DIPLOMATIC AND PARLIAMENTARY PRACTICE

SPANISH DIPLOMATIC AND PARLIAMENTARY PRACTICE IN PUBLIC INTERNATIONAL LAW, 1993—1994

This Section was prepared by C. Jiménez Piernas, Professor of Public International Law and International Relations at the University of Alcalá de Henares, and M. A. Almeida Nascimento, C. Antón Guardiola, V. Carreño Gualde y J. Ferrer Lloret, Assistant Professors of Public International Law at the University of Alicante, C. R. Rueda Castañón y 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.* 1993—1994, 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:

BOCG–Cortes Generales.

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

BOCG–Congreso.D

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

BOCG–Senado.I

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

DSCG–Comisiones Mixtas

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

DSC–C

— Diario de Sesiones del Congreso. comisiones
(Official Record of the Congress of Deputies. Committee Meetings).

DSC–P

— Diario de Sesiones del Congreso. Pleno y Diputación

Spanish Yearbook of International Law, Volume III 1993–1994, 89–263.

Permanente
(Official Record of the Congress of Deputies. Plenary Sessions and Standing Committee).

DSS–C

— Diario de Sesiones del Senado. Comisiones
(Official Record of the Senate. Committee Meetings).

DSS–P

— Diario de Sesiones del Senado. Pleno
(Official Record of the Senate. Plenary Sessions).

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I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis and Purpose

The Third Ibero–American Summit of Heads of State and Government held in Salvador de Bahía (Brazil), 15—16 July 1993, issued a Final Document in which the following was declared:

> "2.... we reaffirm our full commitment to representative democracy, and to respect, defend and promote of human rights and basic freedoms. Within this framework, we reiterate the principles of sovereignty, non–intervention and territorial integrity, and we recognize each country's right to form its own political system and create its own institutions in peace, stability and justice. These are the basic objectives of the community of nations that has gathered here together, and they are integrating factors of any type of policy on cooperation. Thus, we fully confirm all of the provisions of the Guadalajara Declaration of 19 July, 1991, and the Madrid Document of Conclusions dated 24 July, 1992, which together constitute the rules and principles that should guide our relations.
>
> (...)".

In his intervention before the 3247th Meeting of the Security Council on 29 June 1993, Mr. Yáñez Barnuevo, Spain's representative, stated the following as regards the conflict in the Republic of Bosnia and Herzegovina:

> "I wish to recall in this context that Spain, together with the other countries that are members of the European Community, has recently reaffirmed, at the meeting of the Council of Europe held in Copenhagen on 22 June, that any negotiated solution to the conflict must be based on the principles of the London Conference as reflected in the Vance–Owen peace plan, and in particular on the independence, sovereignty and territorial integrity of Bosnia and Herzegovina, the protection of human rights and the rights of minorities, the inadmissibility of the acquisition of territory by force, the vital need that humanitarian assistance be provided to and reach those who need it, and the bringing to justice of those who have committed war crimes and violations of international humanitarian law.
>
> (...)" (UN Doc. S/PV.3247, p. 156).

The Spanish Minister of Foreigu Affairs, Mr. Solana Madariaga, referred to the right to interference in his intervention before the

Non–permanent Commission on Cooperation and Aid to Development on 10 October 1994:

"The right to interfere is a right the international community must reexamine... There do exist examples of the new approach that is being taken by the international community as regards the right to interfere. I understand that this is a very delicate subject in some countries, as we have seen in the latest session of the General Assembly that is still taking place in New York. There have been some very significant debates on this issue in the first few days with some countries maintaining that the principle of interference is absolutely unappealable, and others that feel that, in the final analysis, this simply leads to richer countries interfering in the affairs of poorer ones. This debate is currently taking place in the international community, and if I had to take a stance, I would, in the name of my Government, support a broadening of the concept of the right to interference, or of narrowing, if you will allow me to look at the issue from the opposite point of view, the right to non–interference when there are humanitarian issues or flagrant violations of human rights involved.

(...)" (DSC–C, V Leg., n. 306, p. 9038).

2. European Regional Subsystem

In his intervention before the IV Meeting of the Council of Ministers of the CSCE in Rome on 30 November 1993, the Minister of Foreign Affairs stated the following as regards the role the CSCE should play in the security and stability of Europe:

"The CSCE, as the only pan–European and transcontinental entity, and the key to an undivided Europe, must become the main organization responsible for our security and stability.

(...)

While progress has been made towards democracy on our continent, we can still find flagrant violations of the most basic rights and aggressions that, in the name of a brand of nationalism that borders on racism and various types of fanaticism, have hocked the future of several generations to come for their own miserly interests.

We must responsibly analyse the role of the CSCE when confronted with these problems and consider them as a stimulus for finding a more effective role for the Conference not only as regards

crisis and conflict management but also as regards prevention.

(...)

... the Conference must accelerate its efforts to create a permanent and operative structure that would encompass all of its various institutions and thereby become a real international organization. Above all, it must ensure that all of these efforts bring about a clear, effective and unified political will.

(...)

... there is an urgent need to extend the informing principles of the CSCE to the southern borders of our continent because the answer to the challenge that Europe as an entity is facing is substantially the same as the one that applies to the Mediterranean.

It was in this spirit that my Government, in Palma de Mallorca, proposed the idea of initiating a process of cooperation and security for the Mediterranean region.

(...)

We hope that in the future, serious dialogue can take place between the CSCE and non–participating Mediterranean countries.

(...)

The growing articulation of CSCE institutions should open new channels for regular and fluid dialogue between the Conference itself and the rim countries.

Spain will unhesitatingly give its full support to assuring that these dialogues are successful.

(...)".

On 18 October 1994, in response to a question posed by the Congress on the results of the "Mediterranean Forum" that met in Alexandria (Egypt) on 4 July , 1994, which brought together the Ministers of Foreign Affairs from ten Mediterranean rim countries, and Spain's contributions to this meeting, the Spanish Minister of Foreigu Affairs made the following comments:

"... the Mediterranean dimension of Spanish foreign affairs has grown in importance over the last few years.

(...)

We could point out Spain's role in the Western Mediterranean Initiative (better known as the 5+5 Forum), its pioneering role in the proposal of a Conference on Mediterranean Security and Cooperation, and its active participation in efforts to enrich the Mediterranean dimension of the different European security fora (CSCE, WEU, NATO), and in developing European Union foreign policy (especially the Renewed Mediterranean Policy).

(...)

Among the most important conclusions of the meeting, we can point to the decision taken by the ten Ministers of Foreign Affairs to continue to develop the initiative on the Mediterranean Forum, conceived as a mechanism for political dialogue and cooperation in areas of common interest to Mediterranean countries. ... One of the priority issues for this forum is to establish a strategy that takes into consideration the need for stability, peace, security and sustained development throughout this region.

(...)

Spain understands that the Mediterranean Forum can be the first step towards a broader project. Therefore, the Mediterranean Forum should work towards establishing a community of analysis that would then give way to a community of action. This is a challenge of historical proportions. Its scope easily surpasses aggressive countries. The Government of Spain will continue to work at the forefront of this or any other effort at ensuring dialogue and cooperation in the Mediterranean region.

(...)" (BOCG–Congreso.D, V Leg., n. 150, pp. 171—172).

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

a) In General

Due to the significant increase in the number of treaties to which Spain is a party, together with Spain's accession to the European Community and the abundant doctrine of the Council of State on this subject, the Ministry of Foreign Affairs issued an order on 17 February 1992, which establishes new rules for the processing of international treaties by the Ministry and its organs:

"I. Report of the International Legal Advisory Board

Once the text of a treaty has been negotiated, adopted and authenticated, and before it can be signed or any international obligations created for the State, a report must be requested from the International Legal Advisory Board of this Ministry on the processing of the treaty.

1. ... On the other hand, Decision 74/393 of the Council of the

European Communities, dated 22 July 1974, establishes a consultation procedure for agreements on economic or industrial issues for member States and third countries whose purpose is to assure that the content of these agreements respects the common policies of the community, especially common trade policy. Thus, whenever any of the clauses of a treaty has to do with these aspects of cooperation..., the treaty must first be submitted to the International Legal Advisory Board for a ruling on whether or not notification must be made to the EEC Commission or the other member States.

2. In order to request the processing report, the *Dirección General* that is competent to oversee the issues involved in a treaty should send the International Legal Advisory Board a copy of the final, complete text of the treaty in Spanish (or a translation of it certified by the Office of Language Interpretation) along with any annexed documents or antecedents deemed necessary to facilitate the Board's work, and indicate clearly any declarations or reservations that should be formulated.

(...)

3. The International Legal Advisory Board will indicate the appropriate procedures to follow for each case, especially if the treaty in question requires the prior authorisation of the *Cortes Generales* or if it must be sent there for informational purposes in accordance with article 94 of the Constitution. An *ex officio* copy of the report will be sent to the *Gabinete de Tratados*.

II. Preparation of the File for the Opinion of the Council of State and the Authorisation of the Council of Ministers

A) Once the *Dirección General* has received the International Advisory Board report, it will prepare one file which will be used for both the Council of State opinion and the authorisation of the Council of Ministers for the signing and remission of the treaty to the *Cortes*.

This file... will always include the following documents, in triplicate:

1. A completely legible copy of the text of the treaty and any annexes that might exist.

2. The entire text of the reservations and declarations that the Government proposes to formulate.

3. An extensive and reasoned report on the situation leading to the negotiation of the treaty and a detailed description of the treaty's contents and of the political or other types of reasons that support

Spain's being a party to the treaty.

4. The file abstract for the Council of Ministers...

5. The mandatory reports from other Ministries or divisions, if there are any.

If the treaty stipulates that it, or any of its clauses, is to be provisionally in force from the time it is signed, the exceptional circumstances that justify such a stipulation should be specified.

Also, if the *Dirección General* feels there are reasons to support the emergency processing of the treaty, this should be so indicated and the reasons provided with all of the other documentation remitted to the *Gabinete de Tratados*.

B) Once the *Gabinete de Tratados* has received the documents listed above, a request for a Council of State opinion will be prepared, on the requirement to obtain the authorisation of the *Cortes Generales* prior to the State giving consent.

When the Gabinete de Tratados receives the Council of State opinion, a photocopy will be sent to the *Dirección General* and to the International Legal Advisory Board. The original will be kept with the treaty's protocol.

III. Council of Minister's Authorisation to Sign and Remit the Treaty to *the Cortes*

1. According to article 94 of the Spanish Constitution, the Council of Ministers is responsible for authorizing the signing of the treaty ... before it is sent to the *Cortes Generales*.

The file for the Council of Minister's authorisation of the signing and remission to the *Cortes Generales* will be processed by the *Secretaría General Técnica* and will always include a photocopy of the Council of State's opinion...

2. The authorisation needed for the signing of a treaty is obligatory according to current legislation. Therefore, signing cannot take place if authorisation has not been obtained except in exceptional cases which must first be duly justified to the satisfaction of the Minister and approved by him...

In these exceptional cases, the expression '*ad referendum*' must always be written next to the signature of the Spanish representative. All '*ad referendum* signatures of a treaty must be subsequently approved by the Council of Ministers. This approval will be equivalent to a final signature for the purposes found in article 12.2 b), of the Vienna Convention on the Law of Treaties.

If provisional enforcement from time of signature is stipulated in an '*ad referendum*' treaty, this provisional enforcement can only take

effect after the Council of Ministers approves the signing.

3. Once the Council of Minister's authorisation is given for both the signing of the treaty (or the approval of the '*ad referendum*' signature is obtained) and its remission to the *Cortes Generales*, the *Secretaría General Técnica* will return the complete file to the *Dirección General* together with the photocopy of the approved proposal. The original will remain with the *Gabinete de Tratados*.

All '*ad referendum*' signings must be notified to the negotiating State or States. This notification will be prepared and sent by the *Dirección General* on behalf of the Minister of Foreign Affairs. A copy of this notification and the original of the acknowledgement of receipt by the other party will be sent to the *Gabinete de Tratados*.

IV. The Signing of the Treaty. Full Powers.

1. Authorisation for the signing of the treaty and its remission to the *Cortes* by the Council of Ministers will allow the signing of the treaty to take place provided that this event in and of itself does not include a statement of the State is consent to accept obligations.

As regards the determination of the date for the signing, the competent *Dirección General* should keep in mind that the deadline for sending treaties to the *Cortes* is 90 days from the date of authorisation by the Council of Ministers, except when an extension is requested and justified ...

2. Full powers to sign a treaty (when required by Spanish legislation) will be requested in writing by the competent *Dirección General* from the Department of Protocol, Chancellery and Orders ... A copy of this written request will be sent by the *Dirección General* to the *Gabinete de Tratados* so that it can be entered into the Register created for that pupose.

3. Once the treaty is signed, the *Dirección General* will send the *Gabinete de Tratados* all of the originals corresponding to the Spanish part when the treaty is bilateral or a certified and authenticated copy by the depositary in the languages in which the treaty was written along with the Spanish translation done by the Office of Language Interpretation if there is no Spanish–language original when the treaty is multilateral. In the Exchange of Notes, the original of the note verbale issued by the other party and a copy of the Spanish note will be remitted.

(...)

4. If provisional enforcement from the time of signing is stipulated in the treaty, this fact will be communicated to the *Gabinete de Tratados* as soon as the signing has taken place and a

supplementary photocopy of the Spanish–language text will be delivered so that the *Cortes Generales* can be informed immediately and the text of the treaty be published in the *Boletín Oficial del Estado*.

V. Remission to the *Cortes Generales*

Treaties should be sent to the *Cortes Generales* as soon as signing and remission have been authorised by the Council of Ministers.

In accordance with the provisions of article 94 of the Constitution, prior authorisation by the *Cortes Generales* must be obtained for the situations stipulated in section I before State obligations from an international treaty can be created. In all other cases, the treaty will be immediately sent to the *Cortes Generales* for informational purposes.

The files that are prepared by the *Gabinete de Tratados* will be sent by the *Secretaría General Técnica* through the *Ministerio de Relaciones con las Cortes* and the *Secretaría del Gobierno.*

This will be done as soon as the Council of State's opinion is available and provided that the *Direccion General* involved, having received a photocopy of the opinion, does not notify the *Secretaría General Técnica* of any political or other type of reason that would warrant the interruption of the processing of the treaty.

The *Gabinete de Tratados* will inform the *Dirección General* of the *Cortes Generales*' authorisation of the State's acceptance of the obligations created by the treaty or its acceptance of the remission for informational purposes.

VI. Manifestation of Consent and Entry into Force

In order for a treaty to enter into force, the following conditions must exist:

A) Bilateral Treaties

I. Treaties that enter into force on the date of signing or through the completion of an Exchange of Notes.

The signing of the treaty or the sending of a Spanish note verbale if an Exchange of Notes procedure is being used, can take place once the parliamentary procedures described in Section V have been completed. Once the signing or Exchange of Notes has taken place, the *Dirección General* should send the *Gabinete de Tratados* either the original texts of the signed treaty that correspond to Spain, or the documents that constitute the Exchange of Notes (foreign original and Spanish copy) so that they can be published in the *Boletín Oficial del Estado.*

2. Treaties that enter into force through an exchange of

instruments of ratification.

The *Gabinete de Tratados* will prepare the required instrument of ratification in consultation with the *Dirección General* if necessary. When the *Dirección General* knows the date on which the exchange of ratification instruments is to take place, it will notify the *Gabinete de Tratados* so that the Spanish instrument can be submitted to the Minister of Foreign Affairs and then to His Majesty, the King, for signature.

If the treaty establishes that the exchange of instruments will take place in Spain, the *Gabinete de Tratados* will prepare the Spanish–language version of the Exchange Orders based on the information provided by the *Dirección General.* When the exchange is to take place abroad, the *Gabinete de Tratados* will send the Instrument of Ratification to the appropriate Spanish diplomatic mission.

Once the exchange is completed, the *Dirección General* or the Spanish diplomatic mission will send the original Exchange Records that correspond to Spain to the *Gabinete de Tratados,* together with the original copy of the foreign instrument of ratification so that it can be published in the *Boletín Oficial del Estado.*

3. Treaties that enter into force through an exchange of notifications between the parties to the treaty of compliance with their respective constitutional requirements.

The *Dirección General...* will communicate the treaties compliance with Spanish constitutional requirements for the entry into force of a treaty, and once foreign notification of the same has been received, the original of this last notification along with the Spanish notification will be sent to the *Gabinete de Tratados* so that they can be published in the *Boletín Oficial del Estado.*

B) Multilateral Treaties

1. Treaties that enter into force through signing or accession, or through ratification, acceptance or approval without signing (single act).

When there is only one signature, the treaty can enter into force if the parliamentary procedures described in Section V are carried out.

In all other cases, the *Gabinete de Tratados* will draw up the necessary instrument. When the *Dirección General* knows the date of deposit, it will notify the *Gabinete de Tratados* so that the required signatures can be obtained. Then the *Gabinete de Tratados* will send the signed instrument to Spain's diplomatic mission

corresponding to the country or international organization in which the treaty will be deposited. The diplomatic mission will then send the original of the certificate of deposit to the *Gabinete de Tratados.*

In all cases, Spain's diplomatic mission corresponding to the depositary will send the *Gabinete de Tratados...* the notification from the depositary which states the date of the treaty's general entry into force, its entry into force for Spain, and an updated list of the States that are party to the treaty, so that this information can be published in the *Boletín Oficial del Estado.*

2. Treaties that enter into force through ratification, acceptance or approval without signing.

Once a treaty is signed according to the stipulations found in Section IV, and once the parliamentary procecures are completed, ratification, acceptance or approval proceedings can commence as stated in the previous section.

Spain's diplomatic mission will send the *Gabinete de Tratados* all of the texts and notifications provided by the depositary that are listed in the final paragraph of the previous section.

3. Treaties that enter into force through notification of compliance with constitutional requirements.

In cases in which a treaty enters into force after the depositary receives notification that Spanish constitutional requirements have been met, the Dirección General will, when deemed necessary, give instructions to the Spanish diplomatic mission corresponding to the depositary State or international organization to issue a note verbale to that effect and send a copy to the Gabinete de Tratados together with the acknowledgement of receipt.

The diplomatic mission will also send the Gabinete de Tratados the texts and communications provided by the depositary that are found in the last paragraph of point I.

VII. Publication

1. *The Secretaría General Técnica* will arrange for the publication of international treaties to which Spain is a party in the *Boletín Oficial de Estado* as soon as they enter into force or as soon as an official date of entry into force is known.

2. Publication will entail the inclusion in the *Boletín Oficial del Estado* of the following documents and data:

a) Complete text of the instrument which includes the State's consent to accept the obligations created by the treaty, when an instrument exists. This instrument should include the reservations and declarations that Spain makes to the treaty.

b) The entire text of the treaty whether it consists of a single instrument or two or more related instruments.

c) Any annexes to the treaty.

d) A list of the parties to multilateral treaties...

e) Any objections presented by Spain to the reservations or declarations made by other parties to the treaty.

f) The date of the treaty's entry into force for Spain, and in the case of a multilateral treaty, the date of its entry into force for the other parties.

3. The *Secretaría General Técnica* will also arrange for the publication in the *Boletín Oficial del Estado* of the entire text of treaties that are provisionally applied. When appropriate, the date of entry into force of these treaties will also be published as will the date upon which their provisional application will terminate.

(...)

5. The *Direcciones Generales* and the diplomatic missions will send the *Secretaría General* Técnica the original copy of any communication received related to the following for publication in the *Boletín Oficial del Estado*:

a) The participation of other subjects in multilateral treaties to which Spain is a party, including, when necessary, the reservations and declarations they have made and Spain's objections to these.

b) The withdrawal of reservations and declarations formulated by Spain and of objections made to the reservations and declarations made by other parties.

c) The withdrawal of reservations and declarations made by other parties and the objections made to Spain's reservations and declarations.

d) Denunciations of a treaty to which Spain is a party.

e) Any other international act related to the territorial scope of application, competent authorities, amendment, modification, suspension, termination or annulment of a treaty to which Spain is a party.

VIII. Registration and Certification of Treaties

1. In order to comply with the provisions of article 102 of the United Nations Charter regarding the registration of treaties to which Spain is a party, once their text is published in the *Boletín Oficial del Estado*, the *Gabinete de Tratados* will send a certified and authenticated copy of each of the bilateral treaties to which it is a party and of the multilateral treaties for which our country is the depositary and, for this last group, certificates of any international

act related to these treaties that subsequently take place, to Spain's permanent mission to the United Nations...

2. The *Gabinete de Tratados* is competent to issue certifications of the texts or portions of the texts of all of the treaties to which Spain is a party, which are in force. Likewise, the *Gabinete* is authorized to issue certificates of the legal force or denunciation of treaties when it has that information at its disposal.

3. The *Gabinete de Tratados*, in keeping with current legislation, is responsible for the *Registro de Tratados* of the Ministry of Foreign Affairs and has custody of the original texts of the treaties entered into in Spain and the authorized copies of these treaties and any instrument or communication related to them. Therefore, all original international legal documents received by our diplomatic missions abroad or by the different divisions of this department, and any copies that are issued, should be sent to the *Gabinete de Tratados.*

IX. Derogation Provisions

Circular Orders number 295I dated 1 July, 198I, 3066 dated 28 June, 1985, and 3144 dated 16 February, 1990, are derogated as is any other Circular related to the subject of this Order that is contrary to the provisions of this Order.

Madrid, 17 February 1992. Signed: Fernández Ordóñez".

b) Interaction Between Customary and Conventional Rules

In his intervention before the Committee on Foreign Affairs of the Congress of Deputies on 23 February 1994, to answer a question on the upcoming entry into force of the United Nations Convention on the Law of the Sea (1982), the Minister of Foreign Affairs, Mr. Solana Madariaga, stated the following as regards the provisions found in the Convention related to fisheries:

"... I would like to divide [the provisions] into three parts. First of all, those that are already in force either as customary international law, for example, the freedom to fish on the high seas...

The second group of questions has to do with the provisions that do not constitute current international law, but for which a generalized international practice later developed which converted them into rules of general international law. For example, ..., the idea of an exclusive economic zone...

The third question is related to the provisions on which no international consensus exists or existed prior to this Convention, and those questions on which no consensus has been achieved. In

this group... we find provisions related to the requirement to establish internal rules and to cooperate in the management and conservation of high seas marine resources.

(...)

Therefore, the entry into force of this Convention logically does not affect the first two categories... because they already form part of international law and are already in force.

As regards the third group, these are new rules that are not yet very specific and concrete in practice.

(...)"(DSC–C, V Leg., n. 116, pp. 3716—3717).

c) Conclusion and Entry into Force

In the same intervention, the Minister of Foreign Affairs offered the following explanation:

"... It is true that [the Convention] has already been ratified by sixty countries and can therefore enter into force. Spain's position on this is certainly well–known: in 1982 Spain abstained, in 1984 Spain signed, but we have not yet ratified. We intend to continue in this position of non–ratification which is the position taken by the entire Community.

What is this position based on? It is currently based on the failure to modify what has come to be known as the IIth part, or at least the manner in which this part will be enforced, which is related to the exploitation of the subsoil of the ocean floor.

(...)

... the Spanish Government shares the United Nations Secretary General's desire that this Convention be universally accepted with the necessary modifications, and this is why, together with its Community partners, it is actively participating in the different initiatives sponsored by the Secretary General himself...

This is the position that Spain will continue to support. We are against ratification as long as section XI related to the exploitation of the subsoil of the ocean floor remains unchanged.

(...)" (DSC–C, V Leg., n. 116, pp. 3715—3716).

A few months later, on 18 October 1994, the Government addressed the current situation of this Convention and Spain's position on it, in response to several questions presented before the *Congress*:

"On 28 July, the General Assembly approved a resolution that included an agreement related to the application of Part XI of the

Convention... the Agreement adapts Part XI of the Convention related to the exploration and exploitation of international ocean floors to the principles of market economy. On the other hand, paragraph I of article 4 of the Agreement states that, after its adoption, "any ratification or formal confirmation instrument on the convention or accession to it will also constitute consent for the acceptance of obligations created by the Convention". It is obvious, then, that at this time, the Convention and the Agreement must be accepted together. Spain signed the Agreement *ad referendum* on 29 July, 1994.

(...)

3. Spain abstained in the vote on the Convention taken on 30 April, 1982, within the framework of the III United Nations Conference on the Law of the Sea. Spain did sign the Convention on 5 December, 1984, and included a series of interpretative declarations. Given the complexity and importance of the many questions regulated by the convention, and the scope of the reforms introduced in Section XI, the Government is now carrying out the studies needed to request that, if necessary, the Cortes authorize the ratification of the Convention and the Agreement on Section XI.

4. The Government feels that significant events have recently taken place that affect several countries' opinion of the Convention, especially those that are industrialized or highly industrialized. As we stated, the United Nations General Assembly's adoption of the Agreement on Part XI will truly allow for universal participation in the Convention.

(...)" (BOCG–Congreso.D, V Leg., n. 150, pp. 172—173).

On 9 March 1993, in response to a question presented in the Senate on Spain's position as regards the Gibraltar question ten years after the opening of the grille, the Minister of Foreign Affairs stated:

"As regards the pressure that the Government is exerting within the Community, please be assured that this pressure is being brought to bear virtually every time there is a meeting on some related question. At the present time, a very important legal instrument — the Convention on External Borders — is paralyzed at the insistence of the Spanish Government with the support of the Parliament, which voted unanimously in favor of a resolution to this effect.

Therefore, we believe that we are in a slightly enhanced negotiating position... but as long as this historical dispute is not resolved, we will not be satisfied.

(...)" (DSS–P, IV Leg., n. 152 p. 8443).

The Secretary General of Foreign Policy, Mr. Villar y Ortiz de Urbina, intervened before the Foreign Affairs Committee on 22 December 1993, to respond to a question on the difficulties related to the application of the Brussels Accord on the joint use of the Gibraltar airport. In his intervention, Mr. Villar y Ortiz de Urbina stated:

"... the difficulties related to the enforcement of the so–called 1987 agreement on the airport have not been caused by Spain, but rather by the United Kingdom, who has still failed to formally notify the Spanish Government that the legislation needed to put the agreement into practice has entered into force as is stipulated in article 8 of the agreement found in the joint declaration issued 3 December, 1987.

(...)

The fact that it has been impossible to enforce the agreement has very negative consequences for Gibraltar as well given that part of the community rules, for example, all of the directives related to the liberalization of air traffic, are suspended for Gibraltar, precisely because this agreement cannot be applied. Furthermore, this suspension will remain in effect as long as the agreement cannot be applied. The fact that this bilateral agreement, which is a firm and final agreement between two sovereign States — Spain and the United Kingdom —, has not been applied creates a breakdown of bilateral trust and has had a negative impact on the entire negotiations. On occasion, we have been obliged to adopt a very harsh position which has, in turn, affected our flexibility.

(...)" (DSC–C, V Leg., n. 96. pp. 3084—3085).

On 9 February 1993, the Government stated the following in response to a question presented in the Congress of Deputies on the remission to the Parliament of the successive extensions of the Treaty establishing the Western European Union:

"Last 20 November, on the occasion of the meeting of the Council of Ministers of the WEU held in Rome, the Protocol for the accession of Greece to the Western European Union was signed. The required processing has been initiated for the remission of this Agreement to the *Cortes Generales* for the authorisation of State consent in accordance with article 94 of the Constitution.

Furthermore, in this meeting of the WEU Council of Ministers, the ministers of Foreign Affairs of the WEU member States and representatives of Denmark and Ireland, adopted a 'Declaration on WEU Observers' which is not an international treaty.

Finally ..., the ministers of Foreign Affairs of the WEU member

States and the ministers of Foreign Affairs of the Republic of Iceland, the Kingdom of Norway and the Republic of Turkey, signed a 'Document on the Associate Members of the WEU with reference to the Republic of Iceland, the Kingdom of Norway and the Republic of Turkey'. The required processing for the remission of this agreement in accordance with article 94 of the Constitution has also been initiated.

(...)" (BOCG–Congreso.D, V Leg., n. 376, pp. 86—87).

The failure to establish the Nador–Almería maritime line was the object of a question presented to the Government in the Senate. On 23 October 1993, the Government replied that:

"The provisional enforcement of a Convention is a discretional question that must be evaluated by the parties. This discretional power was not made use of in the case of the modification of the Convention with the Kingdom of Morocco. Furthermore, it should be pointed out that in the Note Verbale which initiated this modification, it is stated that the new Convention '... will enter into force once both of our Governments have made notification through diplomatic channels that all constitutional requirements have been met'. At the present time, this matter is going through the proper parliamentary procedures ...

Furthermore, ... it is important to point out that Spain has a sovereign right to determine the limits of its terrestrial and maritime borders; that is, to determine the ports or points of entry/exit that form part of the concept of a common external border, and this sovereignty is expressly recognized by the European Community.

The Spanish Government does not wish to impede the establishment of any of FerryMaroc Ltd.'s maritime lines between Spain and Morocco, or those of any other company for that matter, but given the financial and human resources that will be needed for such a venture, a decision of this type can only be made after having coordinated the efforts of the Ministries of the Interior (immigration and emmigration police), Economics and the Treasury (customs), and the Secretary of State for the European Communities (community rules) — which is what we are doing now —.

(...)" (BOCG–Senado.I, V Leg., n. 32, pp. 74—75).

The parliamentary processing of the Agreement on the European Economic Space was the subject matter of the intervention of the Minister of Foreign Affairs before the Full Senate on 17 November 1993. During this intervention, the Minister stated the following:

"(...)

I believe that this Treaty has reached the Parliament at a very opportune moment, I would say at the right moment, given that the Treaty of the Union has been ratified by all of the countries and is now in force.

(...)

The European Union is a reality from a formal legal perspective, and therefore there should be no problem or concern as regards Spain's ratification of the European Economic Space.

Therefore, on behalf of the Government, I ask that you vote in favor of what I believe to be a good decision for Spain, good for its economy, and therefore, good for its citizens.

(...)" (DSS–P, V Leg., n. 12, p. 414).

Finally, on 15 March 1994, the Government, in response to a question presented in the Congress of Deputies on the reasons for the delay in the publication in Spain of the Treaty on European Union, stated:

"The *Cortes Generales* authorized State consent for the ratification of the Treaty on European Union by approving Organic Law I0/1992 on 28 December, 1992.

The Instrument of Ratification was signed by His Majesty the King on the 29th of that month and deposited with the Italian government on the 31st, the date on which Spain became a party to the Treaty on European Union.

In order for this Treaty to enter into force, it was necessary for the twelve member States of the European Community to deposit their instruments of ratification, as is stipulated in Article R. After Spain did so, there still remained Portugal (16.2.93), Denmark (17.6.93), the United Kingdom (2.8.93), and the Federal Republic of Germany (13.10.93).

Only after this, and in accordance with section 2 of Article R, could the date of 1 November, 1993, be set for the entry into force of the Treaty.

Once the Treaty was ratified by all of the member States of the Union, in order for it to be published in the *Boletín Oficial del Estado,* a complete text of the treaty, duly certified by the depositary, had to be presented in order to meet the requirements of current Spanish domestic rules.

Although an original certified official copy was received from the depositary, we all know that the text of the Treaty underwent subsequent technical and stylistic corrections. Therefore, in order to guarantee the contents that were to be published, a new certified

copy of the final text was requested from the depositary.

The Embassy of Spain in Rome obtained this certified copy from the Italian Ministry of Foreign Affairs at the end of December, 1993, and the Ministry of Foreign Affairs received it on the 28th of that month. Once it was received, the certified copy was sent to the *Boletín Oficial del Estado* on 4 January, 1994, and the text of the Treaty was published on 13 January, 1994.

(...)" (BOCG–Congreso.D, V Leg., n. 74, p. 182).

d) Reservations

In the letter dated 12 January 1993, addressed to the Secretary General, the Permanent Representative of Spain to the United Nations, Mr. Yáñez–Barnuevo, informed the Secretary of the withdrawal of the reservation presented by the Spanish Government when it deposited the instrument of ratification of the General Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare:

"On instructions from my Government, I have the honour to inform you of a decision taken recently concerning the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

Spain signed the Protocol on 17 June, 1925, and deposited the corresponding instrument of ratification on 22 August 1929, with the French Government, the depositary of the Protocol. On that occasion, the Spanish Government entered the following reservation:

'Declares as compulsory *ipso facto* and without special agreement in relation to any other Member or State accepting and executing the same obligation, that is to say, on condition of reciprocity, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva, June 17, 1925'.

Spain has no such weapons and its defense plans make no provision for their use.

Furthermore, in paragraph 8 of its Final Declaration, the Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction stressed the importance that it attached to the

withdrawal of such reservations.

Spain has also said that it intends to be one of the original signatories to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, which was the subject of resolution 47/39 recently adopted by the General Assembly.

I am pleased to inform you that on 23 December 1992, the Spanish Government informed the depositary Government that it had decided to withdraw the reservation entered on 17 June 1925. Such withdrawal took effect on 28 December 1992.

I should be grateful if you would have this letter distributed as a document of the General Assembly under the item entitled 'Chemical and Bacteriological (Biological) Weapons'.

(...)" (UN Doc. A/48/62).

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

Note: See II.I.*a) In General*

On 11 February 1994, Spain's Permanent Mission to the United Nations addressed a Note Verbale to the Secretary General regarding the enforcement of Security Council Resolution 883 (1993):

"With regard to the freezing of funds or other financial resources owned or controlled, directly or indirectly, by the public authorites of the Libyan Arab Jamahiriya or by Libyan undertakings provided for under paragraph 3 of the resolution, the Council of Ministers has adopted Royal Decree 2120/1993, dated 3 December, by which prior authorisation is required from the Office for International Economic Affairs and Foreign Trade of the Ministry of Economy and Finance as regards any act relating to the disposal of stocks, accounts or other financial assets attempted by the Libyan public authorites or individuals or bodies corporate resident in the Libyan Arab Jamahiriya acting on behalf of the former. Authorisation by the same Office is also required as regards any payment or transfer from Spain to such authorities or individuals or bodies corporate.

With regard to the prohibition of any provision to the Libyan Arab Jamahiriya of the items listed in the annex to Security Council Resolution 883 (1993), pursuant to paragraph 5 of the resolution, the

Council of Ministers of the European Community, in Regulation 3274/93, of 29 November, has incorporated the prohibition into Community legislation. An Order of the Ministry of Trade and Tourism, of 27 December 1993, has been adopted in implementation of (EC) Regulation 3274/93, prohibiting the direct or indirect export to the Libyan Arab Jamahiriya of the items listed in the annex to Security Council Resolution 883 (1993).

(...)" (UN Doc. S/1994/162).

On 26 July 1994, the Permanent Mission sent a Note Verbale to the Secretary General of the United Nations on the situation in Haiti and the measures adopted in relation to the application of paragraph 13 of Security Council Resolution 917 (1994):

"... in accordance with paragraph 13 of Security Council Resolution 917 (1994), dated 2 June 1994, the following legal provisions, which are directly applicable in Spain, have been published in the Official Journal of the European Communities:

1. Regulation (EC) N. 1263/94 of the Council of the European Union, dated 30 May 1994, suspends certain economic and financial relations with Haiti;

2. Regulation (EC) N. 1264/94 of the Council of the European Union, dated 30 May 1994, prohibits any satisfaction of claims by the Haitian authorities relating to contracts and transactions affected by the measures imposed under United Nations Security Council resolutions 917 (1994), 841 (1993), 873 (1993) and 875 (1993) or approved in accordance therewith;

3. A recommendation of the Council of the European Union, of 30 May 1994, relating to the suspension of certain economic and financial relations with Haiti;

4. A decision of the representatives of the States members of the European Coal and Steel Community, meeting in the Council on 30 May 1994, suspending certain economic and financial relations with Haiti (94/314/CSCE);

5. A decision of the Council of the European Union, 30 May 1994, relating to the common position determined on the basis of article J.2 of the Treaty of the European Union on restricting economic relations with Haiti (94/315/ECSC). This decision provides the basis for the regulations referred to in paragraphs 1 and 2 above.

