg., n. 98, pp. 1949–1950).

Regarding relations with the Russian Federation, the Minister said:

"... Three weeks ago we approved... an important document containing conclusions on our future relations with the Russian Federation. The aim we have pursued in approving this agreement is to establish a framework that allows us better to coordinate and integrate the different political and economic instruments at our disposal in order to strengthen our relations with a partner as important and as essential for the Union as the Russian Federation. This is a comprehensive document proposing principles for action in the political and security fields as well as in trade, economics and cooperation". (DSCG-Comisiones Mixtas, V Leg., n. 98, p. 1952).

Regarding Central and Eastern Europe:

"... As regards relations with the partner countries of Central and Eastern Europe, at the Madrid European Council we presented a report on the work performed during this second half of the year, which encompasses eight ministerial meetings in the framework of structured dialogne with those countries, the signing of protocols that will allow them to take part in community programmes and the approval of a mandate granting additional agricultural concessions to the Central and Eastern European countries on the basis of those established in the respective European partnership agreements. In this way we hope to contribute to the economic growth of those countries, which in a few years' time are due to become members of the European Union. In this

connection, I would like to stress that... we have received requests for accession from Latvia and Estonia, and Bulgaria is preparing to submit its request at the European Council here in Madrid". (DSCG-Comisiones Mixtas, V Leg., n. 98, p. 1952).

He also referred to the EU's relations with the United States:

"A few days ago in Madrid... at the six-monthly summit, the new Transatlantic Agenda was signed and the joint action plan was adopted. I think I can safely say that to have achieved this objective within a short time is a success for the Spanish Presidency. (...)

As the Honourable Members are aware, the new Transatlantic Agenda and the action plan are intended to be a quantum leap in the relationship between the European Union and the United States. There was already a broad dialogue and multiple consultations in different forums, but there was perhaps lack of coherence and global vision, and the practical results were unfortunately scanty. Better results were achieved in trade, because in this sphere the Commission has defined the Community's area of responsibility well, but this was not the case in many other fields.

The new Agenda establishes a framework for action based on the following ideas: first, enhancing political cooperation by specifically targeting priority countries and issues, both in Europe and in other regions; cooperation in international organisations, particularly the United Nations, consultation and coordination in human rights affairs, humanitarian development assistance, preventive diplomacy and non-proliferation. Second, the establishment of a cooperative relationship of joint action in new international matters that until recently were not cousidered an integral part of foreign policy: these are the fight against international crime, drug trafficking, terrorism and contagious diseases and the quest for a solution to environmental problems... Third, strengthening economic relations. Here, we have preferred not to waste time with theological discussions on whether or not we should set up a transatlantic free exchange zone. It is obvious that right now the European Union is not in a position to undertake total disarmament in agricultural matters and that the United States also has sensitive sectors it wishes to protect. Therefore, we have preferred to take a pragmatic approach, focussing on areas in which we can progress bilaterally, for example, mutual acknowledgement of tests and certifications, technical standards, health rules, public purchases, issues relating to intellectual property, etc., or at international forums such as the World Trade Organisation or the OCDE.

(...)

Promoting contacts between civil societies has been another priority. In this regard, we will be backing the Transatlantic Business Dialogue on the basis of the results achieved at the Seville Conference, scientific and technical cooperation through the negotiation of an agreement in this sphere before 1997 and

educational and cultural exchanges. We will also promote parliamentary dialogue, in order to try and arouse greater interest among lawmakers bothon sides of the Atlantic in strengthening the transatlantic links". (DSCG-Comisiones Mixtas, V Leg., n. 98, pp. 1952–1953).

Finally, the Minister highlighted the EU's relations with Latin America:

"... The Spanish Presidency is particularly interested in strengthening the Union's relations with our sister continent, Latin America... There will be three priority areas of future cooperation with Latin America: first, support for institutions and the consolidation of the democratic process; second, the fight against poverty and social marginalisation; and third, support for economic reforms and the improvement of Latin America's competitiveness internationally.

Over the past months we have approved the text of the Interregional Framework Agreement with Mercosur and the decision on its signature will be made... on 15 December, as well as the provisional implementation of provisions of the Agreement, including the immediate establishment of mechanisms of political dialogue.

The agreement with Mercosur is part of a two-phase strategy. The first will prepare for a future interregional partnership between the Union and Mercosur. This agreement has a large chapter on economic cooperation, including cooperation for fostering enterprise and fostering investment. The Union will, in any event, back the process of integration in Mercosur.

The Vice-president of the Commission, Mr. Marín, has submitted a draft mandate for negotiation of a framework agreement of economic and commercial cooperation with Chile. As you know, the characteristics are similar to those of the Mercosur agreement I have just mentioned and this is annexed to the draft mandate submitted by the Commission for negotiations with Mexico". (DSC-Comisiones Mixtas, V Leg., n. 98, pp. 1953–1954).

On 19 December 1995, the Minister of Foreign Affairs, Mr. Westendorp y Cabeza, appeared before the Senate in full session. In response to a parliamentary question, he assessed the Agreement signed on 15 December 1995 between the EU and Mercosur:

"The Agreement signed as a result of the Council held in Madrid between the European Union and Mercosur is an agreement with far-reaching historic consequences. It is ... the culmination of a process of gradual, slow and patient rapprochement, pursued by Spain since joining the European Union, to bring the European and Latin America closer together. When we joined Europe in 1986, these relations were practically non-existent... Little by little... a pattern of relations has been built up with the Latin American countries, in Central America, the Andean Pact, intervention of the European Investment Bank, granting of the generalised preference system, a well-established scheme of development

assistance in the Central American countries, individual cooperation agreements with different countries –that gradually raised the status of relations with the European Union. But what completed this pattern was an initiative in which the European Union is an absolute pioneer. This is the first time that a group of countries remote from the immediate borders of the European Union have signed an agreement with Europe through an interregional framework. As I said, this is something totally new.

The European Union is Mercosur's leading trade partner, its chief investor and main donor. This Agreement is aimed at achieving, primarily and in the short term, a substantial liberalisation of trade and, in the medium and long term, a free trade area. For this purpose, a gradual, realistic strategy has been devised to safegnard the interests of the parties properly.

But trade is no the only side to the Mercosur Agreement; it is also a predominately political agreement. The political dialogue established in this agreement is at the same level as the political dialogue established with other areas in other countries traditionally linked to the European Union by what are now traditional ties... We therefore consider that the Interregional Agreement with Mercosur, in addition to meeting one of the essential goals of the Spanish Presidency, is a unique and to some extent a revolutionary experience in the European Union's foreign relations... It is not simply an economic agreement; it is also an agreement with deep political significance which will undoubtedly be conducive to the well-being and prosperity of citizens in both continents". (DSS-P, V Leg., n. 100, p. 5225).

6. 1996 Intergovernmental Conference

a) Spain's Position

Addressing the Joint Commission for the EU on 19 June 1996 to outline his Department's policy, the Minister of Foreign Affairs, Mr. Matutes Juan, listed Spain's priorities at the 1996 Intergovernmental Conference:

"First, to improve the Union's efficacy in defending its citizens' interests; second, to improve the working of the Union's institutions; and third, to improve the Union's capacity for external and internal action.

In Spain's view, the defence of citizens and citizens' interests lies basically in the improvement of two essential fields: internal security and combating unemployment... In this connection, terrorism is a particularly odious form of crime in a democratic State and under the rule of law, where freedom of opinion and political choice are guaranteed. Therefore, it is unacceptable that the category of an offence should continue to be used to prevent terrorists who seek refuge in another EU State from standing trial.

(...)

Another fundamental aspect is job creation. It is obvious that this is, and will continue to be, the responsibility of member States and economic agents. However, there is no doubt that the Union contributes an added value in combating unemployment: it boosts the competitiveness and growth of the national economies by creating a large internal market, it fosters stable growth through rigorous progress towards Monetary Union, and it develops sector policies which directly affect the labour market. The Spanish Government want the Treaty to include a chapter on employment to enable the European Council to establish strategies for coordinating national policies in this field.

I also spoke earlier about improvement in the working of the institutions. This is an issue with which the Honourable Members are very familiar, as it is one of the most controversial issues of the negotiations. We start from the principle that it is necessary to maintain the current balance between the institutions and between member States. It is obvious that this balance could not be maintained with merely arithmetical extrapolations regarding the new member States and their populations.

The Spanish Government are therefore in favour of making the necessary adaptations to guarantee the legitimacy and efficiency of the Union's institutions, as well as its balance. This balance between the member States therefore calls for a new weighting of votes in the Council.

(...)

The third priority of the Spanish Government is to improve the Union's capacity for external action. We want the Union to be equipped with a unit that enables it to improve its capacity for analysis and planning in foreign policy. We also believe there is a need for a shift to a qualified majority as part of the measures for implementing this policy... In this respect it is essential to bear in mind the security and defence aspect. The transformation that NATO is undergoing points even more clearly to the need to establish an institutional structure for the Union reflecting the European identity in security and defence matters. And although we are aware of the difficulties this poses for some member States, our initial position at the Conference favours gradual integration of the Western European Union in the European Union.

