SPANISH DIPLOMATIC AND PARLIAMENTARY PRACTICE IN PUBLIC INTERNATIONAL LAW, 1992

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Except when otherwise indicated, the texts quoted in this section come from the OID, and more specifically from the OID publication *Pol. Ext.* 1992, 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.A — Boletín Oficial de las Cortes Generales. Cortes Generales. Serie A, Actividades Parlamentarias (Official Journal of the Spanish Parliament. Spanish Parliament. Series A, Parliamentariy Activities).

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

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

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

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

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

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

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

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Index

4. Human Rights
   a) Allegation of Respect for Human Rights as an Erga Omnes Obligation
   b) Minorities and Self-Determination
   c) The Spanish Government's Response to the Special Rapporteur of the Human Rights Commission on Torture and Other Cruel, Inhumane or Degrading Treatment

VI. Organs of the State
1. In General
2. Regulation of the Foreign Service

VII. Territory
1. Territorial Divisions, Delimitation
   a) Internal Waters
2. Territorial Jurisdiction
   a) Territorial Sovereignty
3. Colonies
   a) Gibraltar

VIII. Seas, Waterways, Ships
1. Internal Waters
2. Territorial Sea

IX. International Space

X. Environment
1. United Nations Conference on Environment and Development
2. Marine Pollution

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

XII. International Organizations
1. United Nations
2. North Alantic Treaty Organization
3. Western European Union

XIII. European Communities

1. Enlargement
2. Institutions
3. Internal Market
   a) Free Movement of Goods
   b) Freedom of Movement of Persons. Schengen
4. Economic and Social Cohesion
5. Subsidiarity
6. Political Union
7. External Relations
8. Common Foreign and Security Policy

XIV. Responsibility

1. Responsibility of Individuals
2. Injurious Consequences Arising from Acts not Prohibited by International Law
3. Reprisals or Countermeasures

XV. Pacific Settlement of Disputes

1. Diplomatic Modes of Settlement
   a) Good Offices, Mediation
2. The International Court of Justice

XVI. Coercion and Use of Force Sbort of War

1. Unilateral Acts
   a) Retorsion
2. Collective Measures. Regime of the European Community and its member States
3. Collective Measures. Regime of the United Nations
   a) Irak
   b) Libya
   c) South Africa
   d) Yugoslavia
   e) Peace-keeping Operations
   f) Interfering with Humanitarian Aid

XVII. War and Neutrality

1. Humanitarian Law
2. Belligerent Occupation
3. Civil War: Rights and Duties of States
4. Disarmament

I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis, Purpose

Note: See SYIL, vol. I (1991), pp. 38—39; IV.1.*a) Sovereignty and Independence.*

The Second Ibero-American Summit of Heads of State and Government held in Madrid (Spain) on 23 and 24 July 1992, issued a Conclusions Document in which the objectives and principles established in the 1991 Guadalajara Declaration were reaffirmed:

> "9. The nations of Latin America, inspired by their legal tradition, do solemnly reaffirm the primacy of the Law in their dealings with one another and with the other States pertaining to the International Community.
>
> They stress that international disputes must be resolved by peaceful means and that all States must, in good faith, comply with the obligations that derive from the United Nations Charter, with generally recognized principles and rules of International Law, and with the international agreements that are drawn up in accordance with these rules and principles.
>
> They consider it especially important to reiterate the need to completely respect the full and exclusive exercise of each State's sovereignty over its own territory.
>
> The Conference considers any judicial decision at odds with the aforementioned principles to be extremely disturbing.
>
> [The Conference] rejects any type of interpretation that attempts to recognize the possibility of an extraterritorial application of the laws of a specific country in another country, and accepts in this regard, the Declaration of the Rio Group dated July 16, 1992. For these reasons, we propose that the General Assembly of the United Nations in its 47th session be asked to request a consultative opinion from the International Court of Justice on this matter.
>
> (...)".

In his appearance before the Congressional Committee on Foreign Affairs to explain the contents of the Friendship, Good Neighbour and Cooperation Treaty with Morocco, the Minister of Foreign Affairs, Mr. Solana Madariaga, stated the following as regards the principles of international law found in this accord:

"The treaty restates a series of general principles of International Law that both countries reaffirm as the framework for their relations. I must point out that these principles are nothing more than the rules of conduct that are in full effect today in International Law. The wording of these principles is very similar if not exactly the same, and on some occasions even exactly the same, as the wording of the United Nations Charter on the principles of International Law related to friendship and cooperation between the two States, which was passed by United Nations General Assembly Resolution 2.625, as well as the text of the decalogue of the Helsinki Final Act.

Thus several principles are included which I would like to briefly list: respect for international law, abstaining from recurring to threats of the use of force against the territorial integrity of the other party, respect for human rights and basic freedoms, the promotion of dialogue between and understanding of each other's cultures and civilizations, respect for the sovereign equality of both parties and non-intervention in domestic matters, and the intensification of cooperation as regards the development and prosperity of both nations.

(...)

Of course, as regards both the resolution which I referred to earlier, number 2.625, and the Helsinki Final Act, these principles cannot validly be considered in an isolated fashion. Their interpretation should be done by relating them to each other, in other words, by relating them to one another and putting each of them within the broader context of the others.

(...)" (DSC-C,IV Leg.,n.508,p.14984).

Mr. Solana Madariaga, Spain's Minister of Foreign Affairs, made the following comments on September 25, 1992, during his intervention before the 47th session of the General Assembly:

"During the general debate at the forty-sixth session, the common denominator of many statements heard in the General Assembly was the tremendous change that had taken place in the world since the middle of the previous decade. Far from abating, the pace of that trend to transformation has significantly accelerated over the last 12 months.

At this stage of the process, it would be no exaggeration to say that we have before us a new pattern of international relations. After the disappearance of the East-West confrontation and its replacement by dialogue and cooperation, decisive progress has been made in disarmament agreements and arms control, at both world-wide and regional levels. Long-

festering regional conflicts have been settled or may well be on their way towards settlement.

(...)

Meanwhile, the gap between the developed and the developing countries persists, and in many cases, has even widened. Old conflicts have intensified and new ones have appeared. The tragedy presently afflicting Somalia is palpable proof of the terrible effects that underdevelopment, poverty, natural disasters and violence can have when they coincide in time and place. This situation demands greater solidarity and a swift collective response such as the one decided in the framework of the United Nations, which was aimed at putting an end to such terrible suffering and making possible a peace process that will lead to national reconciliation in that country.

For all these reasons, after the initial moments of surprise and euphoria, of perplexity and optimism in the face of what seemed to be the emergence of a new world order, we are not coping with the need to incorporate these new changes, so as jointly to build a more just and secure international society.