Furthermore, an Order dated 13 June 1994 of the Ministry of Economic Affairs and Finance establishes a requirement for prior administrative authorisation in respect of imports and exports of all goods originating in or bound for Haiti, with the exception of food

products and supplies intended solely for medical use.

Lastly, the Ministry of Foreign Affairs has transmitted appropriate instructions to all consular and diplomatic offices of Spain providing for denial of entry visas into Spanish territory to any person included in the categories referred to in paragraph 3 of Security Council Resolution 917 (1994).

(...)" (UN Doc. S/1994/872).

IV. SUBJECTS OF INTERNATIONAL LAW

1. International Status

a) *In General*

Note: *See* VI.2. The Foreign Service

The Minister of Foreign Affairs, Mr. Solana Madariaga, appeared before the Committee on Foreign Affairs of the Congress of Deputies on 21 December 1993, to report on his department's policy on Andorra:

"Andorra has privileged relations with Spain for several reasons. In addition to the many different kinds of ties that have been developed over the last 700 years, we can cite the 1993 passage of a Constitution which entered into force last 5 May which gives the principality a parliamentary system based on popular sovereignty, the separation of powers and respect for fundamental rights.

It is important to remember the role that the the Bishop of Seu d'Urgell, Monseñor Martí Aramís, had in this process and the very important influence he exterted a few years ago that resulted in the incorporation of the United Nations Declaration of Human Rights into the Andorran legal system.

(...)

The Constitution of Andorra was approved by referendum last 8 March by an overwhelming majority. This means that the Andorrans have assumed full internal and external sovereignty and have established a western–type democratic system based on a classic democracy in the form of a parliamentary co–principality. As I stated earlier, this will reinforce our ties, and the bilateral relations that are now being established will be from State to State, as with

any other country, and not through a sovereign co–principality as was the case prior to this. This constitution maintains the traditional divided Head of State in which one of the co–principals is Spanish, a fact that throughout history has been and is still extremely important in terms of our foreign policy with the Principality.

(...)

... under the new Constitution, sovereignty does not reside with the co– principals but with the people, which is a major change in terms of Andorra's foreign relations. (...) ... Andorra's executive branch directs foreign relations, thereby assuming, within International Law, a capacity that the Principality has exercised, although in a somewhat limited manner, throughout its long history

(...)

... the first additional disposition of the Constitution stipulates the conclusion of a trilateral treaty between Andorra, Spain and France for the purpose of establishing a framework for Andorra's relations with these two countries based on a respect for sovereignty, independence and territorial integrity.

Therefore, a good neighbour, friendship and cooperation treaty was negotiated and signed on I June 1993, between the three States, with the stipulation that provisional application would begin at the time of signing given the deadlines for the entry into force of the Constitution. As a consequence of this, Spain and France have formally recognized the State of Andorra and have established diplomatic relations. Spain has established an embassy in the former bishop's seat that disappeared with the entry into force of the Constitution. The ambassador presented his credentials before the two co–principals, and Spain also has a Consulate General that is run by two career diplomats who have begun to carry out their functions in cooperation with the Andorran authorities.

Spain and France have pledged to support the diplomatic and consular activity of Andorra in third States in which it has no representation. Andorra can ask either France or Spain equally and without distinction to protect its interests abroad.

(...)

... one consequence of the passage of the 1993 Constitution was Andorra's admission into the United Nations as member 184, the ILO and UNESCO.

(...)

The Principality also wishes to become part of the WHO, the UPU, and after the general election, which is to be held on 12

December, Andorra will be invited to become a member of the Council of Europe, a move which the Ministry of Foreign Affairs supports fully.

(...)

In conclusion, the strength and extension of the ties that bind Spain and Andorra, the support for the steps taken to establish a democratic system, and our collaboration on their admission to international organizations all contribute to the favorable relations that exist between Andorra and Spain.

(...)" (DSC–C, IV Leg., n. 94, pp. 2996—2998).

b) Immunity of Foreign States and their Organs and Property

On 5 March 1993, the Administrative Council of the Port Authority of the Bay of Cádiz agreed to initiate a sanctioning proceeding against the Moroccan navy vessel called "Al–Rahnani" for illegal dumping in the port of the Bay of Cádiz. This agreement was revoked on 28 January, 1994, by virtue of the principle of State immunity:

"Having seen the reports issued by the case investigator and the International Legal Advisory Board of the Ministry of Foreign Affairs, which includes recognition of the sovereign immunity of war ships, prohibits administrative or penal jurisdictional acts and, *a fortiori*, enforcement acts against the ship or its crew, in the name of all here present, it is hereby unanimously agreed:

— To withdraw the complaint initiated against the Morrocan navy ship called "Al–Rahnani" for illegal dumping in the inner harbor of the Port of Cádiz, given its sovereign immunity.

— To inform the Consul of the Kingdom of Morocco in Málaga and the president of the Cádiz Nautical Club who, in representation, appears as the injured party in the complaint.

(...)".

2. Recognition of States

Note: See IV.1.*a) In General*; VI.1 Participation in Foreign Policy.

a) Eritrea

The referendum carried out in Eritrea in April, 1993, was the subject of the following declaration issued by the twelve members of the

European Community within the framework of European Political Cooperation on 29 April 1993.

"The Community and its member States are very pleased with the great success of the referendum held in Eritrea on 23—25April, 1993.

Through this referendum, registered voters showed they were almost unanimously in favor of independence for Eritrea, thereby peacefully ending the conflict that has lasted for more than 30 years.

The EC observation teams declared that the elections took place without any important incidents and that the results clearly reflect the choice of the majority of the Eritrean people.

Therefore, the Community and its member States are pleased with the birth of the Independent State of Eritrea and will now issue the necessary dispositions, at the national level, to recognize Eritrea as a new member of the international community.

(...)".

A few months later, the Office of Diplomatic Information of the Spanish Ministry of Foreign Affairs made public the following communiqué regarding the establishment of diplomatic relations between Spain and Eritrea, dated 5 October 1993:

"The Kingdom of Spain and the State of Eritrea have agreed, on this date, to establish diplomatic relations and to proceed as quickly as possible to the accreditation of ambassadors.

The Kingdom of Spain and the State of Eritrea do hereby declare their desire to develop their relations in a spirit of friendship and cooperation based on the principles of mutual respect, sovereignty, territorial integrity, political independence, equality and non–interference in the internal affairs of both States.

The Kingdom of Spain and the State of Eritrea are convinced that there exist great possibilities for cooperation on political, economic, cultural and other mutually beneficial undertakings.

Both States are willing to contribute to the advancement of the international community based on a respect for peace and international law and are committed to promoting the goals and principles of the United Nations Charter.

(...)".

b) Belize

Note: See SYIL, vol. I (1991), pp. 49—50, vol. II (1992), pp. 143—146.

As regards the recognition of Belize by Guatemala, the twelve member States of the European Community within the framework of European Political Cooperation, made the following statement on 12 July 1993:

"The Community and its member States are pleased that Guatemala, on 28 June, clearly and decisively reaffirmed its recognition of Belize and pledged to continue to build closer relations with this country. [The Community] believes that this affirmation will significantly contribute to regional stability and hopes that the relations between Guatemala and Belize continue to improve until a complete and definitive solution is found for their territorial disagreement.

(...)".

c) Republic of Macedonia

On 23 March 1993, in response to a question presented in the Congress of Deputies on Spain's position as regards the recognition of the Republic of Macedonia, the Government declared:

"... the Spanish position has been conditioned by the statements made by one of the Community countries, Greece, which, as we all know, has claimed all along that the Macedonia situation is a problem that directly affects its interests.

This is why, at the present time, the Government does not have any plans to recognize the Yugoslav Republic of Macedonia and feels that the solution might be found in the draft Resolution that Spain, France and the United Kingdom are elaborating in the Security Council. This draft proposes the immediate admission of Macedonia to the United Nations with the provisional name of 'Former Yugoslav Republic of Macedonia' and the subsequent mediation of Cyrus Vance and David Owen in order to find a mechanism by which to resolve the differences that exist as regards the name, and to promote measures to create trust between the parties.

(...)" (BOCG–Congreso.D, IV Leg., n. 396, p. 149).

At a later date, on 16 February 1994, the Minister of Foreign Affairs, in an appearance before the Foreign Affairs Committee of the Congress, responded to a question on the Government's position as regards the fact that five European Union countries had established diplomatic relations with Macedonia. He said:

"We recognized the Republic of Macedonia on 8 April, 1993,

when the Security Council, and later the United Nations General Assembly, voted in favour of admitting this former Yugoslav republic as a new State with full rights in the United Nations. ... this vote should be considered a formal act of recognition that does not require any subsequent formal declaration to support it. By recognizing the former Republic of Macedonia, Spain, of course, accepts its identity and its capacity to act as a subject of law, and this recognition shows the government's willingness to accept the new state as the substitute for the former Yugoslavia as regards responsibility in international relations in the territory whose borders remain clearly defined. ... Spain recognizes the former Republic of Macedonia in the same spirit as the United Nations voted in favor of the admission of this new State; that is, it does so by assigning it a provisional name and, through Security Council Resolution 817, by formally calling for good–faith negotiations between Greece and the Republic on their bilateral differences which I will recount here very briefly. Greece feels that the first article of the new Republic's constitution, the Vergina star used in its flag, and any other name that incorporates the word Macedonia in one way or another is a direct affront to the territorial integrity and traditional historical identity of the Greek nation. These are basically the three differences that exist (the first article of the constitution, the name and some of the emblematic symbols that are used in the coat of arms and on the flag). Ever since this dispute arose, Spain has expressed its position in both the Security Council — in what I would consider a significant manner — and in the European Union, in favor of a logical solution to this conflict, a negotiated solution that satisfies the rights of both neighbouring countries as much as possible.

On the other hand, the Government has not considered it wise to establish diplomatic relations with the former Republic of Macedonia for several reasons, which, ... in any case, ... should not be viewed in any way as an unfriendly act towards the former Yugoslav Republic of Macedonia, but just the opposite, as an act of cooperation and assistance with the peaceful resolution of the differences that exist between Macedonia and Greece.

(...)" (DSC–C, V Leg., n. 110, pp. 3507—3308).

A few months later, on 30 June 1994, the Government replied to a question presented in the Senate on this matter in the following way:

"...the Government believed it was wise to delay the establishment of diplomatic relations with the new Republic in order

to promote dialogue and negotiations between Skopje and Greece on the several questions on which they disagree.

We believed that this was the best way to support the establishment of a viable and effective framework in which the countries could negotiate and to make the parties involved understand the need to find common ground in order to resolve these differences as quickly as possible. In this regard, Spain expressed its concern to the Greek authorities about the imposition of the trade embargo against the Former Yugoslav Republic of Macedonia, and made them see that our Government hoped that Greece would be flexible enough to solve the differences that existed in a relatively short period of time.

Knowing that this was the only reason for the delay in establishing diplomatic relations with the Former Yugoslav Republic of Macedonia, Spain plans to establish relations soon and to comply with the stipulations of the proposal approved last 23 February by the Foreign Affairs Committee of the Congress of Deputies. There is no reason for the delay in the establishment of relations, but the Government reserves the right to evaluate the appropriate moment for doing so and will take into account the progress being made in the conversations between Greece and Skopje and will always attempt to guarantee the principle of stability in this region, to the greatest extent possible.

Madrid, 20 June 1994.— The Minister" (BOCG–Senado.I, V Leg., n. 142, pp. 22—23).

d) Republics of Kiribati, Nauru and Tuvalu

On 17 May 1994, the Council of Ministers approved the establishment of diplomatic relations with the Republics of Kiribati, Nauru and Tuvalu:

"The Council of Ministers has approved the establishment of diplomatic relations with the Republics of Kiribati, Nauru and Tuvalu.

The Republic of Kiribati is the new name for the Gilbert Islands, in Micronesia. It is square kilometers in size and has a population of 59,000 inhabitants according to the 1980 census. Its capital is Bairiki. Kiribati belongs to some of the international organizations that form part of the United Nations system such as the ICAO, the IMO and the South Pacific Commission.

The Republic of Nauru is 21.4 square kilometers in size and has

7,020 inhabitants according to the 1980 census. Its capital is Yaren. It belongs to the ICAO, the Universal Postal Union, and the South Pacific Commission.

The Republic of Tuvalu is 27 square kilometers in size and has 7,500 inhabitants. Its capital is Funafuti. It is a member of the South Pacific Commission.

Once the establishment of diplomatic relations with these republics has taken effect, we will proceed to name as mission head our embassador in Canberra who will thus have multiple accreditation.

(...)".

3. Succession of States

The Spanish Government, depositary of the Barcelona Convention (16 February 1976), on the Protection of the Mediterranean Sea from Pollution and its complementary Protocols, sent a note verbale on 21 January 1993, to the governments of the party States to notify them that the Republic of Croatia would succeed the Socialist Federal Republic of Yugoslavia in these conventions, with effect from 8 October, 1991:

"The Minister of Foreign Affairs ... as regards the Convention for the Protection of the Mediterranean Sea against Pollution, the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft, the Protocol on cooperation in combating pollution of the Mediterranean Sea by oil and other harmfull substances in emergency situations done in Barcelona on 16 February 1976, the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources done in Athens on 17 May 1980, and the Protocol concerning Mediterranean specially protected areas, done in Geneva on 3 April 1982, of which Spain is the depositary, has the honor of notifying you, and requesting that you notify the Government of your country, that, not having received objections from any party State to the aforementioned Convention and Protocols before 31 December 1992, the Republic of Croatia will be considered a party State to these conventions by virtue of succession from the Socialist Federal Republic of Yugoslavia, as of 1 January 1993.

At the request of the government of Croatia, ..., this notification of succession will be considered to take effect as of 8 October 1991, the date of the independence of the Republic of Croatia.

The government of the Republic of Croatia, in accordance with paragraph 3, article 22 of the Convention, does declare that it recognizes the application of the arbitration procedure stipulated in the provisions of Annex A as compulsory ipso facto with no need for a special convention as regards any other party that also accepts this same obligation.

(...)".

On 30 September 1994, the Council of Ministers approved an agreement on interference in Spanish–Czechoslovak treaties:

"The Council of Ministers has approved an agreement which recognizes the Exchange of Letters between the Czech and Spanish ministers of Foreign Affairs confirming the legal force of Spanish–Czechoslovak treaties.

In October 1993, a few months after the disappearance of the Federative Republic of Czechoslovakia, the Czech government formulated a general declaration (by which it assumed the rights and obligations of the former Czechoslovak state).

However, at the beginning of last February, representatives of the Ministries of Foreign Affairs of both Spain and the Czech Republic met to negotiate in Madrid, and they prepared a list of twelve bilateral treaties plus the protocol for collaboration between Spain and the former Czechoslovakia, in which the succession of the Czech Republic was accepted and the legal force of these treaties would be confirmed by means of an Exchange of Letters between the Ministers of Foreign Affairs.

(...)".

4. Self–Determination

Note: See V.4.*b) Minorities and Self-Determination*

a) In General

The report of the United Nations Secretary General on the right of peoples to self– determination includes the Spanish government's point of view as expressed on 3 August 1993:

"1. Spain recognizes the right to self–determination and independence of all peoples still subject to colonial domination, alien subjugation and foreign occupation and faithfully complies with the relevant resolutions of the United Nations.

2. Spain supports the right of the Palestinian people to self–determination. It is Spain's view that the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War applies to the occupied territories and that Israel must comply with the Convention, as well as with Security Council resolution 799 (1992) of December 1992 demanding the immediate return of all those deported. Spain views the Palestine Liberation Organization as the legitimate representative of the Palestinian people.

3. Spain has supported and will continue to support the economic development of Namibia and the promotion of democracy in that country.

4. Spain has rejected and continues to reject apartheid, faithfully complies with United Nations resolutions aimed at the eradication of apartheid and applies all Community measures aimed at attaining a united, democratic and non–racial South Africa through peaceful means and negotiation.

5. Spain supports the peace process in Mozambique, having provided 20 military observers to the ONUMOZ contingent and committed 350 million pesetas in aid in connection with the return and re–insertion of the refugee and displaced population and assistance in the electoral process.

6. Spain fully supports the efforts of the Secretary General to implement the plan to settle the question of Western Sahara.

7. Spain vigorously condemns human rights violations of peoples still subject to colonial domination and alien subjugation as well as other such violations.

(...)" (UN Doc. A/48/384, p. 9).

b) Sahara

In response to a parliamentary question on the activities carried out by the Spanish Government as a member of the United Nations Security Council to hold a referendum on the Western Sahara, the Secretary General of Foreign Policy, Mr. Villar y Ortiz de Urbina, stated the following on 22 December 1993:

"The activities that the Spanish Government is carrying out as a non–permanent member of the Security Council in relation to Western Sahara, have as their main point of reference the position that Spain has maintained since 1976 when it withdrew its administration from that territory.

Much more recently, Spain... was pleased to accept... Security

Council Resolutions 658 and 690... that charged the United Nations Secretary General with the organization of a referendum to be directed by the Security Council itself in accordance with the provisions of the peace plan that the secretary himself had designed. From the first moment, Spain offered its complete cooperation to the Secretary General in order to ensure the correct development of the referendum, and this offer was accepted. The Spanish contribution, as regards financing, logistics and technical support, has consisted of approximately two million dollars which is an obligatory contribution to the Minurso budget, four million dollars as a voluntary cash contribution, and close to one million dollars more in modes of transport. The 1974 Spanish census was also provided, as this is the only census that has ever been done in this territory. Other documents that would be useful in identifying Saharans were also provided, as were the services of experts in this field ... and different logistical and health–related services in Las Palmas de Gran Canaria.

... As a demonstration of our support for the peace plan, Spain has carried out constant diplomatic activities, which in our opinion have been constructive, by means of bilateral contacts with all parties: the governments involved, United Nations representatives, the Secretary General himself and his office and successive special representatives.

(...)

As regards the current status of the peace plan, we find ourselves in the wake of the application of Security Council Resolution 809, unanimously approved last 2 March. Spain participated very actively in the elaboration of this resolution, which was complicated and very delicate, and which correctly reflects our main concerns. I will make special mention of two of these.

First of all, we must make sure that this consultation with the population in general is not delayed indefinitely. In the second place, the Secretary General should intensify his efforts to discuss with the parties involved, the important question of the interpretation and application of the criteria that will determine who can vote in the referendum, and initiate the process of indentifying and registering voters, beginning with those who are included in the 1974 Spanish census...

(...)

... another important aspect of this problem is the issue of direct contact between the parties.

(...)

We are most definitely in a very delicate phase of the process, but you can be sure that Spain will continue to exert or try to exert as much positive influence as possible from its position as a non–permanent member of the Security Council, in order to try to resolve all of the difficult problems that are still pending so that, by applying the Secretary General's peace plan, this conflict can end and a just and lasting peace can be established in this region of the Maghreb which is so close to us.

(...)

... For a very long time now, we have been trying to encourage direct contacts, and some have even taken place (...). ... the fundamental objective of these contacts is to try to encourage a political solution which, in our opinion, should constitute perhaps a third option; that is, an option that is somewhere between the two extremes that are being considered at this time in the peace plan; ... these two lines are the pure and simple integration [of Western Sahara] into the Kingdom of Morocco or total and absolute independence. It is clear that neither of the two parties is willing, at this time, to enter into negotiations to find an intermediate solution.

(...)" (DSC–C, V Leg., n. 96, pp. 3079—3081).

On the other hand, on 1 June 1994, the Spanish Minister of Foreign Affairs, Mr. Solana Madariaga, appeared before the Foreign Affairs Committee of the Congress of Deputies to report on the evolution of the situation in Western Sahara, taking into account the most recent messages received from His Majesty the King of Morocco. Mr. Solana Madariaga explained:

"Perhaps the most important piece of information that I can report on is the approval of Resolution 907 on 29 April...

(...)

... the Secretary General submitted three options for immediate action to the Council. These three can be briefly summarized as: Option A: carry out a referendum, even though one of the parties is opposed; Option B: have the Secretary General continue to work with the parties to unblock the situation; and the so–called Option C: withdraw or reduce the Minurso, the United Nations land forces.

... In Resolution 907, unanimously approved last 30 March, the Security Council basically states that it is in favour of Option B and states that the Commission for Identification should complete the process of identification and registration of voters no later than 30 June 1994....

(...)" (DSC–C, V Leg., n. 225, p. 6835).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Nationality

2. Diplomatic and Consular Protection

a) Exhaustion of Internal Recourses

On 9 March 1994, the Minister of Foreign Affairs, in response to a parliamentary question, reported on the the attempts made by the Spanish government before the Bolivian government to clarify the circumstances surrounding the assassination of the Spanish citizen Manuel Ramón Puchol:

> "From the time it received notification of this terrible assassination, the Spanish Foreign Service began to use all of the mechanisms at its disposal, including contacts with the Chancellor of Bolivia with whom several conversations were held, and all of the services offered not only by the ambassador but by the entire embassy and the Ministry itself ...
>
> At this time, ... seven individuals who have been discharged from the Army are in custody. The lieutenant colonel who was garrison head, has also been discharged. ... We will continue to exert the same type of pressure until those responsible are convicted.
>
> (...)" (DSC–P, V Leg., n. 56, p. 2706).

On 21 December 1994, the Spanish government made a statement regarding the case of Carmelo Soria, a Spanish national who was allegedly tortured and assassinated by members of the Chilean police and army in 1976 at which time he was working as an employee of the United Nations. The government stated:

> "In conjunction with Chilean authorities, the Spanish government is closely following the judicial proceedings on the kidnapping and assassination of Mr. Carmelo Soria, a Spanish employee of the United Nations Economic Commission for Latin America, who was arbitrarily detained in Santiago by a military brigade on 14 July 1976.
>
> The government has made every attempt from the outset of the proceedings to completely clarify the facts, and is confident that, once the facts are proven by the corresponding judicial organ, the decision issued by the minister of the Supreme Court will be just and fair and will demand responsibility be taken.
>
> (...)".

3. Aliens

a) Refugees

On 21 December 1993, the Minister of Foreign Affairs informed the Foreign Affairs Committee of the Congress of Deputies about the situation of refugees in Spain and offered data on the refugees accepted by Spain in the last few years:

"The 1984 law, which regnlates the right to asylum and refugee status, establishes conditions and competence in matters of asylum, which is attributed to the Government at the request of the interministerial commission to which you have referred, within the Ministry of the Interior. This commission is composed of representatives from the Ministries of Social Affairs, Justice, Interior and Foreign Affairs. The Ministry of Foreign Affairs' participation in matters of asylum is based on the fact that this is an activity that forms part of foreign policy, especially as regards consular activity. This question is related to the policy on visas, which is how the Ministry participates in the task of controlling illegal immigration.

The competencies of the Ministry do not include following–up the situation of refugees from other countries here in Spain, as the Congressman who posed this question is well aware. What, then, have the Ministry's activities been concerned with? Fundamentally two areas. First, the Ministry participates in the procedure established by current legislation for the examination of applications for asylum and refugee status in accordance with the law and the conventions to which Spain is a party, especially the 1951 Geneva Convention on the Statute on Refugees. Second, Spanish representatives abroad also process applications for asylum, as is to be expected.

According to the statistics available to the interministerial commission — and this was one of the questions posed by the Congressman — as of 31 December 1992, the number of individuals who have been granted asylum in Spain was 2,685 out of a total of 29,339 applications. Those with refugee status numbered 2,202 out of 34,900 applications. In the period from January to September 1993, 1,125 petitions for asylum or refugee status were granted out of 9,486 applications. This shows a considerable increase in both the number of applications filed and in the number of petitions granted.

(...)" (DSC–C, V Leg., n. 94, pp. 2991—2992).

On 12 April 1994, the government of Spain, in response to a parliamentary question, reported on policies related to the acceptance of refugees from the former Yugoslavia and especially from Bosnia and Herzegovina:

"Spain is not currently the country that accepts the lowest number of Bosnian refugees. The Government offered a quota of 1,000 persons (formally detained individuals and their relatives) through the Government Program for Former Bosnian Detainees, in collaboration with the United Nations High Commission on Refugees (UNHCR) and the International Red Cross (IRC).

Countries that have offered a lower quota are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, Greece, Italy, Luxembourg, Malaysia, Holland and New Zealand.

Those that equal our numbers are: Poland and the United States.

The only countries which surpass our quota are Germany, Norway, Switzerland and the United Kingdom.

Nevertheless, certain countries have established transit camps and special quotas inside their territory.

Spain is the only country that grants the refugee status found in the Geneva Convention dated 28 July 1951, to former detainees and their relatives. In other countries, these individuals are only granted this status until the war ends.

Regarding the quota offered through the Government Program, there are now 588 individuals in Spain, but the quota has still not been completely covered. This is not due to a lack of interest on the part of the Government, but rather to the difficulty in the processing that UNHCR and IRC must complete first to liberate these individuals and then to locate and evacuate their family members who are dispersed throughout Bosnia–Herzegovina.

We are currently expecting another 104 people, 45 of whom are ex–detainees whose arrival is imminent as they are already in a transit centre in Korkula (Croatia). Efforts are being made by UNHCR and IRC to locate and evacuate their family members from Bosnia–Herzegovina and bring them to Spain.

Given that the quota of 1,000 people has not yet been filled, we do not feel it is necessary at this time to expand this program. If the need exists in the future to increase this number, it will be done. However, we must also think about providing for the needs of the 1,378 individuals who are presently in Spain as the result of private initiatives and who are experiencing certain difficulties, especially in economic terms.

Therefore, given that there are 1,976 individuals from Bosnia–Herzegovina in Spain, who have entered through a variety of special programs, and that the quota of the Government Program has not yet been reached, and considering that some of the private programs are experiencing some difficulties, we do not feel it is necessary nor wise to increase Spain's acceptance of refugees at this time.

We must also keep in mind that there are Bosnians who have arrived in Spain by their own means, and that these individuals usually request asylum, and that after their cases are studied, they are granted asylum or are at least allowed to stay in Spain under the TPT regime (128 cases, 182 individuals in 1993).

(...)" (BOCG–Congreso.D, V Leg., n. 83, pp. 196—197)

4. Human Rights

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

In the meeting of the European Council on the 10—11 of December 1993, the twelve member States of the European Community, within the framework of Foreign Policy and Common Security, made the following common declaration:

"On the 45th anniversary of the Universal Declaration of Human Rights, the European Union does solemnly reconfirm its acceptance of these rights. This declaration expresses the common concept that all the peoples of the world have on the inalienable rights inherent to all human beings, and thereby constitutes the basis for the legitimate and permanent actions undertaken by the international community so that all of these rights are protected and promoted as this respect also contributes to the establishment of the conditions needed for peace, security and lasting development.

The European Union participates fully in these actions and can cite the Declaration of the European Council of 29 June 1991 on Human Rights and the resolutions of the "Development" Council of 28 November 1991 and 18 November 1992. The respect for and promotion of human rights and basic freedoms, and the development and strengthening of democracy and the state of law is an integral part of its foreign and common security policy.

The European Union actively participated in the World

Conference on Human Rights held in Vienna this year which produced a Final Document that included a definition of the principles and orientation for the actions that the international community as a whole plans to carry out in the next few years in the area of human rights.

In keeping with this Final Document, the European Union recognizes that human rights are universal, indivisible, interdependent and closely linked. The respect for human rights is a legitimate concern of the international community and all States are obliged to protect and promote them, regardless of their political, economic, or cultural system.

The Final Document from Vienna emphasizes the interdependence that exists between democracy, development and respect for human rights and basic freedoms. All human beings are entitled to benefit from the right to development. If development facilitates the promotion of all human rights, then it is clear that the lack of development somehow limits those internationally recognized rights. The European Union is committed to making the human rights–democracy–development nexus the central axis of its common policy as regards cooperation with third countries.

The European Union is pleased that the World Conference in Vienna has given great importance to the strengthening of the respect for the rights of women and has taken into account the need to increase protection for and the integration of vulnerable or unfavoured groups.

The European Union has pledged to actively contribute to the application of the set of recommendations found in the Final Document of the World Conference on Human Rights. The European Union gives special importance to the worldwide strengthening of the programs, the United Nation's protective and control measures and the creation of a post as High Commissioner for Human Rights.

We believe that 45 years after the proclamation of the Universal Declaration of Human Rights, the international community must set as one of its goals the eradication of the many human rights violations that are committed all over the world, and the creation of the conditions needed for all citizens, regardless of where they are, to benefit from the protection of these rights.

(...)".

On 22 June 1994, the Government, in response to a parliamentary question, explained Spain's position as regards the armed conflict that

is taking place in northern Turkey, and especially its position as regards the bombing of the Kurdish civil population by the Turkish army in May:

"It is true that Turkey has been experiencing an armed insurrection directed by the PKK for several years now. The PKK is a group that carries out military actions, mainly in the southeastern provinces of the country, but it has also carried out terrorist acts in the main cities, and in one of the most recent attacks for which this organization claimed responsibility, a Spanish citizen was killed and two others were severely inquired.

This situation of insurrection and terrorist acts has unfortunately provoked an inevitable, but still unfortunate, action–repression response of which innocent people are frequently the victims. In general terms, this dynamic affects the civilian population in the regions where this type of reaction takes place, and these people not only suffer the direct consequences of these types of actions, but they are also frequently forced ... to move to other parts of Turkey or even to neighbouring countries.

Allow me to try to briefly synthesize the Government's position on the Kurdish question in general — which is very complex and delicate —, and also to specifically address the actions of the PKK.

First of all, Spain fully supports the territorial integrity of Turkey, just as we support, of course, the territorial integrity of Iran where there is a very serious problem related to the Kurds and where there have also been secessionist movements.

In the second place, we support the fight against PKK's terrorist acts and against those of any other organisation that resorts to terrorism, because whatever the cause, and regardless of how legitimate that cause may seem, we understand that terrorism must be condemned in all cases.

Now then, having said this, we also believe that the fight against terrorism should be carried out within the framework of a rule of law, especially given that Turkey is a democratic state belonging to the Council of Europe and a candidate for admission to the European Union, and that the human rights of those allegedly involved as well as of the innocent civilian population must be respected.

At the same time we are convinced that, even though there is no doubt a certain logic to the position that a military response is needed when there is an authentic and significant armed insurrection, — which is basically what is taking place in the

southeastern part of the country —, as well as an energetic political response to a very serious terrorist threat, as we pointed out at the outset, I do believe that it is important for it to be very clear that we feel that the Kurdish question cannot be limited to the PKK, and that, given the great complexity of the situation, this problem cannot be solved by purely militaristic means. Therefore, the solution to the Kurdish question in Turkey, or in any other country in which this minority exists, can only be found by developing democratic principles through both political dialogue and the recoguition of and respect for the cultural identity of this minority.

I should add that in spite of the extremely delicate nature of the problem and the extreme sensitivity of Turkish authorities on this subject, and within the framework of the good relations that we maintain with this very important country who is our ally in the Atlantic alliance, we have never ceased to inform them of our position, of our perception of the Kurdish question in general and of the problems in the southeastern part of the country. This has been done discretely, but persistently, both bilaterally and through efforts carried out within the framework of the European Union, where the efforts that we would like to see made, are not, of course, always the ones that are carried out simply because there are times when it is not easy to achieve consensus among the member States. All, or to be more exact, almost all of the states of the European Union have very good relations with Turkey and consider it a key country in relation to the new geostrategic situation both in the Balkans and in the Middle East and even in relation to the former USSR republics of central Asia.

(...)" (DSC–C, V Leg., n. 249, pp. 7542—7543).

b) Minorities and Self–Determination

On 14 March 1994, the Minister of Foreign Affairs informed the Senate Foreign Affairs Committee of Spain's position as regards the self–determination of Western Sahara:

"... Spain's position on this issue has remained unchanged since 1976 and is well known by all those here in this chamber. In reality, the conflict in Western Sahara is a problem of an incomplete decolonization that can only be resolved by holding a fair, just and free referendum on self–determination with all the necessary international guarantees.

... Spain was pleased to accept Security Council resolutions 658

and 690 which were ratified by the General Assembly and by the two parties involved. These resolutions entrusted the organization of the referendum to the United Nations Secretary General under the direction of the Security Council, in accordance with the provisions of a plan for peace designed by the Secretary General, who at the time was Mr. Javier Pérez de Cuellar.

At the request of the Secretary General, Spain has collaborated in the development of the preparations for the referendum. The Spanish contribution can be itemized as follows: two million dollars as the obligatory contribution to the Minurso budget, four million dollars as a voluntary cash contribution, close to one million dollars more in modes of transport, and the offering of the 1974 Spanish census and other logistical and health–related contributions to Minurso and to the action taken by the United Nations in Las Palmas de Gran Canaria.

Spain has also exercised constant diplomatic activity in support of the peace plan through bilateral contacts with the parties involved, with the governments involved and with United Nations representatives. The incorporation of Spain into the Security Council most certainly created new opportunities for action. An informal group of countries, which includes Spain, has formed within the Council, and these countries are especially interested in the resolution of this problem.

At this time, we are in the application phase of Security Council Resolution 809 which was unanimously approved on 2 March, 1993. You will recall that this resolution establishes, first of all, that the referendum should not be delayed indefinitely, and secondly, that the United Nations Secretary General should increase his efforts both to bring the parties together on the question of the interpretation and application of the criteria used for determining who can vote in the referendum and to initiate the process of identifying and registering voters starting with those who are included in the 1974 Spanish census.

As regards how to interpret the applicaton of what we colloquially call 'criteria for being a Saharawi', the Secretary General has offered the parties a compromise. These efforts have not yet come to complete fruition, and full acceptance by both parties has not yet been achieved. In fact, this question is the main obstacle that still remains to carrying out the referendum. As regards the identification and registration of voters, some positive steps have been taken. The Identification Commission of Minurso has begun to

work on this issue by opening Commission offices in the main population centres of the Sahara, in refugee camps and even in Mauritania, and has begun to distribute application forms for inclusion in voting lists. However, it will be quite difficult for progress to be made on this issue as long as the problems we mentioned above as regards voter identification criteria persist.

As I said earlier, Resolution 809 also asked that the Secretary General present a report evaluating the results of his efforts and outlining steps for an early referendum.

Remember that the Secretary General, Mr. Butros Ghali, did present these reports in both May and November, and we are currently waiting to receive the most recent and substantial report which was presented last Saturday, that is two days ago, which we, as the Spanish representation or as members of the Security Council, have not yet had an opportunity to analyze. Nevertheless, the new report by the Secretary General was presented in New York on Saturday afternoon.

We are, therefore, waiting to carry out this detailed analysis of the report and are anticipating the Security Council meetings which will take place soon. The agenda for the Security Council is very full these days. In the first place, the beginning of the week is going to be dedicated to finding a formula that will allow for a resolution on the latest events that have taken place in the Middle East, and therefore, this topic [the Sahara situation] will most likely not be discussed until the end of this week or the beginning of next.

Therefore, Mr. President, we now find ourselves in what I would call a decisive phase of this very important process. Spain believes that the application of the Secretary General's plan can put an end to this conflict and allow a just and lasting peace to be established in this region of the Maghreb.

(...)" (DSS–C, V Leg., n. 80, pp. 5—6).