Let us move on to another absolutely vital issue. I want to underline that Spain is opposed to incorporating clauses on flexibility, concentric circles or whatever one wishes to call them, into the Treaty, as some member States want. In the Government's opinion, the possible enhanced cooperation that may arise from the Intergovernmental Conference is only acceptable in very specific, concrete terms, with the approval of all the member States... establishing particularly, and precisely, the sphere of this strengthened cooperation and all the rules of procedure. Only with such clear specification – as in the issue of Monetary Union, or the Schengen issue – is it acceptable to us. The Government would thus be able

to negotiate enhanced cooperation in defence matters or specific third-pillar issues, which are also fundamental for us.

(...)

Lastly,... regarding very ultraperipheric regions of the member States of the Union, we believe that the special system deriving from the particular situation of these regions should now be consolidated permanently in the Treaty. For this purpose, the Government will be presenting a proposal that envisages introducing an article and a protocol establishing this permanent nature for very ultraperipheric regions". (DSCG-Comisiones Mixtas, VI Leg., n. 7, pp. 14–15).

b) Common Foreign and Security Policy

Note: See XII.3 Western European Union

In a subsequent address on 24 September 1996 in reply to a parliamentary question, the Government defended their position with respect to the issues of security and defence raised at the Intergovernmental Conference of the European Union:

"The main subject of discussion at the Intergovernmental Conference to review the Maastricht Treaty in the sphere of Security and Defence is the examination and implementation of the conversion of the Western European Union into the defence instrument of the European Union. This objective, established in the Declaration attached to the Treaty on European Union signed by the WEU Ministers on 10 December 1991, consisted in shaping the European Defence and Security Identity gradually, step by step, and it was decided that the 1996 Intergovernmental Conference would make some statement on this.

Through its Foreign and Defence Ministers, Spain has consistently supported the objective of making the WEU the European defence instrument. In this connection, during the Spanish presidency of the WEU in the latter half of 1995, our representatives submitted to the WEU a discussion document listing the options for the possible degree of integration of the WEU in the EU, as a preparatory stage for the work of the Intergovernmental Conference. The three possible options are basically:

The strengthening of relations between the two organisations, while they their independence.

Institutional harmonisation of the two organisations, through legal and political links. There would be different possibilities, depending on the strength of these links.

Integration of the Western European Union in the European Union, with different possibilities depending on the acknowledged role of collective defence.

In the discussions held on these options at the WEU Ministerial Meeting in Madrid in November 1995, most of the member nations spoke of gradually

harmonising the WEU with the EU, keeping decisions on defence matters at intergovernmental level. Spain spoke in favour of this position of institutional harmonisation of the WEU and the EU as a realistic way of building the Europe of defence. Nonetheless, there are major difficulties as the five non-WEU members of the EU and the United Kingdom are opposed to this possibility.

Whatever the case, Spain considers that the WEU should continue to strengthen its operational capacities in order to be en effective military instrument for the so-called Petersberg Tasks – that is humanitarian, peace-keeping and crisis management missions, all at the service of the European Security and Defence Identity". (BOCG-Congreso.D, V Leg., n. 46, p. 115).

Appearing before the Joint Commission for the European Union to give a progress report on the work of the Intergovernmental Conference, the Secretary of State for Foreign Policy and the EU, Mr. Miguel y Egea, again referred to common foreigu and security policy:

"With respect to common foreign and security policy, a high degree of consensus has been achieved. This has been facilitated by the fact that the proposals on the table are, frankly speaking, not very innovative. Nobody is discussing the intergovernmental dimension, nothing is said of communitising the second pillar, and the truth is that there are no major amendments with respect to Maastricht. There are some innovations, and I believe everybody agrees on the objective; for the foremost power in trade and cooperation and development in the world cannot adopt a merely passive role in international events or appear to the rest of the world to be divided on important matters. The idea is to achieve a more effective, more continuous and more visible foreign policy.

The most effective way of shaping this policy is contained in a proposal, on which practically everyone agrees, to set up a prevention planning cell, an analysis cell, a kind of meeting point of all European diplomacy, on which there is broad consensus, although different ideas remain as to what the nature of this cell should be. Whether it should be an analysis cell, whether it should be combined in any way with a unit within the secretariat general, or whether it should come to have executive functions over time.

In view of enlargement, it seems inevitable that the flexibility of the decision-making processes must be improved and enhanced in order to ensure this efficiency, for which more expeditious forms of decision making have been proposed. More controversial is the possible extension of voting by qualified majority. Spain supports voting by qualified majority for implementation measures but not for the adoption of joint actions.

(...)

Another objective is visibility and continuity of the Union's external action, for which a high-level representative is being created. This could be the current secretary general of the Council or another person of the same rank and with this

sole function, embodied in the now well-known and much spoken of 'Mister CFSP'.

Spain is open to any option. We are willing to accept a high-profile person of this kind, provided that there are guarantees... that the European Union's foreign representation, the direction and organisation of the work of CFSP are the responsibility of the Presidency, which must likewise be presided over by the Political Committee. The new figurehead to be established might be appointed by the European Council, but would act under the mandate of the Council of Ministers, and would always be coordinated by the Presidency.

Spain's position on security and defence is based on the conviction that the process of European integration will not be complete until it has a defence dimension. We therefore consider it necessary to reform the current structure, which separates security and defence matters artificially, entrusting them to the CFSP and the WEU respectively, and hinders the adoption of rapid decisions and actions that are clearly down to the Union.

Although opinions differ as to whether or not it is necessary to equip the European Union with this defence dimension, there appears to be a possibility of consensus on the basis of including the so-called Petersberg tasks – that is humanitarian assistance and peacekeeping missions – in the Treaty". (DSCG-Comisiones Mixtas, VI Leg., n. 30, p. 474).

c) Cooperation in the Field of Justice and Home Affairs

Finally, in his address to the Congress of Deputies in full session to report on the Dublin European Council, on 18 December 1996, the President of the Government Mr. Aznar López referred to the reform of the third pillar of the EU and the proposals that Spain presented at the Conference:

"... the reform of the third pillar is going to be a central topic of the negotiations and there are already guidelines and agreements that broadly reflect Spain's position. We should all be pleased that the creation of an area of freedom, justice and security in the European Union, something advocated by Spain, is today a priority objective of the Conference. These Spanish positions are currently highly valued and shared by the member States, who are increasingly conscious of citizens' growing demand for greater security in the face of phenomena such as terrorism, drug trafficking and other forms of organised crime.

The conclusions of the European Council reflect an evident political commitment of the Fifteen to ensuring that the Conference develops the exclusion of political asylum for nationals of EU member States... the principle has been accepted and the Conference is entrusted with developing it, specifying its legal organisation in the Treaty. This will be a further step forward in the process set in motion at Florence, where, again on the initiative of Spain, decisive impetus was given to concluding the extradition convention. If that decision simplified and

facilitated extradition between member States, now, with the Dublin commitment, a vital step is being made to ensure that nobody escapes justice by availing themselves of a right that is meaningless between States with shared ideals, principles, policies and common institutions of respect for democracy, guarantee of human rights and defence of the Rule of Law.

The conclusions are important in orienting the Conference on the establishment of a common judicial area, and they contain an agreement that enables Europol to take action to combat terrorism and organised crime.

(...)

The proposals Spain presented at the Intergovernmental Conference are aimed at strengthening cooperation in judicial and home affairs by creating a single area of freedom, security and justice. However, this strengthening cannot wait for the treaty reform to come into force and it must also be implemented from now onwards by making headway in this area, taking advantage of the current possibilities that the Treaties offer.

The European Council has echoed this need and has signed a pledge to maintain and develop the European Union as an area of freedom, security and justice, making full use of all the instruments that the Treaty on the Union offers. Specifically, the Union's action will focus on four objectives, the first of them the fight against drugs. In this field, the Council gladly welcomes the joint action agreed to harmonise the legislation and practice of police, customs and judiciary in order to combat drug addiction and trafficking. It has also decided to step up international cooperation with non-member countries, and in this counection I would underline the determination to go ahead with the action plan for combating drugs in the Caribbean and Latin America.

Second, in order to combat organised crime, the Council has decided to create a high-level group to follow a global action plan. It has likewise urged the member States to ratify four very important conventions as soon as possible: on extradition, Europol, the fight against fraud and the customs information system.

Third, the Council has paid special attention to the sexual exploitation of children and traffic in humans and has backed joint actions designed to enhance judicial cooperation and increase Europol's responsibilities in these matters.

Lastly, the Council has once again reiterated its determination to fight to the finish against terrorism both at home and abroad, and has expressed a wish for the Union to cooperate closely with other international players in an attempt to eradicate this aberration". (DSC-P, VI Leg., n. 51, pp. 2552–2553).

XIV. RESPONSIBILITY

1. Responsibility of Individnals

The Spanish representative at the United Nations General Assembly's Sixth Committee, Mr. Pastor Ridruejo, made the following comments regarding the Report of the International Law Commission on the Work of its Forty-Eighth Session, and explained Spain's position on the "Draft Code of Crimes Against the Peace and Security of Mankind":

"Mr. Chairman, we are now discussing the Draft Code of Crimes against the Peace and Security of Mankind. First and foremost, my delegation is happy to note that the Commission has given the go ahead to continue with work that was initiated as far back as 1949, was set aside in 1954 and was taken up again in 1982.