(...)" (Doc. UN A/47/PV.13,pp.17 and 21).

The Spanish Minister of Labour and Social Security, Mr. Martínez Noval, in his intervention before the 79th session of the International Labour Conference, emphasized the importance of *consensus* in order to achieve the objectives of International Labour Law:

"For tripartism [the collaboration between government, employees and workers] to develop fully its role as a moderator and agent of reform it has to be assumed without any reservation by the social partners. Social *consensus*, which is the most complete expression of tripartism, is a firm support for democracy and an effective instrument to balance the functioning of the economy; its success, however, depends upon the existence in each of the parties participating in this process of a reciprocal spirit of mutual concession and preliminary consensus on the final objectives, which are those of an advanced democracy.

(...)" (Doc. ILO,Provisional Record,79th Session, 10th Sitting 1992,p.19/5).

Finally, in Note Verbale n. 442, sent by the Permanent Mission of Spain to the Secretary General of the United Nations on 10 July 1992 in response to a note from the Secretary General on 28 January 1992 (Ref. LA/COD/27) related to the United Nations Decade of International Law, Spain's contribution to the

promotion of the teaching, study and dissemination of International Law was pointed out:

"IV. Promotion of the teaching, study, dissemination, and a more complete understanding of International Law.

International Law figures prominently in university-level education in Spain. The most recent general directives on the programs of study for Faculties of Law in Spain state that Public International Law, together with European Community Law and Private International Law, should be a required core course in all programs of study. Furthermore, the teaching of the Law of International Organizations can be included in these programs as an elective course.

As regards postgraduate study, numerous annual seminars are conducted specifically on International Law, among which we can mention the course offered in Vitoria-Gasteiz, which is organized by the University of the Basque Country, and those that are sponsored by the Center for Constitutional Studies.

In addition to this, International Law, together with European Law, is an essential component in international exchange programs between Spanish and foreign universities, especially between Spanish and European universities within the framework of the Erasmus program, and between Spanish and Latin American universities.

This year, 1992, will be witness to two especially relevant events related to international cooperation in the teaching and dissemination of International Law. First of all, we have the Ibero-American conference entitled 'The Salamanca School and International Law in America; From the Past to the Future' which will be held in Salamanca next November, and is sponsored by the Spanish Association of Professors of International Law and International Relations. Many prestigious internationalists will be participating in this congress. The second event we wish to mention is the XVII Congress of the Hispano-Luso-American Institute of International Law which will be held in Cáceres in September.

The *Spanish Yearbook of International Law* will also be published for the first time in 1992. This publication will complement the scientific contribution of the *Revista Española de Derecho Internacional* and bring about greater knowledge of Spanish doctrine and practices among specialists in many countries around the world.

As regards the area of finance, Spain contributes to the maintenance of several private and inter-governmental international institutions dedicated to the teaching and dissemination of International Law and its codification and development. Among these we can point out the Hague

Academy of International Law, the International Diplomatic Academy, the Hague Conference on Private International Law and the International Institute for the Unification of Private Law.

(...)".

2. European Regional Subsystem

Mr. Solana Madariaga, the Spanish Minister of Foreign Affairs, made the following comments in his intervention before the General Assembly:

"The map of Europe has undergone a profound transformation over the past year. The unification of Germany now appears fully consolidated. Russia and the formerly subjugated countries that recovered their independence and freedom are struggling to consolidate their democracies and to overcome the serious economic difficulties brought on by their transition to a market economy. The European Community, on its way towards union, is acquiring a greater political role, in accordance with its undoubted economic strength. Democratic ideals and practices and the recognition of human rights have reappeared vigorously not only in Eastern Europe but also in Latin America and many African countries, despite the grave economic situation now prevailing on that continent.

Those auspicious events should not lead us to forget that the collapse of the former system has opened up a great void fraught with risks in which disorder may find a natural home. In some extreme cases, we are witnessing the exacerbation of previously repressed or latent nationalist forces which are giving rise to such bloody conflicts as those at present dividing the new Caucasian Republics and the new States that emerged after the dissolution of the former Yugoslavia. Such situations reveal that the horrors of the past can always be repeated if we do not keep looking to the future. This is something that neither Europe nor the rest of the international community can or should allow.

The seriousness of the conflict now taking place in the territory of the former Yugoslavia is a good example of what I have just said. In the Conference that started in London, the many efforts of the international community converged in an attempt to put an end to that complex conflict by helping the parties to resolve their differences through the negotiations currently taking place in Geneva. Aggression, the use of force, and the violation of human rights will only generate destruction and hatred and will meet with the continued condemnation and determined action of the

international community to put an end to them" (Doc. UN A/47/PV.13,pp.18—19).

In the joint address given by the Minister of Foreign Affairs, Mr. Solana Madariaga, and the Minister of Defense, Mr. García Arias, before the Congressional Committee on Foreign Affairs, the following comments were made regarding the situation in Yugoslavia:

"I would like to point out what in our opinion are some of the fundamental elements of the speech given by Lord Carrington. First of all, the acceptance of a series of principles of conflict resolution adopted by the international community, the refusal to recognize territory acquired by force, and the need for different communities to be able to live together peacefully, thereby rejecting unacceptable formulas related to the transfer of population groups. In the second place, confirmation of the idea that the this dispute could be resolved by recognizing and protecting the rights of national minorities. The ethnic make-up of the territory of the former Yugoslavia makes it impossible to find solutions that are based solely on territorial autonomy.

(...)

We must stand firm in our defense of these principles, especially those that are at the heart of this matter: the inadmissibility of territorial acquisition through force and the need for guarantees for minorities.

(...)" (DSC-C,IV Leg.,n.504,p.14784).

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on Bosnia-Hercegovina on 11 May 1992 in which they demand the following from the authorities of the Federative Republic of Yugoslavia (Serbia and Montenegro):

"The Community and its member States also request from the authorities in Belgrade to commit themselves to:

— respect for the integrity of all borders of all republics;

— respect for the rights of minorities and national or ethnic groups, including Kosovo and Vojvodina, in accordance with the Carrington Draft Convention;

— promote the conclusion of an agreement on a special status for Krajina ensuring respect of the territorial integrity of Croatia;

— fully cooperate with all parties at the Conference for settling the question of State succession.

(...)".