VI. STATE ORGANS

1. Participation in Foreign Policy

In response to a question presented in the Senate on the active role that the Government plans to give representatives of Spanish legislative

power, the Government, on 13 May 1994, had the following to say:

"1. The participation of the legislative branch in foreign policy is defined constitutionally in article 94 of that document which establishes the cases in which State consent for taking on obligations created by treaties or conventions requires prior authorisation by the *Cortes Generales*, and stipulates informing both parliamentary chambers of the conclusion of a treaty or convention in all other cases.

2. The legislative branch also exercises monitoring and control functions in relation to foreign policy, both in plenary sessions and through specific committees...

3. Law 47/85, dated 27 December, on the Basis for the Delegation to the Government of the application of European Communities law, established the grounds for the Joint Commission for the European Communities. The new bill regulating this function ... generalizes and expands the Government's obligation to inform the legislature and sets the basis for greater collaboration with the national parliaments of the other member States of the Union and with the European Parliament, in accordance with the new perspectives that have come about as the result of the entry into force of the Treaty of the European Union.

4. The Senate, through the new General Commission on the Autonomous Communities, can receive information from the Government on the process of adaptation of European Union rules or acts that have regional or autonomic relevance and can also ... formulate the Government's criteria for Spanish representation in those international fora where territorial participation is allowed.

5. ...the contact between Spanish and foreign parliamentarians, in both multilateral and bilateral situations, constitutes an important instrument of State foreign policy, as long as the principle of separation of powers is safeguarded and adequate coordination is carried out.

(...)" (BOCG–Senado.I, V Leg., n. 122, p. 66—67).

2. The Foreign Service

In his appearance before the Foreign Affairs Committee of the Congress of Deputies on 19 October 1993, to report on the draft bill for the 1994 general state budget, the Undersecretary of Foreigu Affairs, Mr. Cajal López, addressed the question of the opening and closing of

Spanish embassies and consulates:

"As regards the opening and closing of embassies and consulates ... last year... three general consulates were closed and converted into consular agencies. These were the consulates in Bremen, Basilea and Nîmes, whose competencies were assumed respectively by the general consulates in Hamburg, Bern and Montpellier. The embassies in Liberia and in the Sudan were closed. Permanent representation in the UEFO was established between 1992 and 1993, and an embassy was opened in Zagreb and Andorra. I should mention that the Ministry has made considerable efforts in this regard because these openings were done at the expense of the Ministry with no additional funds received from the budget.

As regards this coming year, we plan to open two embassies, one of which could be in Kazakhstan, ... and it might be wise to open an embassy in the Middle East, not only for reasons of reciprocity, but also because there are many commercial prospects in the area, and it would be advantageous to support these prospects with some kind of diplomatic presence, however small...

Three of the consulates located in community countries will most likely be closed.

At the present time there are no plans to close any embassies.

(...)" (DSC–C, V Leg., n. 50, pp. 1420—1421).

On 22 December 1993, the Undersecretary of Foreign Affairs, Mr. Cajal López, made reference to the measures used to correct the duplication of Spanish delegations abroad in his comments to the Committee on Foreign Affairs of the Congress of Deputies:

"The Ministry of Foreign Affairs..., represented in this case by the diplomatic corps, cannot hope to cover all of the activities that arise in an embassy in an important country. An embassy of this type is comprised of a considerable number of state employees who must deal with issues that range from agriculture to scientific cooperation, financial, consular, and cultural concerns, and many other types of matters. I believe that this is impossible. We must have a good foreign service which encompasses all of the departments that for one reason or another are involved in foreign matters.

(...)" (DSC–C, V Leg., n. 96, p. 3068).

Mr. Cajal López, in another appearance before the Foreign Affairs Committee of the Congress of Deputies on 9 February 1994, responded to a parliamentary question on the commercial offices of Spain's diplomatic missions abroad:

"At this time we have 81 commercial offices, 76 of which are

attached to 66 bilateral diplomatic missions. This is easy to explain. In some countries there is more than one commercial office. There are three offices attached to Spanish representations to international organizations, specifically Brussels/European Union, Geneva/GATT and Paris/OECD. Also there are two commercial offices attached to consulates in territories with what we might call specific statutes, Hong Kong and Puerto Rico.

The six countries in which there is more than one commercial office are the Federal Republic of Germany, where in addition to the office in Bonn, there is one in Berlin and another in Dusseldorf. In Brazil there is an office in Brasilia and another in Rio de Janeiro. In Canada there are offices in Ottawa, Montreal and Toronto. In the United States there are offices in Washington, Miami, Los Angeles and Chicago. In Italy, offices are located in Milan and Rome, and in Turkey there is an office in Ankara and another in Istanbul. There are three countries in which the commercial office is not located in the capital city: Australia, where the office is located in Sidney and not Canberra; the United Arab Emirates where the office is located in Dubai and not in Abu Dhabi; and the Republic of South Africa where the office is located in Johannesburg and not in Pretoria. At this time, two of our commercial offices are closed: the one in Bagdad, along with the diplomatic mission, and the other in Duala, Cameroon. Of all of these commercial offices, the ones in Moscow, Brasilia, Brussels/European Union, Paris/OECD, Havana, Tripoli and Jakarta are located within the embassy building or compound itself. ... In Washington, steps are being taken to see if the commercial office can be integrated into the new embassy.

... the reason that most of the commercial offices are located in buildings other than the embassy or consulate itself is ... that, among other things, the commercial offices often existed first, and diplomatic missions frequently do not have sufficient space to house other types of offices, be it the commercial office or any other department such as labour, agriculture or finance, depending on the country involved.

In addition to these reasons we could add another more specific one, which is the fact that a different type of client — to use a general word — visits a commercial office. ... However, I believe that the most important reason is the space problem. Not all diplomatic or consular offices are large enough to absorb other types of offices, and looking for larger diplomatic or consular spaces presents many kinds of problems, beginning with those related to the

budget.

(...)

... A commercial office, which is created by decree, is considered open and functioning when the Ministry of Commerce and Tourism provides the staff that is considered necessary, and these staff members carry out their tasks in a regular manner.

(...)" (DSC–C, V Leg., n. 105, pp. 3367—3369).

On 26 March 1993, the Council of Ministers approved the creation of Labour and Social Security Affairs Departments in Consular Offices.

"The Council of Ministers has approved a Royal Decree which regulates the Departments of Labour and Social Security Affairs in consular offices. The creation of these departments and the provisions related to their application and development are considered part of the process of modernization of the public administration, and the cost of maintaining them will be inferior to the cost incurred under the prior approach.

(...)

The duties of the Departments of Labour and Social Security Affairs will be to inform and advise individuals on work–related and social security issues and to provide professional orientation, training and development. They are also charged with the processing of social security payments and old–age pensions, providing information on and disseminating programmes for emigrants, disseminating and promoting community programmes for the free movement of workers, and providing information on immigration and employment for foreigners in Spain.

These duties will be carried out under the leadership and management of the head of the consular office.

The Departments of Labour and Social Security Affairs in consular offices will have the following objectives:

— To give these departments legal capacity and provide their staff with job descriptions and with the appropriate 'status'. Labour Offices have existed in a de facto manner in the past, and they have been accepted by the receiving countries due to the services that they offered Spanish immigrants, but this does not mean that they have not, on some occasions in the past, been the object of disapproval and that employees of this office have not been considered professional 'intruders'.

(...)".

VII. TERRITORY

1. Territorial Divisions, Delimitation

2. Territorial Jurisdiction

3. Colonies

a) Gibraltar

Mr. Solana Madariaga, Spanish Minister of Foreign Affairs, appeared before the 49th Session of the United Nations General Assembly (1993) and reiterated Spain's position as regards the decolonization of Gibraltar:

> "The decolonization of Gibraltar is a priority goal of the Spanish Government. The General Assembly has clearly established the doctrine that the decolonization of Gibraltar is a case not of self–determination but of the restoration of Spain's territorial integrity. I wish here to reiterate the Spanish Government's firm resolve to continue the process of negotiation with the Government of the United Kingdom, in a constructive spirit and on the basis of the Declaration of Brussels of 27 November 1984, taking duly into account the legitimate interests of the population. The Government of Spain expresses its profound hope that these negotiations will put an end to this colonial anachronism.
>
> (...)" (UN Doc. A/49/PV.12, p. 16).

In his comments before the Special Committee on the situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, Mr. Fernández Pita referred to the United Nation's interpretation and to his country's interpretation of the situation in Gibraltar:

> "The United Nations has established with utter clarity the doctrine applicable to Gibraltar, indicating in many General Assembly resolutions that the decolonization of that Territory is not a question of self–determination but rather one of restoring Spain's territorial integrity. In this respect, British and Spanish authorities have been holding bilateral negotiations in order to resolve the dispute over Gibraltar in accordance with the doctrine established by

the United Nations. The last meeting, at the level of Foreign Ministers, as was mentioned by Chief Minister Bossano, was held in Madrid last 1 March.

In particular, in connection with the reference made by the Chief Minister of Gibraltar concerning the creation of a new State, I should like to recall that this possibility is contemplated neither in the United Nations resolutions nor in the bilateral agreements between the United Kingdom and Spain. In this context, the United Kingdom, the administering power internationally responsible for the Territory, recognizes that the limitation of its capacity to have sovereignty over Gibraltar, established by the Treaty of Utrecht, is both valid and currently in force, and it has consequently declared on many occasions that the independence of Gibraltar is not an option. This is true both in the framework of its diplomatic relations with Spain and in its contacts with the local authorities of Gibraltar, and it has been stated by Ministers and Prime Ministers in the House of Commons and the communications media. Furthermore, on a number of occasions, the Spanish authorities have shown their willingness to ensure due respect for the interests of the population of Gibraltar, while also taking very much into account those of Campo de Gibraltar.

(...)" (UN Doc. A/AC.109/PV.1421, pp. 31—32).

In response to a question presented in the Senate on Spain's position on the Gibraltar conflict ten years after the opening of the grille that separates Spain and Gibraltar, the Spanish Minister of Foreign Affairs stated that:

"We will not be satisfied until this dispute is resolved and Gibraltar once again occupies its rightful position as part of our nation. However I do want to say that as regards opening the crossing, in general terms 1 do believe that it puts us in a better negotiating position than we previously had.

... from 1969 to 1985, during which time the crossing was closed, negotiations on the recovery of Gibraltar did not progress one iota. A few years earlier, from 1964—1968, a small advance was made when the United Nations doctrine on the decolonization of Gibraltar was formulated, but once the crossing was closed, absolutely no progress was made.

Therefore, when the crossing was opened in 1985, we thought, and we continue to think, that it was a step in the right direction. In 1985, the Brussels negotiations were initiated, coinciding with the opening of the crossing. This was the first time that the United

Kingdom agreed to negotiations, to talking to Spain about topics related to sovereignty, and this can indeed be considered progress. An agreement on the use of the airport, which is still in force, was also achieved. Regardless of whether or not the parties are complying with the agreement, it does still exist.

In any case, it is good that the economy of Gibraltar is little by little becoming more dependent on the Spanish economy. This is something we all desire and is related to the free movement of people, goods and merchandise.

(...)" (BOCG–Senado.I, IV Leg., Series I, n. 152, pp. 8442—8443).

In another intervention, this time before a plenary session of the Congress of Deputies, the Minister pointed out that the crossing fence is not the border. The Treaty of Utrecht did not recognize the isthmus as part of British sovereignty:

"... the fence is not the border between Spain and Gibraltar, as you well know, and have known for many years. It would certainly be an error for anyone to consider the fence as the border. The fence is not the border. The isthmus was never recognized in the Treaty of Utrecht as part of British sovereignty.

(...)" (DSC–P, IV Leg., n. 259, p. 13219).

On 27 October 1993, in response to a question presented by the Joint Parliamentary Group on the reasons why a passport must be presented at the crossing between Spain and Gibraltar, the Government pointed out that:

"The Brussels Declaration of 27 November 1984, which established the negotiations between Spain and the United Kingdom in order to resolve their differences on Gibraltar, stipulated that the Spanish and British governments put the Lisbon Declaration dated 10 April 1980, into practice prior to 15 February 1985, in order to, among other things, 'establish the free transit of persons ... between Gibraltar and its surrounding territory'.

In the conversations that followed the Brussels Declaration, and in order to determine the type of controls that would be carried out at that site by the police of La Línea de la Concepción, Spain offered the United Kingdom the possiblity of allowing individuals to cross by simply presenting a national identity card without having to show a passport. The Spanish offer, made prior to its accession to the Communities, seemed coherent with the provisions of section 1 of article 3 of Directives 68/360/EEC of the Council dated 15 October 1968, on the supression of restrictions on the displacement and stay

of workers of member States and their families within the Community, and 73/148/EEC of the Council dated 21 May 1973, on the supression of restrictions on the displacement and stay within the Community of nationals from the member States as regards establishment and the offering of services. These two directives were written in identical terms, and stipulated that a national from a member State, when addressing a co–national from another member State can only request that he present either his identity card or a valid passport, whichever he preferred.

However, the British, due, it seems, to pressure from local Gibraltar authorities, rejected the Spanish offer and required the presentation of a passport in order for individuals to cross.

Therefore, the British authorities are the ones who, at that time, opposed the adoption of a solution that was in keeping with Community Law as regards crossing from Spanish territory into Gibraltar.

In any case, we must keep in mind that the border between the Kingdom of Spain and Gibraltar is what could at best be called an 'atypical' border, given that according to the terms of the 1713 Treaty of Utrecht, the line is located on the northern slope of the rock. The crossing point is located on the isthmus that unites the rock to the rest of Spanish territory, and the isthmus was never ceded to British authorities by virtue of the aforementioned Treaty or by any other legal title. This situation has been repeatedly denounced by Spain.

On the other hand, we should also keep in mind, from a more general perspective, that the problems related to Gibraltar are due to the persistence of a colonial situation within the territory covered by the Charter Treaties of the European Communities, and this is an anomaly.

Finally, it is worthwhile to point out that the current 'status' as regards crossing the border between the Kingdom of Spain and the colony can only be modified within the framework of the negotiations that are currently underway with Great Britain.

Madrid, 27 October 1993.—The Minister" (BOCG–Congreso.D, V Leg.).

Likewise, in order for the Convention of External Borders in the EEC to be applied in a manner acceptable to Spain, a formula for Gibraltar that would include the following conditions is needed:

"1. That Spain's legal position would not be harmed, especially our rejection of British sovereignty over the isthmus.

2. That the agreement included in the Joint Spanish–British Declaration of 2 December 1987, on the joint use of the Gibraltar airport, the implementation of which is currently pending, is not invalidated or weakened.

3. That Spain be permitted to monitor passengers from third countries who enter Gibraltar through either the sea port or the airport so that, when the crossing controls are eventually abolished, entry into national territory is not exclusively controlled by colonial authorities.

Madrid, 17 November 1993.—The Minister"(BOCG–Congreso.D, V Leg., n. 36, p. 80).

Within the framework of the negotiations established in the Brussels Declaration of 27 November 1984, the Ministers of Foreign Affairs of Spain and Great Britain met on 1 March 1993. On 23 March 1993, as a result of those conversations, the Spanish representative addressed the Foreign Affairs Committee of the Congress of Deputies and reported on the negotiations. He pointed out that the restoration of Spanish territorial integrity could not be renounced and that many efforts to achieve this goal had been made throughout history. However,

"Today, the situation is very different. On the one hand, Spain long ago unequivocally and irrevocably renounced the use of force as a means by which to achieve its goals. On the other hand, the strategic value of Gibraltar for the United Kingdom is not comparable now to what it might have been in the past, and furthermore, Spain and the United Kingdom are now partners, allies in the European Community and in the North Atlantic Alliance.

Given today's circumstances, British colonial presence on a piece of Spanish soil is not only an anachronism and an affront, but also an incongruency, an absurd situation, a situation that is clearly incompatible with the political and cultural framework of a modern Europe.

From this perspective, the framework favours us. It makes no sense at all that on the threshold of the 21st century, when the United Nations has declared the present decade as the decade of decolonization and when there remain very few colonial enclaves in the world, for one to remain right here in Europe. One European country maintains a colony within the territory of another European country and these two countries happen to be partners and allies. The negotiations established in Brussels in 1984, which are also part of the Lisbon declaration, were created within this framework. Even though at that time, Spain was still not fully integrated into the

Community, this was already its main point of reference.

In Brussels, a negotiation process was initiated which was meant, on the one hand, to resolve the differences between Spain and Great Britain as regards Gibraltar, including — and I want to emphasize this — for the first time in the history of this dispute, the questions of sovereignty and, on the other, to promote cooperation on economic, cultural, touristic, air, military and environmental issues that would be of mutual benefit, as stated in the declaration.

But this framework — which favours our aspirations — together with the current negotiations, also sets certain limits for us. Spain must make its claims not only by renouncing the use of force, as it did in the past, but also by accepting the rules of the game that exist in our geopolitical sphere, in addition to the pact that was made in Brussels. There are two types of limits we should mention: first, those that are derived from the rules of the democratic political game which must be observed in both the relations between States and in a States' relation with individuals, with absolute respect for human rights; second, those that have to do with the supranational legal framework in which our political and economic activities take place. I am, of course, referring to the European Community, keeping in mind that Gibraltar is a European territory, albeit a sui generis one as it does not form part of the Customs Union nor is the Common Agricultural Policy or VAT applied to it, although the charter treaties of the Community and derived community law are applied, even though each new provision is dealt with separately.

For the Government, the meaning of all of this is clear. One thing is our dissatisfaction with the progress being made through negotiations which have not been very fruitful over the last eight years and that is moving us — as I said in the news conference that followed the ministerial meeting — towards a policy which combines pressure and persuasion as regards our British counterparts. A very different approach would be to consider measures along the lines of those often mentioned in some political arenas, which is to restrict traffic through the crossing or to penalize the rock's population for the lack of results in the negotiation process. These are measures that the Government is not, in principle, ready to adopt because we believe that they go against the rules of the game mentioned earlier and against our own democratic principles. I am going to attempt to develop these statements briefly.

(...)" (DSC–C, V Leg., n. 643, p. 19406).

In general terms, our overall evaluation of the negotiating process is

that some progress has been made. Among the steps that have been taken, one was very significant but never came to be. This was ...

"the agreement on the airport found in the joint declaration signed in December 1987. This agreement was negotiated in the context of the chapter on mutually beneficial cooperation, in order to overcome the problems that could arise from the application of European directives on the liberalization of air traffic to Gibraltar.

As you know, Mr. President, the airport is located on the isthmus, territory which was never ceded by Spain. The application of the air directives of the Gibraltar airport would have meant recognition of British sovereignty over the isthmus. The United Kingdom, as you know, accepted the agreement, which is a means by which to neutralize the repercussions of the controversy over the sovereignty of the isthmus, although it does not resolve the dispute or prejudge it. However, the local authorities unfortunately did not understand the problem and opposed its implementation.

However, the agreement — which from our perspective could be considered a successful outcome of the negotiations — is legally in force, even though it is not being applied, and the fact it is not being applied, while posing some problems for the area surrounding Gibraltar, is most harmful for the people of Gibraltar themselves.

To our way of thinking, the United Kingdom is wrong and is contributing to this harm that is being done to Gibraltar by not exercising its prerrogative to put this agreement into practice. Nevertheless, none of this diminishes the importance of the agreement itself, which continues to be, in our opinion, the only possible way to neutralize the problem.

(...)" (DSC–C, V Leg., n. 643, pp. 19406—19407).

Another aspect of this cooperation, Mr. President, is what we could call local, between the populations living on both sides of the crossing:

"... these measures include not only specific financial support for infrastructure and urban development such as the Special Plan that is about to be instituted, but also the channelling of Community funds for the development of specific programs related to infrastructure, industrial development, social problems, professional training, education, health care and many others.

They also include a rigorous application of current legislation, especially as regards contraband, all types of illegal traffic, and the study of measures that could be taken to avoid competition that could arise from the development of Gibraltar and its status as a tax haven, both in order to prevent Spanish tax fraud and unfair

competition as regards certain activities, for example, the Algeciras port.

(...)" (DSC–C, V Leg., n. 643, p. 19407).

As regards the contents of the joint meeting, the Minister made the following comments:

"First, in general terms, the meeting gave me a certain degree of satisfaction, the satisfaction of seeing that the United Kingdom has no arguments against our reasoning. This seems important to point out.

In my intervention before the plenary session, in the formal meeting, I mentioned the position that Spain has traditionally maintained which is that given the combined effect of the Utrecht dispositions and United Nations doctrine, Gibraltar should be decolonized and Spain's territorial integrity fully respected in accordance with paragraph 6 of General Assembly Resolution 1514. This should be done through negotiations between the Kingdom of Spain and the United Kingdom, with emphasis on safeguarding the legitimate interests of the population when decolonization is complete. ... Spain is not asking the United Kingdom to renounce any commitment. What Spain is asking for, with a great deal of tenacity, is that this commitment not be interpreted in an abusive manner, and that Spanish proposals on the transfer of sovereignty that would allow the population to maintain and even modernize their institutions of self–government be explored, while recognising that sovereignty over this territory could never belong to anyone other than Spain or the United Kingdom.

Second, as regards the climate of negotiations, I must say the climate in which our conversations took place was relatively cordial, as both ministers stated in the press conference. ... We all know that a problem that in a few months will have existed for two hundred and eight years is not going to be resolved overnight.

(...)

In the third place, I made a special plea to Secretary Douglas Hurd that he intensify the work being done so that some degree of trust could be reestablished in the Spanish negotiators, who have felt disappointed since 1988. In order to do this, it would be necessary to centre our efforts on establishing measures of trust, and specifically, on putting the agreement on the airport into practice as soon as possible.

I will also say here that the British are extremely concerned about the fact that the Gibraltar population is not represented at our talks. I

reminded him very clearly that they are not present because they have chosen not to be, and that Spanish negotiators sat at the negotiating table with representatives from Gibraltar in 1984, 1985, and 1986 and we are willing to include them now. The British, who will not discuss our reasons and reject all other options, logically desire to have them present at the negotiating table.

(...)" (DSC–C, V Leg., n. 643, pp. 19407—19408).

The Secretary General of Foreign Policy, Mr. Francisco Villar y Ortiz de Urbina, informed the Committee on Foreign Affairs of the Congress of Deputies that the final evaluation of the difficulties involved in putting the Brussels agreement on the joint use of the Gibraltar airport is negative:

"As has been stated on many other occasions, and as the preamble to the December 1987 declaration itself states, this agreement is advantageous and positive and should be beneficial to everyone involved. On the one hand, it safeguards the respective legal positions of Spain and the United Kingdom on the issue of sovereignty over the territory on which the airport is situated: the isthmus. In other words, the agreement neutralizes, at least in practical terms, the dispute over the sovereignty of the isthmus and facilitates putting aside the practical difficulties that arise from this controversy, which is the pretext that the authorities in Gibraltar have used as a shield and an excuse for not adopting the guidelines that make them responsible for the distribution of competencies between the administration and the colony so that the agreement can be put into practice.The fact that the agreement has not been applied has undoubtedly negative consequences for Gibraltar because it is based on Community rules. For example, all of the directives regarding the liberalization of air traffic are suspended for Gibraltar precisely because the agreement has not been implemented, and this suspension is going to remain in force as long as this situation persists. Furthermore, the fact that a firm bilateral agreement between two sovereign States such as the United Kingdom and Spain has not been applied, has undoubtedly brought about a rupture in bilateral trust — and this too is another very negative consequence of this situation — and has had a negative effect on the overall negotiations, requiring us at times, to adopt a very harsh position on certain issues related to community rules. This has resulted in reduced flexibility.

(...)

... the 1987 declaration is an agreement between the United

Kingdom and Spain. This is how we view it, and this is how Great Britain views it. The problem is that, according to the declaration itself, application requires the adoption of a series of measures and rules that, according to the division of competencies between administrative authorities and the territory of Gibraltar, correspond to local authorities. This is precisely where the problem lies, as you know. Mr. Bossano won the election largely on the basis of stating in his electoral campaign that he would not implement the agreement on the airport. This situation remains unchanged, but we must not lose hope that the British authorities will someday be able to convince Mr. Bossano that he should terminate this policy of radical opposition to the implementation of the agreement on the airport.

(...) (DSC–C, V Leg., n. 95, pp. 3084—3085).

As regards a possible delimitation of the Bay of Gibraltar, the Secretary General of Foreign Policy stated the following before a meeting of the Foreign Affairs Committee of the Congress of Deputies on 22 June 1994:

"... the delimitation of waters in the Bay of Gibraltar has not been done, and as I stated in my earlier intervention, will not be done. This issue can only be resolved in the context of a broader, overall solution to our dispute over Gibraltar and in relation to the problems of sovereignty that the Gibraltar question produces.

(...)" (DSC–C, V Leg., n. 249, p. 7538).

Finally, the Secretary General of Foreign Policy stated the following as regards the incidents involving high–speed motorboats that have been taking place in the Bay of Algeciras lately, often thought to be smugglers coming from Gibraltar, and which sometimes affect the efforts of the Customs Control and Sea–based Civil Guard to suppress this type of illegal trafficking:

"... This is a question that was raised in the last monographic ministerial meeting on the general question of the dispute over Gibraltar held within the framework of the Declaration of Brussels, the Brussels process, on March 1, 1993, by Minister Solana and by the Secretary of State of the Foreign Office, Mr. Douglas Hurd. It is a question that has been raised in a serious and thoughtful manner in all of the meetings that have taken place between the so–called coordinators representing the two ministers of Foreign Affairs. In the most recent meeting, which was held in Madrid on 28 March 1994, on the occasion of the visit of the new Gibraltar coordinator from the Foreign Office, this was one of the main topics that was discussed. The latest protest and the latest position on these incidents, took

place on 27 May during a meeting held in Madrid which was attended by the Secretary General for Community Affairs of the Foreign Office.
(...)
As I said, not only is this question addressed regularly in our difficult conversations with the British on all of the problems related to the Gibraltar situation, it has also been raised in certain international organizations, and we are willing to explore all of the possibilities that exist as regards the competency involved. For example, the question of certain types of illicit traffic, although not specifically the question of the gliders, has been presented before the International Financial Action group, which is an informal organization related to the OECD specializing in money laundering. Unfortunately, there is a long history of illicit trafficking and I have the impression that previous governments made less effort to resolve these problems. However, for the first time, Gibraltar is now considered a high risk zone, and this organization has asked the United Kingdom to prepare them a detailed report on the situation as regards this problem.
(...)" (DSC–C, V Leg., n. 249, p. 7539).

VIII. SEAS, WATERWAYS, SHIPS

1. The Spanish Position on the 1982 United Nations Convention on the Law of the Sea

With the entry into force of the United Nations Convention on the Law of the Sea about to take place, a series of parliamentary interpellations provoked the Government to restate the position that Spain has maintained as regards this Convention: Spain abstained in 1982 and signed the Convention in 1984, but has not yet ratified it. This position, which is the one maintained by the entire European Community, is due to the fact that Part XI of the Convention on the exploitation of the ocean bed and marine subsoils has not yet been modified. However, on 23 February 1994, the Minister of Foreign Affairs addressed the Foreign Affairs Committee of the Congress of Deputies and reported that solutions to the problem were being sought:

"... In the first place, [we will] divide what we have called the

International Seabed Authority into groups, as I said earlier. Perhaps in this way we could require a majority of the States in each group to adopt decisions and thereby prevent these decisions from opposing the interests of any significant group of States, especially the developed States, some of which not only have a high degree of involvement from an economic/fishing point of view, but are also major contributors to the United Nations and have the most advanced technology. Therefore, what must be determined at this point, is exactly which of these States would have veto power on this international council.

Second, as regards financing, the Authority should be provisionally financed by the United Nations, and a maximum amount should be set, taking into account that the initial budget for the Authority and the tribunal should not go much over that of the preparatory commission that has been meeting periodically in New York and Kingston.

Third, provisional membership in the authority should be defined. These members could take advantage of the rights conferred by the Convention, although they are not yet parties to it, in exchange for complying with all of the responsibilities or duties created by the Convention, especially those related to the financing of the organization.

(...)" (DSC–C, V Leg., n. 116, p. 3716).

As regards fisheries, and keeping in mind that competencies on this issue have been ceded to the European Community, the Minister said:

"I believe that the rules of the Convention, correctly interpreted, provide a good balance between the rights and the responsibilities of rim States and of those States that fish in locations far from the Western European Union (as is our case, among others). Therefore, the problems that are still pending can be summed up as being those related to Part XI of the protocol. There is one more problem, from an industrial point of view and from a fishing capacity perspective, the fact that some important countries have not recognized the Convention prevents it from being universally recognized, and therefore its possibilities are limited.

(...)" (DSC–C, V Leg., n. 116, p. 3717).

Finally, as regards Spain's position on the regime governing the transit of international vessels through the straits, the Minister said

"... Spain would continue to oppose the legal regime which led the Government to present interpretive declarations at the time the Convention was signed.

(...)" (DSC–C, IV Leg., n. 116, pp. 3717).

In response to a question presented by a member of the *Partido Popular*, the Government stated that, having received the resolution approved by the United Nations General Assembly on 28 July 1994, which includes an annex to the agreement on the application of Part XI of the Convention, it would proceed to study the resolution in order to request authorisation for ratification of both the Convention and the agreement on Part XI. He said:

"4. The Government feels that significant events have occurred recently which undoubtedly affect the opinion of the Convention held by several countries, especially industrialized and highly industrialized ones. As has been indicated, the United Nations General Assemby's adoption of the Agreement on Part XI makes universal participation in the Convention truly possible.

Madrid, 29 September 1994. —The Minister" (BOCG–Congreso.D, V Leg., n. 150, p. 173).

2. Territorial Sea

In reference to the incident that occurred in the entrance to the port of Ceuta involving Moroccan patrols and their later incursions into Spanish jurisdictional waters, the Government responded to a question presented by the *Partido Popular* by stating its position on this matter:

"The Government always guarantees the right of Spanish fishermen to fish freely in Spain's territorial waters. Furthermore, the Goverment fully exercises all of the functions inherent to the concept of sovereignty in Spanish territorial seas.

As regards the incident which occurred during the first week of November, 1994, in Spanish territorial waters off Ceuta, the following aspects should be pointed out:

— The fact that the navy did not intervene does not mean that Spanish security forces did not. The actions taken by the Civil Guard brought about the Moroccan patrols' departure from our waters.

— In any case, the Moroccan forces acted inappropriately within Spanish territorial waters. The General Director for Africa and the Middle East lodged an official protest with the Embassador from Morocco last 7 November, 1994, in relation to the Moroccan patrols' actions in violation of Spain's right to sovereignty.

Furthermore, the Minister of Defense has a patrol ship that is permanently based in Ceuta, and the patrol ships from the Maritime

Zone, which includes the strait, regularly stop in this city as part of their patrol functions.

(...)" (BOCG–Congreso.D, V Leg., n. 211, p. 135).

As regards Algeria's decision to extend its jurisdictional waters, the Spanish Government, in response to a question presented by the *Partido Popular*, stated that:

"... from the point of view of the International Law of the Sea, Algeria's creation of a reserved fishing zone is framed within the institution of the exclusive economic zone. Therefore, from a strictly legal perspective, Algeria does have the right to establish fishing zones that go beyond the 12–mile limit of its territorial seas as long as it does not go over the line that is equidistant from the coasts of neighbouring States. Even though there does exist an implicit agreement between the Mediterranean rim States not to create exclusive economic zones, the rupture of this consensus by Algeria is not a violation of international law, especially if we take into account that another rim State (Morocco) had already broken this consensus. However, the Spanish government has already notified Algeria, both in a bilateral manner and as a member State of the European Union, that this rupture of the consensus does concern us.

(...)" (BOCG–Congreso.D, V Leg., n. 173, p. 209).

3. Exclusive Economic Zone

As regards both the Canadian Government's decision to sanction fishermen for infringing its national rules beyond the 200–mile limit of its exclusive economic zone, and the measures the Spanish Government has decided to adopt within the Northwestern Atlantic Fishing Organization to defend its interests against this unilateral decision, the Secretary of State for International Cooperation and Cooperation with Ibero–America, Mr. Dicenta Ballester, responded to a question presented by the *Partido Popular* by stating before the Foreign Affairs Committee of the Congress of Deputies, that:

"Spain feels that the legislation recently passed in Canada to protect fishing on the high seas is objectionable from both a political and a legal point of view.

From a legal perspective, a law that allows for enforcement measures to be exercised against a foreign ship on the high seas undoubtedly surpasses the jurisdiction that corresponds to a rim State according to current international law. Specifically, the 1982

United Nations Convention on the Law of the Sea establishes exclusive jurisdiction for the State under whose flag ships sail on the high sea — article 92 — and jurisdiction over individuals who are on these ships — article 117. Furthermore, article 89 of this convention expressly prohibits the submission of any part of the high seas to the sovereignty of one State. Therefore, this legislation is legally objectionable.

From a political point of view, the Canadian legislation endangers the efforts that are currently being made to improve international conservation and fishing resource management activities, especially as regards the high seas .

(...)" (DSC–C, V Leg., n. 396, p. 12219).

4. Fisheries

In his appearance before the Joint Congress–Senate Committee on the European Union, the Minister of Foreign Affairs reported on the European Council meeting in Brussels on 19 July 1994, and addressed the issue of the escalation of fishing conflicts:

"... We have accepted the commitment to return the French ship that is currently surrounded by a good number of Spanish ships. We committed to this yesterday and I believe it is in Spain's best interests now and in the future to do so. Let us not forget that Spanish fishermen must fish where they are currently fishing, but they also have to fish in more northern zones, in Canadian waters, and we must be able to demand that rules are followed by being the first to follow them. This seems very important.

The agreements that were reached yesterday are, in our opinion, very positive. What changes do they mean? First, European Union inspectors are going to have some powers that they did not previously have: they are going to be on board Spanish and French patrol ships and they are going to have the authority to carry out inspections. Prior to this, as you know, they only had the authority to observe. Now they are going to have the authority to inspect. European Union inspectors arrived in Galicia early this morning and they went on board to begin implementing the first measures that the European Community has authorized them to utilize. Second, French vessels, as you know, agreed again yesterday that they are not authorized to fish nor to have vertical mesh trawling nets that measure more than 2.5 kilometers in length on board. This is the

second question, the second compromise that was reached yesterday. The third has to do with 'La Gabrielle', the French ship that we agreed to turn over to French authorities. These are the three commitments that we agreed to yesterday. Once again I must insist that right is what guides Spain and its fishermen on these questions, and with this sense of rightness, we can demand that European Union rules be followed because it is the European Union that is responsbile for dictating these rules and for ensuring compliance with them.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 43, pp. 901—902).

In another appearance before the same Committee, this time to report on the European Union Council of Ministers' degree of compliance with their political commitment to fully integrate Spain into the general regime of common fishing policy, and the dates on which the Council plans to adopt new regulatory measures on the conditions contemplated in Spain's Act of Accession as regards access to waters and resources for all member States, the Minister stated:

"I want to point out that the commitment on fishing has several parts to it. Perhaps the one that has been most heatedly debated and which is the greatest cause of concern is the political and legal commitment to fully integrate Spain in common fishing policy, which has been approved, and which must be put into practice by the Council on Fishing.

(...)

I do not know if it is necesary to remind you of the basic issues included in the fishing agreement. ... The first is to defend Community patrimony, and you know what this means. The second is to increase fishing opportunities for Spain's fleet, and the third is the one I just mentioned, to fully integrate Spain into the general regime of common fishing policy, thereby moving up the final transitory period established for Spain in our Act of Accession by seven years — and this is worth emphasizing. This is, without a doubt, the fisherman's point of view as regards this negotiation. We want the pact among the twelve and among the twelve plus four to be enforced.

(...)

As I said, the government, supported by all of the parliamentary groups, wants all deadlines to be respected so that by the end of this year, ... Spain is fully integrated into the common fishing policy.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 52, p. 1100).