It has also been duly noted that in this Draft Document that we are now discussing, the Commission, in comparison with earlier work done, has drastically reduced the number of crimes listed. In line with the observations made by my delegation as well as others last year, we feel that the reductions are both prudent and realistic.

We would now like to make the following three observations regarding the content of the document:

Art. 3: This article states that the punishment of an individual shall be commensurate with the nature and the gravity of the crime against the peace and security of mankind. We are of the opinion that this provision, irreproachable in and of itself, should be further developed with a reference to an important principle of criminal law, the principle of legality as regards punishment: *nullam poena sine previa lege*. Put in another way, this means that a sentence which is not contemplated under applicable national or international law at the time the crime was committed cannot be applied.

Art. 14: This article orders the competent court to consider the existence of attenuating circumstances in accordance with general principles of law, without losing sight of the nature of each crime. It goes on to comment that this criterion 'limits the possible attenuating circumstances applicable to crimes listed in the Code, to those that are well established and widely recognised as admissible with regard to similar serious crimes by virtue of national or international law.' Mr. Chairman, it should be questioned whether this reference to the general principles of law, as it is worded in the text, does not give rise to a significant level of legal insecurity which is once again incompatible with one of the cardinal principles of criminal law, i.e. the principle of legality.

Art. 15: contains a provision on circumstances that attenuate or limit responsibility, identical to the ones that we have just discussed. Here we must make the same observation.

Mr. Chairman, we do not feel that it would be useful to formulate additional specific observations that are less important in our view, because the most urgent problem stemming from the Draft Code approved by the Commission in 1995 is with regard to its final destination. Should the document be submitted to a plenipotentiary conference in order that it be adopted as a convention? Should it be the object of a mere declaration from the General Assembly? Should the Draft Code of Crimes serve some other purpose?

These questions can only be answered in light of the General Assembly Preparatory Committee which, as we are all aware, is preparing the statutes for a permanent International Criminal Court. These statutes will contain a list of crimes which, quite realistically and within a reasonable amount of time, will be submitted to a diplomatic conference with a view to the adoption of the pertinent convention. This circumstance precludes the submission of the Code to a plenipotentiary conference because that would risk a futile duplication of efforts and could have a harmful effect on or at least complicate the work undertaken by the above-mentioned Preparatory Committee. It is also our view that the adoption of a General Assembly declaration should be excluded for the same reasons. It seems that the best alternative would be simply to submit the Draft Code of Crimes drawn up by the International Law Commission to the Preparatory Committee. This Draft Code will undoubtedly be very useful to this Committee".

2. Injurious Consequences Arising out of Acts Not Prohibited by Iuteruatioual Law

The Spanish representative at the United Nations General Assembly's Sixth Committee, Mr. Pastor Ridruejo, made the following comments regarding the Report of the International Law Commission on the Work of its Forty-Seventh Session:

"We note with satisfaction that during the course of the 1995 session, the Commission has given its provisional approval to Articles A, B, C, and D. These are very important provisions because they deal with general principles of trans-frontier harm. My delegation is willing to accept these principles regardless of where they are located. With regard to the rest, we wish to issue a strong call for the approval of these articles because we are aware of the difficulties that the Special Rapporteur had to overcome in limiting the scope of the subject, given that this material is relatively new and that controversial conceptual issues come into play. Furthermore, my delegation is of the opinion that the title of the subject leads to confusion and difficulties because, in the final analysis, it seems as though the deeds that are contemplated in the articles approved by the Commission last year and this year are prohibited by the primary norms of International Law.

In short, ever since the Commission's wise decision to focus its attention on those activities that present a risk of trans-frontier harm, my delegation has had

the opportunity to confirm the utility of those efforts. We therefore lend our enthusiastic support to the provisional approval of articles 1 to 20 although we would like to make a general observation regarding their scope of application.

Where it defines 'trans-frontier harm', Art. 2, Subsection b) refers to: 'the harm caused within the territory and in other territories under the jurisdiction or control of a State other than the State of origin, regardless of whether these two States have common frontiers'.

It is our view, Mr. Chairman, that this definition excludes from the draft articles, harm caused in territories not subject to the sovereignty, jurisdiction or control of a State, such as the high seas, international ocean floors, outer space, celestial bodies and the Antarctic Continent. My delegation sees no reason why these areas should be excluded from the Draft Articles under discussion here".

3. Responsibility of States

a) International Crimes

The Spanish representative at the United Nations General Assembly's Sixth Committee, Mr. Pastor Ridruejo, made the following comments regarding the Report of the International Law Commission on the Work of its Forty-Seventh Session and defined Spain's position on international crime indicating that there are two basic lines of thought on this subject: on the one hand those who believe that positive International Law should include a regimen of greater international responsibility within which the "*actio popularis*" would be effective and in which special or complementary action would be contemplated. On the other side are those who oppose such a regimen of aggravated international responsibility:

"... my delegation supports the first of the two lines of thought alluded to and consequently favours the general proposals contained in the Special Rapporteur's seventh report. It is our view that the sociology of international relations identifies two broad categories of violations of International Law defined by the importance of the norm violated and the seriousness of the violation itself. This is the case because the simple violation of less important norms only affects the injured State. A serious and flagrant violation of important norms, however, produces unrest and alarm throughout the International Community. In the poignant words of some Commission members during the report debate: 'The violation of an international norm concerning customs duties cannot be approached in the same way as genocide or territorial occupation by another State' (paragraph 254, International Law Commission Report).

It is our view, ... that International Law must act in accordance with this reality; i.e. with the above-mentioned differentiated treatment by the International Community: simple international offences on the one hand and international

crimes on the other. This differentiation should also consist in special or complementary treatment of international crime, such as *actio popularis* or general right of action and others specified in the Special Rapporteur's seventh report. It is in this spirit that we support the basic premises of Arts. 15 to 19 proposed in that report regarding the consequences of the perpetration of international crime.

Mr. Chairman, the above considerations belong to the substantive or normative dimension of international crime. We must now turn our attention to the institutional dimension.

It stands to reason that consideration of the seriousness of the consequences of the perpetration of an international crime raises the crucial question of who exactly determines whether this crime was actually committed. Given that this verification should not be the unilateral responsibility of States, so as not to make the concept of international crime a seed bed of conflict, tension and controversy, provisions must be made for verification by an independent third party and, if possible, institutionalised verification. This is the viewpoint expressed by the Special Rapporteur where, with an admirable combination of legal imagination and political courage, he proposes a system in draft Art. 19 of his Report.

The proposed system would include two phases. In the first, verification would pass a political screening process – it would be the responsibility of the General Assembly and the Security Council to determine whether the allegation of the perpetration of an international crime was supported by sufficient evidence to justify grave concern on the part of the International Community. Once this evaluation was made by the United Nations' political institutions, we would enter into a second, jurisdictional phase, which gives all those States party to the Convention the faculty to unilaterally request confirmation of the General Assembly's and Security Council's decision by the International Court of Justice. Once this jurisdictional confirmation is forthcoming, all States party to the Convention may institute the special or complementary legal action appropriate to the international crimes in question.

The institutional proposal formulated by the Special Rapporteur clearly falls within the framework of the progressive development of International Law and is both imaginative and daring. It must be pointed out however that it is based on institutions already operating within the world Organisation, whose powers and scope of action need to be enhanced as far as possible.

... my delegation questions whether this system would function efficiently without a prior reform of the United Nations Charter. In any case, if the system were generally accepted, the process of institutionalisation of the International Community would benefit considerably with regard to pacific relations among States. But, regardless of the importance that my delegation attributes to this step forward and its willingness to embark upon a serious study of the Special Rapporteur's formula, we are unfortunately not too hopeful about the possibilities

for general acceptance of the proposed formula. In the final analysis, a formula such as this would involve three principle United Nations institutions and would lead to potential conflicts among them. The formula also sets up mandatory jurisdiction on a number of subjects on which States have so far been reluctant to give their consent owing to their wide political implications.

We nonetheless commend the Special Rapporteur on his seventh report in general, and specifically Art. 19. Regardless of the outcome of the proposals contained therein, it is our view that the International Law Commission and its rapporteurs should not confine themselves to making proposals that they know the States are bound to accept. The Commission and its rapporteurs should take a reasonably more advanced stance (without falling prey to utopianism) with a view to fostering and stimulating the progress of International Law; according to its statutes, the Commission not only has responsibility for codifying International Law but must also contribute to its progressive development, and as we see it, such development should include progress towards improved pacific relations among States. These ideas were very well expressed by the Special Rapporteur in Paragraph 234 of the Commission's Report: '...pointed out that the Commission, comprised of independent experts, shonld not anticipate possible objections raised by the States but should rather contribute to the progressive development of International Law establishing an even balance between what would be ideal and what is possible' ".

The following year he explained Spain's position regarding the regulation of international crime contained in the Draft Document on Responsibility of States approved at the first reading in 1996:

"... the regulation of international crime through the Draft articles now under discussion maintains the notion of *actio popularis* in its Art. 40 while at the same time holding that all States are injured States in the event of an international crime. The draft also contemplates other specific and complementary actions in respect of international crime, for instance that restitution or satisfaction shonld not be subject to certain limitations (Art. 52) – which are applicable in the case of an international offence – and the imposition of certain non-recognition and no aid obligations to third States (Art. 53). What is not contemplated is the imposition of sanctions.