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

a) In General

A Note Verbale sent by Spain's Permanent Mission to the United Nations dated 10 July 1992 includes the following observations made by the Spanish Government on the promotion of respect for and acceptance of International Law:

> "I. Promotion of, Respect for and Acceptance of International Law.
>
> Spain is a party to a good number of multilateral treaties currently in effect regarding the gradual development of International Law and its codification. It has recently ratified the United Nations Convention on the Law of Treaties between States and International Organizations or between International Organizations themselves as well as the 1977 Additional Protocols to the Geneva Conventions on Humanitarian Law. In keeping with the policies of the Spanish Government, in both cases the clauses on conflict resolution and the guarantee mechanisms related to the application of the treaties have been accepted in full.
>
> In addition to this, the Spanish Government, to the extent it is possible, aids other States in facilitating their participation in multilateral treaties and their application. To give some specific examples, Spanish experts are currently helping an African State define and mark its territorial waters and a Latin American country elaborate rules of international commerce in accordance with the work being done by the UNCITRAL.
>
> The Spanish Government makes every effort possible to provide ample information on the international commitments undertaken by Spain. With the invaluable help of the Treaties Division of the United Nations Office of Legal Affairs, Spain publishes a biannual summary report on the international treaties and agreements to which it is a party. This report includes all legal acts carried out related to these treaties and agreements by Spain or by any other contracting party.
>
> (...)".

b) Conclusion and Entry into Force

Note: See SYIL, vol.I (1991), pp.41—42; III.2. Community Law and Municipal Law; XIII.7 .*b) Free Movement of Persons. Schengen.*

In response to a question presented in the Senate regarding the timetable for the implementation of the Maastricht Treaty, the Government stated the following:

> "The Council of Ministers authorized the signing of the Treaty of the European Union in its meeting on 31 January 1992. On March 18th, the Ministry of Foreign Affairs requested the mandatory opinion of the Council of State. In opinion number 421/92 dated April 9th, the Council of State issued the following statement:
>
> First. That Spain's ratification of the Treaty of the European Union must be authorized by Parliament by means of an organic law approved in accordance with article 93 of the Constitution.
>
> Second. That prior to said ratification, the procedure outlined in article 95.2 of the Constitution should be followed so that the Constitutional Court can rule whether or not there exist any contradictions between the Treaty of the European Union and the Constitution itself.
>
> In a meeting on April 24th, the Council of Ministers accepted the proposal made by the President to ask the Constitutional Court to give an opinion on whether the Treaty of the European Union conforms to article 13.2 of the Constitution. Until the Court issues that opinion and until the sense and scope of the opinion is known, no timetable for processing the ratification of the Treaty signed in Maastricht can be made.
>
> (...)" (BOCG-Senado.I,IV Leg.,n.325,p.109).

Mr. Westendorp, Secretary of State for the European Community, speaking before the Joint Committee on the European Community, stated the following as regards the entry into force of the Schengen Accord and Spain's presidency:

> "Due to the mechanics related to the entry into force of the Schengen Accord, it appears that the accord cannot yet enter into force. We know it will not enter into force on January 1, 1993; perhaps it will sometime during that year. Its entry into force will be somewhat *sui generis*.
>
> It is not enough that all of the countries involved ratify the accord and deposit their instruments of ratification, for in addition to this, article 139 states that certain conditions must be met for its entry into force. This is a somewhat curious procedure as regards entry into force and some questions must be answered: who determines what these conditions are and how are they to be met?
>
> The program proposed for the Spanish presidency consists of and is based on meeting the conditions set so that the Schengen Accord can be put into effect. The entry into force of the Schengen Accord depends on

compliance with a random series of events and no one knows exactly what these events might be. After several meetings, especially after the last one held in Luxembourg, these conditions were clearly established and it is precisely these conditions that the Spanish presidency is going to address. At the same time, the second problem has been resolved and that is that a determination has been made as to who is going to decide when the conditions that have been set are met. The Committee of Ministers and the Secretaries of State will have this responsibility once the degree of compliance with the program that I mentioned earlier has been analyzed. Therefore, the deposit of the instruments of ratification by all the countries involved will be done once the Committee of Ministers and Secretaries of State have studied compliance with these conditions, even if ratification itself took place earlier.

The conditions are, first of all, to promote efforts related to the constitution of the Schengen information system, the SIS, including both the central SIS in Strasbourg and national SIS systems as well as the complementary system known as Sirene. The second condition is to promote efforts related to the establishment of a uniform visa. The third condition is to give common instructions to all consulates so that an easy and flexible mechanism for issuing visas can be established. Fourth, we must finish a common manual on borders and promote efforts at and mechanisms for police cooperation. The fifth condition has to do with reenforcing cooperation related to the fight against drugs. Sixth is finding a way to make the Dublin Convention and the Schengen rules compatible in matters of asylum, that is those rules related to the State responsible for accepting a petitioner for asylum. And finally, the accession agreement for Greece must be concluded.

(...)" (DSCG-Comisiones Mixtas,IV Leg.,n.49,pp.1327—1328).

In response to questions presented in the Congress and the Senate on compliance with the agreement between Spain and Great Britain for the joint use of the Gibraltar airport, the Government stated:

"When the Agreement on the Joint Use of the Gibraltar Airport was done in London on 2 December 1987, the British Minister of Foreign Affairs qualified it as beneficial to Spain. The Administration agrees with that assessment and therefore has no plans to 'denounce' the Agreement which is in full force at this time, was quite difficult to achieve, and benefits Spanish interests.

The nature and content of the Agreement do not make it susceptible to immediate compliance through a single action at a specific point in time,

but rather stipulate a regime of joint usage for an indefinite period of time. According to the Agreement itself, this regime was to go into effect once British authorities notified Spanish authorities of the entry into force of the required legislation.

Therefore, it is not that the United Kingdom is in non-compliance with the Agreement, but rather that it has not notified Spain of the entry into force of the legislation needed to be able to put the stipulated regime into practice... this Administration's policy is not to pressure Great Britain or demand its compliance with the agreement, hut rather to wait for the British Government to notify us of the entry into force of the legislation that will allow the regime stipulated in the agreement to be put into practice.

(...)" (BOCG-Congreso.D,IV Leg.,n.338,p.79).

2. Codification and Progressive Development of International Law

The Note Verbale dated 10 July 1992 sent by Spain's Permanent Mission to the United Nations, explains Spain's position on the need to promote the progressive development and codification of International Law:

"III. Promotion of the Progressive Development of International Law and its Codification.

Spain firmly supports the progressive development of International Law and its codification and believes that it would be a good idea for the Sixth Commission of the General Assembly to coordinate the different efforts being made in this area around the world...

(...)

The Spanish Government is well aware of the important role of the United Nations Commission on International Law in the area of codification and the progressive development of International Law. It is also aware of the difficulties involved in finding new topics that are able to generate generalized support in order to begin efforts to codify or progressively develop these topics. Therefore, it feels that it would be extremely useful for the Commission on International Law to proceed to review all of the conventions done in the past which have not yet reached the desired level of acceptance. This, of course, should be done without abandoning the search for new topics. This type of review is especially appropriate on topics related to universal conventions on special missions and on the representation of States before international organizations and above all on conventions on state succession, a topic currently of great practical importance and one which would henefit from a new approach

which takes into account new international circumstances.