Because of the potential fishing volume in certain fishing grounds,

Spain has shown special interest in having the European Union enter into fishing agreements with countries where these fishing grounds are found. In response to the questions on fishing agreements with Argentina and Namibia, the Government stated the following:

"The fishing agreement with Argentina was ratified by the EU Council of Ministers of Transport on 28 September 1993. It will be in effect for 5 years from the date it was signed.

Community vessels can operate within the framework of the agreement, through joint partnerships, the establishment of companies with community capital, and by means of temporary business associations.

The amount of fishing per year established in the agreement is: 120 tons of Hubssi hake, 50,000 metric tons of hake, 30,000 metric tons of Illex squid, and 50,000 metric tons of Creole and/or Granadero cod .

The entire financing of the agreement will be covered by the European Union and is estimated at 162.5 millon ECUs. Some seventy ships of several types will participate, of which forty to fifty will be Spanish.

Therefore, the EEC/Argentina agreement is extremely important since it encompasses a good part of the Spanish fleet.

Madrid, 23 February 1993.— The Minister"

(BOCG–Congreso.D, IV Leg., n. 388, p. 79).

The Government made the following statement as regards the contents of the agreement reached with Namibia:

"Recovering the Spanish fishing fleet's right to fish in Namibian fishing grounds has been one of the Administration's objectives ever since the Republic of Namibia gained its independence in March, 1990.

Spain insisted that Community institutions initiate negotiations on a fishing agreement, and the first round of negotiations took place in March, 1991.

After this first round, negotiations were interrupted by both parties, although contacts were subsequently reestablished.

At the present time, there is a reactivation of the negotiations in a formal sense. In 1992, a European Community committee member was transferred to Windhoek, and it is expected that official conversations will get underway again very soon.

During the round of negotiations cited above, the parties involved could not reach an agreement on fishing volume for community ships as the Community requested a quota of 200,000 metric tons of

hake, and Namibia was only willing to offer a figure of around 9,000 metric tons, based on a total authorized capture of 60,000 metric tons, and not all of this amount would be for the Community.

Madrid, 24 February 1993.— The Minister"

(BOCG–Congreso.D, IV Leg., n. 392, p. 125).

On 11 October 1993, the Government made the following statement as regards the contents of the agreement reached between the EC and Canada on fishing:

"Spain, along with the other member States and the Committee, was in favour of the normalization of fishing relations with Canada.

The agreement reached should allow the Spanish fleet acess to the quotas that will eventually be granted. However, the agreement also gives rise to the possiblity that point II would be in conflict with article 63.2 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) by fixing "the total allowed capture" (TAC) of cod fish from the 2J3KL shoal found between the Canadian exclusive economic zone and international waters as a certain percentage of Canada's TAC, which means that Canada would be allowed to unilaterally set measures for the administration of this shoal in international waters.

Furthermore, taking into account the issues related to the interaction between coastal states and zones regulated by NAFO, we will have to wait for an International Conference resolution on highly migratory species. This Conference is currently being held at the United Nations.

These issues have caused concern among most Community countries. The Government shares these concerns.

In any case, the Legal Services section of the Committee does not feel that this decreases Community powers.

Madrid, 11 October 1993. — The Minister"

(BOCG–Congreso.D, V Leg., n. p.).

Finally, as regards the measures to be taken to ensure compliance with the Euro– Maghreb Fishing Treaty, the Government declares that:

"The EC–Moroccan fishing agreement that is currently in force provides for a mid–term revision. Three rounds of conversations have been held to carry out this revision, one in June, one in July and one in September.

During these meetings, Morocco has expressed its desire to reduce fishing quotas, and this has been firmly rejected by the European Union, whose position is shared by Spain.

The mid–term revision of the agreement concluded with

Morocco giving the EU fishing permits. It was also agreed that the Community fleet, principally comprised of Spanish vessels, could continue to use multifilament nets. Also, when a member State accedes to the European Union, once called the European Community, they lose their sovereignty to negotiate fishing agreements as this is an integral aspect of common fishing policy, and is in keeping with the provisions of the Charter Treaty of the EC and the accession treaty.

Madrid, 19 October 1994.—The Minister" (BOCG–Congreso.D, V Leg., 13.9.94).

IX. INTERNATIONAL SPACE

1. International Watercourses

In the 49th Session of the United Nations General Assembly, Spain's representative, Mr. Pastor Ridruejo, in his intervention before the Sixth Committee on Chapter III of the International Law Commission's report on "the Law of the Non–navigational Uses of International Watercourses", commented on the four principle aspects that are listed below:

"1) the nature of the Draft Articles presented by the Committee; 2) the use of the adjective '*sensible*' to qualify the concept of harm to international watercourses that must be avoided by watercourse States; 3) the new wording of article 7 on the obligation not to cause significant harm; and 4) provisions for settlement of disputes.

As regards the first question — the juridical nature of the Draft Articles — allow me to point out that in our intervention last year, and given the dilemma presented by the Special Rapporteur on whether to make the Draft a framework agreement or model rules, we were in favor of a framework agreement, although we did say, on this point, that article 3 of the Draft presented by the Committee last year was somewhat unclear. In its comments on article 3 submitted to us this year, the Committee considers this to be a framework–agreement. Nevertheless, taking into account the provisions of article 3, my delegation continues to have doubts about the exact nature of this instrument, and even feels that it might be closer to being model rules instead of a framework agreement. It is

just that, once again this year, we cannot find a clear statement in this article whereby the draft articles are applicable even when no specific agreements on adaptation or application exist. What article 3 once again does is invite international watercourse States to apply the provisions of the future convention and adapt them to the characteristics and use of a particular watercourse. This lack of clarity should be remedied at some point because it is clear that if, as we wish, the Draft Articles should become a convention, States would need to know precisely what commitments they were assuming when agreeing to accept obligations. Of course, this should be done independently of the fact that certain of the Draft Article's provisions are already binding and directly applicable, being of the nature of general customary rules. Such is the case of article 5, especially important as regards the concept of equitable and reasonable use.

I shall now turn to the second topic that I mentioned at the beginning of my intervention, and this is the use of the adjective '*sensible*' in article 7 and other related provisions of the Spanish version of the Draft Articles to qualify the harm that a watercourse State must avoid. Upon consulting the *Diccionario de la Real Academia de la Lengua Española* (The Dictionary of the Royal Academy of the Spanish Language, 1984 edition), we see that the word '*sensible*', in the context that concerns us here, means something that is 'perceptible, present, understandable' while the word '*significativo*' refers to 'that which is important because it represents or signifies something of value'. We believe, Mr. President, that this second meaning in Castilian Spanish better represents the meaning of the word 'significant' in English and '*significatif*' in French, used in the final version of the Draft Articles and the explanation offered by the Committee in its comments in both languages. Therefore, '*significativo*' should be the term that accompanies the noun *'daño'* (harm) in the Spanish version of article 7 and other related provisions of the Draft Articles.

As regards the third question — the obligation of a watercourse State not to cause significant harm — and bearing in mind that this is an important manifestation of the basic principle *sic utere tuo ut alienum non laedas,* we see that article 7 of the draft as approved in the second reading differs considerably from the version submitted by the Committee last year. The most interesting new feature, in my delegation's opinion, is that the obligation not to cause significant harm to another watercourse State is now configured as an

obligation of behaviour and not of result. This is because this obligation is considered satisfied if the watercourse State exercises 'due diligence'. This is definitely a vague juridical concept (as is that of 'equitable and reasonable use') and therefore it is sometimes difficult to determine exactly the limits of the obligation to act with this degree of diligence. Given the impossibility of establishing more precise criteria on this point, we feel that the introduction of the concept of due diligence is correct and worthy of support. We also feel that section a) of paragraph 2 of article 7 should include a reference to the principle of equitable and reasonable use, as it implies that the obligation not to cause significant harm is subordinate to that principle.

(...)

First of all, it is fitting that the Committee has proposed rules concerning the settlement of disputes, because we feel that an issue such as the use of an extremely scarce and important natural resource such as fresh water is frequently subject to particularly intense disagreements. Moreover, we believe that it is always a good idea for the International Law Committee to take the initiative on this point, because its proposal fosters both discussion and reflection on this topic in the Sixth Committee, and it allows the Conference of Plenipotentiaries to subsequently base its work on concrete ideas.

The rules pertaining to the settlement of disputes proposed by the Commission in the Draft Articles establish a fact–finding commission as compulsory and able to be put into action unilaterally, whereas recourse to mediation, conciliation and jurisdictional settlement (arbitral or judicial) is optional. Perhaps the Commission has been too cautious in this respect, however, because whilst making the establishment of a fact–finding commission compulsory generally represents a step forward, given the importance which clarification of the facts has in the type of dispute under discussion, the optional character of recourse to conciliation constitutes a step backwards, bearing in mind that conventions on codifications concluded over the last decades did envisage this manner of settlement as compulsory.

Moreover, considering the extraordinary importance attributed by article 3 of the Draft to 'watercourse agreements', the Commission ought not to have ignored the fact that many similar agreements already in force contain more effective dispute-- settlement clauses than those proposed by the Commission itself. Taking into consideration the leaning towards a model rules–type instrument

that the Draft Articles have, it may be asked whether the Commission should not have included in article 33 some obligation to include dispute–settlement provisions in watercourse agreements."

(Doc. UN A/C.G/49/R.23).

X. ENVIRONMENT

Note: *See* IV.3 Succession of States.

The IV Ibero–American Summit of Heads of State and Government held in Cartagena de Indias (Venezuela), 14—15 of June 1994, issued a Final Document which includes the following recommendations relating of environmental protection:

"... the Heads of State and Government will promote policies that:

— promote environmental policies as part of the development of international commerce, and at the same time ensure that environmental measures are not used as excuses for protectionism.

— protect the environment as an essential factor in the well–being of the people and attempt to make state–of–the–art technology available and ensure the flow of new financial resources into this field.

— respect the commitments made in Río de Janeiro at the United Nations Conference on Environment and Development to reach appropriate levels of growth and development without harming the environment".

In his appearance before the Foreign Affairs Committee of the Congress on 3 May, 1994, to explain the terms and scope of the Cooperation Agreement between Spain, France, Morroco, Portugal and the European Community, for the protection of the waters and coastlines of the Northeast Atlantic against pollution, the Secretary of State for International Cooperation, Mr. Dicenta Ballester made the following comments:

"... this agreement was signed in Lisbon on October 17, 1990, and are part of this Treaty between Spain, France, Morroco, Portugal and the then called European Economic Community.

The purpose of establishing models for regional cooperation and mutual assistance in the fight against pollution caused by oil and

other harmful substances in the Northeast Atlantic. ... The basic objective is to cover a geographic gap in cooperation efforts against pollution in Spanish maritimes spaces and in other spaces that are not Spanish, but are in close proximity to them ...

There was no intergovernmental agreement that established measures for cooperation to deal with the harm caused by hydrocarbons or other harmful substances in the waters or along the coasts of the northeast Atlantic which are part of the maritime spaces of the western and southern flanks of the European Union ...

This agreement attempts to facilitate and promote regional cooperation whenever there is an oilspill or the spilling of any other kind of harmful substance, or the risk of one.

(...)

Under this agreement, each party State must establish a national system for the prevention of and fight against maritime pollution, including a national intervention plan, which Spain already had and continues to have, which is the Maritime Rescue and Safety Society.

(...)

The agreement requires all member countries to obtain efficient and effective equipment to fight pollution and to store it at specified locations.

(...)

Finally, the agreement establishes the creation of an international center, domiciled in the depositary State, to assist the member States in any actions that must be taken to fight pollution. This organization will also serve as the administrative center for the agreement.

(...)

There are two annexes to the Agreement. Annex 1 shows that the zones that are identified in the agreement as regions or areas of cooperation correspond to the exclusive economic zones of each of the contracting States. Annex 2 refers to the functions of the international center in Lisbon, whose purpose is basically to coordinate national and regional actions in the area of training and technical cooperation in emergency situations, as well as to collect and disseminate information on polluting events.

(...)

... two resolutions were signed. One recommends that the agreement be ratified as soon as possible and that while the ratification procedure is taking place, the party States do everything possible to ensure the correct functioning of the agreement ... The

second is a resolution that refers to the protection of delicate maritime zones. It requests cooperation from the parties in order to ask that competent international authorities adopt measures in areas that are especially delicate in the Canary and Madeira archipelagos. (...)" (DSC–C, V Leg., n. 188, pp. 5833—5835).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Development Cooperation

a) Ibero-America

In response to a question presented before a plenary session of the Congress of Deputies on 9 February 1994, the Minister of Foreign Affairs, Mr. Solana Madariaga, explained the Spanish Government's policy on development assistance:

"... the Government's current policy on development assistance is the policy that was defined by this Parliament... after careful study and analysis... and which was finalized by a report that was unanimously approved by all of the groups represented in this chamber in November of 1992.

... we will mention the four basic aspects of this policy.

The first is a reference to our own Constitution. The Spanish Constitution states that aid must be offered and peaceful relations maintained with all of the countries of the world.

(...)

To do this, we must be very active in the area of development assistance.

The second aspect... is that development assistance is also a fundamental instrument of a country's foreign policy. ... How so? In at least two ways: first, because contributing to peace, stability and progress is one of the objectives of any democratic country's foreign policy, ... second, because when a country develops its foreign relations ... it is obliged to develop relations in all fields, not just in the political arena, but also in economic, social, cultural and scientific arenas; in other words, in all of the many areas that should be included in the foreign policy of a country, understood in the broadest sense of the term.

> The third aspect... has to do with the fact that the development cooperation offered by Spain should not be neutral in nature. It should include some political elements. And, what should these political elements be? This cooperation should be based on the values that Spanish society embraces, which are reflected in the Constitution. In other words, the purpose of this cooperation should not only be to help resolve specific problems experienced by a people whose living conditions are worse than ours, but also to encourage the proper defense of human rights, the acceptance of the values that we share, such as tolerance and a belief in democracy ...
>
> (...)
>
> The fourth aspect... is that a clear social consensus is needed because development assistance is not only the responsibility of the government or of public authorities, but of the population as a whole".

During this same appearance before the plenary session of the Congress of Deputies the Minister took stock of Spain's contribution to development cooperation.

> "... in 1981, Spain was among the countries that according to United Nations lists was eligible to receive development assistance. Just ten years later, Spain is one of the largest contributors to development assistance.
>
> (...)
>
> Spanish society, parliamentary groups, and the Spanish Government have all made a tremendous effort in a little over ten years to make up for lost time ... Spain's level of development at that time, more than ten years ago, prohibited it from making any contributions to development, and furthermore, it was a recipient country. We are spending this year, in 1993, just over 155 billion pesetas, which is equivalent to 0.26% of our gross domestic product. I want to emphasize again, however, that this figure is in comparison to zero, or even to negative numbers, if we look at the year 1981.
>
> (...)
>
> We have made a very great effort in a very short time. ... This effort has been made by the Government, by parliamentary groups, and by society as a whole.
>
> We must understand the magnitude of this effort, the speed with which we have achieved this amount, which is still not high enough, but which, if we think about how quickly it has been achieved, gives us an idea of the very profound change that has taken place in Spanish society, in our collective social conscience.

I want to state that this amount is not sufficient. ... we must all demand an increase in these amounts, and this increase, to a large extent, must come from our general state budget. However, there is no doubt whatsoever that these amounts do not come only from the general state budget in Spain, in any European Union country or in any developed country for that matter. They come from different sectors, from different administrations, and they also come from a committed civil population with a social conscience that wants to support those who need help from those who have a higher level of development than they do.

(...)

... this is a country that has made a great effort in the last few years, a country whose contribution to aid and cooperation has increased significantly over time. Spain spends a higher percentage [of its GDP] on development assistance than the United States of America.

(...)

At this moment, there are only three countries that destine 0.7% of their gross national product to development assistance. Indeed, many countries have reduced their contribution to development assistance in this year's annual budget, to a greater degree than Spain.

Therefore, being well aware of the situation, ... we must also realize, and I will repeat this once more, that we have made great strides over the last few years.

(...)" (DSC–P, V Leg., n. 44, pp. 2204—2105).

2. Assistance to Developing Countries

In two different interventions before the Foreign Affairs Committee of the Congress of Deputies on 5 May and 10 October 1994, the Secretary of State for International Cooperation and Ibero-America, Mr. Dicenta Ballester, reported on the Annual Plans for International Cooperation for 1993 and 1994:

"In 1993, Spain earmarked 215.876 billion pesetas for international cooperation, of which 154.365 billion can be considered official development assistance. It is important to remember that the annual plan for international cooperation includes all of the activities that the different Spanish state entities carry out as regards international cooperation in a specific year. These

activities range from those that are carried out jointly with industrialized countries and international organizations to those that are undertaken with less developed countries from the so– called third world. When this cooperation comes from the public sector in the form of grants or loans, at least 25% of the amount does not have to be repaid and is meant to improve the economic conditions and standard of living of less developed countries, it can be officially considered development assistance.

(...)

... the percentage of the GDP used for development assistance this year was 0.25%. This percentage reflects the effort that was made in 1993 to improve our country's level of participation quantitatively and qualitatively.

(...)

... this level is similar to the average amount earmarked for these purposes by the member countries of the Development Assistance Committee (DAC), which in 1992 was 0.33%.

(...)

... for 1994, the amount earmarked for international cooperation was 255.83 billion pesetas, of which 167.197 billion were considered official development assistance. This amount represents a 6.6% increase over 1993.

(...)

... the percentage of GDP used for official development assistance (ODA) is 0.26%". (Appearance 5 May 1994).

As regards multilateral cooperation, the Secretary of State reported on figures for 1993 and 1994:

"... In 1993, multilateral cooperation represented 44.5% of the total funds spent on international cooperation: 95.965 billion pesetas. As regards development assistance, this percentage was approximately 30.4%: 46.924 billion pesetas. The two basic components of Spanish multilateral cooperation were: contributions to the European Community in the amount of 48.361 billion pesetas in 1993, of which 35.734 were considered development assistance; and contributions to international organizations of both a financial and non–financial nature. Financial institutions received 9.961 billion pesetas in international cooperation funds, of which 7.432 were development assistance, and non–financial institutions received 37.642 billion, of which 3.757 were development assistance.

The Spanish contribution to the European Union can be divided

into two main categories: the contribution to the Community budget for cooperation, in the amount of 32.741 billion pesetas for international cooperation, of which 20.113 were development assistance, and contributions to the European Development Fund, which were all development assistance and which totalled 15.620 billion pesetas.

(...)

... as regards international financial organizations, the Spanish contribution in 1993, as I said, was 9.961 billion.

(...)

As regards development assistance, the contribution to international financial organizations is 7.432 billion, of which 1.77 billion correspond to Spain's contribution to the African Development Fund and 1.343 billion to the International Development Agency...

In terms of non–financial international organizations ..., in 1993 the Spanish contribution was 37.642 billion, of which 3.757 was development assistance.

(...)

... the amount of multilateral cooperation earmarked for 1994 is 135.602 billion pesetas, which is a decrease of 48.749 billion from 1993. This reduction is basically due to the fact that no contribution to the International Monetary Fund is contemplated for 1994. As regards offical development assistance, multilateral cooperation amounts to 65.216 billion. Spain's contribution is funnelled through the following organisations: contributions to the European Union, contributions to international financial organizations, and contributions to non–financial international organizations. The total contribution our country will make to community policy on development cooperation, together with the community budget, is 62.919 billion pesetas, of which 48.557 are considered official development assistance. Therefore, 8.893 billion more are being spent in this category this year than last.

(...)

... Spain will participate in financing the sixth and seventh European Development Fund by contributing 18.5 billion pesetas.

(...)

... The Spanish contribution to the community budget earmarked for cooperation is estimated to be 44.419 billion pesetas, which represents 8.13% of the total community budget. Of this amount, 30.057 billion is considered official development assistance, given

that programs developed for European countries are not considered as official development assistance, not even for Eastern European countries, because these countries are not currently included in the list prepared by the OECD Development Assistance Committee.

Next we have international financial organizations.

(...)

The amount earmarked as Spain's contribution to these organizations for 1994 is 15.256 billion pesetas.

(...)

... 10.995 billion are considered official development assistance. Of this amount, 2.038 billion is earmarked for the African Development Bank, 889 million for the Asiatic Development Bank, 4.949 billion to the Latin American Development Bank and 3.117 billion to the International Bank for Reconstruction and Development.

Third, as regards non–financial international institutions, our contribution for 1994 is 57.426 billion pesetas, 29 billion more than in 1993. However, we must remember that a good portion of the amount earmarked as contributions in 1993 is actually going to be paid out in 1994 ... . As regards official development assistance, the amount will equal 5.663 billion. Most of this is comprised of our contributions to United Nations systems".

In these appearances, the Secretary of State made reference to the three types of bilateral aid that Spain participates in (Development Assistance Fund loans, projects which include aid to NGOs and decentralized aid). He explained the geographic distribution of these types of aid:

"... Bilateral aid in 1993 totalled 119.91 billion pesetas, which is 55.5% of the total amount spent on international cooperation during this period of time. In terms of development assistance, this percentage is 69.8%.

The three basic components of bilateral aid are the following: first, contributions to the Development Assistance Fund, which is an instrument meant to promote exportation and development assistance in 1976 by means of Decree, dated August 24. In 1993, the overall net amount contributed was 83.24 billion pesetas.

(...)

The amount corresponding to Development Assistance Fund loans to developing countries was 53.9% of the total development assistance.

(...)

Projects comprise the second component of bilateral cooperation. These projects include those related to technical, cultural or scientific assistance, food aid, emergency aid, equipment and materials, and subsidies, as well as aid to NGOs.

(...)

Within this category, technical assistance, classified as development assistance, totalled 19.427 billion pesetas.

(...)

The geographic distribution of this type of official development assistance is the following: Ibero–America, 46.6%; sub–Saharan Africa, 16.28%; North Africa, 5.06%; the Middle East, 2.46%; Asia and Oceania, 1.7%; Eastern Europe, 1.43%; other countries, the remaining 26.2%.

The third element involved in this bilateral cooperation is decentralized official cooperation.... In the mid–1980s, the autonomous communities become involved in international cooperation.

... In the 1993 Annual Plan for International Cooperation, decentralized cooperation totalled 4.384 billion, of which 4.185 billion, or almost the entire amount, was considered official development assistance.

(...)

As regards bilateral cooperation for 1994, as I said earlier, the amount totals 120.229 billion, of which 101.980 is considered development assistance.

The three basic components of this bilateral cooperation are the Development Assistance Fund, for which the 1994 total of these loans is 80 billion pesetas, all of which is considered official development assistance given that, unlike in other years, all of these loans are going to developing countries.

(...)

The second component is project aid. ... The amount for 1994 for this category is 36.429 billion pesetas, which is a decrease of more than 2 billion from the 1993 amount, due to budgetary reductions for 1994.

Of this amount of just over 36 billion pesetas, 19.28 billion is for official development assistance.

(...)

As regards decentralized cooperation..., it is comprised of programs and projects developed and financed by the autonomous communities or local entities. ... The overall estimated amount in

this category for 1994 is 3.8 billion pesetas, of which 2.7 billion can be considered official development assistance.

As regards the distribution of this aid, Ibero–America continues to be the geographic area that receives the most assistance, receiving 38% of international cooperation funds and 68% of official development assistance. The second most important region is sub–Saharan Africa which receives 21% of the official development assistance, and in third place is North Africa, which receives 5%.

(...)" (DSC–C, V Leg., n. 188, pp. 5839—5841 and n. 306, pp. 9049—9051).

In response to a parliamentary question presented in the Senate on 30 June 1994, the Government explained the general approach to cooperation that was adopted for 1995 for the purpose of achieving unity of action:

"Royal Decree–Law 16/76, dated 24 August, establishes the creation of the Development Assistance Fund whose purpose is to grant loans and other types of grants. These loans are linked to the acquisition of Spanish goods and services. The administration of these funds corresponds to the Ministry of Commerce and Tourism, which presides over the so–called Interministerial Commission charged with studying different proposals for the financing of projects.

(...)

In a meeting of the Interministerial Commission on International Cooperation (ICIC) in November, 1993, the Ministry of Foreign Affairs made a proposal to reinforce the ICIC's role and to coordinate all of the departments and offical development assistance funds. The proposal was passed, and as a result, a new procedure for interdepartmental planning and coordination was put into practice. The ICIC will approve the strategic channels for cooperation at the beginning of the year to be developed during that year, and these channels will be used by all Administration organizations that participate in this policy.

... In February 1994, the ICIC approved channels for cooperation for 1995, and these channels, which will be adopted by all departments, are summarized below:

1. Concentration on human development. Priority will be given to:

a) Social expenditure policies that attempt to provide a minimum number of opportunities for development to broad strata of the population.

b) Least favoured nations, and within these, the poorest and most vulnerable population centers.

c) Specific programs aimed at eliminating social tension and supporting peace processes.

d) Support for policies that strengthen democracy and contribute to the modernization of state institutions.

e) Emergency aid programs, either directly or through competent international organizations.

2. Geographic and sectorial specialization and concentration:

— Integrated cooperation: coordination of public and private influx in order to transcend a purely aid–oriented approach and encourage more direct contracts between individuals, firms and institutions at all levels.

— Distinguishing the type of cooperation based on the level of development of receptor countries: parity cooperation.

— Coordination with other contributors and multilateral organizations, especially the European Union.

— Special attention given to the achievement of sustained development which takes into account the impact on the environment, population and social development issues.

— Integration of debt cancellation programs in development cooperation.

(...)" (BOCG–Senado.I, V Leg., n. 142, pp. 23—24).

Finally, in his appearance before the Senate Committee of Foreign Affairs on 14 March 1994, the Secretary of State for International Cooperation and Ibero–America, Mr. Dicenta Ballester, explained the Government's position on the so–called 'Helsinki Accord':

"It is true that the so–called 'Helsinki Accord' establishes a limit of $2,475 for official development assistance. The official Spanish position on this subject has been very clear. When we are told that official development assistance cannot be given to countries that have a per capita income of $2,475 or more, as this would immediately affect countries with which we have developed significant programs of cooperation — Mexico, Colombia, Venezuela, Argentina, Chile — our response is that the decision made in Helskinki is neither fair nor reasonable. We feel this way because in these countries, there are still pockets of misery which are sometimes very sizeable and merit cooperation assistance. Therefore, we consider the idea good in principle, but as long as these pockets of misery exist, official development assistance should be allowed for some countries with a per capita income

higher than $2,475".

At another moment in his intervention, the Secretary made reference to the target of 0.7 per cent:

"I was asked if there is a deadline for the 0.7%. No, there is not. But there is a specific date. The president of the Government has referred to that date — the year 2000. How can we achieve the 0.7% mark by the year 2000? We will have to see how the country's economy evolves and how much of an increase and what percentage of gross national product can be earmarked each year for official development assistance in order to reach what I consider to be an obligation, that 0.7% mark in the year 2000.

It is true that a great effort has already been made. I have told those of you who sit on the 0.7% committee that this effort has been made and that it should be recognized. Going from a situation in which development assistance was below zero level in the year 1983 to a percentage that equals 0.26% of the gross national product in 1993, when the average for countries that belong to the Development Assistance Committee of the OECD is 0.33% ... must be recognized as a significant effort. ... Furthermore, only three countries have reached the 0.7% mark: Sweden, Norway and Denmark.

(...)" (DSC–C, V Leg., n. 80, pp. 32—34).

a) *Ibero–America*

In the Third Ibero–American Summit of Heads of State and Government held in Salvador de Bahía, (Brazil), 15—16 July 1993, an agreement was reached on a Final Document in which the following is stated:

"23. The Ibero–American heads of State and of Government, in keeping with our Madrid and Guadalajara Declarations, reaffirm the need to foment effective means for cooperation which contribute to reducing the differences between developed and developing countries. We also reiterate the importance of finding new operative instruments which define the culture of cooperation which is considered the cornerstone of our dialogue.

24. The on–going dialogue that has taken place in successive and periodic meetings of our ministers of foreign affairs, the activities of the 5–country Coordinating Group, and the meetings between our permanent representatives to the United Nations, have, for the first time, made it possible to come to an understanding and make

decisions on political topics that are of common interest to the region. In this context we can point out:

d) The implementation of the programs for cooperation that were approved in the II Summit, especially as regards education, health, science and technology.

25. The implementation of the Fund for the Development of the Indigenous Peoples of Ibero–America and the Caribbean. ... with which we are particularly pleased.

(...)

26. The agreement to carry out informal consultations among Ibero–American countries prior to large international meetings, especially the General Assembly of the United Nations in order to increase the level of agreement between our countries and to expand the scope of the decisions adopted in Madrid.

27. The decision to highlight the topics of 'Fighting Poverty' and 'Financing Development' from among those topics discussed in our different sectorial meetings, given their importance to the central focus of this Summit.

(...)".

The Secretary of State for International Cooperation and Ibero–America, Mr. Dicenta Ballester, explained cooperation with Ibero–America to the Senate Foreign Affairs Committee on 14 March 1994:

"The Spanish policy on cooperation with Ibero–America is guided by the principle of promoting development in Ibero–American countries, contributing to the strengthening of democratic practices in all of these countries, supporting the development of an Ibero–American economic and social space, and facilitating the rediscovery and recreation of the bonds that link Spain to Latin America. Specifically, our priority is to promote and facilitate citizen participation in foreign matters.

We must emphasize how important the Summits of Heads of State and Government are for our country, and especially for our foreign policy. These summits allow for political dialogue at the highest level which can bring about the emergence of an Ibero–American community of nations. In order for this to occur, it is fundamental that policies on cooperation help to articulate the Ibero–American economic and social space in order to create new bonds between these societies by providing support and economic and social foundations for the political progress that these summits represent.

The efforts to promote Ibero–American cooperation should be intensified now more than ever since democracy is now the rule, not the exception, in Ibero–America, and given that painful structural adjustments have taken place. We should not miss the opportunity to support democracy by strengthening economic and social development.

(...)

During 1994, and in keeping with these lines of orientation and goals, programmes and projects were begun in six areas which we consider basic and fundamental.

One was to support the initiatives that promote social cohesion and assistance for the least favoured sectors of society.

The second could be called institutional reinforcement. This has brought about an important level of technical assistance on matters such as support for the system of the Administration of Justice, the running of elections, the elaboration of fiscal and legal reforms, the legislative development of rules that promote equality between men and women, etc.

The third is related to environmental protection and the promotion of natural resources.

The fourth is support for educational and training programs in all sectors ...

The fifth is support for urban development given migration to urban centers and demographic growth...

And the sixth is support for the networking of small and medium–sized companies and the development of research capabilities in the area of production...

(...)". (DSC–C, V. Leg., n. 80, pp. 23—24).

b) Maghreb

On 21 December 1994, the Secretary General on Foreign Policy, Mr. Villar Ortíz de Urbina, in response to a parliamentary question presented to the Foreign Affairs Committee of the Congress of Deputies explained the criteria that inspired the Government's policy on the Maghreb.

"... The Maghreb is a priority area in our CSCE policy and activities.

In the last few years, Spain has put a global policy into practice in this region in order to defend and promote our political, economic, and cultural interests in the area through the creation and

consolidation of a stable and prosperous space in which the peoples of the Maghreb can fulfil their aspirations, and Spanish interests can be accommodated. In order to achieve these general objectives, the Government is making use of several different instruments. ... The first is institutionalized political dialogue, and the second cooperative actions defined in a very broad sense, that is, both bilateral and framework type cooperation.

(...)

... some of the most important actions that we are currently undertaking in this region ... have to do with political action. Stability cannot be promoted in the Maghreb without duly taking into account the political evolution and historical dynamics of the region. The Maghreb is currently going through a complex historical phase in which it is searching for new political and economic models to replace those that have failed in the past and is struggling to find and reaffirm its own identity.

(...)

The Spanish government, through its policy on the Maghreb, is attempting ... to contribute ... to a gradual political evolution towards more participatory and democratic formulae that can guarantee greater representation for the Maghreb people within the framework of the protection of human rights. However, in addition to internal issues related to stability, there is also a foreign aspect to be considered. The values of harmonious coexistence and development must be respected in inter– Maghreb relations ... and in this area ... there have been many problems in recent months. ... As regards these problems, the Spanish Government has continually made efforts to encourage the different governments to respect the integrative spirit that brought about the creation of the Arab Maghreb Union in 1989, which is currently in a state, not exactly of paralysis, but of virtual inactivity.

I would also like to stress ... some of the Mediterranean initiatives in which Maghreb countries are participating to some extent with European countries. Of special interest is the decision taken by the European Council at Corfu and Essen to find new bases for and ways to strengthen the European Union's Mediterranean policy. This process will be given what we hope will be an important and decisive boost at the Euro–Mediterranean Conference ... that will be held in Spain ... in Autumn, 1995.

(...)

We also consider the so–called Mediterranean Forum of great

importance. This is basically a forum for political dialogue involving ten Mediterranean countries in which Spain has played an important role from the outset. There are three Maghreb countries in the forum: Tunisia, Algeria and Morocco. ... Spain has also been quite active for a long time now in what we might call the 'Mediterranean *tour*' in which several different security organizations such as the CSCE — nowadays called the OSCE —, the WEU and NATO are now involved.

... the Spanish government maintains regular and fluid contact with all of the Governments in this region. Sometimes these contacts are made through institutional channels, such as those set up for the Good Neighbour, Friendship and Cooperation Treaty just concluded with Morocco, or those needed for the treaty that we are just beginning to negotiate with Tunisia. Political declarations have also been made recently on the programming of bilateral relations and cooperation in several areas with Mauritania and Tunisia. ... Another fundamental aspect of our Maghreb policy is socio–economic policy. Spain supports the process of economic liberalization which has been instituted to one degree or another by Governments in this region. Privatization efforts, the opening of markets and a certain correction of the financial and public sector have been initiated in these countries.

The Spanish government is clearly in favour of strengthening the economic ties and all other types of cooperation that exist between Spain and the countries of the Maghreb. This effort, which has been supported directly, for example, by loan policy, is already proving fruitful. In the last few years, the presence and activities of Spanish businesses have increased in the region, especially in some of the countries such as Morocco and Tunisia ... We must also mention cooperation and development activities in the Maghreb ... We try to obtain as much benefit as possible from our development assistance resources which are still insufficient to meet the enormous need and the magnitude of the problems that exist ...

Finally, our cooperation with the countries of the Maghreb is also growing in the area of education and culture. This is important because it has a great deal to do with what we call the dialogue between cultures which encompasses questions related to the role of religion in some of these countries, including the complex issue of Islamic integration.

(...)" (DSC–C, V Leg., n. 396, pp. I2246—I2247).

c) Eastern countries

In his appearance before the Senate Foreign Affairs Committee on 14 March 1994, the Secretary of State, Mr. Dicenta Ballester, made reference to Spanish cooperation with the countries of Central and Eastern Europe.

"... I do believe that it is important to cooperate with Central and Eastern European countries, in those countries that until recently had Communist regimes ... We have historically and traditionally been rather removed and distant from these countries, and have not understood their reality. Therefore, in addition to all of the positive attributes of cooperation 'per se', in this case we also see that cooperation would be a wonderful way to penetrate these markets and the socioeconomic realities of these countries. ... It is true that we do not currently have offices for cooperation in these countries nor can we create bilateral programmes...

(...)

I want to point out that Spain carries out cooperation efforts with these countries through our contributions to the cooperation funds within the European Union. Therefore, there are European Union programmes of cooperation in Central and Eastern European countries that are partially supported by the 6.6% that Spain contributes to the community fund for cooperation efforts.