Notwithstanding the above, the Draft submits the issue of whether an international crime has indeed been committed (and hence the possible action referred to above) to the general settlement of disputes system contained in Part 1II. This system, with the exception of cases in which countermeasures are adopted, does not envision mandatory recourse to court action and therefore does not set up mandatory jurisdiction for the objective verification of the perpetration of an international crime.

... the truth of the matter is that the mere fact of accusing a State of an international crime is in itself a very serious matter, and the penalties contemplated for them are certainly severe. It is our view that if this accusation can be levelled unilaterally by the injured State (and according to the notion of *actio popularis* all states are considered injured States) and if we do not establish mandatory recourse to some jurisdictional mechanism, we are paving the way to political manipulation of such crimes. This entails the danger that the notion of international crime will have no moralising effect on International Law and that its effects will be quite the reverse of pacifying. Without the guaranteed intervention of an impartial third party, the notion of international crime would lend itself to all types of abusive interpretations in the relations among States.

In sum, we could accept the notion of international crime if the above mentioned institutional guarantees were established. We would then be in a position to favourably consider a procedure in two phases as contemplated in Arts. 9 to 11 of the Commission's comment on Draft Art. 51; i.e. a first phase in which the conciliating institution would act as a filter and a second phase that would allow for unilateral recourse to arbitration. The International Law Commission was not, however, daring enough to include this system in the Draft and we are therefore seriously concerned about the perverse effects of the notion of international crime as it is regulated in the Draft Articles on Responsibility of States".

b) Countermeasures

With regard to the regulation of countermeasures contained in the 1996 Draft, the Spanish representative to the Sixth Committee, Mr. Pastor Ridruejo, made the following statement:

"The International Law Commission has also asked us to comment on the Draft Articles' regulation of countermeasures. In this respect, it is impossible to ignore the associated disadvantages and risks. On the one hand, their effectiveness is conditioned by the differing powers of States, and on the other hand their application can give rise to a spiral of actions and reactions that does not help in the settlement of the dispute but rather has the opposite effect. We therefore understand perfectly the doubts expressed by some Commission members as to the advisability of establishing a legal regimen got the countermeasures in the Draft under discussion.

We believe, however, that the Commission has done the right thing in developing this regimen and including it in the Draft. There are two reasons for this belief: the first is that customary International Law has been setting the stage for some time for criteria to be applied to countermeasures; which criteria should obviously be confirmed and clearly defined through written rules in the codified document. The second reason is that, with or without codification, States will

continue to resort to countermeasures and therefore detailed and precise regulation could go some way to alleviating the above mentioned risks and disadvantages, especially if, as is explained further below, mandatory jurisdiction is included in countermeasure issues. With regard to the rest, we feel that the regimen developed by the Commission is generally acceptable as it appears in chapter III of the Draft Articles (Arts. 47 to 50).

Moving on to the issue of settlement of disputes, we also feel that it was a positive step that Draft Paragraph 2, Art. 58 dealt with the unilateral right of the State suffering the consequences of countermeasures to submit the dispute to arbitration. The existence of mandatory jurisdiction in this area will act as a stimulus to self control and moderation in meeting the conditions for legitimacy of the application of countermeasures".

XV. PACIFIC SETTLEMENT OF DISPUTES

1. Diplomatic Modes of Settlement

a) Good Offices, Mediation

On 26 June 1996 the Spanish Government, in response to a parliamentary query, provided information on efforts made with respect to the peace process under way in Guatemala:

"The Government is particularly satisfied with the progress of the peace process in Guatemala. As you are aware, Spain forms part of what is known as the *'Grupo de Amigos de Guatemala'*. This Group operates in collaboration with the United Nations with a view to fostering the peace process under way between the Guatemalan government and the Guatemalan National Revolutionary Unit. As a member of this *Grupo de Amigos*, we have been making an ongoing and untiring effort which has, at the same time, been both prudent and discreet in favour of peace in the only Central American country where conflict still exists. Furthermore, Spain has had a privileged vantage point from which to monitor the development of all of the conflicts in Central America and has earlier had occasion to bring her experience to the Nicaragua and El Salvador peace processes. I certainly share the view of the MP with regard to the important role played by the Guatemalan President Alvaro Arzú. His diplomacy, expertise and personal effort to bring peace to his country is already bearing its first fruits with the cease fire that was recently declared between the guerrilla and government troops". (BOCG-Congreso.D, VI Leg., Plenary, n. 17, pp. 727–728).

2. Jurisdictional Modes of Settlement

Spain's Representative to the Sixth Commission of the United Nations General Assembly, Mr. Pastor Ridruejo, made the following comments on the Report of the International Law Commission on the Work of its Forty-Seventh Session on State Responsibility:

> "We have also noted the mention of arbitration made in Art. 5 which is, in principle, by 'mutual accord,' i.e. with the consent of the two parties to the dispute except in cases in which countermeasures have been adopted because in these cases the state against which these measure have been taken may submit the issue unilaterally to a court of arbitration. What we have here is a situation of mandatory jurisdiction. In addition to highlighting the fact that in our view the overall system is balanced and useful as a basis for discussion, we would like to add that we would not have minded that this mandatory jurisdiction be attributed to the International Court of Justice rather than to an arbitration court.
>
> My delegation is however concerned with the way that Art. 7 is worded. This article resorts to the jurisdiction of the International Court of Justice for any type of challenge regarding the validity of the arbitration decision (unless the parties reach an agreement in another forum) and this is agreeable to us. It is our view, however, that this article as it is now worded, turns the Hague Court into an institution of appeal. To talk simply of the 'validity of an arbitration decision' without specifying objective grounds for challenging this validity, the State which partially or completely loses in the arbitration procedure will almost certainly turn to the Hague as if it were an appeal court. What is required in the opinion of my delegation is rigorous, objective and detailed specification of the grounds on which an arbitration can be challenged. We therefore support the Commission's suggestion to enumerate here the grounds for nullification mentioned in the model of rules for arbitration procedure.
>
> (...)".

Spain's representative to the Sixth Commission of the United Nations General Assembly, made the following comments on the Report of the International Law Commission on the work of its Forty-eighth session on State Responsibility:

> "Moving on to the issue of settlement of disputes, we also feel that it was a positive step that Draft Paragraph 2, Art. 58 dealt with the unilateral right of the state suffering the consequences of countermeasures to submit the dispute to arbitration. The existence of mandatory jurisdiction in this area will act as a stimulus to self control and moderation in meeting the conditions for legitimacy of the application of countermeasures.
>
> With regard to part three of the Draft Articles on Responsibility of Etates – settlement of disputes – we observed that, with the above mentioned exception of countermeasures, no mandatory jurisdiction was envisioned for the disputes

resulting from the application and interpretation of the future convention. Consideration is only given to mandatory recourse to a conciliating body.

Although we understand that this important deficiency is born of realism and undoubtedly pursues the objective – praiseworthy in its own right – of attaining the widest acceptance possible in favour of the future Convention, we must say that, in the opinion of our delegation, we would have liked it to have been more bold; we would have liked mandatory recourse to a legal means of settling disputes to have been applied to the Draft in its entirety. It is no mere chance that a few years ago my country subscribed to the unilateral declaration of mandatory jurisdiction of the International Court of Justice in accordance with Paragraph 2, Art. 36 of its Statute".

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Acts

a) Peru

On 31 October 1995, in response to a parliamentary question, the Spanish Government reported on Spain's stance with regard to human rights violations in Peru:

"1. According to information received through the Spanish embassy in Lima and from the National Coordinator of human rights in Peru and other non-governmental organisations, the last two years have borne witness to a clear decrease in the number of human rights violations in Peru. Nevertheless, the amnesty law passed on 15 June applicable only to the military, police, or similar institutions, is undoubtedly a controversial move with regard to the Fujimori goverument's commitment to human rights issues. The Spanish government demonstrated its concern over that law through its Ambassador in Lima as well as through EU channels.

2. The Spanish government has been adapting the intensity of its relations with Peru, particularly in the area of cooperation, to the degree to which human rights are being respected by the Peruvian authorities.

Other aspects of the relationship between Spain and Peru, trade for example, are not dependent upon their human rights record because they are controlled by the normal functioning of the market economy and by private initiative.

3. Mr. Roberto Lay, a Peruvian national and member of the institution known as Development and Peace in the Amazon, was arrested at the end of August along with Mr. Antonio Moreno, also Peruvian and a member of the same institution.

They were accused of alleged acts of terrorism. According to information received through the Embassy in Lima, Mr. Lay was released. It seems that Mr. Lay's family failed to report this fact.

4. Diplomatic measures are not called for when it is Peruvian nationals that are involved. Madrid, 13 October 1995 – The Minister". (BOCG-Congreso.D, V Leg., n. 288, p. 66).

b) Cuba

On 2 November 1995, the Spanish representative to the United Nations General Assembly, acting on behalf of the European Union, spoke in the following terms regarding the U.S. economic embargo against Cuba:

"The European Union strongly favours a peaceful transition to democracy in Cuba. We are concerned about the negative effects of the embargo on the situation of the Cuban population. However, this is not the only reason for the difficult situation in Cuba. Because of its economic and political choices, the Cuban Government is also responsible for the deterioration of the situation in the country.