In addition to this, the Spanish Government also wishes to point out the exceptional contribution that has been made to the specific field of International Trade Law by the United Nations Commission on International Trade Law. The commission should be strongly encouraged to continue its work, taking into account the conclusions of the recent World Congress on International Trade Law (New York, 1992).

(...)".

In relation to this last topic, the comments made by Mr. Dastis, Spain's representative, to the Sixth Committee on the United Nations Commission on the International Trade Law's report on the work done in its twenty-fifth session were recorded in the following way:

"... it was customary to begin the work of the Sixth Committee with consideration of the report of UNCITRAL and that that always struck a positive note. The success of UNCITRAL's work was due to its judicious choice of issues appropriate to the uniform development of international trade in two main areas — meeting the challenges of technology and devising ways of overcoming the difficulties arising from the differences between countries' legal systems and levels of economic development. The Model Law on International Credit Transfers lay within the first of those areas and the draft Legal Guide on International Countertrade Transactions, the second.

UNCITRAL's working methods could serve as a model for other United Nations bodies concerned with the development and codification of International Law. Its methods were characterized primarily by: a) a practical approach to the selection of topics and wide participation in that selection; b) flexibility in the drafting of texts, subordinating the final form to content requirements; c) close coordination with other organizations specializing in the issues under consideration and concerned with international trade law, thereby avoiding duplication and conflicts; and d) continued attention to texts already adopted.

These working methods had amply demonstrated their effectiveness and could be applied to other spheres of International Law, particularly in connection with the United Nations Decade of International Law. For that reason, his delegation accepted UNCITRAL's conclusions on possible ways of improving and rationalizing its work methods and, in particular, the conclusion that it was impracticable for its working groups to hold consecutive meetings.

Finally, there must be continuous participation by the developing

countries in UNCITRAL's deliberations. The future success of its work depended thereon.

(...)" (Doc. UN A/C.6/47/SR.4,pp.4—5).

3. Non-binding Agreements

In response to a question posed in the Senate regarding the conditions for the concession of a credit in the amount of 1.5 billion pesetas to the former Soviet Union, the Government stated:

"1. The credits to the USSR to which Your Honor refers were based on the Spanish-Soviet Memorandum on the improvement of the conditions related to the financing of commercial and economic cooperation signed on 27 October 1990. In this Memorandum it was stipulated that the Spanish Government would make credits available to the Government of the USSR in the amount of 1.5 billion dollars over a three year period for short, medium and long term financing schemes.

(...)

The Memorandum was not an international treaty but rather a simple declaration of intent. It did not, therefore, contain any legally binding obligations for the Spanish state. That is why no conditions were established in the Memorandum. In any case, there was an underlying awareness by both parties that if the political and economic liberalization of the USSR were to be detained for any reason, or if any type of economic catastrophe were to occur, the Memorandum would become inoperative.

The financial terms and conditions for the concession of the credits were established in a second Memorandum signed on 30 November 1990. After relatively long and complicated negotiations, a credit agreement was signed on 8 March 1991 between a group of Spanish financial entities and the USSR Bank for Foreign Economic Activities. This document is a technical banking document that specifically develops the content of the two Memoranda. It is important to point out that it is not the Spanish Government that awards the credits but rather the Spanish financial institutions that individually signed the credit agreement of 8 March 1991. These financial institutions are free to study the characteristics of each of the projects presented to them by their clients and decide whether or not to finance them.

(...)" (BOCG-Senado.I,n.190,p.114).

4. Codes of Conduct

Note: See III.2. Community Law and Municipal Law.

In the Declaration on the Eleventh Synthesis Report on the Code of Conduct for Community Companies with Subsidiaries in South Africa dated 11 May 1992 and signed by the twelve member States of the European Community within the framework of European Political Cooperation, the following is stated:

> "The Community and its member States approved the Eleventh Synthesis Report on the Application of the Code of Conduct for companies from the EC with subsidiaries, branches or representation in South Africa. They decided to forward the report to the European Parliament and to the Economic and Social Committee of the European Community.
>
> The report covers the period from 1 July 1989 to 30 June 1990 and analyses reports on the activities of 241 companies with about 80,000 black employees. It also takes into account the annual report by Heads of Mission in Pretoria on the implementation of the Code.
>
> The Community and its member States have noted with satisfaction that:
>
> I. A very large majority of European companies have resolutely adopted a policy of allowing their workforces to choose freely their representatives;
>
> II. Objective non-racial criteria are employed by all companies in determining wages and filling vacancies;
>
> III. The majority of companies have achieved total desegregation;
>
> IV. In line with the objective of encouraging black businesses, an increasing number of companies are members of, or support, local organizations established to promote black entrepreneurs.
>
> The Community and its member States are convinced that the measures taken by the European companies to abolish segregation at the working place have contributed substantially to furthering their policy aimed at achieving the elimination of apartheid by peaceful means".

In an intervention before the Senate in response to a question on the European Community Code of Conduct regarding the protection of the dignity of men and women in the workplace, the Administration referred to the content of the Community recommendation:

> "The Commission recommends three types of action:
>
> a) to promote an awareness of the fact that sexual behaviors that affect

the dignity of men or women in the workplace are unacceptable and in certain circumstances, contrary to the principle of equality,

b) to apply the Commission's code of conduct on this subject in the public sector,

c) to encourage employers and workers to apply this code in the private sector" (BOCG-Senado.I,IV Leg.,n.33,p.95).

In response to a question directed to the Government on the measures it planned to adopt in order to apply the European Commission Code of Conduct in matters related to protecting the dignity of women and men in the workplace, the Government stated the following:

"As regards the competencies of the Ministry of Labour and of Your Honors in this matter, measures have already been introduced into Spanish Labour law by means of the reform of article 4.2 of the Worker's Charter that address the concern that exists about this topic.

Furthermore, the Institute for Women's Issues is proceeding with the publication in Spanish of the code of good conduct and with its dissemination among social agents. As regards the public sector, sexual harassment has been added to several administrative agreements and we are proposing that it be gradually introduced into even more of them" (BOCG-Senado.I,IV Leg.,n.333,p.95).

III. RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

1. International Law in Municipal Courts

On the occasion of the Committee debate on eradicating discrimination against women under article 18 of the Convention, Spain's representative, Ms. Gutiérrez López's comments were recorded in the following way:

"9. The Committee had asked whether women can bring cases before the Spanish Constitutional Court and before the Court of Justice of the European Communities. Article 10 of the Spanish Constitution provided that rules relating to fundamental rights and freedoms embodied in the Constitution should be interpreted in the light of the Universal Declaration of Human Rights and international agreements ratified by Spain. Consequently, the fundamental rights and freedoms, including the right to

equal treatment, set forth in the Constitution had to be interpreted in the light of the principles laid down in the Convention. Under the Convention, women could have recourse to all ordinary courts, including the Supreme Court. Under the amparo procedure (procedure for the enforcement of constitutional rights), individuals can bring cases before the Constitutional Court in the event of a violation of article 14 of the Constitution (the principle of equality) and of fundamental rights and freedoms. The Constitutional Court had handed down many decisions in implementation of article 14 that had been reached in the light of international agreements.

10. On the issue of affirmative action, article 9, paragraph 2 of the Spanish Constitution provided, *inter alia*, that public authorities should promote equality, remove obstacles to equality and facilitate the involvement of all citizens in political, economic, cultural and social life. Accordingly, the Constitutional Court had indicated that different treatment for women did not constitute discrimination under article 14 of the Constitution but rather represented action to counter discrimination against women as a group, and thus met the requirements of article 9, paragraph 2. The Constitutional Court had concluded that different treatment for individuals in different situations, based on criteria that could be regarded as reasonable, does not violate the principle of equality. That had the view expressed by the Constitutional Court in its decision of 16 July 1987, laying down a principle which was reaffirmed in subsequent decisions.

(...)" (Doc. UN/CEDAW/C/SR.199,p.4).

In his intervention before the Joint Commission of the European Community, the Secretary of State for the European Community, Carlos Westendorp, explained the reasons for the Spanish delay in the transposition of Community directives in response to a question posed:

"Spain has made an enormous effort in favor of directives in the last five or six years and we have transposed 1,244 out of a total of 1,479 of them. Another 98 were not transposed within the time frame allowed. The number of directives that have not yet been transposed but for which the deadline is yet to pass — in other words, those which we still have time to pass — is 137. In other words, in general, the number of directives pending transposition is relatively low.

(...)

The basic reason [for the delay in transposing the directives] has been the need to ensure a proper transposition and this can be seen in relation to the infraction procedures instituted by the Commission and the number of times the Commission has filed against ns in the Court of Justice.

We have heen charged with faulty transposition of directives and with general non-compliance on twelve occasions. We should keep in mind that Italy has 122 infraction procedures before the Court of Justice, Belgium 56, Germany 21 and France 36. Only two countries have a better record than ours and these are Denmark and the United Kingdom. Why is this so? Among other reasons because we are required by legislative provisions to send all transpositions of directives to the Council of State for examination. The other reason for this very thorough procedure is the existence of the Interministerial Commission on Nutrition which has an extremely careful and rigorous decision making process which really slows down adoption procedures and favors quality over quantity so to speak, but even the Ministry of Health and Consumer Affairs and the Ministry of Agriculture have of late made an attempt to revise the rules governing this commission. (...)" (DSS-C,IV Leg.,n.60,pp.1638-1639).

2. Community Law and Municipal Law

Note: See II.1.*b) Conclusion and Entry into Force;* 4. Codes of Conduct; XIII.7.*a) Free Movement of Goods.*

By virtue of the provisions of art. 95 of the Spanish Consitution, the Council of Ministers decided on April 24, 1992, to appeal to the Constitutional Court for a ruling on the existence of a possible contradiction between art. 13.2 of the Constitution, which refers solely to a foreign subject's right to vote in municipal elections, and the Treaty of the European Union, which gives all citizens of the future Union residing in a member State of which they are not nationals, the right to both vote and stand for election under the same conditions that the nationals of that State are entitled to:

"If the Constitutional Court rules that there is a contradiction between the text of the Treaty and that of the Constitution, the State could not give its final consent without first amending the Constitution. This amendment, given that it would only affect article 13.2, would be done in accordance with the provisions of article 167, that is, it would require the passage of a constitutional reform by a three-fifths majority of each of the chambers, and if there were disagreement, by a commission made up of an equal number of congressmen and senators and finally an absolute majority in a vote in the Senate and a two-thirds majority vote in the Congress. The amendment could also be submitted to a national referendum for ratification if one tenth of the total number of congressmen or senators did so request.

The procedure for requesting an opinion of the Constitutional Court on contradictions between a treaty and the Constitution is provided for in both the Constitution and the Organic Law of the Constitutional Court. Once the request is filed, the Government, the Congress and the Senate are all able to appear before the Court to present allegations. This will be done within a month's time. After this period, the Court has another month in which to issue its binding decision.

The procedure for requesting an opinion from the Constitutional Court has never been used.

(...)".

The Constitutional Court ruled in favor of the reform of the Constitution. The reform of article 13, section 2 of the Spanish Constitution was finalized — after passage in both the Congress and the Senate — on August 27, 1992 (*BOE* 28.8.1992).

IV. SUBJECTS OF INTERNATIONAL LAW

1. Intentional Status

a) Sovereignty and Independence

Note: See I.1. Nature, Basis, Purpose.

Mr. Yáñez Barnuevo, representative from Spain to the 3096th Meeting of the United Nations Security Council, stated the following as regards the situation in South Africa.

"The Spanish Government, which from the outset welcomed the courage and political vision of President De Klerk and the President of the African National Congress, Nelson Mandela, and all other South African political leaders and officials who made possible the opening up of a hopeful process of change in South Africa, wishes to express here its conviction that we cannot and must not see frustrated the legitimate hopes that have been aroused.

(...)

The fact that, despite the undoubted progress made, the apartheid regime has not yet been completely dismantled has extremely negative consequences for human rights for all South Africans, and in particular the

majority. Specifically, it leads to outbreaks of violence such as those that have recently been seen in that country.

Therefore, Spain considers it of cardinal importance that the process of peaceful change should be resumed as soon as possible through the restoration of dialogue and negotiation, with the aim of achieving a democratic, non-racist and united South Africa.

The South African people should know that they may rely on the solidarity of the Spanish Government and people in their efforts to attain that goal. We trust that on the basis of this important debate the firm solidarity of the international community in pursuing that goal will also be made manifest.

(...)

We fully support the text of the draft resolution that members of the Council have before them, and in particular the initiative to invite the Secretary-General to appoint, as a matter of urgency, a Special Representative to recommend, after discussion with the parties, measures which would assist in bringing an effective end to the violence and in creating conditions for successful negotiations.

(...)

In conclusion, Spain wishes to join the international community in calling upon all the parties in South Africa, and especially the South African Government, to create suitable conditions to resume negotiations within the framework of CODESA, with the aim of ensuring a peaceful transition to a truly democratic and non-racist South Africa — in particular, at the appropriate time, through the establishment of a transitional government.