(...)" (DSC–C, V Leg., n. 80, pp. 30—31).

d) Middle East

On 14 December 1993, the Minister of Foreign Affairs, Mr. Solana Madariaga, informed the Foreign Affairs Committee of the Senate on cooperation policy in the Middle East:

"Spain will continue to offer all of its support in both the political arena and in the area of cooperation with the peace process in the Middle East, and we will continue to act at both levels: politically by contributing to all of the efforts that help bring about a definitive agreement, and economically and in terms of cooperation, from a bilateral perspective through the Spanish–Palestinian Commission created on 22 November 1993, and also multilaterally.

... the European Union is, at this time, the most important world partner that the peace process in the Middle East has. ... And, of course, part of these resources come from Spain.

I would like to briefly list Spain's cooperation with the occupied

territories. This cooperation has undergone not only a qualitative change, but also quantitative changes evidenced by the fact that the amount has tripled in the last three years. I would like to distinguish between three areas in this regard: first, the funds channelled through international organizations, which amounted to 267 million pesetas in 1993, with a projection of 300 million for 1994; second, the community aid I just mentioned to which Spain contributed 474 million pesetas in 1993 and which is scheduled to total 500 million ECUs in the next five years, 250 million of which will come from the EU budget and the remaining 250 from the European Investment Bank. (Spain will cover approximately 1.35 billion pesetas of this total;) third, bilateral aid which in 1993 totaled 100 million pesetas, mostly earmarked for agricultural, touristic and environmental projects...

We also hope that an amount similar to last year's will be earmarked in the 1994 budget and that non–governmental organization projects will make up the difference as they have in previous years.

Two very interesting projects that the Palestinians have said they would like Spain to participate in are the training of autonomous Palestinian police, ... and Spanish technical assistance in the electoral process...

(...)

... Spain has made one billion pesetas available to Palestinian representatives from the Spanish Development Assistance Fund. These funds must be used to obtain equipment, goods and services in Spain. This amount is divided as follows: 500 million pesetas as a subsidy for the financing of mutually agreed projects and supply programmes, and 500 million pesetas for the financing of 30% of the cost of mutually agreed projects and supply programmes. The other 70% must be obtained from any other source of financing except offical loan entities. In other words, it is hoped that the civilian population and the private sector will also participate in these efforts.

Spain is aware of the need to multiply international cooperation and to concede aid to the peoples of the occupied territories in order to make the peace process viable...

Up until now, our cooperation with the Middle East has been characterized by a perhaps obsolete or sometimes non–existent legal framework. We have only had cooperation pacts signed with Jordan and Egypt in the last few years...

Therefore, the criteria that, in our judgment, should guide our policy on cooperation with the Middle East are the following:

First, a global approach. This means that in order to formulate Middle Eastern policy, the entire region should be taken into consideration...

Second, selectivity. We should concentrate our efforts on those sectors in which Spain has the most experience...

Third, complementarity so that our efforts complement the objectives and actions of the European Union...

Fourth, profitability, because given the scarce resources that are available, it is better to concentrate our efforts on some very large programs and projects that can be expected to grow given the participation of experts and firms from our country.

(...)" (DSS–C, V Leg., n. 49, pp. 4—5).

3. International Terrorism

On 22 November 1993, the Secretary of State for International Cooperation and Ibero– America, Mr. Dicenta Ballester, in his report to the Senate Foreign Affairs Committee on the III Summit of Heads of State and Government on the topic of Cooperation in Ibero– America, made reference to the fight against terrorism and drug trafficking:

"In the fight against drug trafficking and terrorism, our attitude is very clear, and we will maintain and perfect the legal instruments needed to support Ibero– American countries, be they extradition treaties or those related to strengthening or improving the judicial system, and so on.

(...)" (DSS–C, V Leg., n. 37, p. 6).

4. Cooperation on Judicial, Criminal and Civil Matters

In his intervention before the 48th Session of the United Nations General Assembly held on 26 October 1993, Mr. Garzón Real, the Government's delegate to the National Drug Plan, made reference to the problem of international drug–trafficking:

"To combat this world–wide and complex phenomenon, we must abandon local solutions that underestimate the magnitude of the problem and are based on the mistaken idea that drugs are produced by others and that we are the ones who suffer. But we must not forget

that, first, it is necessary for States to coordinate their own efforts and policies so that, once the structure is firm, we may be able to achieve wider coordination. Only a coordinated structure at the very base will make it possible, with the support and leadership of the United Nations, to give the police and judicial authorities a broader sphere of action and make possible the development of intelligent policies to deal with those engaged in organized crime whose main activity is drug trafficking and laundering the profits.

(...)" (UN Doc. A/48/PV 37).

In the Final Document agreed to at the IV Ibero–American Summit of Heads of State and Government held in Cartagena de Indias on 14 June 1994, the following was emphasized:

"We reiterate our commitment to combating the illegal production, trafficking and consumption of narcotic and psychotropic substances and the money laundering and terrorist activities linked to drug trafficking, and we urge international cooperation to create favourable conditions in which to develop competitive economic activity in areas where drugs are produced so that farmers can get out of the drug business.

(...)".

5. Mediterranean Cooperation

In his intervention on 14 March 1994, before the Senate Foreign Affairs Committee to report on relations with the Maghreb, the Minister of Foreign Affairs, Mr. Solana Madariaga, made reference to the so–called "5+5 initiative" and the "Mediterranean Forum":

"... allow me to make reference to the dialogue and multilateral cooperation taking place in the Mediterranean region. First, I would like to mention the so–called '5+5 initiative' which, after the promising 1991 Algiers Declaration, entered a period of non–activity due to the Libyan crisis.

We are currently exploring the possibility of resuming cooperation in the western Mediterranean, given that we have a special interest in the development of several key sectors of cooperation such as migration, the environment, transport and communications — which 1 mentioned earlier — nutritional self–sufficiency, and cultural dialogue. We are attempting to reinitiate conversations on these topics in some type of western Mediterranean forum which will allow us to revive the dialogue

between the northern and southern rims of the western Mediterranean.

Second, there do exist other proposals which are directed not only at dialogue in the western Mediterranean region, but at something even broader in scope, such as the creation in Egypt of what we might call a 'Mediterranean Forum' for a series of countries that belong to the two basins that make up this body of water ... I trust that we can soon hold a ministerial–level meeting, probably in Alexandria, in which we would reflect on the major questions that affect the region's stability...

(...)

... the Mediterranean Forum encompasses a larger geographical space. It includes the entire Mediterranean, not only the western part. The creation of this forum was difficult and I would say even impossible, until means were found to resolve the problems of the Middle East.

The Mediterranean, in a broad sense, is very involved in the conflict in the Middle East, and I reiterate that it was very difficult to imagine that the great powers could cooperate or collaborate or participate in a Mediterranean dialogue in a broad sense as long as there was no formula by which to address the Middle East problem. Fortunately, the means by which to work towards a solution has been found, although there are both high points and low...

I believe that this will allow us to initiate the most ambitioius dialogue that has been undertaken by the Mediterranean Forum, which is concomitant with the Mediterranean Cooperation and Security Conference.

Therefore, I think that we can already talk of some type of forum so that a meeting can be held before too long, most probably in Alexandria, to discuss this broader framework for the Mediterranean Forum ... in my opinion, this is undoubtedly a step in the right direction.

(...)

I believe that this is the right time to begin to think about Mediterranean unity from all perspectives...

... I believe that we are moving in the right direction, which is towards Mediterranean unity. In any case, there will always be the western Mediterranean and the entire Mediterranean. There is a western Mediterranean sphere which is of great interest to us given the 5+5 dialogue which could not take place in the broader scope of the entire Mediterranean. I believe we will always have to

passionately defend some kind of regional relations for the western Mediterranean.

(...)" (DSS–C, V Leg., n. 80, pp. 5, 10 and 14).

A few months later, in July 1994, the Mediterranean Forum did meet in Alexandria. The ministers of Foreign Affairs of ten rim countries attended. The Government, in response to a parliamentary question of 13 September, 1994, reported on the outcome of that meeting:

"The Mediterranean region is extremely complex. Political, economic, social and cultural diversity among its States and peoples make it a cauldron of centrifugal forces. However, there also exist many unifying elements which are the fruit of a long history of coexistence and interrelations. There is a growing perception that the region's problems and their solutions are indivisible, and that there is an interdependence among the Mediterranean States. The outcome in the last few years has been the various initiatives that seek to analyze and find solutions to the problems that affect the Mediterranean region.

Spain has participated in these efforts. The Mediterranean dimension of Spanish foreign policy has been strengthened in the last few years. Our country has had an important role in the initiatives that have been undertaken to facilitate dialogue and promote cooperation in this region.

We could mention, for example, Spain's role in the Western Mediterranean Initiative (better known as the 5+5 Forum), its pioneering efforts in the proposal for a Mediterranean Cooperation and Security Conference, and the actions it has taken to enrich the Mediterranean dimension of several European security fora (CSCE, WEU and NATO) and the European Union's foreign policy (especially, its Renewed Mediterranean Policy).

Spain has been part of the Mediterranean Forum since its creation and has had the same positive attitude and will to collaborate that it has shown in earlier initiatives...

On 3—4 July the first ministerial meeting was held in Alexandria...

One of the most important outcomes of this meeting was the decision taken by the ten ministers of foreign affairs to continue to develop the Mediterranean Forum initiative which was conceived as a mechanism for political dialogue and cooperation in areas of common interest to Mediterranean countries. As a guideline for future efforts, the ministers stated their desire to be realistic and to adopt decisions that have a concrete effect, thereby avoiding any

possible duplication of activities being undertaken in other fora. One of their priorities must be to establish a global strategy that takes into consideration the need for stability, peace, security and sustained development throughout the region.

It was also decided that the next ministerial meeting of the Forum will take place in the first half of 1995 in a French Mediterranean city. Experts and high government officials of participating countries were charged with the preparation of this meeting. Groups of experts were established for three specific areas: politics, economics and culture...

(...)

The ministers stated their desire that other Mediterranean countries gradually become involved in future meetings. The incorporation of Malta in the next meetings was accepted in Alexandria.

The responsibility for coordinating and presiding over the first meeting of these groups was recently given to different countries. Thus, Italy was put in charge of the culture group, Egypt the economic group and Spain the political group in recognition of the important role these countries have played in the genesis and development of the Mediterranean Forum. These three groups will meet during the month of October.

Spain understands that the Mediterranean Forum could be the first step towards a more ambitious project. Thus, the forum should contribute to forming a community of analysis that can then evolve into a community of action ... The Spanish Government will continue to be at the forefront of this and any other initiative that promotes dialogue and cooperation in the Mediterranean region.

Madrid, 30 September 1994.— The Minister" (BOCG–Congreso.D, V Leg., n. 150, pp. 171—172).

XII. INTERNATIONAL ORGANIZATIONS

1. United Nations

a) Reform of the Charter

In the Report of the United Nations Secretary General on the

question of equitable representation and an increase in the membership of the Security Council, the Spanish Government's position is reflected in the following way:

"I. General Considerations

1. Fundamental changes have occurred on the international scene since the convening of the San Francisco Conference and the establishment of the United Nations at the end of the Second World War.

2. As a result of the decolonization process which began during the 1960s and the recent establishment of newly independent States, the number of members of the international community has increased very substantially. This growth has been reflected in the steady increase in the number of States Members of the United Nations (the number rose from 51 States in 1945 to 113 in 1963, and to 183 in 1993). The Organization today has more than three times the number of Member States it had 50 years ago. Furthermore, new actors have appeared on the international scene while the role of others has increased, a reflection of their particular importance, with the result that their influence on international relations is considerable.

3. The contemporary world, which is very different from the world during the early days of the United Nations, is characterized by the disappearance of bipolarity and of traditional ideological barriers, as well as by increasing interdependence and the rapid acceleration of means of transport and communications. Following the end of the cold war, new and very complex types of conflicts have emerged within States, posing a clear threat to international peace and security and a challenge to the capacity of the United Nations to act.

4. The Security Council, which for decades was largely obstructed by the actions of its permanent members — 280 vetoes were cast — has recently regained its capacity to take decisions in exercise of its primary responsibility to guarantee the maintenance of international peace and security. This is demonstrated by the increasing number and importance of resolutions adopted by the Council, and it is therefore more necessary than ever to provide the Council with the necessary means to ensure that its decisions are effective and properly carried out.

5. In light of the foregoing, the Spanish Government believes that it is necessary and timely, on the eve of the celebration of the fiftieth

anniversary of the United Nations, to pursue the process of revitalizing and restructuring its organs, in particular the Security Council, with a view to making it more representative and ensuring that it is able to act both promptly and effectively, as called for in Article 24 of the Charter of the United Nations.

II. Basic Criteria

6. The following basic criteria should be borne in mind when considering the possible review of the membership of the Security Council:

(a) *Representative nature:* The membership of the Security Council, which acts on behalf of all Members of the Organization (Article 24 of the Charter), must properly reflect the increased number and diversity of Member States. This would enhance the legitimacy of its actions and encourage compliance with all decisions adopted on the crucial subject of the maintenance of international peace and security.

(b) *Effectiveness:* The renunciation by States of the use of force, and even the exception envisaged in Article 51 of the Charter, require that the Council be able to act promptly and effectively. This effectiveness should be guaranteed not only through the prompt adoption of timely decisions, but also — and this is particularly important — by ensuring that such decisions are implemented and complied with fully, promptly and without distinction. Only thus will the prestige and authority of the Council be guaranteed.

III. Membership

7. With the foregoing in mind, it would be timely for all Member States to consider the desirability of reviewing the membership of the Security Council, in order to make it more representative and effective. To that end, the criteria for membership in the Council established in article 23, paragraph 1, of the Charter remain fully valid, and particular emphasis should be placed, first of all, on the contribution of Member States to the maintenance of international peace and security and to the other purposes of the Organization as well as on equitable geographical distribution. Due care must be taken to ensure that a proper balance is maintained between the two elements.

8. The membership of the Council also should take fully into account the presence on the international scene of various actors with substantial influence at the global or regional level and the capacity to make significant contributions to peace– keeping operations or collective actions authorized by the Council. The

objective of the review should be to ensure equitable distribution not only in the allocation of non– permanent seats, but also in the membership of the Council as a whole.

IV. Possible reforms

9. (a) *Increased membership:* The membership of the Security Council should be increased moderately to take into account, in particular, the fact that since the last expansion of the Security Council, in 1963, 70 new States have joined the United Nations, and that this number is likely to continue increasing.

(b) *The creation of new categories* should be considered, to enable certain States which play an important role in international relations and have the capacity and willingness to make a significant contribution to the purpose of the Organization to be included as members of the Council. Accordingly, we would envisage a limited increase in the number of permanent members, which would not be entitled to cast a veto. Consideration also should be given to the creation of a new category that would permit more frequent membership in the Council of certain States in accordance with objective criteria based on the principles established in Article 23 of the Charter. In addition to reflecting the new realities on the international scene, the presence of such States on the Council would prompt them to assume obligations to contribute substantially to the conduct of the Council's work. In addition to enlarging the membership, such a step also would provide a counterweight to the actions of the permanent members. In any event, the selection criteria for access to these categories should guarantee balanced geographical distribution and, on a rotating basis, should include certain States of particular importance within their respective regional groups.

V. Procedures

10. For obvious reasons, the possible review of the membership of the Security Council must not proceed hastily, but rather, should take the form of an ongoing process of dialogue and exchange of ideas and proposals to ensure the required consensus among the regional groups and secure the agreement of the permanent members.

11. The process should in due course result in the elaboration of a draft resolution of the General Assembly and amendments which ultimately would be submitted for ratification by the Members of the United Nations, in accordance with the provisions of Article 108 of the Charter.

12. Spain will participate in a constructive dialogue with other States Members of the Organization in order to define the preliminary ideas advanced in this document in more specific terms at a later stage. In so doing, it also will keep the views of other states very much in mind, in particular those expressed by the other States members of the European Community.

(...)" (UN Doc. A/48/264, pp. 83—86).

The basic lines that will govern Spain's presence as a non–permanent member of the United Nations Security Council were explained by the Minister of Foreign Affairs, Mr. Solana Madariaga, to the Foreign Affairs Committee of the Congress of Deputies, on 17 February 1993:

"... I would like to refer to the general guidelines or criteria to keep in mind. First of all, I wish to state that the intense activity of the Council has obliged us to work even harder and to commit considerable additional resources to this area. We have therefore expanded both our permanent representation in New York and the *Dirección General de Organismos y Conferencias Internacionales* (Office for International Organizations and Conferences) here in Madrid. At this time our delegation is not only actively participating in all of the Council's activities per se, but is also sitting on five sanctioning committees established by the Council that deal with Libya, South Africa, Iraq, the former Yugoslavia and Somalia...

Second, we should accept the idea that when a State forms part of the Security Council, it does not only represent its own interests; it must also take into account the general interests of the international community ... Therefore, we can at no time lose sight of the global interests that are in play...

(...)

Third, ..., we have been elected members of the Security Council because of what Spain represents for the world. Therefore, it is logical and natural that we give priority to those areas that have special ties with our country, with Spain. In this sense, I believe we could cite Ibero-America, Europe and the Mediterranean as regions that share many kinds of special ties with Spain and which are, in fact, the priority areas of our foreign policy. We also have the opportunity to put forth and defend our own specific interests in this sphere.

(...)

Fourth, we also realize that members of the Security Council do not generally act in a solitary manner. They constantly consult with

others and try to come to some consensus on their positions. Our delegation carries out many of these consultations. Specifically, we have always consulted, do now consult and will continue to consult with the two other members of the European community who are on the Security Council — France and Great Britain — who are permanent members. By doing so, we are complying with the spirit and the wording of the Treaty of the European Union.

We also have special ties with Ibero-American countries, and so we also frequently consult with the two Ibero–American countries — Venezuela and Brazil — that form part of the Security Council for Ibero–America, and plan to continue to do so.

(...)" (DSC–C, IV Leg., n. 605, pp. I3177—I8178).

2. North Atlantic Treaty Organization

In his appearance on 25 January 1994, before the Foreign Affairs Committee of the Congress of Deputies to report on the Atlantic Alliance Summit held January 10—11, the Minister of Foreign Affairs, Mr. Solana Madariaga, addressed several different questions.

As regards the strengthening of transatlantic ties, he stated:

"... this summit has shown that there is clear agreement among all sixteen allies that in the still confusing world of European security, it is absolutely necessary to maintain an Atlantic Alliance with strong transatlantic ties, in other words, a cohesive and efficient North Atlantic Alliance.

Although the end of the Cold War has given us hope for a new era of peace in Europe, there is no question that our countries still need a collective defense system such as the Atlantic Alliance to ensure our security. The presence of NATO is needed not only to dissuade [countries from engaging in] aggressive actions and to organize the collective defense of its member States, but also to project a certain stability across Europe.

(...)".

The Minister went on to explain the need to adapt the Alliance to the new realities of European security:

"First, to strengthen European security as a whole, including special consideration of the legitimate security concerns of the Central European countries who have petitioned for accession to the Alliance...

Second, to facilitate the allies' making a greater contribution to

the security of our continent, in consonance with the concept of the progressive development of European defense, by defining some lines for action and some technical procedures that would make it possible for the Western European Union to carry out some autonomous military operations, under certain conditions, that would complement those of the Atlantic Alliance.

Third, to adapt the Alliance structures to Europe's new security challenges in order to make the best use of its military efficiency within the framework of crisis management and peacekeeping operations that it might be charged with by either the United Nations or the CSCE.

Fourth, to focus more of the Atlantic Alliance's attention on security questions related to the Mediterranean region.

(...)".

He also referred to new NATO responsibilities in the following way:

"... the changes that have taken place as a result of the end of the Cold War as regards European security and the different types of conflict that our continent is confronting, make it necessary for NATO to carry out new missions whose purpose is to prevent conflicts or manage crises, especially through peacekeeping operations that the Atlantic Alliance carries out at the request of either the United Nations or under the responsibility of the Conference on Security and Cooperation in Europe as a regional organism of the United Nations.

In order to plan and develop these new responsibilities in the most useful and efficient way possible, the Alliance's military structures must be modified ... And this is precisely what the summit has decided: to modify the Alliance's structures and procedures so that a more rapid and flexible response to requests for intervention can be accommodated without harming its traditional responsiblity for the collective defense in any way. This will include closer cooperation with non–Alliance member European countries.

(...)".

As regards security in the Mediterranean region, the Minister stated:

"... for some time now, the Spanish Government has felt that the new reality of European security demanded that the Alliance pay closer attention to the stability and security of the Mediterranean region ... We thought that the recent events in the Middle Eastern peace process allowed us to contemplate new perspectives with greater confidence and with a greater understanding of the Mediterranean region which NATO should also be able to take

advantage of.

The mandate that is included in the summit's declaration that the permanent Council continue to study this situation and do everything possible to strengthen regional stability, is an important first step in the right direction. We will work to develop the mandate given to the permanent Council. To our way of thinking, the Council should at some point approve the initiation of contacts with certain southern Mediterranean countries who are destined to affect the peace and stability of the entire region through dialogue on security issues.

(...)".

Finally, as regards the expansion of the Alliance in order to strengthen security on the European continent after the lessening of East–West tension, Mr. Solana Madariaga gave the following explanation:

"... there are two basic ways to address this question. The first would be to immediately initiate a process of expansion of NATO to incorporate some Central European countries... The second understands that the true problem is not that the summit decided to expand the Alliance immediately... but rather the need to set down bases for the development of a new cooperative security system in which all European countries would participate.

The sixteen allies preferred this second approach.

(...)" (DSC–C, V Leg., n. 104, pp. 3322—3324).

In another appearance, on 14 December 1994, the Minister reported on the latest events related to European security, the NATO ministerial meeting and the Budapest Summit of the CSCE, and once again made reference to the subject of the expansion of NATO. He stated:

"We agreed that the expansion of the Alliance should be based on the following four principles. First, expansion should contribute to stability and security for the entire Euro–Atlantic region. Second, expansion should improve the Alliance's effectiveness. To achieve this, expansion should be done so that NATO maintains its ability to carry out both its main duty, which is collective defense, and its new peacekeeping functions. Third, new members will be full members with all of the rights and obligations that correspond to an ally. Fourth, acceptance of new countries should be done on a case–by–case basis... In this way, the expansion of the Alliance would most certainly begin by evaluating a candidate's degree of preparedness and the context in which it exists.

(...)

What is our opinion on this?

(...)

First, all of the allies agree the Alliance should be expanded...

Second, no European country is expressly excluded from this expansion...

Third, the Alliance has decided that the process of reflection that is being initiated on the issue of expansion should be completely transparent...

Fourth, ..., we still believe that expansion of the Alliance is an extremely complex question that can only be done gradually and prudently... And therefore, in our opinion, we should continue to use the Partnership for Peace as a mechanism for the harmonization of countries that wish to join the Alliance.

Fifth, it seems logical to us that the Partnership for Peace is not at odds with, but rather is complementary to the decisions now being made on the expansion process...

Sixth, it is clear that the challenges related to incorporation into the Alliance are greater for some countries than for others. Therefore, some countries will be admitted before others.

(...)" (DSC–C, V. Leg., n. 383, pp. 11794—11795).

3. Western European Union

Note: *See* XIII.8. Common Foreign and Security Policy

The Secretary of State for Foreign Policy, Mr. Villar y Ortíz de Urbina, appeared before the Foreign Affairs Committee of the Congress of Deputies on 19 October 1993, to explain Spain's role in the WEU:

"... as regards the development of the role of the WEU and of Spain's role in this organization, I must say that Spain has participated from the outset in the development of the so–called operative role of the WEU which has several aspects to it. First, we have participated intensely and actively in the establishment and development of a planning unit that is located in Brussels in the new WEU headquarters and which works together with the international secretariat and the permanent representatives to this organization...

Another important aspect... is the identification of the forces to be put at the WEU's disposal. At this time, the majority of WEU members have already identified or notified the organization and its

members of the forces that they have assigned to the organization. We have not yet done this, but we hope to do so soon. We are waiting for the Ministry of Defense and the General Staff to identify these forces.

(...)" (DSC–C, V Leg., n. 50, p. 1444).

4. Conference for Security and Cooperation in Enrope

In his appearance before the Foreign Affairs Committee of the Congress of Deputies on 14 December 1994 to report on the CSCE summit in Brussels, the Minister of Foreign Affairs, Mr. Solana Madariaga, made reference to the summit's most important decisions:

"First, as a symbol of the member States' willingness to continue the process to strengthen and institutionalize the Conference, it will now be called the Organization for Security and Cooperation in Europe. There will also be a Ministerial Council, which was the former Council of the CSCE, and other organizations of the Conference itself will also undergo a name change. The role of the president, the Secretary General and the high commissioner for national minorities will be strengthened, and contacts with the organization's Parliamentary Assembly will be increased...

Second, a code of conduct on matters of security is being adopted which will govern the relations between member States and their relations with their citizenry, basically as regards the democratic control of the Armed Forces. This code should serve as a guide for the behaviour of new European democracies. Among others, it validates the principle of the approval of defense expenditures by the Legislature and the requirement that the Armed Forces be politically neutral and always act within a constitutional framework.

Third, a reference framework is also approved in the Conference for the future control of arms, with emphasis placed on the treatment of regional conflicts.

Fourth, all of the participating countries have signed a document on the principles that govern the non–proliferation of weapons of mass destruction. This is a code of conduct for all of the countries that belong to the organization.

Fifth, a security model will be elaborated for the 21st century, which will define the major points of European security in the future.

Sixth, the Summit has improved the system for the promotion of

trust and security that was one of the principle achievements of Helsinki from the outset by adopting new measures on the world–wide exchange of military information.

Seventh, as regards the human dimension, several measures are being taken to strengthen the Office of Democratic Institutions and Human Rights. The final document includes a clear condemnation of all types of torture and ethnic cleansing, and advocates more rights for national minorities, with special mention of the citizens of the Romany/Gypsy race.

Eighth, as regards the economic dimension, the participant States pledge to support the gradual incorporation of former Communist countries into the free market system. The Economic Forum will be strengthened as a center of discussion and reunion, and a commitment is made to give priority attention to environmental issues and the fight against drug trafficking.

Ninth, the Spanish ideas on the strengthening of economic and security relations with Mediterranean rim countries were also well accepted in Budapest. As a consequence, the Summit established a channel for dialogue between itself and the so– called non–participating Mediterranean states which are Morocco, Algeria, Tunisia, Israel and Egypt, by means of a kind of group contact with regular meetings to be held involving representatives of these countries, and high level consultations made between the Secretary General and the leadership of the former CSCE, now called the Organization for Security and Cooperation in Europe.

... The most recent international meetings have shown the need we have... to come up with a new security structure for our continent, for Europe. This means that there must first be a better system for the relations that unite the different security organizations that exist today. The United Nations, the Organization for Security and Cooperation in Europe, the European Union itself, the Atlantic Alliance, the Western European Union and even the Council of Europe should not only improve their methods of interaction, but should also perhaps better divide their work. In this way, they could complement one another more adequately and more effectively.

(...)" (DSC–C, V. Leg., n. 383, pp. 11796—11797).

5. Couucil of Europe

In response to a question presented in the Senate on the position the Government defended before the Ministerial Commission of the Council of Europe and the position it intends to maintain during the Vienna Summit of Heads of State and Government, the Government stated, on 3 December 1993:

"1. Revision of the Statute of the Council of Europe.

... The Council of Europe created a Conference of Local and Regional Powers in Europe in 1957... Its principal function is to debate the problems that local and regional autonomy presents, issues of territorial arrangement, urbanism, environmental protection and several cultural questions related to this entity's scope of action.

In its Final Declaration, the Vienna Summit included the 'decision to approve, in principle, thè creation of a consultative organ to truly represent local and regional concerns in Europe'.

Thus, new impetus is given to the work that has been carried out for many years on the possible transformation of the Conference into a two–chamber congress within the Council of Europe.

2. The accession of the European Communities to the European Cultural Convention and the European Convention of Human Rights.

Cooperation between the Council of Europe and the EC has been taking place since I987 through exchanges of letters. The political declaration of the Summit is pleased that this cooperation has been especially fruitful as regards the development of common actions, especially with the countries of Central and Eastern Europe.

The declaration also recognizes that this collaboration in more and more areas reflects specific and evolving institutional relations...

... in the Commission's opinion, once the Treaty of the European Union enters into force, the question of the Community's accession to the Statute of the Council of Europe should be examined. This would be a positive step towards strengthening the new European balance and achieving the objectives pursued by both organizations.

Although the Summit did not make any decision on this point, the paragraphs of the political Declaration, which were actively supported by Spain during their preparation, open a channel for negotiations for the Community and make possible its participation in the conventions cited above.

3. The establishment of a single Court for human rights to replace the current Commission and Court which are constantly busy.

... given the importance of the Council of Europe for the protection of human rights and the alarming overload of their capacity which is only expected to worsen in the future, Spain firmly supports the creation of a single and permanent court which could be made up of two chambers, the upper one dealing exclusively with issues presented to it by the lower chamber or when there is an appeal of a certain case in special circumstances, so as not to simply repeat the problems that currently exist which slow down the system and generate more expenses.

... the final Declaration mentions the single court and mandates that the Ministerial Committee prepare a final text for a protocol for the modification of the Convention so that it can be signed by the States at the next ministerial session in May 1994.

4. The adoption of an additional protocol to the European Convention of Human Rights on the rights of national minorities.

(...)The Spanish position... is clearly summarized in the words of the President of the Government himself when he spoke at the Summit:

1) There is no type of human right other than individual human rights.

2) No individual can be discriminated against in the exercise of his rights because he is a member of a minority, nor is positive discrimination based on this membership acceptable.

3) The exercise of certain basic rights by individuals belonging to a minority, whether it be national or of another kind, can, however, justify public authorities being asked to attend to certain collective needs.

(...)" (BOCG–Senado.I, V Leg., n. 50, pp. 54—55).

XIII. EUROPEAN UNION

1. Enlargement

In his appearance before a plenary session of the Congress of Deputies to report on the conclusion of the EuropeanCouncil held in Brussels on 29 October 1993, the President of the Government spoke about the

issue of the enlargement of the European Union:

"... the Council of Europe has decided to emphasize its determination to carry out the first enlargement of the European Union, and therefore accession of Austria, Finland, Norway and Sweden can take place on 1 January, 1995...

(...)

The President and the Secretariat of the Council have been charged with preparing a proposal to be ready by December on the institutional aspects of the enlargement. From our point of view, this last debate should focus on one essential question: maintaining the institutional balances that currently exist in the Union after enlargement takes place.

(...)" (DSC–P, V Leg., n. 24, p. 866).

The Secretary of State for the European Communities, Mr. Westendorp, in response to a parliamentary question, made reference to the institutional reform of the Communities that will be needed as a result of the incorporation of Sweden, Austria, Finland and Norway:

"... the institutional question, within the framework of enlargement, has always been and continues to be an issue of great importance to the Spanish Government... Enlargement is taking place towards the north and centre of Europe, ..., and therefore, the current balance in the Community is being altered...

In the European Council in Lisbon, a statement was made that enlargement as regards institutional issues was possible in accordance with current institutional provisions. This means that it would not be necessary to deeply transform the institutional system for decision making in the Community before enlargement because the intergovernmental conference called for 1996 is planned to accommodate these fundamental changes. However, this enlargement, which is limited to four countries, does not require large institutional transformations. Spain has understood this from the outset. There were countries, however, that felt that the enlargement should be used to make significant institutional reforms. In our opinion, this would have unnecessarily delayed the accession negotiations of these four countries. Therefore, these institutional adaptations would have to be limited to those considered most fundamental, basically those affecting the Council of Ministers, the European Commission, the European Parliament and the European Court of Justice...

As regards the Commission, ..., the possibility of carrying out a mechanical adaptation was suggested: add one commissioner for

each new country. There were other suggestions, such as reducing the number of commissioners... but this solution created the problem that, if we wanted to maintain the current balance and the number of commissioners were reduced, we could end up with either a solution that provided only one commissioner per country, in which case there would be a profound imbalance of the current system, or the number of commissioners would be reduced to a number lower than the number of countries, an approach that would allow the current balance to be maintained by giving large countries a permanent commissioner and smaller countries access to a rotating position. Neither of these solutions is acceptable...

At the Court of Justice, Spain was in a situation of being a large country in terms of number of judges — all countries have one judge — but there is a thirteenth judge, this position rotating through the five most heavily populated Community countries. However, we are considered a medium–sized country and even a small country as regards advocates–general. The four most populated countries of the Community, that is the Community before we became a member State, had a permanent advocate–general, and the remaining countries had to share the remaining number of advocates on a rotating basis. Spain requested a permanent advocate–general as part of this enlargement to put it in line with the other four most heavily populated countries.

As regards the European Parliament, the European Council in Edinburgh had decided to modify the number of parliamentarians in order to make room for the representatives of the new German 'länder'. The number of German parliamentarians was raised from 80 to 99. A proportional increase of five for the four other most highly populated countries was also approved, with one more parliamentarian for Spain and so on...

As regards the Council of Ministers, the problem of whether or not the number of votes assigned to each country should be modified was discussed. ...There is an imbalance in the Community; there is an overrepresentation of small countries and an underrepresentation of large countries... There is an imbalance, but what was being attempted at that time was the maintenance of that balance. The best way to do that, in Spain's judgment, is through the Council voting system. There are two approaches. The first is to do a mechanical adaptation. The minimal number of votes required to block a decision is currently 23. If four new members are integrated, and if we want to maintain the 70% that these 23 votes represent,

this minority blocking number will have to be increased from 23 to 27. On the other hand, at the other extreme is the position maintained by the United Kingdom which is that the number of votes for a minority block remain 23 based specifically on this relative underrepresentation of the large countries as compared to the small countries in the Community...

Spain was between these two positions: the majority being the 27 figure and the minority, the United Kingdom's figure of 23 ... Spain proposed an alternative which was that the general rule for a block would be that 27 votes would be needed to block a decision, or a decision could be blocked when the total votes of three countries equalled 23 votes... This system was inspired mutatis mutandis in the ECSC ...

Well then, this was Spain's proposal, and it is currently being studied by the different member States. We believe that it could be an intermediate compromise between the two more extreme positions I have explained above...

... the so–called small countries are somewhat reluctant to accept the Spanish proposal because it makes the de facto assumption that two large countries plus one medium–sized one can block a decision. ...However there are small countries with a specific idiosyncracy that are better represented in the Community as regards voting under the Spanish formula. I am thinking of Greece, Portugal, also France and Italy. These are countries with which we have historically voted because we were defending similar interests. ... All other proposals that Spain has made in the past... have been acepted by the European Council in Brussels and have been transmitted to the new acceding countries. ... The only question that is still pending, then, is the minority block in the Council voting system.

(...)" (DSC–C, V Leg., n. 96, pp. 3044–3046).

In response to a question presented in the Senate on the repercussions the incorporation of Sweden, Finland, Austria and Norway into the European Union would have for Spain, the Government stated the following:

"The Government is convinced that the accession of Austria, Sweden, Finland and Norway to the European Union would not only produce no harmful effects for Spain, but would even be beneficial to our interests.

In general, the incorporation of four new States that are among the most industrialized countries in the world, will contribute to

increasing the economic importance and weight of the European Union internationally.

In more specific terms, the conditions that have been negotiated for the accession of these countries include immediate access to an important market for our agricultural exports which will be able to enter these countries with no type of barriers whatsoever.

(...)

Three of the four candidate countries (with the exception of Finland) will be net contributors to the Community budget, and this will help finance the largest areas of community expense, especially those related to European Agricultural Guidance and Guarantee Fund (Guidance)guarantees and structural actions that are of special interest to Spain.