The European Union condemns the repeated violations of human rights in Cuba, particularly in the political sphere. The European Union considers it supremely important to scrupulously respect human rights and fundamental freedoms in Cuba and to deepen the institutional and economic reforms in the country.

The Cuban Government has embarked on a process of economic reform that we hope will enable the country to overcome the present economic crisis and pave the way towards a more comprehensive plan to move to a market economy. In the political sphere, the Cuban regime retains a firm monopoly on political power. Additional efforts to promote dialogue and cooperation at all levels are required to make possible the necessary evolution towards democracy and pluralism, as in other parts of Latin America. In this context, the European Union believes that stepping up contacts is the best way to lend impetus to the transition to a democratic system. The European Union has decided to enter into a political dialogue with Cuba in order to identify the most appropriate framework for future relations between the Union and Cuba for promoting the acceleration of the internal reform process.

The European Union therefore takes a negative view of the passing by both Houses of the United States Congress of their respective versions of the Cuban Liberty and Democratic Solidarity Act and reiterates its opposition to the adoption of any measure of extraterritorial scope or in contravention of international norms, in particular those of the World Trade Organisation.

The European Union cannot accept the United States unilaterally determining or restricting the European Union's economic and commercial relations with any State.

The European Union believes that the United States commercial embargo against Cuba is primarily a matter that has to be resolved bilaterally between the Governments of the United States and of Cuba. The member States of the European Union will have these concerns in mind when voting on the draft resolution before us". (UN Doc. A/50/PV. 48, pp. 15–16).

2. Collective Measures. Regime of the United Nations

a) Iraq

On 9 October 1996, in response to a parliamentary question, the Spanish Government reported on Spain's position regarding the United States' attacks against Iraq in response to the incursion of Iraqi troops north of parallel 36:

"First issue: allusion to the Iraqi military intervention in the north of the country above the 36th parallel. There is no doubt that this is what caused the crisis at the beginning of September but to date we have not been able to determine Saddam Hussein's motivation. He may have underestimated the U.S. reaction capacity or he may have overestimated the existence of a more positive international climate in favour of Iraq despite the occasional difficulties that the United Nations Special Commission under the leadership of Ambassador Rolf Ekeus has come up against in carrying out its functions in Iraq. It is true that the Iraqi army's overstepping the boundaries of the 36th parallel did not constitute a breach of the Security Council's resolution. It is also true, however, that decision was based on a military decision taken by the international coalition at the close of the conflict. This decision was limited to exclusive air space, a flight down, without making any mention of ground troops. This is an argument that I have heard even in public statements made by U.S. officials who are cognizant of these facts. This does not mean that we should be naive. It is hard to believe that concern for the interests of one of the Kurd factions that has been fighting for some time now in the north of Iraq, triggered the Iraqi decision to go beyond the 36th parallel and intervene directly in the conflict.

Second issue: What the Spanish Government is particularly concerned about is the risk of regional destabilisation. What it deplores is not the violation of International Law, which has not been respected by Iraq, but rather the upsetting of a *status quo* that, despite some differences, provided a guarantee at that time of an acceptable level of stability in the region. Let me point out that the Government, as it has stated on several occasions, has a firm and unwavering commitment to stability and security in the region and to the territorial integrity of Iraq. It is within this framework, therefore, that one should interpret the reference to the fact that the U.S. military operation, selective and focusing exclusively on military objectives, is intended to make Iraq respect that former *status quo*.

Notwithstanding, on several occasions in the media, I have expressed this same orientation and emphasised the fact that the Spanish Government would have preferred that military force not be used and has consistently called for diplomatic pressure before resorting to this intervention. Protection of the civilian population is made very clear in the official communiqué which states: Any type of action that could lead to suffering within the Iraqi population should be avoided and the rights of the Kurd population should be respected. We have always taken the suffering of the Iraqi people into account and, from that perspective, Spain will continue with bilateral humanitarian programmes focusing on the civilian population. The Spanish Government and the European Union itself will continue to lend its full support to the timely implementation of Resolution 986, food for oil.

Apart from the above, I would like to make special mention of the efforts, both at a national level and through international forums, that this Government has made to foster the normalisation of Iraq in an international context. The Government's position is based on the following concerns: stability, regional security, protection for the Iraqi civilian population, Iraq's territorial integrity, the upholding of the political conditions needed to carry out humanitarian programs and, most important of all, the need to make Saddam Hussein understand that only a constructive policy and full compliance with obligations can remedy the situation.

The issue is quite clear. Three different positions were held by the American allies, especially the Europeans, with regard to this conflict. The first reaction which specifically characterised France was to hold back support. France did not support the attack in its first communiqué released in the early afternoon. Then there was a majority of countries that supported the intervention with some reservations. Spain fell into this group because, when faced by this type of situation, it is always advisable to take a careful look at the events unfolding and acquire information. The fact was, however, that we had to take a stand immediately and that was the attitude of the majority of the other countries: Italy, Belgium and the Allies in general. It is public knowledge that, among other things, a second attack was not made because the United States did not have the unconditional support of its allies. In the end there was a third country, and to my knowledge the only one, that provided unconditional support and that was the United Kingdom which, only a few minutes after I expressed my reaction, lent its unconditional support – but this is nothing new. There was, therefore, no incoherence whatsoever. Three different positions took shape. Our position, a little bit hurried given the circumstances, was the one followed by a majority of the United States' allies in the western world.

At the same time I am happy to have the opportunity to further explain the alleged unavailability of the Defence Minister. No mistake was made in this case either. This was no more than the simple, strict application of an Agreement with

the United States regarding the use of bases located in Spanish territory. In accordance with these agreements, when an American aircraft has to fly over Spanish territory, as was the case, simple verbal notification is sufficient and Spain is not required to provide written consent. The United States simply notifies the Spanish authorities of the approximate time that a specified number of aircraft will be flying over Spanish territory and Spain is thus officially informed. This is the legal framework of the Agreements. If at any time the United States wishes to land in Spanish territory to refuel or for any other reason, the Agreement stipulates that authorisation must be requested in writing within a time frame that allows for a written response.

In this particular case the American Government had advised of its intention to enter Spanish air space, but once the aircraft arrived over Spanish territory they decided to request permission to land. This request was made outside of the established time frame and could only be granted in writing. The official on duty in charge of the facilities contacted the responsible *Director General* at the Defence Ministry. Unable to make immediate contact with the Minister, who was at a dinner with NATO generals and therefore could be located, he decided against interrupting the Minister and since the Agreement set up a very clear time frame regarding requests and since this time frame had not been met, the *Director General* took it upon himself to simply apply the written agreements in force and decided to refuse authorisation. If at that time and despite all these circumstances, the *Director General* had decided to contact the Minister and the Minister had decided that, although the time requirement had not been met, authorisation could still be granted, that authorisation would probably in fact have been granted. I insist, however, that what the *Director General* did was simply to apply the Agreement, and that cannot be considered wrong.

Then, at 11.00 p.m., the United States Ambassador called the Minister. The Minister took the call immediately and the Ambassador explained: Mr. Minister, we did want to use these bases but, since there was not enough time to properly formulate the request, we have made other arrangements and it is no longer necessary. That is the extent of the explanation which, as you can clearly see, can not be considered negligence; quite the contrary, it shows that great care was taken by State officials in applying Agreements that are binding. I do not feel that any further explanation is needed on this subject". (DSC-C, VI Leg., n. 66, pp. 1424–1427).

b) Liberia

On 20 June 1996, in response to a parliamentary question, the Spanish Government reported on the Spanish position regarding humanitarian aid to Liberia and the possibility of this African State submitting to a trusteeship system:

"...The current situation of anarchy makes it impossible to provide any type of

aid to the Liberian population. Even the non-governmental organisations who are free to operate in Liberia have had to abandon their efforts because many of their headquarters have been attacked. In short, not even the most basic conditions exist that would allow for the implementation of humanitarian or emergency aid. Not even international organisations like the United Nations or ECHO itself have been able to intervene directly in Liberia.

The only channel left open to us is in the bordering countries where we can see to the needs of the Liberian refugees. This is already being done through the multi-lateral cooperation organisations in which Spain participates, and ECHO.

The aid received by the refugees in the bordering countries has been arriving efficiently and in sufficient quantities. ECHO began to send this aid and the European Union halted its efforts because sufficient aid is already being provided by international organisations. In the area of humanitarian and emergency aid to Liberia, the proper initiatives were taken. No action can be taken within the country's borders because it is practically impossible. Violence is rampant, government organization headquarters have been ransacked and not even minimum safety conditions can be guaranteed to implement emergency and humanitarian aid initiatives.

With regard to the question about setting up a trusteeship regime through a United Nations intervention I will begin by saying that to date this initiative has not been presented to the United Nations Security Council and was simply a statement made by the High Commissioner for Refugees. It should be pointed out, however, that an action similar to the one carried out in Cambodia with the Apronuc would require, as it required in Cambodia, a prior agreement between the parties regarding the principal elements of the future transition, i.e. of the trusteeship regime as was the case in Cambodia.