Attaining that goal will enable South Africa fully to take its rightful place in the region and the international community, which would surely have positive implications for the African continent and the whole world" (Doc. UN S/PV.3096,pp.118—120).

As regards the judicial conflict between the United States of America and Mexico resulting from the Alvarez-Machaín case, the comments made by Mr. Yáñez Barnuevo, representative of Spain, to the 38th meeting of the Sixth Committee of the General Assembly were recorded as follows:

"1. Mr. Yáñez-Barnuevo, speaking on behalf of the 21 delegations that had proposed it (A/47/249 and Add.1), presented the item entitled 'Request for an advisory opinion from the International Court of Justice', thus fulfilling an explicit mandate from the second Ibero-American Summit of Heads of State and Government, held in Madrid in July 1992.

2. Owing to the changes that had taken place in the last few years, the

international community was becoming a more and more open society wherein persons and States were increasingly interrelated beyond national frontiers. Such interrelationship did have some supremely positive effects, but it also led to an increase in certain patterns of crime that could affect different States. During the current United Nations Decade of International Law, there was a particular need to achieve reliable cooperation among States in order to combat such crimes effectively using international resources. In an international community made up of independent, free, sovereign and equal States, such cooperation must be based on full respect for International Law, and in particular for the principles of sovereign equality, territorial integrity and fulfillment of international obligations in good faith.

3. Above all, no State should apply unilateral measures to the detriment of other States. No country, large or small, could take the law into its own hands because, in so doing it not only contravened fundamental principles of law but also made it less likely that other States would be in good faith willing to cooperate in fighting crime that had international ramifications.

4. Neither could any Sate, on the grounds of provisions of its internal law or decisions of its judicial organs, disregard its obligations under International Law, which prohibited any State, barring express authorization to do so, from exercising coercive power in the territory of another State. Respect for territorial sovereignty was a fundamental principle of international relations. As Benito Juárez once said, 'respect for foreign law is peace'. The delegations that had called for the inclusion of the item in the agenda of the current session only wished to serve the cause of peace by encouraging respect for International Law.

5. The point at issue was whether International Law was violated by a State that directly or indirectly captured a suspect in the territory of another State without the latter State's consent and brought him under its criminal jurisdiction to trial. There was also a need to define and specify International Law standards applicable in such a case, their scope and the specific juridical consequences of violating them for the States involved.

6. Clarification of those important questions would avoid any erosion of mutual trust between States and would make it possible to establish effective judicial cooperation against international crime while respecting International Law.

7. Since the juridical questions involved were of enormous importance for the whole international community, the Ibero-American Summit of Heads of State and Government had decided to ask the General Assembly, at its current session, to request an advisory opinion from the International

Court of Justice, hence the request in documents A/47/249 and Add.1. The sponsoring delegations had attempted to set forth the legal problem in a general way and, as a matter of principle, apart from any particular situation.

He was sure that the other members of the Sixth Committee had the same concern with the problem and would arrive at the same conclusion on how to solve it.

(...)" (Doc. UN A/C.6/47/SR.38,pp.2—3).

b) Non-intervention and Non-use of Force

The twelve member States of the European Community, acting within the framework of European Political Cooperation, made the following statement on Bosnia Hercegovina, dated 11 April 1992:

"The Community and its member States wish to express their deepest concern about the security situation in Bosnia and Hercegovina and appeal to all parties for an immediate ceasefire.

(...)

The Community and its member States reaffirm that they strongly uphold the principle of the territorial integrity of the Republic of Bosnia and Hercegovina as the unquestionable foundation of any constitutional order. They wish to make clear that violations of this principle will not be tolerated and will certainly affect the future relations of those responsible with the community.

(...)

... they specifically call upon Serbian and Croatian Governments to exercise all their undoubted influence to end the interference in the affairs of an independent republic and to condemn publicly and unreservedly the use of force in Bosnia and Hercegovina".

c) Domestic Jurisdiction

Note: See I.1. Nature, Basis, Purpose.

On February 4, 1992, the Office of Diplomatic Information of the Spanish Ministry of Foreign Affairs made public the following statement regarding the attempted coup d'etat in Venezuela:

"The Spanish Government emphatically condemns the attempted coup d'etat that took place in the last few hours in Venezuela against a

democratically elected government that represents the public will.

The Spanish Government reiterates its unconditional endorsement of the constitutional Government of Venezuela, grants complete support for the measures adopted by the president of the Republic, Carlos Andrés Pérez, to quash the attempted coup, and wishes to express its satisfaction as regards the resolve with which the democratic institutions and the Venezuelan people have rejected this attempt by a small group of insurgent military men to subvert the constitutional order".

The Ibero-American Conference also condemned this new coup attempt in Venezuela and the Office of Diplomatic Information of the Spanish Ministry of Foreign Affairs (as Spain was the Secretary *pro-tempore* of the Ibero-American Conference) made public the following communiqué:

"The member States of the Ibero-American Conference express their most energetic condemnation of the new attempt at a coup d'etat in Venezuela.

They take this opportunity to restate their emphatic and resolute rejection of any action of this sort which makes use of force or violates the democratic institutions of Ibero-American countries or of any member of the international community. The preservation and development of these institutions and of democracy in general are fundamental principles of the Ibero-American community of nations as is clearly stated in the concluding document of the summit held in Madrid on July 23—24, 1992".

2. Recognition of States

a) Belize

Note: See SYIL, vol.I (1991), pp. 49—50.

As regards Guatemala's recognition of the independence of Belize and the resulting situation, the twelve member States of the European Community, within the framework of European Political Cooperation, made the following statement on 12 November 1992, reiterating what had already been stated in the Joint Political Declaration of the Lisbon Ministerial Conference on Political Dialogue and Economic Cooperation between the European Community and its member States, the countries of Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) and Colombia, Mexico and Venezuela as cooperating countries, held on February 24—25, 1992:

"The Community and its member States warmly welcomed President Serrano's statement of 5 September 1991 recognising Belize as a sovereign independent state, and the subsequent establishment of diplomatic relations between Guatemala and Belize. This defused a source of regional tension, opened the way for Belize to play her full part in the region's political and economic life, and represented a major step towards a settlement of the long-standing dispute between the two countries.

The Community and its member States now welcome the Guatemalan Constitutional Court's ruling on the constitutionality of the constructive actions taken last year by President Serrano. They look forward to a full and final settlement of the territorial issue with Belize before long".

b) Guidelines on the Recognition of New States in Eastern Europe and the Former soviet Union

Note: See SYIL, vol.I (1991), p. 50; IV.2.*d) Recognition of the Republics of the Former Yugoslavia.*

In light of these guidelines on recognition signed 16 December 1991, the twelve member States of the European Community, within the framework of European Political Cooperation, made the following statement on Georgia on 8 January 1992:

"The Community and its member States have followed with concern the grave events which have taken place in Georgia during the past weeks.