As regards fishing, Spain will acquire new opportunities to increase their catch of cod and similar types of fish in Norwegian fishing grounds and those belonging to third countries.

In addition to this, there is the important political commitment made by the Ministers of Foreign Affairs to terminate the transitory regime that was established in our act of accession regarding access to waters pertaining to the Ten, which was not due to expire until January 1, 2003. The Council has pledged to approve the measures needed so that this commitment can take effect no later than January 1, 1996.

Throughout the accession negotiations, Spain has remained clearly in favor of respecting current community patrimony, and of avoiding any danger of contamination of the same.

(...)

We can also speak about the issue of the free movement of goods. Transitory periods of four years have been approved for the candidate countries to maintain stricter rules on issues related to consumer and environmental protection. During this period, the possible revision of patrimony will be studied. ...

In conclusion, the accession of Austria, Sweden, Finland and Norway will help to strengthen the European Union, and the conditions established in the respective acts of accession will have favourable effects for Spain.

(...)" (BOCG–Senate.I, V Leg., n. 112, pp. 15—16).

The Minister of Foreign Affairs appeared before the Senate Foreign Affairs Committee to explain the position the Spanish Government defended in the meetings of the Heads of State and Government in Vienna and in the European Council as regards the enlargement of the

European Union to include Eastern–block countries:

"... how do Eastern countries see Europe, and by Europe we mean the European Union, and what do the members of the European Union think of the incorporation of the new Eastern countries? This is a two part question. I will begin with the first part. How do Eastern countries see Europe or the construction of Europe? Well, they see it as a great dream. In some senses they see it in the same way the Spanish saw it in the 1960s. Europe, for them, is the land of freedom, and Europe for them, is the land of relative prosperity. There is not doubt that this is the vision the citizens of Eastern countries have of the Europe of the Twelve at this time...

The other part, how do the countries of the European Union feel about the incorporation of the old Eastern–block countries? We must look at this from the perspective of a great principle, the principle of solidarity. And this is certainly difficult because Eastern countries have to make much more complex transitions than the ones other countries had to make because they have to submit to a double transition, a very complex and difficult political one, and also an economic one, which may be even more complex and difficult ... These are societies in which building a market economy is going to be enormously difficult.

I believe, from Spain's perspective, that we must at least try to help these countries incorporate into the European Union at whatever pace their economies allow... but we must also try to defend the interests of the member countries through the introduction of some elements that have to do with variable time.

... How quickly can developed economies take on this new trade? How quickly can the rest of us adapt, can our economies adapt, in order to keep this balance? This is where the great debate emerges... I don't believe anyone questions the generosity of this type of measure. What some do question is just how quickly these projects can be carried out.

(...)

The second problem is that the Europe that today looks towards the East is a Europe that should not forget that this is not the only border Europe has. Europe has a southern border, a Mediterranean border, and this border also deserves special attention.

I would remind you that the European Union is currently party to association treaties... with Poland, Hungary, the Czech Republic and Slovakia, and is about to conclude treaties with Romania and Bulgaria. These are association treaties, the same type that we hope

to sign with Russia at the end of this year or the beginning of next. And it is the same type we want to sign with the countries of the Maghreb. The most advanced is that with Morocco, although Morocco does not form part of Europe, geographically speaking...

Therefore, we are trying to find a balance between the eastern border and the southern border so tbat the center of overall gravity for the Community or the European Union does not move exclusively towards the east. However, we are seeing the possible appearance of some protectionist measures which we must be able to balance with the concepts of generosity and free exchange.

(...)".

The President of the Government appeared before a plenary session of the Congress of Deputies on 29 September 1994 to report on the European Council in Corfu, which was held on 24—25 June. He made reference to some considerations related to Central and Eastern Europe included in the Council's conclusions:

"The Council expressed its desire that associated countries such as Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria accede as soon as possible to incorporation as members of the Union, but said that negotiations for accession cannot begin until after the 1996 Intergovernmental Conference.

The Council also expressed its desire to increase the European Union's cooperation with Slovenia ... Also, it is pleased with the fact that the negotiations with Baltic countries are well on their way to establishing areas of free commerce and are coming to a very successful end. The Union expresses its desire that the Baltic countries form part of the Union some time in the future.

(...)" (DSC–P, V Leg., n. 85, pp. 4321).

In a subsequent appearance before a plenary session of the Congress of Deputies to report on the European Council in Essen held on 9—10 December 1994, the President stated:

"The Spanish Government is unequivocally in favour of a strategy that would allow the countries of Central and Eastern Europe to become members of the Union. ... In this sense, the European Council ratified the Corfu decision which stated that the formal negotiations with these countries would have to wait until the Union had adopted the new operating rules in the 1996 Intergovernmental Conference, which are very necessary to ensure that the newly expanded Union, which will surely surpass twenty members, will be efficient.

The European Council has explicitly confirmed the inclusion of

Malta and Cyprus in the next phase of enlargement of the Union and the importance of concluding the negotiations with Morocco, Tunisia and Israel as soon as possible.

(...)" (DSC–P, V Leg., n. 117, p. 6288).

The Minister of Foreign Affairs, Mr. Solana Madariaga, in response to a question presented before a plenary session of the Senate, made reference to Spain's representation in European institutions:

"As regards Commissioners, Spain has two, one that represents the majority and the other the minority. I believe that these commissioners are currently in very significant positions from the point of view of the responsibilities they have been assigned.

We have two full general directors, two adjuncts to general directors and two extra–official general directors. Therefore, we are in a perfect situation as regards our capacity and our dimensions. I would also like to say that the last extra–official general director was appointed in the last few hours and this gives us a higher number than we had last year.

If we keep going down the scale — after the general directors we have the A–2 positions. At this job classification level, we could have between twelve and nineteen positions. We currently have seventeen, and therefore, we are above the average in this classification.

Going down one more step, from the A–2 to the A–8, we should have, in general terms, approximately ten percent of the positions. We actually have more than the amount that would correspond to us because at the present time we have 11%.

(...)

In relation to institutions that are not strictly European Union organizations... the decisions which have been taken over the last few months are also beneficial. We have gained some ground with regard to judges and we have attained an advocate– general ... we are among what we could call the four largest Community countries in terms of advocates–general and judges.

(...)" (DSS–P, V Leg., n. 44, pp. 2266–2267).

2. Headquarters

In an appearance before a plenary session of the Congress of Deputies on 13 November 1993, the President of the Government reported on the conclusions of the special meeting of the European Council held on 29

October in Brussels. He made reference in his comments to the agreement on headquarters included in one of the decisions annexed to the Conclusions:

"Spain has accepted the Office for the Harmonization of Internal Market, which is going to encompass the Trademarks Office and the Designs and Models Office, which until now was listed in the Commission's projects as an independent agency to be constituted at some later point in time. I have the impression that the competencies that this agency will have are of considerable importance for the development of trade and industrial relations in our countries.

(...)" (DSC–P, V Leg., n. 24, pp. 865).

3. Free Movement of Persons

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

On 22 December 1993, the Secretary of State for the European Communities, Mr. Westendorp y Cabeza, responded to a question presented before the Foreign Affairs Committee of the Congress of Deputies, on the evolution of the Gibraltar situation and the Convention on External Borders:

"... last 28 October, the European Parliament approved a resolution which proposed that the Gibraltar Statute and the one on the Gibraltar airport be temporarily excluded from the discussion on the problem of the free movement of individuals, and asked the council to examine the proposals that the Parliament made on this matter as quickly as possible in order to issue a report on its position to the corresponding committees. Therefore, ... we have been able to get the European Parliament to sanction the Spanish position, which suspends Gibraltar from the topic of external borders and get its approval for further work on the problem; in other words, there is Parliamentary support. Furthermore, it [the Convention on External Borders] will enter into force and this is the other new element of the Treaty of the Union; thus the Commission is able to overcome the problem of the Convention on External Borders and approach it from a Community point of view, based partially on article 100C as regards visas, and partially on article K.3 as regards external borders.

The Commission included a series of elements that prevent a

prejudgment of the adoption of a specific solution for the Gibraltar situation. There is article 30, in which the entire text is replaced by a '*pour mémoire*', which includes new wording for the statement of purpose that mentions Spain's philosophy on this subject and states that the text proposed by the Commission does not attempt to resolve this question, as that can only be done through bilateral negotiations between the member States involved.

(...)" (DSC–C, V Leg., n. 96, pp. 3049).

The Secretary of State for the European Communities, Mr. Westendorp y Cabeza, appeared before the Senate–Congress Joint Committee on the European Community, and reported on the so–called third 'pillar' of the European Union as regards the free movement of persons and the Schengen Agreement:

"... the Schengen Agreement is one part of this, and it will be incorporated into the Community as soon as we can convince the three countries that are reluctant to accept the free movement of persons given their different interpretation of this concept, of the Agreement's virtues. Ireland, Denmark and Great Britain claim that the free movement of individuals does not require the suppression of border controls, and that only citizens of third countries, in other words, non–Community countries, should be checked at internal borders. The position of the nine countries in favour of Schengen is that there should be no controls whatsoever at internal borders, only at external borders, although these should not be limited to citizens from third countries, but rather be applied to all citizens who are entering the Union from a third country.

This disparity of criteria is what makes the Schengen Agreement useful, and it contains an auto–revocation provision to take effect as soon as there is agreement on this issue throughout the European Union.

... in order for Schengen to enter into force ... there remains only one technical question to be solved. This question has to do with the Schengen Information System which is the heart, the nucleus, the lungs of the system of free movement of persons and which combines freedom and security.

(...)

In any case, we already have the beginnings of an agreement with Germany, and real flights are taking place between Spanish and German cities. Thus we can see, at least in an airport situation, what the advantages of the free movement of persons are for internal, not external flights.

(...)

... the free movement of persons seems to be a contradiction, or put another way, the arrangements being made for a third 'pillar' are in flagrant contradiction with article 8.A). The problem is that the interpretation of article 8.A) within the framework of the 'twelve' is divergent. First of all, there are nine of us who feel that the borders that separate our countries can and should be removed. What we would really like to see happen is for there to be a kind of spontaneous delegitimization of the border as a control point. However, the British, perhaps because the United Kingdom is an insular country, do not agree. They feel that borders are needed to prevent the entry of delinquents, drugs, money launderers ... There is no doubt that different political groups hold divergent opinions and have differing ideologies. Some are more inclined to emphasize freedom and others security. This is perfectly legitimate. Different opinions exist because different problems exist.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 23, pp. 421—422 and 427).

In response to a parliamentary question, the Government explained the reasons why the free movement of persons as provided for in the Schengen Agreement had not become effective as of 1 February 1994:

"1. In the meeting held on 30 June 1993 in Madrid,of ministers and secretaries of State of the countries that have adopted the Schengen Agreement, it was agreed that the Agreement would be applied with effect from 1 December 1993, provided that certain conditions had been met. These were:

— Effective controls at existing borders.

— Respect for the provisions of the convention as regards narcotics.

— Implementation of the Schengen Information System.

2. In the 'Schengen' meeting of ministers and secretaries of State held in Paris on 18 October 1993, the parties stated that the conditions related to external borders and narcotics had been met, and that the only condition still pending for the application of the convention was the implementation of the Schengen Information System.

The date of 1 February 1994, was set at this meeting for the entry into force of the convention, with the understanding that the Information System would be operative by this date.

However, this was not the case, due exclusively to technical problems that affect the central computer system located in

Strasbourg and to the connections with national computer systems which gave rise to problems at the incorporation stage.

Under the presidency of Germany, work is being undertaken to resolve these difficulties, and this presidency has stated clearly that it intends to do everything possible to make the system operative as soon as possible. This would allow the convention to be applied sometime this year.

Madrid, 26 May 1994.— The Minister" (BOCG–Senado.I, V Leg., n. 132, p. 40).

4. Economic and Social Cohesion

The Minister of Foreign Affairs, Mr. Solana Madariaga, in his appearance before the Joint Committee for the European Communities, made reference to the approval of the new legal framework related to Structural Funds:

"... one of the principle achievements of the Treaty of the European Union, and perhaps one of the most important results of the Spanish contribution to its management, has been the strengthening of internal solidarity, which we call cohesion. This is what distinguishes the structure of the Community from other models of regional interaction that exist around the world... The Union Treaty has converted this component of internal solidarity... into an objective, a principle and a policy of the Union which has taken a very big quantitative as well as qualitative leap thanks to the efforts of the Structural Funds such as the European Regional Development Fund, the European Social Fund, the European Agricultural Guidance and Guarantee Fund (Guidance) and the creation of the cohesion fund. This quantitative leap has taken the form of the doubling of the financial contribution the Community makes to structural actions.

(...)

... the most interesting aspects mentioned by Spain are the following: Spain was very active and very tenacious during the negotiations in order to gain as many advantages as possible for Spain, our country, from the agreements sanctioned by the Union Treaty and the European Council of Edinburgh.

As regards the contents of the regulation, in the first place, we were able to expand the list of objective–1 regions. Cantabria was added to those already on the list — Andalusia, Asturias, Castille

and León, Castille–La Mancha, the Canary Islands, Ceuta and Melilla, Valencia, Extremadura, Galicia and Murcia. This covers a very significant part of our national territory.

Second, within those objective–1 regions cited above, Canaries has been included in spite of its per capita gross domestic product ... because it is one of the outermost, peripheral regions of the Community recognized in one of the Treaty of the Union declarations. Furthermore, for the same reason, the Canary Islands is eligible for 85% community cofinancing as compared to the 75% maximum for other objective–I regions.

In the third place, we guaranteed more Community action on the new number– 3 objective — you will recall that this objective has to do with long term unemployment and the incorporation of youth into the workforce — as compared to objective number 4 which has to do with the adaptation of workers to industrial mutations.

(...)

In the fourth place, a new mission was created for the European Regional Development Fund, which is to support investments in education, especially secondary and technical education and post–secondary education — in other words, university programmes — and also health education in the less prosperous regions listed in objective number 1.

Finally, a higher percentage of Structural Funds was earmarked for the Commission's so–called community initiatives ... and Council and parliamentary control over the management of these funds was increased.

What I mean by all of this is that the results Spain has been able to achieve are satisfactory in terms of our objectives to strengthen internal solidarity within the Community as approved by the UnionTreaty, and to increase the amount assigned to our country when the amount earmarked for structural actions agreed to in the so–called Delors package was doubled.

Given that, in my opinion, the results we achieved as regards the financial distribution of the structural actions of the Union were good for Spain, perhaps an issue that should be even more important — if that is possible—, is the effort to establish the distinguishing or identifying marks of internal solidarity that are achieved with the Union Treaty by the fact that it recognises economic and social cohesion as an essential element of the model of community integration. This is the model Spain has defended, and the one I hope it will continue to defend, and it differs from the approach that is

based simply on a free exchange zone which other members of the Community advocate.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 14, p. 174—176).

In his appearance before a plenary session of the Congress of Deputies to report on the European Council meeting held in Brussels on 11—12 December, the President of the Government made reference to the principle of subsidiarity:

"... the Committee's report correctly interprets the principle of subsidiarity in the constructive terms that those member States most in favour of integration share. This principle is guaranteed by the interinstitutional agreement that has recently been signed. The report that was approved considers subsidiarity to be a political principle whose function is not to divide and distribute competencies, but rather to regulate their exercise and justify their application on a case–by–case basis. Therefore, it is a dynamic principle which is applicable to the area of shared competencies and not to those for which the Community has precise and unquestionable competence.

(...)" (DSC–P, V Leg., n. 38, p. 1725).

6. Economic and Monetary Union

In response to a parliamentary question presented on 28 January 1994, the Government gave an account of the enforcement of the EEC convergence program:

"The Spanish Convergence Program was approved by the Council of Ministers held on 27 March, 1992. ... After a parliamentary debate, the Government presented the Program to the European Commission for the required examination and to the European Finance Ministers' Council (ECOFIN), which approved it in its meeting on 9 June.

The Spanish Convergence Program identified the basic points of the economic policy to be developed during the 1992—96 period so that Spain could be one of the countries to form part of the third phase of Economic and Monetary Union. In accordance with Article 109J of the EC Treaty, in order to participate in this phase, a high degree of macroeconomic convergence must be achieved and the following criteria met:

1. The achievement of an acceptable level of price stability, understood to be an average inflation rate during the year before the

examination that does not surpass that of the three member States with the best price indexes by more than 1.5 points.

2. The achievement of sustainable public finances, understood to mean that at the time of the examination, the member State will not be the object of a Council decision related to the existence of an excessive deficit. This circumstance ... would occur if a qualified majority of the Council approved the negative report that the Commission must issue when studying budgetary situations if it sees that:

2.1. The real or forecasted public deficit of a member State surpasses 3% of the GDP, unless this quotient has been substantially and continually decreasing towards the target figure, or if the member State has surpassed this figure temporarily and as an exceptional circumstance.

2.2. The proportion of public debt to GDP surpasses 60%, except if this figure has recently decreased and is moving towards the target rate at a satisfactory pace.

3. The maintenance of its currency within the normal fluctuation bands of the EMS for at least two years prior to the examination without this causing serious tension. It is specifically stipulated that the Government cannot have devalued the bilateral central rate of its currency in relation to any of the other member State currencies.

4. The achievement of a long–term nominal interest rate during the year prior to the examination that does not surpass the average of a maximum of the three member States with the best inflation performance by more than two points.

In order to meet these requirements, the Program outlined an economic policy based on these two basic points. First, a monetary and fiscal policy aimed at obtaining a gradual but sustained reduction in our macroeconomic imbalances. Second, a package of structural measures that contemplate the deregulation and liberalization of the goods and factors markets in order to increase the Spanish economy's flexibility and efficiency in assigning resources and thereby, its ability to grow and create employment.

However, international economic trends in the first case, and the dissolution of the Parliament in the second, have slowed the pace of the Program's enforcement.

(...)

It is true that the Convergence Program has not yet produced the desired results, and Spain, like the other Community countries, will work to bring it up to date".

A few months later, the Government addressed the issue of complying with the agenda for Economic and Monetary Union:

"How does the Spanish Government plan to meet the Economic and Monetary Union calendar?

The recent updating of the Convergence Program that was approved by the Government is the instrument that will allow Spain to meet the conditions set in the Treaty on European Union for participating in the single currency.

1. Thus, as regards inflation, the Convergence Program sets the average annual rate at 3.5% for the 1996—97 period,... and this would meet the price stability criteria.

(...)

2. As regards the convergence of long–term interest rates, the Convergence Program should make it possible for our interest rates to approach those of the most stable European Union countries. ... in Spain, long–term interest rates for 1996 will be around 7%.

(...)

3. As regards the criteria for participation in the Exchange Rate Mechanism of the European Monetary Union, given that the turbulence in monetary markets has passed and the exchange rate for the peseta has been adjusted to a level in keeping with its purchasing power, it does not seem likely that our currency will be subject to serious tensions in the next few years ...

4. Finally, as regards public finances, the Convergence Program provides for a level of public deficit of 4.4% of the GDP in 1996 and 3% of the GDP in 1997, and for a net public debt of 65.6% of the GDP in 1996 and 65.2% in 1997.

(...)

In the first place, a deficit of more than 3% of the GDP is allowed provided it is a temporary situation and that the figure remains close to the target amount.

Second, whether or not the level of public deficit surpasses public investment is taken into account ...

Third, a deficit will not be classified as excessive if it has been substantially and continually reduced and is approaching the target amount.

These three considerations give us a certain margin in which to function in order to ensure that the Spanish economy will eventually be incorporated into the third stage of Economic and Monetary Union during the 1996—1999 period.

(...)" (BOCG–Senado.I, V Leg., n. 157, p. 28).

7. Foreign Relations

a) Maghreb

On 1 June 1994, the Minister of Foreign Affairs, Mr. Solana Madariaga, appeared before the Foreign Affairs Committee of the Congress of Deputies to report on the Government's position as regards the draft bill of the Union Treaty with the Maghreb, with special reference to Morocco. The Minister pointed out the importance of the relations between the EU and the Maghreb:

> "... the importance of the relations between the European Union and the Maghreb is increasing and not only from the Spanish perspective. ... The European Union's Mediterranean policy ... is a framework of complex relations between the European Union and these countries, whose main objective is to achieve balanced development in the Mediterranean basin, and it forms part of the Community's non– European preferential policy. ... This policy is basically articulated through three instruments: a trade regime that gives preferential access to the community market, a system for technical and financial cooperation, and the creation of institutional mechanisms for dialogue. Cooperation is based on these three pillars.
>
> The legal framework is comprised of twelve cooperation and association agreements to which some additional financial adaptation protocols, with twelve of the fourteen Mediterranean countries are attached .
>
> (...)
>
> Spain is strongly in favour of the European Union beginning to slowly review its relations with the Mediterranean in general, and its relations with the Maghreb countries in particular, which, in our opinion, should be given more attention.
>
> (...)
>
> The negotiation of this kind of association agreement with the Maghreb countries is undoubtedly one of the main objectives of Spanish action within the Union framework. lt is also an important question within the context of Spanish– Moroccan relations which have improved over the last few years since the signing of the Friendship, Good Neighbour and Cooperation Treaty in July, 1991.
>
> (...)
>
> Last December 6, the Council of Ministers of the Union approved the mandate for the negotiation of the association agreement

between the European Union and Morocco... Morocco has not yet accepted; it has rejected the Community's offer. ... Spain has informed Morocco on many occasions that we are interested in continuing these negotiations and that we hope that the new Moroccan government will reconsider its position and agree to the negotiations.

(...)

... in addition to the immediate advantages of the agreement, we should also keep in mind the political ones. Perhaps the most important is to anchor Morocco's relations with Europe, thereby helping to stop the waves of immigration and the growth of fundamentalism, and support steps to open up the country and institute democratic practices. There are also middle–range macroeconomic advantages, greater investment from the Community point of view, especially in assembly plants and labour–intensive semi–manufactured products.

... The agreement is based on four basic pillars: political dialogue, economic, technical and cultural cooperation, industrial free exchange, and financial cooperation. It is a mixed agreement in that it regulates both community and national competencies and encompasses all of the relations between Morocco, the Community and Community member States ...

Morocco has some problems with this treaty, not only in terms of the content, but also in terms of its political presentation. Morocco perhaps expected more from the political dimension of the treaty. The mandate to negotiate was smaller, narrower than expected, and this has given rise to a certain frustration, a frustration that I believe we are working to overcome through Spain's participation and some modifications that the Moroccan regime is making.

(...)" (DSC–C, V. Leg., n. 225, p. 6809—6811).

b) Ibero–America

On 12 December 1994, the Secretary of State for the European Communities, Mr. Westendorp y Cabeza, appeared before the Joint Committee on the European Union to explain the Government's position on the document presented by the German Presidency on relations between the European Union and Ibero–American and Caribbean countries:

"From the outset, the Spanish Government has given clear priority to the need to strengthen European Union — then called the

European Community — relations with Ibero–America, which was the one big missing link in Community relations with third countries.

(...)

Through the coordinated efforts of the presidencies of Germany, France, Spain and Italy, we agreed that, based on a declaration issued in Corfu to strengthen ties with Mercosur and Mexico, the German presidency would work with the Commission towards the goal of truly strengthening relations between the European Union and Ibero–America.

(...)

... the Spanish Government believes that, having planted that seed in Corfu, which was taken up again in Essen, it is possible for this policy to cristalize during the French presidency and subsequently during the Spanish presidency, and for the relations between the European Union and Ibero–America in general, and the Caribbean and Central America in particular, to take a qualitative leap.

I want to discuss the new type of relation that this effort establishes. It emphasizes human rights as the axis for cooperation between Ibero–America and the European Union, and recognizes that these two areas share a common culture, a common history and common values. Economic system trade exchange mechanisms are also strengthened. ... The future of these relations with Mercosur will affect Chile and Mexico, on the one hand, and Central America and the Caribbean on the other.

As regards Mercosur, Spain hopes to be able to arrive at an agreement on a plan for much closer cooperation whose final objective would be a large free exchange zone between the European Union and the Mercosur countries. However, in the first phase of this final objective, which should come about around the year 2000, and given the current situation in which there are several so–called third generation cooperation agreements with the countries that comprise Mercosur, there does exist an intermediate approach which is to use broader and more complete cooperation agreements which include not only economic and trade relations between the two areas, but also clear support for the integration process in Ibero–America. This desire for the European Union to assist in the process of integration within Ibero–America is the reason for the emphasis placed on this objective in an early phase, before what must be a free exchange agreement is completely defined...

(...)

As regards Mexico, the European Commission presented a document including some reflections on possible agreements with this country. The Commission mentioned five alternatives. The first would be to maintain the current situation; in other words, to maintain a third generation agreement that is, in our opinion, an unsatisfactory situation for both Mexico and the European Union. The second would be a new agreement, what we might call a fourth generation agreement, which would be more complete than the previous one and would take advantage of the undeveloped potential of the current third generation agreement. Third would be a free exchange agreement subject to limitations or with some specialities. Fourth would simply be a free exchange agreement with no limitations, etc., and fifth would be a free exchange agreement with the group of three, that is not only with Mexico, but also with Venezuela and Colombia... The Commission's document does not state any preference as regards these alternatives, but it recognizes that the fourth one... is the most appropriate for the relations that should exist between Mexico and the European Union, and the one that most satisfies Mexico's pretensions...

Just as a preliminary comment, I would say that the ideal solution probably lies somewhere between the third... and the fourth options...

Finally, as regards Chile... we are going to pressure Chile to participate actively in efforts to bring about closer relations with the European Union.

And just a word or two on Cuba. Cuba is a special case. The Community has not negotiated any kind of agreement with this country... We think that when the required political and economic reforms are instituted in Cuba, or when there are indications that they are to be instituted, the Community should think about creating a cooperation and trade agreement with this island country which would be the first step toward the incorporation of Cuba in the Lomé Convention. This is our position on Cuba, but it is dependent on a clear statement by the Cuban Government that it intends to proceed with these economic and political reforms.

As regards Central America, we believe that we should stick with the approach that has been taken in the past, that is to increase cooperation with Central America. In fact, our cooperation in this area, in terms of aid per inhabitant, is among the highest in the European Union. Everything should be included in one major document which reflects on what the relationship between the

European Union and Ibero–America and the Caribbean should be. It should not be limited to specific sectorial aspects and should recognize that Ibero–America is not one uniform reality, but rather an extremely varied region which requires different solutions for each case.

Finally, as regards Caribbean countries, the association these countries have achieved among themselves is very positive, and relations with this area are carried out within the framework of the Lomé Convention which is due to be reviewed soon.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 60, pp. 1216—1217).

8. Common Foreign and Secnrity Policy

In his appearance before a plenary session of the Congress of Deputies on 3 November 1993, to report on the conclusions of the special meeting of the European Council held on 29 October in Brussels, the President of the Government made reference to Common Foreign and Security Policy in the following way:

"The Council has also adopted decisions related to the development of the second pillar of the Union Treaty. We now have a set of rules that show the qualitative leap that we just took from the previous approach based on simple intergovernmental cooperation on matters of foreign policy to the new instrument which is going to allow for a more agile and efficient international projection of the Union.

We have identified five areas for the Council of General Affairs to study and for which they should develop conditions and means by which to carry out common actions. The first has to do with the promotion of stability and peace in Europe. This would entail the preparation and monitoring of a stability pact which would be applicable in central and eastern Europe and would have the dual objective of strengthening the inviolability of their borders and serving as a framework for conflict resolution for minorities. ... Acceding to the European Union means joining a project that is based on the logic of integration, and which, therefore excludes the dynamics of disintegration, of exacerbated nationalism, of violence and discrimination based on race, religion or beliefs. ... The second of these common actions would be related to the former Yugoslavia, ..., which currently constitutes the most palpable example of a process spurred by this dynamic of disintegration. This is why the

European Union should take common action to contribute to the application of a peace plan and to the maintenance of our support through humanitarian aid. ...

Third, Russia constitutes another sphere for common action which would entail support for the democratic process through a monitoring team for the parliamentary elections to be held on 12 December. ...

Fourth, the Middle East is another area in which the European Union clearly supports a peace process ...

Fifth, South Africa, where the Union has also decided to support the transition to democracy by offering assistance in carrying out the elections and establishing a framework for financial and social cooperation. ...

... they say that the Mediterranean is not included in these areas for common action within foreign policy. This is not totally correct. Part of the Mediterranean is included in the area of the Middle East. However, 1 should state that we have intentionally not emphasized creating a common action at this time for the policy related to the part of the Mediterranean that is most sensitive for us, and that is the Maghreb. This is due first to the phase in which the construction of Maghreb unity is found right now, and second, because it did not seem wise to us to establish a comparison between events such as those taking place in Yugoslavia, the Middle East, South Africa or Russia, and those related to what could be a specific policy on some of the countries of the Maghreb.

(...)" (DSC–P, V Leg., n. 24, pp. 865).

On 14 June 1994, in response to a question presented in the Senate on the Government's plans to promote the merger of the European Union and the Western European Union, the Government stated:

"In Chapter IV of the conclusions of the special meeting of the European Council held in Brussels on 29 October 1993, on the implementation of Common Foreign and Security Policy, special mention was made of the fact that the relations between the European Union and the Western European Union established by the Treaty of Maastricht allowed the Union to take a global perspective on security and stated that within the dynamics of the European Union, the WEU was destined to become the defense component of the Union.

In one of the specific annexes to Chapter IV of the Conclusions, some very important decisions are included which favour greater cooperation between the European Union and the WEU after the

entry into force of the Treaty of Maastricht. These measures have to do with cooperation between presidencies and the harmonization of their duration; cooperation between the secretary general of the Council and the secretary general of the WEU; mechanisms for sharing information and consulting with the Commission on WEU activities; and synchronization of the dates and places for meetings.

It is important to mention that among these measures is one which reduces the period of the presidency of the WEU from twelve months to six. This facilitates full harmonization of the presidencies of both organizations. By virtue of this decision, which was formally adopted in the WEU Council of Ministers meeting held last 22 November, our country will simultaneously hold the presidencies of the European Union and of the WEU beginning on 1 July 1995. This will be the first time this happens, and it is a clear indication of the will of European countries, especially of Spain, to promote a gradual merging of the Union and the WEU.

Spain has also supported the establishment of closer work relations between the Union and the WEU. In this regard, ..., concrete arrangements should be made to allow for the exchange of information and documentation between the secretaries of the Council and of the WEU and for the regulation of the reciprocal participation of representatives of both organizations in the ministerial and work group meetings that are held on a regular basis.

...the Government intends to continue to intensify the consultations it makes with our partners to ensure adequate preparation of the Conference of the representatives of the Governments of the member States of the European Union which will be held in 1996, and which will certainly be very important in terms of the merging of the European Union and the WEU.

(...)" (BOCG–Senado.I, V Leg., n. 136, pp. 6—7).

On September 15, 1994, in response to a parliamentary question on the promotion of and cooperation on the development of a common foreign and security policy for Europe, especially in the area of "preventive diplomacy", the Government stated to the Senate that:

" ... Common Foreign and Security Policy (CFSP) is definitely an improvement over the old mechanism for European political cooperation ...

The Common Foreign and Security Policy, which constitutes the so–called second pillar of the European Union, has some characteristics that differentiate it from European Political Cooperation. Among these differences we would point out its 'active

foreign policy'. This aspect is particularly important when it is necessary to promote and execute preventive acts of diplomacy. ... The Common Foreign and Security Policy should be less a policy of 'reaction' to foreign events and more a policy of "action' to achieve the Union's objectives.

Given this principle, we must distinguish between three aspects of interest within the context of the new Europe and from the perspective of preventive diplomacy. These are: procedural aspects, institutional aspects and practical aspects.

From the point of view of procedure, the Treaty has developed the mechanism for Common Action that constitutes the political and legal instrument by which the European Union can act jointly in a specific sphere or as regards a specific matter.

Spain, aware of the great potential of common action, has unreservedly supported the actions already undertaken or currently under consideration in the context of the new Europe: monitoring of elections in Russia, the Stability Pact, humanitarian actions in the former Yugoslavia, strengthening of the system for non–proliferation by means of an indefinite extension of the non–proliferation treaty.

As regards the institutional aspect, the Common Foreign and Security Policy is based on a complete network of work groups, which, under the responsiblity of the Political Committee, allows the Council of the European Union to take quick and coherent action when necessary and to anticipate situations of crisis. Specifically, we would like to mention our participation in the work groups on Central and Eastern Europe, on the CIS countries and those of the former Yugoslavia, all in the European sphere to which your question referred.

Spain, like others, is fully committed to the efforts being made to improve the mechanisms for sharing information, consulting and decision–making within the Common Foreign and Security Policy in order to bring it to full operational status. ...

Finally, from a practical point of view, there have been several initiatives in Europe in the last few months related to partial or total preventive diplomacy. These include:

— The Stability Pact. This has been, without doubt, the most important effort. This common action of preventive diplomacy culminated in the Conference in Paris on 26—27 May 1994, in which a process was initiated that would lead to a pact for the security of Europe.

Spain supported the difficult process that concluded with the Conference in which the practical mechanisms for the organization of regional boards by the Baltic Countries and the countries of Central and Eastern Europe were established in order to draw up good neighbour agreements on questions related to minorities and borders. These agreements will be encompassed in the future Stability Pact, which will be political in nature and administered by the CSCE.

—The Mediterranean. Aware of the importance of this area to the security of Europe, the European Council in Corfu approved an initiative on the Mediterranean, which Spain was very active in elaborating. It stipulates that the Council and the Commission will be responsible for evaluating the overall policy of the European Union in the region and for presenting possible options for strengthening this policy in the short and mid–term with view to a possible conference in which the European Union and its Mediterranean members would participate. All of these efforts are centered on making it possible to adopt the necessary initiatives in the next European Council meeting in Essen.

(...)" (BOCG–Senado.I, V Leg., n. 157, p. 30).

9. Cooperation in the Fields of Justice and Home Affairs

In his appearance before a plenary session of the Congress of Deputies, the President of the Government, Mr. González Márquez, informed the members on the European Council meeting held in Essen on 9—10 December:

"... In compliance with the decision of the Council of Corfu, a framework for Euro–Mediterranean cooperation has been designed to ensure peace, stability and cooperation in this region. In Essen, a decision was made to allow Spain to call a Euro–Mediterranean ministerial conference in which all of the countries of the region could participate. The conference will be prepared during France's turn in the presidency, which shows the level of importance that relations with the Mediterranean has taken on in the foreign policy of the European Union. The Euro–Mediterranean Conference will 'debate' all political, economic, social and cultural questions. There will be a global focus, which Spain will support, that allows for a joint strategy to be addressed.

The principle of the continuity of dialogue is also important here

and is one that our country has always defended. This principle will allow us to hold the conference with open objectives and at the same time continue to discuss the decisions that are made during the Conference on the relations between the European Union and Mediterranean countries through regular and permanent dialogue on matters of common interest.

(...)" (DSC–P, V Leg., n. 117, pp. 6288—6289).

In his appearance on November 18 1993, before the Senate Foreign Affairs Committee to report on the Spanish Government's position at the meetings of the Heads of State and of Government in Vienna and the European Council (Brussels), the Minister of Foreign Affairs made reference to the pillar of justice and home affairs:

"As regards the third pillar, the pillar of justice and home affairs, ..., what we might call the equivalent of common actions in this pillar were defined.

First is the development of police cooperation, a very important subject which is going to distinguish the European Union from the European Community. Second is the common action that establishes efficient means for the fight against drugs and the laundering of illegally obtained money. Third is common action as regards political asylum, which was already established in article 31 of the Treaty. Fourth is the elaboration of a list of third countries whose nationals will be required to obtain a visa in order to enter the Union, in other words, the development of a common policy on external borders; and fifth is the strengthening of judicial cooperation, especially in matters related to extradition.