The turn of events over the last several months, however, clearly indicates that a similar agreement between the parties to this conflict would be impossible. It is an outright civil war and therefore the minimum conditions needed to set up a trust regime have not been met.

The International Community agrees that the future of the Liberian peace process basically depends on the will of the parties to peacefully resolve their differences and honour the Agreements and commitments undertaken. The first of these is the August 1995 Abuja agreement, which envisaged, among other measures, a general and effective cease fire, the removal of troops and arms from Monrovia and the creation of conditions allowing for the deployment of a group of observers from the Economic Community of West African States.

Unfortunately, the willingness of the parties in this conflict to continue with the peace process ratified in Abuja has diminished and today it seems impossible to go back and honour these agreements, and this makes it even more difficult to set up a trust regime in Liberia.

The Spanish Government and the International Community in general is,

however, keeping a close watch on developments in Liberia in order to determine whether there is a possibility for mediation through regional organisations or through the United Nations with a view to bringing the two sides closer and thus avoid a renewal of the conflict that has already cost too many lives and has had an inordinately strong impact upon the International Community, which has seen media images of the violence". (DSC-C, VI Leg., n. 31, pp. 527–528).

c) Yugoslavia

On 27 July 1995, the Foreign Affairs Minister appeared before the congressional Foreign Affairs Commission and explained Spain's position on the conflict in Yugoslavia. He made mention of the difficulties encountered in the deployment of the UNPROFOR; spoke against a military solution to the conflict but did foresee the possible occasional use of force to remedy serious human rights violations, and insisted on humanitarian aid distributed through the European Union:

"... having ruled out the option of troop removal, which would only be considered if the UNPROFOR is unable reasonably to continue with its mission, only two options remain in response to the current situation. The first would be to convert the UNPROFOR into a fighting force and the second would be to maintain it as a peace keeping force. The first option, ... I think should be excluded. All of those present at the London meeting were of this same opinion and that leaves us with the second option.

I would like to make one point very clear: the situation cannot go on like this. It has become absurd to the point that the Blue Helmets have become both human shields and hostages.

What is needed, therefore, is a change in the conditions under which the UN forces operate. This logically entails greater levels of cooperation between the two sides but we cannot afford to be naïve. The UNPROFOR must be bolstered and its vulnerabilities remedied. This process has already commenced with the creation and the initial deployment of the Rapid Reaction Force and with the selective redeployment of the UNPROFOR. From our perspective, these are appropriate measures and will aid the United Nations and the Atlantic Alliance in both fulfilling and enforcing the Security Council resolutions which have been pending for some time now.

Unfortunately, these measures do not solve the immediate problem, which is to bring an end to the Serbian aggression. In London there was almost unanimous agreement that the time had come to say 'enough is enough' and to make it clear that we are willing to use military force if necessary. This does not mean that we propose a military solution to the conflict, nor does it suggest that the UNPROFOR become a peace-imposing force. We do, however, need to set clear limits and respond once and for all to the barbarism.

I will give a brief summary of the basic agreements reached in London. An

attack on Gorazde would be met with a substantial and decisive reaction. The proposed use of an air attack was given general but not unanimous support.

The opening of an access route to Sarajevo has commenced and will be guaranteed in order to bring humanitarian aid to the civilian population and to provide supplies sent to the UNPROFOR. The Rapid Reaction Force will be called upon to protect the UNPROFOR in the completion of this mission.

Throughout the meeting, ... proposals were discussed regarding the use of force and the risks that that would entail. The decisions that we have taken do entail risks and I am of the opinion that we should be willing to accept them. What exactly are these risks? First of all there is the risk of initiating a process that converts the United Nations troops into fighting forces. This would not be good for the United Nations nor would it be coherent from a military point of view. Furthermore, it would not be fair for those countries that committed troops to a peace mission and not to fight in a war.

The second cousequence could be that the possibility for a peaceful end to the conflict would be diminished. An escalation of tension in Bosnia could mean endangering any remaining hope that all the different parties involved in this conflict will sit down at the negotiating table.

And then we have what could be termed the strictly military risks and difficulties. Military escalation could lead to the taking of hostages and could very likely mean the loss of human life. We can reduce the vulnerability of those on the peace mission in Bosnia but their safety cannot be completely guaranteed nor can this be done immediately.

And finally there is the risk of creating an even worse situation for thousands of Bosnians. The UNPROFOR, UNHCR and the non-governmental organisations will find it even more difficult to meet their objectives and this will also have negative consequences.

All of these possibilities were discussed in London, as were the political factors. It will come as no surprise to any of you that there are countries with interests and influence in the Balkans that are opposed to the use of force. Summing up, in London some important agreements were reached: our position is to be strengthened through a believable threat of the use of force – a substantial and decisive use of force were the terms used – to accompany the political peace process.

... the European Union has earmarked more than one and a half million Ecus for humanitarian aid in the former Yugoslavia since the beginning of the conflict. To put this in perspective, the figure accounts for 70% of the total aid and is equivalent to approximately 50% of the funds administered through United Nations agencies and the Red Cross".

The Minister also expressed his displeasure at the Serbo-Bosnian attacks on the cities of Srebrenica and Zepa and the failure on the part of member States to provide

the UN with the troops needed to guarantee safety within the Bosnian safe areas:

"Do you know how many troops the Secretary General of the United Nations requested at the time Resolution 836 was adopted? At the outset he asked for 70,000 to defend the safe areas. After a month and a half, when he saw that no troops had been sent, he said: I can get by with 30,000 – and no more arrived. One week went by and then another while the resolution continued in force and at last 2,000 soldiers arrived. These are the extra 2,000 that are supposedly responsible for the defence of the havens that were defined as areas that we were going to defend tooth and nail. The blame should not be put on the United Nations however, because we all belong to this organisation.

We felt that we had met our obligation by deploying 1,500 or 1,200 soldiers (this is an approximate figure that depends on the battalion deployed at a given time) and we have also deployed a significant number of F-18 aircraft in Aviano. We cannot send more soldiers. Others could have sent more but for one reason or another they did not. I feel that if we want to lambaste ourselves we are certainly free to do so, but I think that Spain has done all in its power to cooperate with the UN Secretary General to resolve this conflict".

And finally, in relation to the possible lifting of the arms embargo imposed by the United Nations Security Council, he made the following statement:

"...I feel that the lifting of the embargo here and now – I do not know what my view might be in six months or a year – is a mistake. This would be like throwing wood on the fire when what we – those who have assumed responsibilities in this conflict – should be doing is trying to put the fire out and not fan it and cause it to spread further, beyond the perimeter within which it is now unfortunately devastating so many lives and possessions. I would go so far as to say that practically no one is in favour of lifting the embargo. The lifting of the embargo through an amendment or through Senator Dole's resolution, as I had occasion to explain to you once before, is a complicated and delicate operation because it would involve the prior withdrawal of the UNPROFOR, and without these forces the whole plan will crumble. This would lead us into a situation of fratricide that ought to be avoided". (DSC-C, V Leg., n. 548, pp. 16720–16739).

c) Rwanda

On 8 October 1996, in response to a parliamentary question, the Spanish Government reported on Spain's position regarding the tragic humanitarian situation in the Great Lakes Region and gave details of Spain's contribution to the UNHCR:

"In 1996, Spain contributed a total of 290,000,000 *pesetas* to the general budget of the UNHCR. This figure represents an increase of nearly 200% over Spanish contributions in 1990. With regard to specific operations in Rwanda in 1996, Spanish contributions were as follows:

a) Eight Spanish observers sent through the Office of the High Commission on Human Rights at an approximate cost of 600,000 Dollars. Their stay was prolonged at a cost of 25 million *pesetas* this year.

b) Contribution to the Rwanda International Court: 83,570 dollars.

c) United Nations Assistance Mission for Rwanda (UNAMIR), 754,466 dollars.

In the form of specific aid earmarked directly for the region, in 1996 Spain contributed the sum of 1,200,000 dollars (159 million pesetas) to the World Food Program (WFP) to provide food to the Great Lakes Region (1996 call for help).

With the exception of the UNAMIR donations, the rest of the contributions are completely voluntary.

The Foreign Affairs Ministry does not currently foresee any additional donations to the UNHCR over and above the contributions to international organisations responsible for humanitarian aid that it makes through UNHCR and ECHO (European Community Humanitarian Office) within the framework of the European Union.

1. With respect to UNHCR initiatives, the Foreign Affairs Ministry receives periodic information indicating satisfactory results from the programmes financed with Spanish funds.

The return of refugees is necessary for the normalisation of Rwanda's political and social life. In addition to the material and human problems that refugee camps generate, they are also vulnerable to manipulation at the hands of forces that oppose the restoration of peace in the region. Any analysis should therefore consider the region's difficult social and political situation. According to available information, however, a policy of forced refugee repatriation is not being implemented in Rwanda. However, this fact in no way conditions the support of the Spanish Government.

2. The only guarantee that the Government has is the commitment acquired by the Rwanda Government to protect and promote respect for human rights and fundamental freedoms, to eliminate impunity and to facilitate the process of voluntary return while guaranteeing the safety, resettlement and reintegration of the refugees in accordance with the accords reached in Nairobi, Bujumbura and El Cairo in 1995 and in Tunisia in 1996.