The Community and its member States call upon all political forces in Georgia to renounce violence and to engage in a democratic process of dialogue and national reconciliation.

The Community and its member States recall that respect for fundamental rights and liberties is a condition for recognition of Georgia as an independent State, in conformity with the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union'".

The acceptance of the guidelines by the Republics of the Commonwealth of Independent States is an essential condition for the recognition of these republics by the European Community and its member States. In this sense, the twelve member States of the European Community, within the framework of European Political Cooperation, made the following statement on 15 January 1992:

"The Community and its member States welcome the willingness

expressed by Kyrghyzstand and Tadzhikistan to fulfil the requirements contained in the 'Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union'. They are ready to proceed with the recognition of these republics.

The Community and its member States note with satisfaction that all members of the Commonwealth of Independent States have now committed themselves to the above-mentioned guidelines.

They welcome in particular:

— the acceptance by the republics concerned of the commitments contained in the CEE treaty and in the other arms reduction agreements;

— their acceptance of other international obligations, and of the commitments outlined by the Helsinki Final Act, the Charter of Paris and all other CSCE documents:

— their acceptance of obligations related to economic questions in general and the question of foreign debts of the former USSR in particular;

— their commitment to solve in a peaceful manner and through the appropriate international mechanisms and procedures their differences in confornity with the UN Charter and the CSCE.

The Community and its member States reiterate the importance they attach to single control of nuclear weapons. They call upon all republics concerned to adhere as soon as possible to the Non-Proliferation Treaty as non-nuclear weapon states. They also call upon these republics to ensure effective control of nuclear exports".

Finally, in his appearance before the Congressional Committee on Foreign Affairs on 16 December 1992, the Under-Secretary of Foreign Affairs, Mr. Cajal López, presented Spain's position on the situation of the Czech and Slovak Republic and defended the application of the doctrine agreed to in the Declaration of 16 December 1991:

"Spain intends to recognize the new republics and establish diplomatic relations with them along with the other member States of the European Community in accordance with the doctrine established by the Community as regards the recognition of new States in Central and Eastern Europe. This doctrine was clearly stated in the ministerial declaration of 16 December 1991 and basically makes reference to the fact that these new States must respect the principles established in the United Nations Charter, the Helsinki Final Act and in the Charter of Paris for a new Europe. Regardless of other considerations, there is every indication that both new republics will meet these requirements and therefore Spain will recognize them and establish diplomatic relations with them. This will most

likely take place next January 1st, coinciding with these acts by other Community members.

Within this context the Government wishes to accredit its ambassador in Prague before the new Bratislavan authorities. This is done with the full consent of both countries and of both the Czechs and the Slovaks.

(...)" (DSC-C,IV Leg.,n.586,p.17648).

The Council of Ministers adopted an agreement authorizing the recognition and establishment of diplomatic relations between the Kingdom of Spain and the Czech and Slovak Republics as of January 1, 1993.

On December 9th of this year, the Presidency of the European Community, on behalf of all twelve members, delivered a note verbale to the Czechoslovakian Minister of Foreign Affairs stating the Community member's desire and willingness to recognize the new Czech and Slovak Republics and to establish diplomatic relations with them as of January 1 provided that these republics expressed their intention to comply with the provisions of the Declaration of the European Community dated 16 December 1991 regarding the directives related to the recognition of new States in Eastern Europe and the Soviet Union.

On December 18, 1992, the Check and Slovak Ministers of Foreign Affairs delivered notes verbales and declarations to the heads of mission of the twelve States accredited in Prague in which they stated their acceptance of the conditions established by the EC and requested recognition of their republics and the establishment of diplomatic relations as of January 1, 1993.

They also state that the Czech Republic is willing to recognize the heads of mission accredited in the Federal Republic of Czechoslovakia as ambassadors to the new Czech Republic if there is mutual agreement to do so. They also state that the current Spanish ambassador to the Federal Republic of Czechoslovakia will be accredited before the new Slovakian republic without having to process the customary placet.

c) Recognition of the Republics of the Former Yugoslavia

Note: See SYIL, vol.I (1991), p. 50.

As regards the question of the recognition of the Yugoslav republics, in light of the Declaration of 16 December 1991, the twelve member States of the European Community, acting within the framework of European Political Cooperation, together with the United States of America, have stated their position in a Joint Declaration dated 10 March 1992 which establishes the following:

"The Community and its member States and the United States reiterate their strong support for the UN Peacekeeping Plan, for the EC Peace Conference chaired by Lord Carrington and for the key principles underlying the search for a political settlement of the Yugoslav crisis at the EC Conference.

(...)

The Community and its member States and the United States have agreed to coordinate their approaches to completing the process of recognizing those Yugoslav republics that seek independence.

The Community and its member States, bearing in mind its declaration on 16 December 1991, and the United States are agreed:

i) that the United States will give rapid and positive consideration to the requests for recognition by Croatia and Slovenia in such a way as to support the dual-track approach based on the deployment of the UN peacekeeping force and the European Community Peace Conference chaired by Lord Carrington.

ii) that the Community and its member States and the United States will also coordinate their approach to Serbia and Montenegro, which have expressed the wish to form a common state, and lay particular emphasis on their demonstrable respect for the territorial integrity of the other republics and for the rights of minorities in their territory as well as their willingness to negotiate Yugoslav state succession issues at the EC Conference on the basis of mutual agreement with the other four republics; and

iii) that positive consideration should be given to the requests for recognition of the other two republics, contingent on the resolution of the remaining European Community questions relating to those two republics. They strongly urge all parties in Bosnia-Hercegovina to adopt without delay constitutional arrangements that will provide for a peaceful and harmonious development of this republic within its existing borders. The Community and its member States and the United States also agreed strongly to oppose any effort to undermine the stability and territorial integrity of those two republics".

The application of the Declaration of 16 December 1991 to the recognition of the Yugoslav republics by the European Community and its member States is clearly reflected in the Statement made by the Presidency on 15 January 1992:

"The Presidency wishes to inform that, in conformity with the declaration on 16 December 1991 on the recognition of States and its application to Yugoslavia, and in the light of the advice of the Arbitration Commission, the Community and its member States bave now decided, in

accordance with these provisions and in accordance with their respective procedures, to proceed with the recognition of Slovenia and Croatia.

With regard to the other two republics which have expressed the wish to become independent, there are still important matters to be addressed before a similar step by the Community and its member States will be taken".