Therefore, this third pillar of justice and home affairs is put into action. It is a new pillar that did not exist before the Union Treaty, and it encompasses five areas for common action which we consider to be of enormous importance.

(...)" (DSS–C, V Leg., n. 35, p. 11).

The Secretary of State for the European Communities also appeared before the Joint Senate–Congress Committee for the European Communities on March 11 1994, to report on the pillar of justice and home affairs as regards the free movement of persons and the Schengen Agreement:

"Efficient measures have also been taken in the fight against drugs, including those related to the laundering of illegally obtained profits from drug trafficking. There has also been action as regards the right to asylum in accordance with an annex to the Treaty which was, as you know, blocked by Spain for a certain period of time

given the attitude of one of the member States, or rather of the royal commissioners of a member State — Belgium — who accepted a request for asylum made by some Spanish citizens, citizens of the European Union, when it is not clear how a right to asylum can be granted for citizens of a common cultural, political and democratic space. This subject is being studied and analyzed and the position of the country in question has been clarified. Therefore, in the area of asylum, an important step forward is now possible.

(...)

In the last Council on Justice and Home Affairs meeting, ... we presented a general reservation on the subject of asylum. In this case, the European Parliament ... approved a resolution saying that a member State should not ever grant the status of political refugee to a national of another member State.

(...)" (DSCG–Comisiones Mixtas, V Leg., n. 23, p. 426).

XIV. RESPONSIBILITY

1. Responsibility of Individnals

a) Establishment of a Permanent International Criminal Court

In January 1994, the Spanish government made the following comments on the report of the working group on a draft statute for an international criminal court:

"a) The Government of Spain firmly supports the establishment of an international criminal court with general competence to punish international crimes. The existence of such a court is an increasingly felt ethical and political need in the international community.

In response to the General Assembly's invitation (resolution 48/31), the Government of Spain wishes to submit the following comments and observations on the International Law Commission's draft articles of the statute for an international criminal court:

1. With regard to the relationship of the court to the United Nations, there is no doubt that a close link between the court and the United Nations is necessary for both practical reasons and reasons

of moral authority. It would therefore be best for the statute to be adopted by an international conference convened under the auspices of the United Nations. Moreover, in order to properly establish the relationship between the court and the United Nations system, appropriate references must be made to the latter system in the preambular and operative parts of the statute of the court. All of this should be without prejudice to the possible adoption of a treaty of cooperation formalizing and even reinforcing the link between the United Nations and the international criminal court.

Another question closely related to the previous one concerns the number of ratifications of or accessions to the proposed treaty for the establishment of the court needed for the statute to enter into force. The Government of Spain is of the view that this number should be neither too low, since this would deprive the court of its necessary representativeness, nor too high, so as not to unduly delay its implementation.

2. Articles 22, 23 and 24 of the draft statute provide that the court's jurisdiction shall be voluntary and not binding. Binding jurisdiction would no doubt be ideal; however, until such time as this becomes feasible, the Government of Spain considers the system contemplated in the draft articles to be perfectly acceptable.

Given the importance of this question, it might be worthwhile to look a little more closely at the following articles:

— In the absence of an international code of crimes, article 22 appears to be acceptable, especially when viewed in light of article 21, which provides for the revision of the list of crimes;

— Of the three alternatives presented in article 23, Spain is in favour of alternative B, which establishes the voluntary nature of the court's jurisdiction without emphasizing it too strongly;

— Article 25 is acceptable with the understanding that it would be directed more towards the denunciation of general situations than against individuals, and would perhaps provide a good alternative to the establishment of ad hoc courts;

— On the other hand, article 27 needs to be examined more fully, since its current wording not only contradicts in some measure the circumscription of the court's jurisdiction *ratione materiae* to natural persons, but also causes some degree of confusion with regard to the crime of aggression.

3. The Government of Spain considers that as far as trials *in absentia* are concerned, article 44 adopts a balanced approach to the arguments for and against the inclusion of a provision on such trials,

by excluding such a possibility in principle and yet allowing it, on an exceptional basis, in cases in which the court, after hearing the submissions and considering the necessary evidence, determines that the absence of the accused was deliberate.

In such a case, and in order to guarantee the full protection of the rights of the accused, provision should be made for a new trial if the accused appears before the court at a later stage.

4. The Government of Spain has certain misgivings with regard to paragraph 2 of article 53, concerning applicable penalties, since the provision does not seem to fully respect the principle of the legality of penalties (*nulla poena sine lege*). In order to comply with the provisions of article 15, paragraph 1, of the International Covenant on Civil and Political Rights ("nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed"), provisions must be made for the court to have the duty — and not merely the ability — to take into account the penalties provided for in the national law of the States referred to in subparagraphs (a), (b) and (c) of article 53 (2) when deciding upon the length of a term of imprisonment or the amount of a fine,.

5. With respect to recourse, the Government of Spain holds the view that provisions should be made for recourse by appeal and revision.

In addition to the convicted person, the prosecutor should also be empowered to appeal a decision or to apply for revision of a judgment. It will therefore be necessary to remove the square brackets in articles 55 and 57.

(...)" (UN Doc. A/CN.4/458, pp. 31—33).

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–Sixth Session (1994), and explained Spain's position in favor of the creation of an International Criminal Court:

"Mr. President, during this year's session, the International Law Commission has been extremely productive. Today I would like to make special mention of its work on "a Draft Statute for an International Criminal Court".

The distinguished delegation from Germany has already made a general declaration on this topic on behalf of the member States of the European Union and Austria. Within the spirit of this general declaration, my delegation would like to add the following specific

points.

As I had the occasion to state in my intervention on this topic last year, the establishment of a permanent international jurisdiction with general competence to punish international crimes is today perceived by relevant sectors of worldwide public opinion as a vital ethical, legal and political necessity, not only because such a court would make it possible to remedy the consequences of international crimes, but also because its mere existence would have a significant deterrent effect. The tragic events that are currently taking place in some regions of the world show that neither the principle of universal criminal jurisdiction embodied in some legislations nor the mechanisms of international judicial coooperation are sufficient to punish the perpetrators of international crimes. It is clear that the International Community cannot remain insensitive to the pernicious effects of this situation of impunity, and this is why the creation of this Court has been a permanent and priority issue of the work of this Sixth Commission over the last few years. Therefore, the International Law Commission should be congratulated for the exquisite sensitivity it has shown by finalizing the writing of a draft statute with such admirable diligence and promptness. In doing so, the Commission has demonstrated its ability to respond to the demands of international public opinion.

As the Minister of Foreign Affairs of my country, Mr. Javier Solana, stated in his intervention before the General Assembly last 30 September, Spain continues to be firmly in favour of the earliest possible establishment of an international criminal court. Therefore, we have carefully and thoroughly studied the final draft statute that was presented by the Commission this year.

In general terms, Mr. President, the draft statute merits our approval. However, we would like to make the following observations which are selective rather than exhaustive and offered in the spirit of constructive criticism.

We are in complete agreement with art. 2 of the Draft which establishes the Court as a permanent body which would only meet when necessary to hear matters submitted to it. It is understood from article 17, in keeping with art. 2, that judges will not be required to serve on a full–time basis and will receive daily stipends for the periods of time in which they are complying with their responsibilities. This emphasis on flexibility and economy, recognized by my delegation on prior occasions, seems the most appropriate for the early establishment of the court and does not

affect the possibility of determining at a later stage, that judges will serve on a full–time basis, as envisaged in article 17, paragraph 4 of the Draft Statute.

As regards the question of the relations between the court and the United Nations, this issue does not seem to have been satisfactorily resolved in the Draft Statute. It is not sufficient to allow the President, with the approval of the States parties, to conclude an agreement establishing an appropriate relationship between the court and the United Nations as is stipulated in art. 2. Of course, this type of bilateral agreement is inevitable at a certain point in time, but my delegation believes that it is also very important to formally and expressly establish that the court will act with the authority and representativity of the United Nations — in other words, with the authority and representativity of the organizations that represent the international community. This idea should be duly reflected in the preamble of the statute.

I would next like to address the crucial question of the court's jurisdiction as regulated in Title III of the Draft.

We see that in keeping with the flexibility and prudence that we mentioned earlier, and with the exception of the crime of genocide, the jurisdiction of the court is basically voluntary and is based on a system of a special declaration of acceptance — art. 22. In our intervention last year, and based on our belief that ideally the court would have binding jurisdiction, we expressed our preference for a system of exclusion or "opting out", given that this system to a certain extent diminished the consensual nature of its jurisdiction. We continue to believe that this is the better system, although we are aware that the articles proposed by the Commission — based on the criteria of special acceptance — are more realistic because they undoubtedly remove some of the obstacles to the early establishment of the court. And, of course, we also support the provision found in article 23 of the Draft Statute, by which the Security Council, acting under Chapter VII of the Charter of the United Nations, can refer matters to the court when it deems that there is a massive and systematic perpetration of serious international crimes that constitute a threat to peace. This is a situation of imposed jurisdiction for which there are precedents; in other words, the breakdown of the principle of voluntary jurisdiction which my delegation supports.

As regards the controversial issue of trial *in absentia*, we feel that art. 37 of the Draft includes a balanced formula which is much more

elaborated than the one proposed in the draft statute that the Commission presented last year.

However, we are still not satisfied, with the article on applicable penalties, which is article 47. This is because, in our opinion, this article does not duly respect the principle of legality of penalties — *nulla poena sine previa lege* — laid down in art. 15.1 of the United Nations Covenant on Civil and Political Rights. On this point, said article says:

'A penalty greater than the one applicable at the time of the commission of the crime will not be imposed,'

It is true that paragraph 2 of article 47 states that in determining the length of terms of imprisonment, the court can take into account the sanctions provided for in those national laws that have the strongest internal jurisdictional authority to hear a case [the domestic law of the guilty party's State, the law of the territory in which the crime was committed, or the law of the State which has jurisdiction over and custody of this individual]. However, the fact that these laws can be taken into consideration does not exclude the possibility of imposing on the accused a penalty that is heavier than the one that is applicable at the time when the criminal offence was committed. In our opinion, not only is it possible for these laws to be consulted, they should be consulted in order to avoid the imposition of a heavier penalty, thereby avoiding the violation of the principle of legality in criminal matters. In our intervention last year, we made a specific proposal to that effect.

There is a delicate problem that the conference of plenipotenciaries will have to resolve at some point, and that is the determination of the number of ratifications or accessions that will be required for the Convention to enter into force and for the International Criminal Court to be established and begin to work. On this point we would like to reiterate the opinion we have expressed on other occasions that an excessively low number of acceptances would deprive the court of the necessary representativity and authority to act on behalf of the international community, but that an excessively high number could cause undue delay in the entry into force and the commencement of the court's activities. Therefore, a balanced solution will have to be found that tries to meet both of the criteria mentioned above.

Finally, there remains the very important question of deciding if and when the General Assembly should accept the recommendation of the International Law Commission to convene an international

conference of plenipotentiaries charged with examining the Draft Statute and coming to an agreement on the establishment of an International Criminal Court.

On this point, my delegation is strongly in favour of immediately convening this conference as we feel that on ethical, legal and political grounds, there is an imperious and urgent need for the establishment of this court. We are aware that the evolution of events and the dynamics of worldwide public opinion have given this period of sessions the necessary momentum to convene this conference of plenipotentiaries, and that the fact that in 1995 we celebrate the 50th anniversary of this organization provides a perfect backdrop for this conference and for the adoption of the statute on this court. We should take advantage of this unique moment in time and the favourable conditions that currently exist and which may never come around again. In order to allay the misgivings of some States, it is important to remember that the commitments derived from the establishment of the court will be modest. Judges will not be working full–time for the court and this means reduced costs. Furthermore, jurisdiction of the court will not be binding. So, if, as we have said before, the International Law Commission has shown exquisite sensitivity in the writing of the final draft statute during the 1994 period of sessions, the General Assembly should also meet the expectations of the moment and proceed to convene the conference of plenipotentiaries this year. This would be a wonderful contribution to the United Nations Decade of International Law.

This is my delegation's point of view on the question of convening a conference of plenipotentiaries. However, if a significant number of delegations prefer to open a period of collective in–depth consideration of the draft statute in order to determine if there is sufficient agreement on the Draft prior to convening the conference, we would not be opposed to such an initiative provided that a reasonable time limit is stipulated for this purpose and that the motivation for such a period is really a desire to ensure the best possible International Criminal Court and not to delay or create obstacles to its establishment.

(...)"

b) The Former Yugoslavia

On 22 March 1993, the Permanent Representative of Spain, Mr. Yáñez–Barnuevo, together with his Italian counterpart, delivered

Spain's position on the establishment of an international tribunal for the prosecution of persons responsible for violations of international humanitarian law committed in the territory of the former Yugoslavia:

"1. The legal basis for the establishment of the Tribunal.

It is our view that a Security Council resolution adopted under Chapter VII of the Charter of the United Nations is the most appropriate instrument to establish the Tribunal. Such a resolution, with an annexed Statute, which should form an integral part thereof, would provide the legal basis binding upon all States for the establishment of the Tribunal, its functioning and its decisions. For that purpose, we consider of paramount importance that it be clearly stated that in adopting the resolution the Security Council expressly says that it acts under Chapter VII of the Charter. At the same time, we believe that the finding contained in Resolution 808 that the situation resulting from widespread violations of international humanitarian law in the former Yugoslavia constitutes a threat to international peace and security and the conviction that the establishment of the Tribunal would contribute to the restoration and the maintenance of peace and security, should be reaffirmed in the resolution that will establish the Tribunal.

2. The independence of the Tribunal.

The Tribunal must be able to discharge its judicial functions impartially and free from any external interference. The independence of this judicial body should be reflected in the procedure for the appointment of independent judges, as well as in a provision to the effect that pursuant to Article 18 (1) of the Statute of the ICJ, no member of the Tribunal can be dismissed unless the Tribunal so decides.

As regards the procedure to appoint members of the Tribunal, we might suggest a formula that combines the indications contained in Article 8 (2) of the draft– Statute submitted by Italy in doc. S/25300 (Italian draft) with those in Article 4 of the Statute of the International Court of Justice, which provides for the election of the members of the Court by the General Assembly and the Security Council.

The same independence, whose perception by public opinion seems especially important, should be reaffirmed with regard to the internal administration and functioning of the judicial body. Even if the Tribunal would formally be a subsidiary organ of the Security Council according to Article 29 of the Charter, it is our view that it would be better for the latter to support the former and not viceversa.

This guarantee of the Tribunal's independence, together with support for its functions, should be related, inter alia, to the court's investigation and preparation of the formal accusation and respect for and enforcement of the Tribunal's decisions.

3. The question of the concurrence of jurisdiction

Two basic principles should be taken into account in elaborating the provisions governing the question at hand: the principle *ne bis in idem*, codified in Article 14 (7) of the International Covenant on Civil and Political Rights, and the need to ensure that the accused is brought before a just and impartial court. The formula that might best encompass these two principles should take into account the indications contained in Article 3 of the Italian draft.

4. The applicable law for the determination of crimes and sanctions.

In discharging its functions, the Tribunal should respect two fundamental principles of criminal law: *nullum crimen sine lege* and *nulla poena sine lege.*

It is our view that the Tribunal will be able to act in accordance with the first of the said principles if the determination of the crimes subject to its jurisdiction coincides with the crimes considered as such by the international community as a whole. For that purpose, reference should be made to the general principles of law and the rules recognized by the community of nations that can be inferred from generally accepted conventions (see, on this point, Art. 15 (2) of the International Covenant on Civil and Political Rights), as well as from a comparative analysis of domestic criminal law, including the law in force in the territory of the former Yugoslavia.

As for international instruments containing relevant rules which are to be considered as generally recognized, mention should be made of the following:

— the four 1949 Geneva Conventions and the Additional Protocols of 1977;

— the 1948 Genocide Convention;

— the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments.

In order to respect the principle *nulla poena sine lege*, the Tribunal should determine the penalties to be inflicted in individual cases by taking into account those provided for by the criminal law in force at the time of commission in the State in whose territory the crime was committed. In any case, the Tribunal shall not impose a heavier penalty than the one provided for by the criminal law in

force at the time of commission in the *locus commissi delicti*, in accordance with the principle found in Article 15 (1) of the International Covenant on Civil and Political Rights. Furthermore, we are of the opinion that in no case should the death penalty be inflicted.

5. Rules of procedure.

It is our view that the rules governing the proceedings before the Tribunal should be primarily aimed at providing minimum guarantees for the accused, along the lines of the principles contained in Article 14 (3) of the International Covenant on Civil and Political Rights. In this respect, as much consideration as possible should be given to the rules governing criminal proceedings in the State where the crime was committed.

It also seems appropriate for the resolution establishing the Tribunal to indicate the power of the latter to adopt the rules of procedure that it may deem necessary for the performance of its functions.

Even if we subscribe to the principle that the accused cannot be tried in *absentia*, it is our suggestion that the fact that the accused is absent should not prevent the prosecutor from preparing the formal accusation that would constitute the basis for the trial that would take place once the accused is brought before the Tribunal.

Furthermore, it is our contention that the defendan's right to appeal a Tribunal decision should be guaranteed, and that the appeal should not be heard by the same judges who presided over the first hearing.

6. Enforcement of judgments.

The resolution establishing the Tribunal should expressly give it —, or the Security Council, — the power to choose the State in which the judgment will be served.

It seems appropriate that, were the State in which the judgment is being enforced to consider altering the conditions of punishment, including the granting of amnesty or a pardon, no such measure could be taken without Security Council authorization.

7. The duration of the Tribunal

The resolution setting up the Tribunal, or the annexed Statute, should contain a provision concerning the cessation of its activity. Rather than setting a final date, we believe such a provision should stipulate that the cessation of the Tribunal's activity be established by a Security Council resolution, taking into account the Tribunal's opinion on how completely it has accomplished its goals.

8. Indemnization of the victims

It may also be appropriate to consider the problems related to victim compensation given the difficulty involved in ensuring that a defendant pay compensation for harm he caused, it is suggested that, apart from any consideration relating to his civil liability, the possibility of establishing a fund primarily financed by voluntary contributions be considered.

9. Obligation to co–operate with the Tribunal.

It is our opinion that the resolution establishing the Tribunal should be drafted in such a way as to stress that the obligation to co–operate with the Tribunal provided for therein is legally binding on all States without exception, including those which are not members of the United Nations, . This is in keeping with Articles 2 (5), 2 (6) and 25 of the United Nations Charter. Therefore, no distinction should be made by the Security Council as to those States that should carry out the Tribunal's decisions on the basis of Article 48 (1) of the United Nations Charter. In this respect, the legal rule should be universal in scope, regardless of the place where the criminal acts were committed.

However, some special obligations related to offering assistance to the Tribunal could be made incumbent upon the host State. This type of special situation should be governed by a separate instrument (*e.g.* a protocol – see *infra*, section 11).

Where the obligations resulting from the Security Council resolution, or the Statute annexed thereto, are considered by national law as non self–executing, States should be requested to pass the necessary legislation to give full implementation to those obligations.

As regards the obligations to assist the Tribunal, they should be spelled out in the security Council resolution in a very comprehensive way, but without giving the impression that the list of such obligations is meant to be exhaustive. This goal can be achieved by adding a general provision to the effect that all States must comply with any request for assistance emanating from the Tribunal and concerning the discharge of its functions as envisaged in the constituent resolution.

Among the obligations related to judicial assistance to be contained in the constituent resolution, mention should be made, inter alia, of the following:

a) those concerning the preparation of the formal accusation, including the collecting and preservation of elements of evidence;

b) the obligation to provide special protection for those who are conducting investigations on behalf of the Tribunal, as well as for the witnesses;

c) the obligation to promptly transmit to the Tribunal any information on crimes received by the public authorities of the State concerned;

d) a State's obligation to arrest and detain, anyone accused of a crime who is in that State's territory and to transfer this person to the Tribunal when the Tribunal does so request.

10. Immunity of State representatives from criminal jurisdiction.

It is considered of particular importance that the Security Council resolution make express reference, as a principle of general international law, to the idea that no immunity from criminal jurisdiction can be validly invoked by a State representative charged with an international crime, when such crime is judged by an international tribunal.

11. The choice of the host country for the Tribunal.

As far as the determination of the seat of the Tribunal is concerned, and in order to facilitate the preparation of the formal accusation, it is suggested that a European country be chosen, with preference for Switzerland or the Netherlands given that: a) neither of them is a neighbouring country of the former Yugoslavia; b) both Geneva and The Hague already host offices of the United Nations under Headquarters Agreements which, for the purposes of the functioning of the Tribunal, may need only minor adjustments along with a protocol containing rules on the special assistance to the Tribunal that is to be provided by its host country (in particular, on the use of local prisons).

(...)".

c) Rwanda

In his intervention on 8 November 1994, Mr. Yáñez–Barnuevo, Spain's representative to the Security Council, made a statement regarding the creation of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandan citizens responsible for such violations committed in the territory of neighbouring States:

"From the beginning of its investigation, the Commission of Experts found overwhelming evidence that acts of genocide and

other serious violations of international humanitarian law had been committed in Rwanda, particularly between April and July of this year. The report says the violations were committed systematically, methodically, treacherously and with premeditation. The Commission of Experts estimates that the number of persons murdered exceeds half a million.

(...)

This is why, for the second time in its history, the Security Council, acting under Chapter VII of the Charter, has established a jurisdictional organ with a specific competence but also with broad powers to hand down judgments in these very serious cases.

(...)

From the very beginning, Spain has supported the resolutions the Security Council adopted for the establishment of the Tribunal for the former Yugoslavia. In the case of Rwanda, our support has also been unbending and constructive, from the initiative that led to the adoption of resolution 935 (1994), under which the Commission of Experts was established, to the latest stage. Spain was among those countries that gave the Commission of Experts all the relevant documentation available to it in connection with the events in Rwanda.

(...)

The decision taken today to adopt Resolution 955 (1994) is within the authority conferred by the United Nations Charter upon the Security Council to act in cases of threats to peace. Nonetheless, the establishment of this court – and the earlier court for the former Yugoslavia – should in no way block the international community's efforts to establish a universal criminal jurisdiction.

(...)" (UN Doc. S/PV.3453, pp. 11—12).

2. Injurious Consequences Arising from Acts not Prohibited by Interuational Law

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–Fifth session on international liability for injurious consequences arising from acts not prohibited by international law:

"In this its third intervention on the report of the International Law Commission in its forty–fifth session, my delegation would

first like to make some very brief comments of a general nature on Chapter III, which deals with the 'international liability for the injurious consequences arising out of acts not prohibited by international law'.

The Spanish delegation is among those that have pointed out the great complexity and difficulty of this issue on previous occasions. This complexity is basically due to two factors: a) the fact that this is a relatively new issue on which, from a *de lege lata* perspective, sufficient data is not yet available; 2) the fact that controversial theoretical questions are involved on the exact distinction between primary and secondary rules. As regards this last point, my delegation is still not certain whether or not the activities in question are prohibited by the primary rules of international law. Therefore, we believe that at some point the International Law Commission should modify the title of the topic.

Having said this, my delegation does generally accept the pragmatic approach taken by the Special Rapporteur, Ambassador Barboza, in his latest reports, especially as regards the prevention of transboundary harm given that he based the State's obligation in this repect on the well–known concept of "due diligence". In the final analysis, we have before us a plausible attempt to regulate the behaviour of States in a matter of great importance for the International Community: environmental protection. It should be clear, in any case, that the articles on the prevention of transboundary harm are not the only ones involved. It is the opinion of my delegation that the question of reparations continues to be relevant.

(...)".

3. International Crimes

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–fifth session on State Responsibility:

"I would like to address some of the issues related to the very important question of the consequences of so–called 'international crimes' in the sense found in article 19 of the first part of the draft articles. This is one of the questions on which the President of the ILC has asked governments to give an opinion.

In response to a question posed by the Special Rapporteur, my delegation is of the opinion that the ILC should indeed derive pejorative consequences in part II of the draft articles from the definition of international crimes included in part one, because in principle, the effects of perpetrating such a crime should not be limited to an obligation to make reparation, but rather should also include punishment of the responsible State.

As regards instrumental consequences, or countermeasures, my delegation would like to make special reference to a problem of great political and legal import which was brought up by the Special Rapporteur: the question of determining the extent to which it is admissible to resort to force in response to an international crime. In our opinion, the use of force by the injured State or States is only admissible in so far as it falls within the confines of article 51 of the Charter related to legitimate defense. In other words, when the international crime constitutes an act of aggression. Beyond these limits, "*de lege lata*", my delegation does not consider it admissible to take any further coercive measures other than the institutional measures envisaged in Chapter VII of the Charter (actions of the Security Council in cases of threats to the peace, breaches of the peace or acts of aggression). Moreover, "*de lege lata*", the Security Council could apply sanctions that would include the use of force against the perpetrator of an international crime as defined in article 19 of part I, other than an act of agression, by interpreting the concept of "threat to the peace" envisaged in Article 39 of the Charter according to its spirit, not its form. This intepretation would consist of determining that the perpetration of an international crime constitutes a threat to peace according to the sense of the aforementioned article, and it would therefore place the Security Council within the framework of Chapter VII and allow it to adopt sanctions that include or authorize the use of force. Although the Security Council has indeed made use of this interpretation in recent years — among others as regards the former Yugoslavia and Somalia — this is not, in my delegation's opinion, the best solution. This is not the best solution because it entails the risk of a broad interpretation leading to abusive interpretations.Furthermore, the legality — or conformity with the provisions of the Charter — of the actions of the Security Council is very hard to verify politically or legally. From a "*de lege ferenda*" point of view, consideration might be given to the possibility of authorizing the Security Council to adopt sanctions, including the use of force, should it determine that

an international crime under the terms of article 19 of part one of the draft articles had been committed. That would certainly be the ideal solution, given the degree of legal certainty that it would produce. However, we must remember that this would entail amending the Charter in areas which are extremely sensitive from a political standpoint, and my delegation can only wonder if the conditions needed for this type of structural reform exist at the present time. We can only hope that the answer to this question would be yes.

(...)".

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–sixth session on State Responsibility:

"This is my third opportunity to address the Sixth Commission this year. On this occasion I would like to comment on Chapters IV and V of the report of the International Law Commission corresponding to the 1994 sessions. The Commission is making very slow progress on these Chapters, most certainly due to the complexity of the issues being addressed.

Chapter IV refers to the issue of State Responsibility. This is an old issue, and given that problems that seemed to have been resolved continue to crop up again, we could even call it too old. We have taken note, in any case, that this year the Commission has not formally presented any articles to the sixth commission of the General Assembly. This is completely understandable given the great complexity of the problems under discussion, specifically the question of the consequences of international crime, first as it is defined in art. 19 of the first part of the draft articles approved in 1980, and second as regards the question of countermeasures.

I want to comment in some detail on the report as regards the first of these two issues — the determination of consequences for international crime — to show that, as I said earlier, the discussion has been reopened on a concept — international crime — that seemed to be clearly defined by the Commission as far back as 1980. There are currently two bodies of opinion in the Commission as regards this issue. According to one view, the distinction made in draft article 19 between international crimes and delicts is not only conceptually accurate, but is rooted in positive international law and in the realities of international life. In other words, it is *lex lata*. According to the other view, such a distinction lacks coherence and a basis in positive international law and is, at best, *lege ferenda*.

Of course, this basic discrepancy with regard to the concept of international crimes has determined the respective approaches to their consequences. For those who defend the concept, the commission of an international crime gives rise to a general right to submit claims — the so–called *actio popularis* principle — and is accompanied by the imposition of other penalties in addition to the obligation to remedy the harm. However, for those who contest the concept, there is logically no difference between the consequences of the commission of a delict and of an international crime.

Now then, in response to the request made by the president of the International Law Commission for some type of orientation on this controversy which might be useful to the Special Rapporteur in his upcoming work, I would like to present my delegation's position on these questions.

We understand that current State practice makes it possible to speak of two major categories of violations of International Law based on the importance of the norm that was violated and the seriousness of the violation. In our opinion, it is clear that at the political level, neither public opinion nor States themselves attach the same importance to minor violations of international law — for example, the occasional breach of a trade agreement — as to major violations, for example, a situation of massive and systematic violations of the most basic human rights. In the first case, such a violation elicits concern only in the affected State while, in the second case, the violation causes alarm throughout the international community, leading to a collective response. This is true because, in the second case, the events in question are debated in multilateral fora such as the General Assembly or the Human Rights Commission of the United Nations, which can adopt appropriate resolutions through which they can exert political and moral pressure for the eradication of the infraction. What else could these special public procedures the United Nations Commission on Human Rights initiates against States be?

In our opinion, International Law must be consistent with State practice in terms of distinguishing between the two types of violations: serious violations given the importance of the obligation being violated and the type of violation (those called 'international crimes' in article 19) and less serious violations as regards these two points (those that are called 'delicts' in this article). This distinction should also extend to the consequences of the commission of either act: *actio popularis*, the commission of an international crime

should give rise to the obligation to make reparation and to the imposition of other penalties, while the commission of a delict should entail simply the obligation to make reparation.

It is logical that given the seriousness of the consequences that should accompany international crime, the question arises of who should determine that a crime has been committed. Obviously, such a determination can not be left to the unilateral discretion of States, unless we want to convert the concept of international crime into a breeding ground for conflict and tension. This determination should be made in an institutionalized manner. This is where the insufficient institutionalization of the international community becomes blatantly evident. Within the United Nations, only one body — the Security Council — has the power to determine, under Chapter VII of the Charter, that crimes such as threats to the peace, breaches of the peace and acts of aggression have been committed, and to impose the relevant sanctions. Furthermore, the Security Council is not an independent judicial body, but rather an intergovernmental body which basically exercises police functions. A jurisdictional body, such as the International Court of Justice, would be in a better position to determine independently that an international crime has been committed and to impose the corresponding sanctions. However, in the final analysis, the competence of the court is voluntary and there is significant reluctance to accept its jurisdiction, especially as regards the most serious disputes. Furthermore, even the States that have made unilateral declarations accepting the Court's jurisdiction have done so with major reservations.

To sum up, in our delegation's opinion, the concept of international crime is well grounded in the legislative sphere as a serious infraction of an important international obligation which is accompanied by *actio popularis* and the imposition of sanctions. In the institutional sphere, however, the application of this concept runs into serious difficulties that can only be remedied by reforming the United Nations Charter and the Statute of the International Court of Justice. These sweeping structural reforms would affect the principle of freedom of choice of means by which to settle disputes (art. 33 of the Charter). We are sad to say that the international community of today does not seem mature enough or sufficiently prepared to accept these changes.

In spite of this, we support the retention in legislative texts of the concept of international crime, not only because we feel that this

concept is already well grounded in positive international law and is very useful, but also because it would promote the progressive reform, development and strengthening of international institutions. (...)".

XV. THE PACIFIC SETTLEMENT OF DISPUTES

1. In General

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–fifth Session on State Responsibility:

"An interesting and important debate has taken place within the ILC on whether a regime for the settlement of disputes should be included in the upcoming convention. My delegation is completely in favor of such an inclusion. We agree with the Special Rapporteur that the ILC should not assume that governments are reluctant to compromise on this subject. Practice has shown over the last few years that there is a growing willingness on the part of the States to accept this type of obligation, although this is not always an issue of the settlement of disputes by jurisdictional means. In our opinion, the ILC should not be timid about fulfilling its responsibility not only to codify international law but also to promote the progressive development of international law, and thus, its duty to confront Governments with the social need to set up dispute settlement mechanisms in connection with the extremely important issue of State responsibility, an area in which, on the other hand, there is a certain propensity to initiate abusive unilateral measures. I would add a second argument to this first one. A comprehensive and effective regime for dispute settlement tends to protect weaker States from the potentially abusive behaviour of stronger States. Therefore, it contributes to the effectiveness of the basic principle of the sovereign equality of all States and also enhances respect for International Law. In the final analysis, this promotes the maintainance of peace.

Now then, what should the exact scope of the regime included in the draft articles be? This point is of special interest and has given

rise to different opinions in the ILC. It seems reasonable, therefore, for the President of the ILC to seek out opinions on this issue from the delegations that are gathered here today.

In my delegation's opinion, the system should have a very broad scope of application and should include not only the question of the legality of countermeasures but also all of the de facto or de jure questions that arise with respect to a specific act that would give rise to the international responsiblity of a State, including the problem of determining if an international obligation had been breached, in other words, whether or not a primary rule had been violated. My delegation realizes that such a system for dispute settlement would have a very extensive scope, but it does not see how, in all reality in a specific case, the aspects related to secondary rules can reasonably be disassociated from aspects related to primary rules. We believe that a formula that puts all disputes related to the application and interpretation of the future Convention within the system would suffice to give the mechanism the broad scope that we are proposing. My delegation believes that this formula would suffice because the determination of whether or not an illegal act has been committed, in other words, whether or not a primary rule has been violated, is what would actually give rise to the application of the Convention.

As regards the specific system for the settlement of disputes presented by the Special Rapporteur in his fifth report, we believe that it offers a suitable starting–point for a useful discussion, although it would be necessary to clarify the underlying question of whether the system would only be triggered by a dispute regarding the lawfulness of a countermeasure. It should be clearly established, in our opinion, that the mechanism would apply in the broad sense that we have given it, even in the cases — which could be quite numerous — in which no countermeasures are taken. Moreover, the mechanism should apply independently of the role played in the mechanism by compulsory jurisdiction. Furthermore, we do not agree with the approach taken in the Special Rapporteur's fifth report regarding the possibility (in article 6) of submitting to the International Court of Justice any decision of the Arbitral Tribunal tainted with *excès de pouvoir* or departing from fundamental principles of arbitral procedure. We do not like this provision because the losing party would undoubtedly always find some reason to appeal to the International Court of Justice, and the practice could become institutionalized, to the detriment of the

authority and effectiveness of arbitral tribunals.
(...)".

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Acts

a) China

On 23 March 1993, the Minister of Foreign Affairs explained to the Foreign Affairs Committee of the Congress of Deputies the state of bilateral relations between Spain and China. He first pointed out that Spain had respected the measures adopted as part of European Political Cooperation in 1989 and their subsequent partial abolishment:

> "On 20 October, 1990, the Community and the Luxembourg Council on General Affairs, lifted sanctions against China, with a few exceptions which I will refer to later, thereby deciding to normalize the relationship with this country after the sad incidents of Tiananmen Square in June 1989. In this way, it became possible to carry out the visits I referred to earlier, as well as those that other ministers from the European Economic Community have made, especially the British and Italian prime ministers. However, sanctions against China are still in place as regards contacts between heads of State and in relation to military cooperation. Of course, our country, in keeping with other community States, respects these sanctions. This is why, three months after the Tiananmen incident it has still not been possible to develop the memorandum of understanding on defense signed in March of 1989.
>
> In this sense, it should be pointed out that we believe that this exchange of visits, which, as we said, is quite fluid, in addition to favouring the bilateral interests of Spain and China, is also an ideal instrument to discreetly make our point of view on certain delicate issues related to human rights quite clear at high levels. These issues are legitimate and should be a constant issue for community countries in their relations with China.
>
> (...)".

As regards community policy in relation to the human rights situation

in China he stated that:

"... since the events of Tiananmen Square in June 1989, the policy of reform in China has not been dismantled. We could say that the process of peaceful evolution towards a market economy has been continued and that this should eventually lead to political liberalization. In these conditions, and within the framework of European political cooperation, we have maintained the position that the most realistic policy is one of helping to maintain this process of pacific change in China. We have insisted that it would be unrealistic to institute an isolationist policy towards China. We believe that if the policies of economic reform and openness to the outside are maintained, China could advance towards a free market system, economically speaking, and the defense of the liberalization of the country's political values. In this way, the sanctions of the European Council, of Madrid, should be interpreted as what we believed them to be: a reaction to a very serious violation of human rights. Now then, keeping them [the sanctions] in place longer than is reasonable on the basis of their usefulness would certainly consitute a type of discrimination against China as compared to other countries where equally questionable situations exist.