3. Along with the other Community partners, Spain is keeping a close watch on the development of the situation in Rwanda and Burundi. On 26 February of this year the European Union decided to appoint the Ambassador Aldo Ajello as the European Union's special envoy to the Great Lakes Region in Africa. Ambassador Ajello has visited several countries in the region and has been officially received by the authorities of Rwanda, Burundi, Uganda, Zaire and Tanzania.

The European Union's special envoy recently travelled to Kigali, where he held talks with the Deputy Prime Minister of Rwanda. Information gathered at

this meeting showed a slight improvement in this country's internal politics which could lead to the organisation of a conference on the Great Lakes Region, considered one of the EU's principle objectives in this part of Africa.

The situation in both Rwanda and Burundi are currently being discussed in the United Nations Security Council. As a result and in accordance with Art. 12.1 of the United Nations Charter, the General Assembly is not be permitted to make any recommendations on these issues. Spain is not currently a member of the Security Council.

4. The Spanish Government does not exercise any type of control with regard to military transfers that countries in the region may carry out.

Spain does not currently have bilateral defence relations with Burundi or with its neighbouring countries. The very limited trade in defence materials that Spain has engaged in with some of these countries has always been carried on within the framework of the Inter-ministerial Regulatory Commission for Foreign Trade in Defence and Dual Use Material (*Junta Inter-ministerial Reguladora del Comercio Exterior de Materia de Defensa y Doble Uso – JAMDAV*), an institution that scrupulously applies all the international agreements to which Spain is a party and respects all embargoes and moratoria decreed by the United Nations or the European Union.

5. In response to the progressive deterioration of the situation brought on by ethnic conflicts, the Spanish authorities:

a) Have extended the Crisis Unit set up for Rwanda and Burundi to include the Republic of Zaire.

b) Have included Zaire in plans for a possible evacuation.

c) Are sending telephone numbers and radio frequencies to Spanish nationals living in the region to facilitate communication in the event that they need to be regrouped or evacuated.

d) Maintain ongoing contact with religious orders and NGOs that have personnel stationed in the region.

e) Collaborate with the embassies of other EU countries in these African countries with a view to exchanging information and services". (BOCG-Congreso.D, VI Leg., n. 53, pp. 156–157).

e) Sudan

On 22 May 1996, Spain's Permanent Mission to the United Nations informed the Secretary General of the measures adopted by Spain regarding sanctions applied to Sudan by the Security Council:

"The Permanent Mission of Spain to the United Nations presents its compliments to the Secretary-General of the United Nations and, in reply to his note of 15 May 1996, has the honour to inform him that the Government of Spain, in compliance with paragraph 3 of Security Council Resolution 1054 (1996), has

instructed all diplomatic missions and consulates of Spain abroad to deny visas for entry into and transit through Spanish territory to members of the Government of the Sudan, officials of that Government and members of the Sudanese armed forces, with effect from 10 May 1996. These measures will remain in effect for as long as the Sudan persists in its attitude of non-compliance with the demands made in the relevant Security Council resolutions.

Since the Sudan has no diplomatic mission in Spain and Spain has no embassy in the Sudan, subparagraph 3 (a) of Resolution 1054 (1996) does not apply" (UN Doc. S/1996/388, 29 May 1996).

f) Peace-keeping Operations

On 19 December 1996, in response to a parliamentary query, the Spanish Government reported on Spain's involvement in peace-keeping operations:

"1. The current state of Spain's participation in peace-keeping operations can be summarised as follows:

Dayton Agreement Implementation Force (IFOR)

Mandate:

United Nations Security Council Resolution 1031 authorises Member States to set up a Dayton Peace Agreement Implementation Force (IFOR) under unified command and control and to take the necessary steps to implement and guarantee the achievement of the military objectives provided for in that Accord.

Time frame:

The transfer of authority to NATO took place on 20 December 1995 for a period of one year. The mandate therefore expires on 20 December 1996 although the possibility of continuing with a smaller force under a new mandate after that date is currently being studied.

Personnel:

41 officers and NCOs assigned to international headquarters.

1 reduced mechanised infantry brigade with 1,340 soldiers.

37 civil guards

316 soldiers assigned to logistic support units

1 F-18 fighter squadron (6 F-18, 2 TK-10, 1 T-2, and 2 more F-18 on alert stand-by in national territory) with 224 men.

International Police Task Force (IPTF) for Bosnia-Herzegovina

Mandate:

United Nations Security Council Resolution 1035, 21 December 1995.

Time frame:

The planned duration is for one year from the time authority is transferred to NATO. The mission commenced on 21 February 1996.

Persounel:

48 Civil guards.

EC Monitoring Mission in the former Yugoslavia (ECMMY)

Mandate:

Aid the EU and the International Conference on the Former Yugoslavia (ICFY) in the search for and implementation of a long-term solution to the conflict in the former Yugoslavia.

Time Frame:

The creation of an EC Verification Mission in the former Yugoslavia is the result of the 7 July 1991 Brioni Accords between the EC, the Yugoslavian federal authorities and the Republics of Slovenia and Croatia. The Mission was put into force under the auspices of the Memorandum of Understanding (MOU) signed on 13 July 1991 by the EC and the countries party to the Brioni Accords. This MOU, which regulates the mandate and the statutes and determines the composition of the mission, determined the type of action carried out in 'Slovenia and, if possible, in Croatia' for a period of three months, i.e. until 13 October 1991.

On 1 September 1991, the EC ad hoc group agreed to broaden the mission's mandate for the verification of the cease fire in Croatia and signed a new Memorandum of Understanding which, along with the 13 July MOU, would constitute the operation's legal framework.

On 14 October 1991, the EC, the federal Yugoslavian authorities and authorities from the six republics signed an extension of the 13 July and 1 September MOUs until the conclusion of the Hague Conference. New MOUs were later signed either extending or revising former ones, not only in those countries where the mission is operating but also in neighbouring countries like Hungary, Bulgaria and Albania which showed interest in becoming party to the memorandums with a view to preventing possible border problems and spreading of the conflict.

As a result of the signing of the Dayton Agreement and of the new missions assigned to the Organisation for Security and Cooperation in Europe (OSCE) in the former Yugoslavia, on 22 December 1995 a Memorandum of Understanding was signed between the OSCE authorities and the European Community Monitoring Mission (ECMM) which set up the framework guiding the ECMM collaboration efforts with the OSCE mission in Bosnia-Herzegovina.

Personnel:

1 officer of the Armed Forces

Human Rights Verification Mission in Guatemala (MINUGUA)

Mandate:

Verify the implementation of the human rights agreement signed by the Guatemalan government and the Guatemalan National Revolutionary Union (URNG) in Mexico on 29 March 1994 and help to strengthen the institutions working to protect human rights in Guatemala.

Time Frame:

The operation was approved by UN General Assembly Resolution RAG

48/267 for an initial period of six months. The first components of the operation arrived in Guatemala on 18 December 1994.

Personnel:

1 Officer of the Armed Forces

9 Civil guards

6 Officers from the Directorate General of the Police force

Observation Mission in El Salvador (MINUSAL)

Mandate, time frame:

General Assembly Resolution of 30 April 1995, extended on various occasions. Is expected to finalise on 31 December of this year.

Personnel:

2 Civil guard corporals

Spain has also provided advisors to the new National Academy of Public Security: 2 civil guards and 2 national police inspectors; technical support for the Civil National Police under the auspices of the European Union: 4 civil guards and 5 national police officers. This mission is expected to finalise on 30 June 1997.

Aid Groups from the OSCE in Chechnya (AGOSCE)

Mandate, time frame:

The OSCE mission in Chechnya came about as a result of the decision taken at the 16th meeting of the OSCE Permanent Council on 11 April 1995. It was decided that the Aid Group, in conjunction with the local authorities and the Russian Federation, and in accordance with Russian Federation legislation, would take on the following tasks:

Promote respect for human rights and fundamental freedoms; aid in the development of democratic institutions and processes including the restoring of local authority; support the drafting of possible constitutional agreements and the holding of elections.

Facilitate the distribution of humanitarian aid in the region by international and non-governmental organisations wherever they may be operating.

Help international authorities to guarantee the return of refugees to their homes as soon as possible.

Foster a peaceful solution to the crisis and contribute to the stability of the Republic of Chechnya in accordance with the principal of territorial integrity of the Russian Federation in harmony with OSCE principles and to promote dialogue and negotiation with a view to reaching a cease fire and eliminating the causes of tension.

Support the creation of mechanisms that guarantee law and order and public security.

Personnel:

1 Officer of the Armed Forces

Support reductions envisioned in Article IV of Annex I-B of the Dayton Peace Agreement (Sub-regional arms control)

Mandate:

Article IV of Annex 1-B of the Dayton Agreement calls on the OSCE to assist the parties in the negotiations on arms control measures on the sub-regional level and in the application and verification of the resulting agreements.

The Agreement on Sub-regional Arms Control was signed in Florence on 14 July 1996. As a result, the acting President of the OSCE called on the member countries to make their contribution to facilitate the reduction processes called for in the agreement.

In response to this call, Spain offered to contribute with an officer who was a reductions expert in the Conventional Forces in Europe Treaty (FACE). His responsibility is to help the parties' reduction teams by: participating in an exploratory mission, providing advisory services on organisation of a place of reduction and on reduction options.