Our general approach to our policy on the human rights situation in China has been based for some time now on dealing with this question at the highest possible level from a political point of view in an insistent yet discreet manner. We believe that publicity on this subject is counterproductive to the objectives or goals that we have set. The focus that we have taken has allowed us to create a climate of trust and reasonable expectations, as was shown, to a certain extent, by the liberation of two Chinese dissidents four days after our president visited China. I want you to know that the Spanish government intends to continue the same policy as regards human rights in China in coordination with our European counterparts.

(...)".

In the third place, he pointed out the importance of China's role in the world economy and the no less important economic relations that have existed between Spain and China in the last few years:

"In the 14 years that have passed since the inception in 1978 of Deng Xiao Ping's policies of economic reform and openness to the outside, living conditions for the Chinese people, as you know, have improved dramatically, with the average annual growth rate being 9%. The data that I have been able to gather in these last few days indicate that at this time it has even surpassed 10%, and in some

areas of China such as Shanghai, we can find growth rates of almost 20%. The Chinese economy today, in real terms, is the third or fourth strongest in the world after the United States and Japan, on a par with Germany. If the growth rate remains what it has been over the last 14 years, it is possible that the Chinese economy could surpass the North American economy within 25 years. The year 1992 has been especially good in terms of economic growth in China.

Chinese foreign trade also reached very important levels in 1992. Just to give you an idea, exports increased 16% reaching approximately 60 billion dollars, and imports grew approximately 21% reaching about 50 billion dollars. Thus, the balance of trade continues to be positive, a condition which has existed in China since 1990.

China is Spain's second largest trading partner in Asia, coming in just after Japan. It is also the Asian country in which Spanish engineering has the largest number of projects, be they in the execution or adjudication stage.

(...)

In round numbers, Spanish exports to China increased in 1992 to approximately 24 billion pesetas, while imports surpassed 150 billion pesetas.

(...)

The criteria that prevail in our attitude towards China as regards economic and trade matters are that it is not enough for Spain to occasionally export to China but rather we must create a permanent market and make Spanish industry and technology well–known, thereby promoting investment that creates jobs for Spanish companies. This is why Spain, since 1985, has granted China four lines of either trade or DAF (development aid) loans in the amount of 450 million dollars for the first three and 60 billion pesetas for the last one which was signed in February during the president's visit to China. These loans have allowed Spanish industry to get a foothold in China, especially the iron and steel, telecommunications, petro–chemical and construction materials industries and the energy and textile sectors.

(...)".

He concludes by saying:

"I believe that it is logical, therefore, for all of us to continue making joint efforts in the same direction without for a moment losing sight of the need to defend human rights, which as you know,

this Administration has always done, I don't know if with gallantry — I don't know what that word might mean to you — but at least, of course, with common sense in an attempt to maintain a positive relationship from both a political and economic point of view with one of the world's greatest powers.

(...)" (DSC–C, IV Leg., n. 643, pp. 19390—19397).

b) Peru

On 3 May 1994, the Government, in response to a parliamentary question, explained Spain's position on the human rights violations committed in Peru, especially the events that took place at the University of "La Cantuta", that left nine students and one professor dead.

"As regards the measures that the Spanish government can adopt in relation to the Peruvian government or the initiatives it can take through international organizations to reestablish respect for human rights in Peru, I must say that it is clear that ever since President Fujimori's coup on April 5, 1992, the situation in Peru has been very confusing. There is still violence, although the amount has decreased, and there are still human rights violations.It is true that the violent acts perpetrated by the Shining Path (*Sendero Luminoso*) in its heyday, if we want to call it that, were quite numerous — close to 27,000 murders in a period of 12 or 13 years — and that after the coup on April 5, 1992, the Government decided to put into practice what it called a policy of pacification. A series of measures were adopted as part of the policy: legal measures such as the intervention of the system of military justice in hearings on acts of terrorism which meant the participation of faceless judges, extremely rapid trials and military type measures which ranged from individual house to full neighborhood searches in all of the outlying areas of Lima and in areas declared in a state of emergency. These measures have been generally criticized both inside and outside of Peru. For example, the Peruvian Coordinator for Human Rights strongly denounced the numerous cases of human rights violations committed by the Armed Forces and has issued very critical reports on the antisubversive policies that President Fujimori's government is carrying out.

As you all know, when the 5 April coup took place, Spain energetically condemned this act and decided to suspend bilateral cooperation with the exception of humanitarian aid. Bilateral aid to

Peru was halted, as were the negotiations that were taking place at that time on a friendship and cooperation treaty. It was also decided that contact with the official authorities of Peru should be kept to a minimum. From that time on, relations and contacts have gradually been reinstituted and have come close to what could be called a normal level. This process has paralleled the advances made as regards respect for human rights and the acceptance of and respect for legality. However, both bilaterally and through actions from within the European Union, the Government has repeatedly made it known to the Peruvian government that it is concerned about the reoccurrence of human rights violations committed by the Security Forces of Peru and by military personnel, especially in the case of La Cantuta, which, as you know, had extraordinary repercussions in the entire international community.

The Peruvian government was also notified of the Spanish government's disapproval of its decision to reestablish the death penalty, which was later ratified through a constitutional referendum. Spain has also cooperated with several NGOs, such as Amnesty International, in providing refuge not only for those individuals who have actually been affected or threatened by terrorist organizations, but also for those who suffered persecution or degrading treatment by the Peruvian army or security forces based on an unproven link to the Shining Path or other subversive groups in Peru.

We maintain an important presence in Peru in addition to what we call humanitarian cooperation, as this is a country that is in great need of cooperation. However, we have had very few exchanges of the official visit type. There has been no resurgence of this type of visit in either direction, and negotiations on the friendship and cooperation treaty have also been paralyzed since 5th April when the so–called 'Fujimorazo' or self–coup took place.

(...)" (DSC–C, V Leg., n. 188, pp. 5858—5860).

2. Collective Measures. Regime of the European Community and its Member States

a) Zaire

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following

declaration on Zaire on 7 May 1993:

"The Community and its member States cannot, within the framework of its relations with Zaire, accept the appointment by Presidential order of Mr. Faustin Birindwa as prime minister, as proposed by a political conclave comprised solely of representatives of the President, without the approval of the High Council of the Republic, as this appointment is therefore not part of the process of transition as defined by the Sovereign National Conference.

Such a government cannot benefit from the cooperation of the Community and its member States, which have agreed to several measures including an embargo on the sale of arms and a restrictive policy on the granting of visas. The Community and its member States have also been notified of the adoption by the former National Assembly of a law on transition called the "harmonized" law. The Community and its member States cannot accept this "Law on Harmonized Transition" or its adoption by the National Assembly because these initatives constitute a violation of the process of democratic transition that the Community and its member States continue to support.

The Community and its member States reconfirm their support for the president of the High Council of the Republic and his efforts to support the evolution of the transition process towards free and democratic elections.

(...)".

b) Nigeria

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on Nigeria on 13 July 1993:

"The European Community and its member States express their deep concern as regards the events that have taken place in Nigeria since the government decided to cancel the presidential election scheduled for 12 June 1993. They are firmly convinced that a quick return to a civil and democratic government is needed.

After the many discouraging modifications that were introduced into the program for transition, they hope that the date of 27 August 1993 — which is the date power is to be turned over to a civil regime — will be respected, and that Nigeria will find the means to achieve this objective in a peaceful and democratic way.

Meanwhile, the Community and its member States have decided

to adopt the following measures as regards current authorities in Nigeria:

— the suspension of military cooperation.

— the restriction of visas for military personnel or members of the security forces and their families.

— the suspension of military visits.

— the suspension of all new aid in matters of cooperation.

The position of the European Community and its member States will be reviewed regularly and as warranted by events which would indicate the implementation of the transition program and especially respect for the date of 27 August 1993, set for the transition to a civil and democratic government.

(...)".

3. Collective Measures. Regime of the United Nations

a) Spain's Non–permanent Membership

On 17 February 1993, the Minister of Foreign Affairs informed the Foreigu Affairs Committee of the Congress of Deputies the approach Spain would take to its role as a non– permanent member of the United Nation's Security Council:

"The fifteen countries that currently form part of the Security Council have the opportunity to play a privileged role and to exert significant influence on matters that are at the forefront of international affairs. The counterpart to this, and it is a logical and reasonable counterpart, is that we must not forget that this obliges us to take a stance on the most controversial questions of international life and we must also, therefore, assume responsibility for our own actions, which will not always please all of the parties involved.

Within this framework and under these circumstances, it might be wise to refer to the general norms or criteria that we should keep in mind. First of all, I would like to say that the intensive Council activity that I mentioned requires us to make an additional effort to work hard and commit considerable resources. For this purpose, we have reinforced both our permanent mission in New York and our Office on International Organizations and Conferences here in Madrid in the ministry. Our delegation is currently participating very intensely and actively not only in all of the Council's actions in and of themselves, but also in those of the five sanctioning

committees established by the Council that are dealing with Libya, South Africa, Iraq, the former Yugoslavia and Somalia. Our country currently holds the vice–presidency of two of these committees, those on Libya and South Africa, and also holds the presidency of the compensation fund for those affected by Iraq's aggression against Kuwait, the headquarters of which is in Geneva.

As a matter of fact, in the last few years our country has begun to take on a relatively significant amount of responsibility for the maintenance of worldwide peace and security. I am thinking specifically of Spain's participation in several peace efforts in Central America, especially in El Salvador, but also in Nicaragua and Guatemala, in Western Sahara, in the Mid–East, in the former Yugoslavia and of our growing participation in peace–keeping operations. I would remind you that in round numbers, there are approximately a thousand Spanish law officers and civil servants currently working in United Nations organizations out of a total of something more than 50,000 people involved in all of the peace–keeping efforts currently underway throughout the world. Until 1989, Spain had never participated in these operations; today we contribute approximately two percent of the personnel involved in these peace–keeping forces. This percentage, interestingly enough, coincides with our contribution to the United Nations budget, making us the ninth largest contributor.

I would like to say that I do not believe that we should conclude from the above that we have forgotten our own national interests in our approach to the Security Council. One of the reasons Spain was elected as a member of the Security Council is because of what it represents around the world. Therefore, it is logical and natural for us to give priority to those areas that have special siguificance for our country, for Spain. I feel it is worthwhile to mention Latin America, Europe and the Mediterranean as areas with which our country has many different and very important ties and which are indeed priority areas in our foreign policy. We also have the opportunity to seek support for our own specific interests in this sphere.

We are also aware of the fact that members of the Security Council do not often act alone but rather are in constant consultation with others in an attempt to come to an agreement on their positions. Our delegation is participating to the greatest extent possible in this consultation process. We have consulted and will continue to consult, and try to come to an agreement on our positions as we have

done in these last few months with the other two members of the European Community that are members of the Security Council — France and the United Kingdom — who are permanent members. In this way we are complying with the spirit of the Treaty of the European Union.

On the other hand, taking into account the special ties that we have with Latin American countries, we currently maintain and will continue to maintain frequent consultations with the two Latin American countries on the Council — Venezuela and Brazil — especially on issues related to Latin America, but also on other problems that go beyond the scope of this region. I would like to point out, in this sense, that we are in very close contact on all issues that have to do with Central America, especially the peace process in El Salvador.

(...)" (DSC–C, IV Leg., n. 605, pp. I8177—18178).

b) South Africa

In his intervention on 25 May 1994, Spain's representative to the Security Council, Mr. Yáñez–Barnuevo, approved of the recent events in South Africa that brought about the end of the economic sanctions that had been set by the Security Council:

"With resolution 919 (1994), the Security Council has brought to an end the mandatory arms embargo imposed on South Africa by resolution 418 (1977). It has also decided to terminate forthwith all other restrictive measures contained in other resolutions of the Security Council, some of which date back to 1963. This entire series of decisions shows the importance the Security Council has attached for many years now, prompted by its African members, to facing up to the challenge presented by the apartheid regime to the international order.

The dismantling of the sanctions regime established by the United Nations against South Africa ... has culminated with the resolution that we have adopted today.

It is not often that the Security Council decides to lift a sanctions regime. It is always a source of gratification, because it demonstrates that the objectives sought by the international community in imposing these special measures have at last been attained.

(...)

The first multi–racial, multi–party elections, held in South Africa

from 26 to 28 April, and the establishment of a united Government, democratic and without racial distinctions, which was inaugurated on 10 May, are irrefutable proof that the South African people have, with great integrity and maturity, taken the reins of their own destiny,

(...)

Aware that we face a new reality in South Africa, Spain shares the firm determination already expressed by the European Union to continue to support the efforts of the new Government to obtain the objective of leading the country towards a democratic, non–racial society in which respect for human rights, both individual and collective, prevails, together with the state of law, the promotion of social justice and the elimination of all forms of discrimination.

(...)" (UN Doc. S/PV.3379, pp. 27—29).

c) Iraq

On 18 January 1993, the Ministry of Foreign Affairs informed the Commission of Foreign Affairs of Spain's position on maintaining economic sanctions against Iraq, and the actions undertaken by the United States, the United Kingdom and France which included use of force.

"a) ... During the last week, the United States, the United Kingdom and France have carried out a series of military operations in Iraq, the last of which took place just a few hours ago.

We understand that these operations are limited and aimed at very specific objectives. I want to say at the outset of my intervention that we have not participated in any way in these actions. We were informed only minutes before the operations were begun, and, I repeat, we did not participate in any way.

Perhaps, in order to adequately evaluate these actions, it would be wise to first remember, even briefly, the regime that the United Nations Security Council set for Iraq when the ceasefire was initiated approximately two years ago. A series of Security Council resolutions — as you will recall — put Iraq under a special regime which was supervised by the United Nations, which consisted of restrictions imposed on Iraqi sovereignty, international control procedures carried out within its territory and an international embargo which has only been lifted as regards essential civilian or humanitarian items.

Among the resolutions approved, Resolution 687, dated 3 April

1991, is of special interest. It could be described as a procedures manual for the relations between the international community and Iraq. You might remember that Resolution 687 required Iraq's acceptance of a series of obligations in order for the ceasefire to be declared. I would like to mention a few of these.

First. An absolute respect for the inviolability of the border between Iraq and Kuwait. In order to achieve this, the Resolution established a demilitarized zone on both sides of the border that was under the control of an observation team from the United Nations called Unikom, which is the name I will use to refer to it from here on.

Second. Iraq's unconditional acceptance of the destruction, removal or neutralization, under international supervision, of all chemical, nuclear and biological weapons as well as of all ballistic missiles with a range greater than 150 kilometers. In order to verify compliance with this obligation, the Resolution established a Special United Nations Commission with the power to inspect, in an unlimited fashion, and I repeat, in an unlimited fashion and first hand, Iraqi power in the aforementioned type of weapons.

As regards these obligations, which were established by several Security Council resolutions, especially Resolution 687 which I have mentioned several times now, we can only say that the Iraqi government has behaved in a clearly irregular fashion. The Iraqi government has violated, avoided or attempted to avoid the requirements established by the Security Council. If you recall, the Security Council had to approve a Resolution as early as August 1991, Resolution 707, which expressly condemned Iraq for violating Resolution 687 on the ceasefire, when it tried to hide its activities related to weapons of mass destruction and prevent the inspections being carried out by the United Nations special commission.

At that point, the Security Council, citing Chapter VII of the United Nations Charter, demanded Iraq to comply with all of its international obligations, specifically those established in Resolution 687. However, Mr. President, and members of the Congress, the Iraqi Government's violations of these international dispositions have continued on a regular basis.

In the last few weeks, both the press and the Governments that form the allied coalition at the highest international levels have mentioned of the declarations coming out of Bagdad which are characterized by a tone that is not in keeping with the United Nations resolutions, and have called for the use of force given that

there was evidence of increasingly frequent movement of arms in the zone and border incidents. As we know, there have recently been several incursions made by large groups of Iraqis which challenged Unikom positions, in other words, United Nations positions, to capture and remove military material from the Kuwaiti sector of the demilitarized zone. Yesterday, before the second action, another of these incursions into Kuwait took place.

In addition to this, the Iraqi Government has recently begun to refuse to allow the United Nations to transport Special Commission and Unikom personnel in their own planes through Iraqi territory. Even today, the Government of Iraq insists on putting conditions of one type or another on the movements of the Special Commission within Iraq.

Given these circumstances, last Monday, 11 January, the United Nations Security Council unanimously issued a formal declaration warning Iraq to cease what were called the serious violations of Resolution 687 if it wanted to avoid the very serious consequences that this conduct could provoke. Unfortunately, the Iraqi attitude did not change, and it was therefore not surprising that the first military intervention took place. In our opinion, the obstinacy of Iraqi leaders provoked the new U.S. attack that took place late yesterday, whose objective, according to official information, was an Iraqi nuclear site.This very morning, there was yet another action carried out by the allied airforces of the United States, France and U.K., against military objectives in southern Iraq.

The Government feels that these actions were supported by the United Nations resolutions which were backed by Security Council resolutions for the purpose of forcing Iraq to comply with and cease violating the aforementioned resolutions, thereby restoring international rule of law.

At this time there is still a great deal of concern about what the future attitude of the Government of Iraq might be. We, of course, hope that this Government reconsiders its actions and makes the changes needed to comply with the conditions established by the United Nations Security Council for the reestablishment of peace and security in the region.

This is, therefore, the information that the Government has at its disposal. I would once again like to state that Spain has not participated in any of the three attacks nor does it have any plans at this time to participate in similar acts that might take place in the future.

(...)" (DSC–C, IV Leg., n. 596, pp. 17940—179415).

On the other hand, on 9 February 1994, the Government, in response to a parliamentary question, made the following statement as regards maintaining economic sanctions against Iraq:

"c) ... it is true that the civilian population is the victim of any type of sanction, and this is true in almost any situation. For example, the main victim of the sanctions against South Africa was the black majority. There is absolutely no doubt about that. This is the case, has been the case and will continue to be the case whenever sanctions are applied. This is not the only type of sanction that can be taken by the international community — and 1 do not believe it should be the only one — but in severe cases and situations, we arrive, have arrived and will always arrive at the conclusion that in spite of these effects and consequences, there is no better way to pressure the authorities or regimes of these countries to change their policies and to comply with international legality and respect Security Council decisions. This is inevitable, and the only way to mitigate the effects of these sanctions is by means of exceptions that can be established in any regime, no matter how severe it is, as regards humanitarian aid such as food, medical care, etc. and this is what is being done. However, as long as the Iraqi Government does not fully comply with Security Council resolutions, sanctions, unfortunately, will not be lifted.

(...)" (DSC–C, V Leg., n. 105, pp. 3361—3362).

d) Libya

In his intervention on 11 November 1993, Spain's representative to the Security Council, Mr. Yáñez–Barnuevo, stated Spain's position on imposing economic sanctions on Libya:

"The Security Council has just adopted a resolution which we had hoped would not become necessary. Unfortunately, a year and a half after their adoption, resolutions 731 (1992) and 748 (1992) have still not been properly complied with. Despite the determined efforts of the Secretary General, to whom we wish to express our special appreciation, and the efforts of States and organizations, particularly the League of Arab States, which are interested in a speedy solution of the crisis, we must note that Libya has not fully complied with the demands set forth in Security Council resolutions 731 (1992) and 748 (1992).

In those circumstances, the adoption of a new resolution was

inevitable. First, it is necessary to ensure respect for the obligation imposed by the United Nations Charter on all Member States to comply with decisions of the Security Council. Secondly, the events that led to resolutions 731 (1992) and 748 (1992) are particularly serious. The attacks against commercial flights of Pan Am and UTA were horrendous crimes which caused numerous innocent victims, and their presumed perpetrators must be brought to justice.

As the representative of Brazil has pointed out, the Security Council is taking action on a decision that affects international peace and security, without prejudice to the principle of the presumption of innocence as regards the persons concerned. These are the reasons that prompted my delegation to vote in favour of resolution 883 (1993), which has just been adopted by the Council. This resolution, though as firm and vigorous as is necessary to attain its objective – namely to ensure compliance with the Council's requirements – nevertheless contains an element of flexibility which provides an appropriate way out of the crisis if there is sufficient will on the part of the Libyan authorities to do so.

It is true that through this resolution new sanctions are imposed on Libya, but it is also true that mechanisms are provided to suspend them and also to immediately lift all the sanctions, once there is compliance with the Council requirements. Moreover, a time period is established which would make it possible to avoid the entry into force of the new measures if Libya fulfils its obligations by 1 December.

(...)" (UN Doc. S/PV.3312, pp. 56—57).

e) Ex–Yugoslavia

In his intervention dated 14 February 1994, Spain's representative to the Security Council, Mr. Yáñez–Barnuevo, stated Spain's position on the use of force in Bosnia– Herzegovina authorized by the Security Council:

"The carrying out of air strikes by North Atlantic Treaty Organization (NATO) forces, if needed, would take place in response to a request by the United Nations in the event of further bombardments of Sarajevo, and, in any case, in close coordination with the Secretary–General, if Sarajevo and its environs are not demilitarized as stipulated in the Atlantic Council's decision.

Spain considers that these decisions are based on the relevant Security Council resolutions, in particular resolution 836 (1993) of

4 June 1993, which, may I recall, was adopted as the result of the initiative contained in the Washington Declaration signed by the Ministers for Foreign Affairs of the United States, the Russian Federation, France, the United Kingdom and Spain. We also consider that those Security Council resolutions give sufficient authority to the United Nations Secretary– General. We have complete confidence that, in close coordination with NATO authorities, he will take whatever decisions are necessary in the circumstances, within the context of those resolutions.

(...)

Therefore, a possible limited recourse to force by the international community is not to be interpreted at all as an abandonment of the quest for a political settlement of the conflict in Bosnia and Herzegovina. The main objective of the decisions adopted by the United Nations and the Atlantic Alliance is to halt the bombardment of Sarajevo and lift the siege to which the city has been subjected, and at the same time carry forward the negotiating process. Nobody should be mistaken about this: it is not a question of the international community's being a party to the conflict but, rather, of protecting civilians and making every possible move towards a negotiated settlement.

(...)" (UN Doc. S/PV.3336, pp. 28—30).

On 19 April 1994, the Minister of Foreign Affairs informed the Foreign Affairs Committee of the Congress of Deputies of Spain's position as regards the conflict in the ex–Yugoslavia, and offered the following data on Spain's participation in UNPROFOR:

"I would like to refer to the Spanish contribution during this phase of the conflict so that we do not forget that we have more than a thousand soldiers who are carrying out increasingly important duties and are receiving much praise from the parties involved as well as from the the United Nations. Spain continues to be committed to a negotiated political solution to the conflict and this is why our troups are there and why they will remain there. At the present time we have 1,364 soldiers in the area. The Government feels that we should maintain this level of cooperation and therefore will act in accordance with this position.

(...)" (DSC–C, V. Leg., n. 173, p. 5450).

On 28 April 1994, in response to a parliamentary question, the Government reported on the costs involved in Spain's contribution to the peace–keeping forces sent to the ex– Yugoslavia during 1993:

"The total amount of expenses incurred during 1993 is 9.439

million pesetas. Of these 6.27 million correspond to the Army, 2.115 million to the Navy, 1.022 million to the Air Force and 32 million to the General Defense Staff.

The economic contributions received or already approved and pending payment by international institutions such as the UN (New York) and the General Headquarters for UNPROFOR (Zagreb) amount to 1.830 million pesetas, when calculating the dollar at 141 pesetas/dollar. We must point out that as regards costs for 1993, there are some additional amounts that are pending approval by the United Nations, and we are currently formulating several petitions. These amounts must be approved by the United Nations, whose administrative procedures are slow and very complex.

(...)".

f) Rwanda

On 19 June 1994, the Minister of Foreign Affairs, in response to a parliamentary question, stated Spain's position on the human tragedy taking place in Rwanda:

"... as regards Rwanda, the Spanish Government is working with five different groups of action. First of all, Spain has been one of the countries within the United Nations Security Council that has supported the maintenance of UNAMIR for humanitarian action within the aid mission that the U.N. Security Council approved. I point this out because you know that there were only a few countries in favour of this mission continuing.

In the second place, from the perspective of the United Nations, but not the Security Council in this case, we have presented a proposal to the Human Rights Council in Geneva that there be a Human Rights rapporteur for Rwanda.

In the third place, I would like to state that we are the first in the United Nations Security Council to propose that a team of experts be created to analyze and condemn, when necessary, the extreme violations of human rights that have occurred during this genocide.

In the fourth place, I would say that the Western European Union to which Spain belongs, in keeping with United Nations Security Council Resolution 925 which Spain voted in favour of (provided that the U. N. Security Council did not initiate any operation to separate combat forces), has proposed to participate in the multinational operation initiated by France, and Spain is cooperating with logistical assistance. The first phase is being carried out by

French troops that were already on the African continent, and we hope to collaborate on the second phase.

In the fifth place, I would say that as regards humanitarian aid, there are two areas in which Spain is helping: humanitarian aid, in the sum of 150,000 French francs for the type of aid that concerned you — humanitarian, medical, medicines, etc., — and humanitarian aid in the sum of 50 million ECUs, funnelled through the European Union, of which we are a member.

(...)" (DSC–P, V. Leg., n. 85, pp. 4361—4362).

On 14 September 1994, the Minister of Foreign Affairs, in response to a parliamentary question, offered new data on the humanitarian aid offered by Spain to Rwanda:

"As of today, after totalling the efforts made by the different public administrations and those made by several non–governmental organizations, I can say that the economic aid provided by Spain equals approximately 150 million pesetas from the Government, approximately 200 million from the autonomous communities and city governments, and a similar amount from non–governmental organizations. I would like to emphasize that the contribution of non–governmental organizations is the highest of any European Union country, a fact which has been recognized in the European Union itself.

I would also say that more than 180 tons of food have been provided, and that there have been seven relief flights carrying food, and the more than 150 experts who are working there. I must also add that as regards United Nations operations — the Unamir operation — Spain, as you know, is going to send a CASA 235 aircraft, which is currently the most useful type in that area, backed by a Hercules for the approximately 20 Spanish soldiers that will participate in the U.N. Forces.

(...)" (DSC–P, V Leg., n. 88, p. 4546).

g) Haiti

In his intervention on 6 May 1994, Spain's representative to the Security Council, Mr. Yáñez–Barnuevo, stated Spain's position in favor of imposing economic sanctions on Haiti through Resolution 917 (1994):

"The Secretary–General's report to the General Assembly of 29 April (A/48/931) indicated that in the last few months there have been very serious violations of human rights, in particular

extra–judicial executions, forced disappearances, arbitrary and illegal detentions, abductions and rapes – all of which appear to be designed to intimidate those who support the return of the legitimate President of Haiti.

It is against that background that we are about to adopt this draft resolution. The embargo measures contained in it are not an end in themselves; rather, they are an instrument to be used to achieve the political objectives...

(...)

The ultimate objective of the sanctions is to facilitate the restoration of democracy in Haiti and the return of President Aristide.

(...)" (UN Doc. S/PV.3376, p. 6).

In his intervention on 31 July 1994, Spain's representative to the Security Council, Mr Yáñez–Barnuevo, stated Spain's position on the authorization of the use of force in Haiti through Resolution 940 (1994):

"Spain, which attaches great importance to the principle of non–intervention, especially on the American continent, supported resolution 940 (1994) because of the singular and exceptional circumstances of this case, because of the clear position taken by the legitimate authorities of Haiti and because the action to be initiated will not be carried out unilaterally but, rather, within a multilateral and institutional framework, under the authority and control of the United Nations. Had it been otherwise, we should not have been able to support such an action.

It must be stressed that in the view of both the Secretary–General, ... and the Council, as expressed in the terms of the resolution we have just adopted, the work carried out by the multinational force and, subsequently, by the United Nations Mission in Haiti (UNMIH) in the second phase of the operation will be aimed at assisting the legitimate authorities of Haiti in carrying out their constitutional functions.

(...)" (UN Doc. S/PV.3413, p. 20).

XVII. WAR AND NEUTRALITY

1. Hnmanitarian Law

The Spanish delegation to the International Conference on the Protection of Victims of War, sponsored by the International Red Cross, held at the end of August 1993, stated:

"Spain completely supports the views expressed by the Belgian delegation on behalf of the European Community and reconfirms its condemnation of the constant and deliberate violation of the principles and rules of International Humanitarian Law which are becoming increasingly more frequent in today's world. We cannot continue to simply stand by and watch as the civilian populations day by day become the main victim and even the objective of all types of crimes against humanity and against the most basic and universal of humanitarian rules that occur during armed conflicts. We cannot accept that humanitarian aid be controlled by the belligerent parties involved in the conflict.

(...)

The existing set of rules of humanitarian law currently offers an adequate legal framework for the repression of these aberrant practices. The Geneva Conventions are almost universally accepted. We would do well to continue to promote the universalization of these fundamental rules and demand respect for and compliance with them, while improving them or expanding them when it is deemed necessary. Along these lines it would be a very positive sign to invite all of the States who have not yet ratified or acceded to the 1994 Protocols or the 1954 Convention on the protection of cultural property in cases of armed conflict to do so. The opportunity to revise the 1980 Convention on prohibitions and restrictions on the use of certain conventional weapons and its three protocols in order to achieve a greater rate of acceptance would also be very wise.

In order to achieve greater compliance with humanitarian law, it is vitally important to adopt the necessary dispositions in national law to punish those responsible for violations of International Humanitarian Law, both in military criminal law and ordinary law as well as in cases of extradition.

(...)

Spain feels that the work of the International Law Commission on a future permanent international criminal jurisdiction should be

supported. Furthermore, the Survey Commission established by article 90 of the first 1977 Protocol could be another useful instrument, along with the establishment of other "ad–hoc" procedures of many types such as the Court for the former Yugoslavia.

(...)".

2. Belligerent Occupation

3. Civil War: Rights and Obligations of States

4. Disarmament

a) Nuclear Arms

On 31 March 1994, the European Union made the following Declaration on the question of North Korean nuclear power:

"The European Union is deeply concerned about the fact that the Democratic People's Republic of Korea has not authorized IAEA inspectors to complete the inspections that the DPRK and the Agency had agreed to on 15 February, 1994. The DPRK has also failed to comply with the provisions of the agreement on the guarantees it committed to as regards the non–proliferation treaty.

The European Union fully supports the IAEA Council of Governors' resolution of 21 March 1994, especially point 3 in which the Council of Governors firmly approves and praises the patient and impartial efforts of the director general and the secretariat to enforce the agreement on guarantees, and point 6 in which the director general of the IAEA is requested to transmit this resolution, together with his own report, to the Security Council, as required and article XII.C of the statutes of the IAEA.

The European Union believes that nuclear proliferation is a grave threat to international peace and security and reaffirms its continuing acceptance of the objectives of the nuclear non–proliferation treaty.

Therefore, we urge the DPRK to immediately and fully respect the agreement on guarantees concluded by the IAEA. We also call upon the DPRK to begin conversations with the Republic of Korea

in order to work towards the application of the joint declaration on the denuclearization of the Korean peninsula.

The European Union reaffirms that the prospects for improved relations with the DPRK would be greatly enhanced if the fears that were raised by the activities and intentions of North Korea as regards nuclear capabilities were calmed.

The European Union asks the DPRK to behave responsibility by abandoning its current position which constitutes a threat to the peace, stability and security of the Korean peninsula and the entire region.

(...)".

b) Moratorium on the Export of Anti-personnel Land-mines

The Spanish government, in a letter dated 8 July 1994, addressed to the Secretary General, stated the following as regards resolution 48/75 K, entitled 'Moratorium on the export of anti-personnel land-mines':

"The Government of Spain is convinced that a moratorium on the export of anti-personnel land-mines would reduce substantially the human and economic costs resulting from the use of such weapons.

A particularly dangerous characteristic of land-mines is that they continue causing injury to persons and damage to property for years or even decades after the cessation of hostilities. The removal of mines is a slow and dangerous process and, in some cases, is virtually impossible: many years are required to clear small areas and mine clearance personnel are the victims of mines with alarming frequency.

The Government of Spain therefore has decided that henceforth, for a renewable period of one year, it will deny any request to export anti-personnel land- mines.

This decision was adopted on 24 February 1994 by the competent organ of the Spanish Government, the Inter-Ministerial Board for the Regulation of External Trade in Defensive Hardware and Dual Purpose Hardware, comprising members of the Ministries of Foreign Affairs, Defence, the Interior, the Economy and Finance and Industry, Trade and Tourism.

At its meeting on 1 July 1994, the Council of Ministers of Spain took note of the decision of the Inter-Ministerial Board.

Spain calls upon all countries of the international community to adopt a moratorium on the export of anti-personnel land-mines similar to that established by Spain, for it is convinced that such

initiatives will help to mitigate the serious impact on life and property occasioned by the use of such weapons.

This decision of the Government of Spain is fully in accord with the following steps which it has recently taken:

(a) The submission to the General Assembly at its forty–eighth session, together with its partners in the European Union, of resolution 48/7 on assistance in mine clearance;

(b) The ratification on 29 December 1993 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, which entered fully into force for Spain on 29 June 1994;

(c) Spain is participating in the preparatory work for the forthcoming Conference to review that Convention to be held in 1995, which will be devoted in particular to restricting the use of land–mines even further.

(...)" (UN Doc. A/49/222, pp. 1—2).

5. The Exportation of Arms by Spain to Third Countries

a) In General

At the end of 1993, the Government replied to a parliamentary question on the criteria used in the sale of arms and the volume of arms sales:

"As regards the volume of arms sold by Spain to other countries, the Government reports that the criteria used for such sales and the volume of these sales are as follows:

'Every commercial operation with a foreign country, whether it be an importation or an exportation, must obtain a prior favorable report from the Interministerial Committee on Defense and Dual Use Materials which must be authorized by the Office of Foreign Trade. This report is based on the instructions received from the Government and on Spain's obligations which are derived from its membership in several international bodies, especially the United Nations, which determines the countries of origin and delivery with which Spain can operate based on political circumstances or any other type of circumstance that might exist'.

(...)".

The Government also offered details of Spain's arms sales over the last

few years, seen in the following table:

Year	Current Pesetas	Price Index (Thousands of ptas.)	Fixed (constant, stable) pesetas
1989	33,679,390	100.00%	33.679.390
I990	49,574,639	97.37%	48,270,878
1991	90,355,9	1796.04%	86,777,822
1992	66,069,97I	96.49%	63,750,915

(BOCG–Congreso.D, V. Leg., n. 21, pp. 174—175)

b) Morocco

On 16 February 1993, the Government, responded to a parliamentary question on its policy as regards the exportation of arms to Morocco:

"Over the last two years the Government has not authorized any sale or supply of arms to the Kingdom of Morocco.

If we go beyond the term 'arms' and consider the broader concept of 'defense material', in the last two years the Government has authorized the exportation of 500 Nissans worth 163 millon pesetas, six CASA CN–235 transport aircraft worth 11.141 billion pesetas, and one naval tactical simulator worth 1 billion pesetas.

We should say that from an international perspective, there is no type of restriction on the sale of arms to Morocco from either the Community or the United Nations or from any other international organization.

It is important to remember that these operations require obtaining prior authorization from the Interministerial Regulating Commission on Foreign Trade in Defense Material and Dual Use Products or Technology. Therefore, all aspects of any sale of defense material to Morocco, including the foreign policy aspect, are carefully analyzed before the sale is carried out.

(...)" (BOCG–Congreso.D, IV Leg., n. 379. p. 97).