Time Frame:

One month starting 4 November 1996.

Personnel:

1 Officer of the Armed Forces

Central Department of Peace Operations of the UN Secretariat General

Spain has two officers of its armed forces seconded to this Department as well as a Chief Inspector of the National Police force. An armed forces officer has done exemplary work in the Logistics Department.

With a view to generating public support for Spain's participation in peace operations, the Defence and Foreign Affairs Ministries have given several conferences at the *Universidad Complutense, in the Centro de Estudios Universitarios*, at the Menéndez Pelayo Summer University in Santander, at the summer courses offered through the *Universidad Complutense* in El Escorial and Almeria and a series of conferences at the *Centro Superior de Estudios de la Defensa Nacional* (CESEDEN).

The Defence Ministry, through the *Oficina de Relaciones Informativas y Sociales de la Defensa* (ORISDE) (Office for Informative and Social Defence Relations) has put together several mobile exhibits on peace operations as well as informative conferences. The Defence Ministry could participate, through the Directorate General on Defence Policy (Spanish initials DIGENPOL), in information programs organised by the Ministry of Education and Culture". (BOCG-Congreso.D, VI Leg., Plenary, n. 87, pp. 219–221).

XVII. WAR AND NEUTRALITY

1. Disarmament

a) Nuclear Arms

On 20 June 1995, in response to a parliamentary qnery the Spanish Government reported on Spain's position at the New York Conference held to review and possibly extend the Treaty on Non-Proliferation of Nuclear Weapons:

"The position of the Spanish Government regarding the Conference to Review and Extend the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) recently held in New York was established in coordination with the rest of the European Union countries and the Western Group. This position was shared by the vast majority of countries from other parts of the world and was articulated in the speech made by the Foreign Affairs Minister at the opening session of that Conference.

With regard to the extension of the NPT, the Spanish Government supported the option of an indefinite extension, a view that it held prior to the celebration of the Conference along the lines of the Common Action adopted by the European Union in July 1994.

Even though Art. XII of the Treaty stipulates that a decision may be taken on the extension of the NPT if it is supported by a majority of the signing States, the Spanish Government, along with a large number of the other countries supporting the indefinite extension, clearly preferred that this decision be taken, if not by consensus, by the broadest possible majority.

That is why Spain was one of the first countries to support the Canadian proposal which, in the event of a vote, sought to insure not only the required number of votes in favour of the indefinite extension option, but also the support of a sufficiently wide majority to draw support from those favouring another similar option.

It should be pointed out that none of the countries opposed the extension of the NPT. The discussion focused on whether this extension should indeed be indefinite or subject to some time limitation and other possible conditions. Furthermore, one of the most common arguments made by some of the States that initially opposed indefinite extension was the fact that in their geographical region there were some countries which had not signed the NPT. This goes to show that even those countries that opposed the indefinite extension share the belief that the Treaty is an efficient control mechanism that protects us from nuclear proliferation and defends the universality principle.

The decision to adopt an indefinite extension of the NPT without having to resort to a vote marked a victory for the International Community and gave the

Spanish Government a sense of satisfaction because we defended this position from the outset. This formula lends greater credibility and legitimacy to the NPT and prevents any country from claiming that it was bound by a decision taken against its will.

It is important to bear in mind that, compared with the other renovation possibilities envisioned in the Treaty (extension for a fixed period or periods of time), the indefinite extension was really the only option that did not call for periodic questioning of the essence of the Treaty and thus protects us from the emergence of new nuclear powers, most likely on the regional level.

Furthermore, the decision taken on indefinite extension was accompanied by the adoption of seven principles: the universality principle, appealing to those States that have yet to adopt the Treaty to sign it as soon as possible; the principle of non-proliferation of nuclear weapons; the nuclear disarmament principle which also recognises the importance of implementing Art. VI of the Treaty with a view to attaining the total prohibition of nuclear testing no later than 1996, and the need to expediently conclude a treaty on the prohibition of the production of materials for nuclear fission with a view to achieving the ultimate objective of the Treaty, which is the elimination of nuclear weapons; the principle of de-nuclearised zones highlighting the belief that these contribute to global and regional security; the principle of security guarantees challenging nuclear states to consider the possibility of granting new guarantees in the form of a legally binding international instrument; the safeguard principle which highlights the role of the International Atomic Energy Agency in the verification of energy, encourages greater openness in the exchange of nuclear technology for the peaceful use of this energy and monitors the export of this type of material to make these transactions as transparent as possible..

The process of Treaty examination was also strengthened. The examination conferences, to be held every five years, will be preceded during the three years prior to their celebration, by 10-day long meetings of a Preparation Committee which will verify compliance both with the terms of the Treaty and with the principles and objectives of non-proliferation.

And finally, a resolution was also adopted regarding nuclear weapons in the Middle East and calling for the adoption of the NPT by all the countries of that region.

In summary, the Conference should be considered a success in light of the indefinite extension and the other decisions taken guarantee the future of the NPT, the only instrument on the global level acting as a buffer against nuclear proliferation.

Madrid, 30 May 1995 – the Minister". (BOCG-Congreso.D, V Leg., n. 248, pp. 107–108).

On 11 November 1996, the Spanish representative to the United Nations General

Assembly, explained Spain's position on the creation of a de-nuclearised zone on the African continent:

"As it did last year, the Spanish delegation has joined in the consensus in favour of the draft resolution on the African Nuclear-Weapon-Free Zone Treaty. That decision is in keeping with the principles that dictate Spanish policy on the non-proliferation of nuclear weapons. My Government is firmly convinced that the establishment of nuclear-weapon-free zones on the basis of treaties that have been agreed upon by consensus between the States of the region will strengthen international peace and security.

It is for that reason that during negotiations on the Treaty of Pelindaba Spain on several occasions reiterated its support for the Treaty's objectives. In this connection, I should like once again to recall the decision adopted by the Spanish Congress on the non-nuclearisation of Spain, which applies to all its territory. Spain is a State party to the Treaty on the Non-Proliferation of Nuclear Weapons and has signed a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA). Accordingly, my country has entered into a series of commitments and obligations in the field of non-proliferation and nuclear security. On that point, I should like to conclude by stating that the final text of the African Nuclear-Weapon-Free Zone Treaty is being very carefully considered by my country from a legal point of view. This means that my delegation's support for the adoption by consensus of draft resolution A/C.1/51/L.23 does not prejudge Spain's final decision on signing Protocol III to that Treaty". (UN Doc. General Assembly, A/C.1/51/PV.19).

2. The Export of Arms by Spain to Third Countries

a) Indonesia

On 29 October 1996, in response to a parliamentary query the Spanish Government reported on Spain's position regarding compliance with the European Parliament Resolution calling on Member States to cease all types of military aid to Indonesia:

"The Defence Minister did not sign any agreement with the Indonesian Chief of Staff during the course of his visit to Spain in 1995 and to his knowledge, no agreement was signed between that Chief of Staff and any Spanish company.

The Defence Minister does not know if any negotiations are under way between Spanish companies and Indonesia. In the event that a hypothetical negotiation did take place however, the company must procure prior authorisation from the Spanish Government through the Inter-ministerial Regulatory Commission for Foreign Trade in Defence and Dual Use Material *(Junta Inter-ministerial Reguladora del Comercio Exterior de Material de Defensa y Doble Uso –JIMMDDU)* in order to formalise the contract.

It is within the competencies of the Foreign Affairs Ministry to inform that Spain, as a member of the European Union, adheres to the European Code of Conduct regarding the export of military material

The Luxembourg and Lisbon Councils held on 28-29 June 1991 and 26-27 June 1992 respectively, passed eight criteria applicable to arms exports:

1. Respect for international commitments subscribed to by European Community member States, especially concerning sanctions passed by the UN Security Council and those passed by the European Union, non-proliferation agreements as well as other international obligations applicable to this issue.

2. The human rights record of the receiving country.

3. The internal situation of the receiving country regarding the existence of tensions or internal armed conflict.

4. The upholding of regional peace, security and stability.

5. The national security of the Member States and the security of the territories that the member State is dealing with as well as countries that are friends or allies.

6. The conduct of the purchasing country as a member of the International Community paying particularly close attention to terrorism, the nature of its alliances and respect for International Law.

7. The possible risk of internal re-routing or unwanted re-export.

8. The compatibility of arms exports with the technical and economic capacity of the importing country, in the hopes that this country is meeting its legitimate needs in the area of security and defence and that it devotes a minimal amount of human and economic resources to arms.

The second criteria to be considered under the Community Code of Conduct regarding arms exports is the human rights record of the receiving country; i.e. that the country is not a flagrant violator of human rights. Where there is a record of reiterated or serious human rights violations, the EU has immediately taken the decision to impose an embargo as was the case with China.

In the case of Indonesia, an arms embargo has not been imposed either by the European Union or by the United Nations.

In accordance with normal policy followed by both the UN and the European Union, Spain is not obliged to exclude Indonesia from possible exports.

In the event that the International Community and particularly the EU considers that Indonesia's human rights record merits an embargo, Spain will strictly adhere to its international obligations.

The approval of this resolution by the European Parliament is not enough to implement an arms embargo" (BOCG-Congreso.D, VI Leg., Plenary, n. 65, p. 109).