As regards the entry into force of Spain's recognition of the republics of Slovenia and Croatia, the Office of Diplomatic Information made the following communiqué public on 15 January 1992:

"... on this date, Spain does hereby officially recognize the republics of Slovenia and Croatia based on the Declaration of the European Community on 16 December. The Minister of Foreign Affairs will ask the Council of Ministers to authorize the establishment of diplomatic relations with these republics".

Three months later, in the Declaration on Yugoslavia dated 6 April 1992 which was signed by the twelve member States of the European Community within the framework of European Political Cooperation, formal recognition of the republic of Bosnia-Hercegovina was made:

"The Community and its member States have decided to recognize, as from 7 April 1992, the Republic of Bosnia-Hercegovina. The measures implementing this decision will be taken nationally in accordance with international practice".

As regards the recognition of the former Yugoslav Republic of Macedonia, the Declaration dated 4 May 1992 which was signed by the twelve member States of the European Community within the framework of European Political Cooperation, stipulates that said recognition is subject to the fulfillment of certain conditions:

"The European Community and its member States, gathered in an informal ministerial meeting at Guimaraes on 1 and 2 May 1992, had an indepth discussion on the request of the former Yugoslav Republic of Macedonia to be recognized as an independent State. They are willing to recognize that State as a sovereign and independent State, within its existing borders, and under a name that can be accepted by all parties concerned".

On this same subject — that of setting conditions for the recognition of the "new Yugoslavia" — Mr. Villar, Secretary General for Foreign Affairs, made the following comments to the Congressional Committee on Foreign Affairs:

> "... As regards the situation with the Federal Republic of Yugoslavia or the new Yugoslavia — Serbia and Montenegro — as I said before, this is a particularly complicated matter for several reasons. First of all, we feel that recognition should of course be subject to the same procedures, conditions and guarantees that we required for the other republics. Therefore we are waiting for the appropriate order or advisory opinion from the Badinter Commission. We especially want to have the certainty that there is going to be a firm commitment from the authorities of the Federal Republic of Yugoslavia as regards minority rights. This is a particularly serious subject in this Republic given that there are two matters related to minorities that could give rise to extremely serious situations, one being the Albanese population in Kosovo and the other the Hungarian population in Voivodina. These situations, if left uncontrolled, could degenerate to the point that a real Balkan war could erupt.
>
> (...)" (DSC-C,IV Leg.,n.499,p.14661).

d) Recognition of the Republics of the Former Soviet Union

Note: See SYIL, vol.I (1991), p. 50; I.2. European Regional Subsystem; IV.2. Guidelines on the Recognition of the New States in Eastern Europe and the Former Soviet Union.

The acceptance of the obligations and commitments found in the guidelines on recognition signed by the European Community and its member States on 16 December 1991 forms the basis for the statement on the recognition of the Republic of Georgia which was signed by the twelve member States of the European Community within the framework of European Political Cooperation on 23 March 1992:

> "The Community and its member States welcome the assurances expressed by Georgia to fulfill the requirements contained in the Declaration on the 'Guidelines on the Recognition of the New States in Eastern Europe and the Soviet Union', adopted by the Community and its member States on December 16 and 31, 1991. They are, thus, ready to proceed with the recognition of Georgia.
>
> The Community and its member States note with satisfaction that all the Republics of the former Soviet Union have now committed themselves

to the above-mentioned guidelines.

With regard to Georgia, they welcome in particular:

— The acceptance of international obligations and of the commitments outlined in the UN Charter and the Helsinki Final Act, the Charter of Paris and all other CSCE documents, especially with regard to the rule of law, democracy and human rights;

— The guarantee of the rights of ethnic and national groups and minorities in accordance with the commitments subscribed in the CSCE framework;

— Georgia's commitment to recognize and respect the inviolability of all borders which can only be changed by peaceful means and by common agreement;

— The commitment to settle by agreement, including where appropriate, by recourse to arbitration, all issues concerning State succession and regional disputes;

— The acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability as a non-nuclear weapon State".

3. Recognition of Governments

In his intervention before a plenary session of Congress, the Minister of Foreign Affairs made the following comments regarding the measures that he feels should be adopted by the Government given the current political situation in Peru:

"... Spain recognizes States and not governments. We maintain diplomatic relations with States, as do all of the nations of the world. All countries work the same way. This certainly does not mean that we agree with the current state of affairs there or with Mr. Fujimori's coup.

(...)

Democratic Spanish governments have coexisted with Mr. Pinochet or Mr. Videla based on the Estrada doctrine... without ever supporting any of these regimes.

(...)" (DSC-P,IV Leg.,n.184,p.9049).

The Government answered a question presented in the Senate on the measures that would be taken to revise diplomatic relations and general cooperation with Peru if democracy were less than fully established there in the following way:

"As has been stated on many occasions, Spain maintains normal diplomatic relations with all Latin American countries without this fact implying support for a particular regime in any of them. Therefore, the Spanish Government has no plans to take any measures to revise its diplomatic relations with Peru" (BOCG-Senado.I,IV Leg., n.351,p.55).

4. Succession of States

Note: See II.3. Non-binding Agreements; IV.2.*b) Guidelines on the Recognition of New States in Eastern Europe and the Former Soviet Union.*

In response to a question presented in the Senate, the Government explained the conditions under which a 1.5 billion peseta credit was granted to the former USSR:

"The disintegration of the USSR momentarily interrupted the granting of credits based on the Memorandum of 27 October 1990. The official visit made by Yegor Gaydar, the Vice-Prime Minister of the Russian Federation in charge of Economic Affairs, to Spain cleared up the matter. From now on, credits available to the USSR will be available to the Russian Federation.

One very interesting aspect of the Hispano-Soviet Memorandum on improving the conditions for financing economic and commercial cooperation is the stipulation that the party responsible for repaying the debts on the Soviet side is the Government of the USSR.

(...)

... the Memorandum dated 27 October 1990 stated that the borrower was the Soviet Government and that when the debt was due, the Government of the Soviet Union was unconditionally bound to repay the principal and interest on the credits granted in accordance with the credit agreement.

Finally, on 17 February 1992, there was an exchange of letters between the Minister of Industry, Trade and Tourism and the Vice-Prime Minister in charge of Economic Affairs of the Russian Federation. In this exchange, the Russian Federation committed to acting as the borrower in relation to the Memorandum of 27 October 1990: ... We hope that before long credits can begin to be granted to the Russian Federation based on the nearly one billion dollars that were not used by the USSR of the 1.5 billion dollar total.

Up until the time the USSR ceased to exist, the amount of credit granted was approximately 468 million dollars.

(...)

The Russian Federation has declared itself ultimately responsible for the former USSR's foreign debt

(...)" (BOCG-Senado.I,n.190,pp.114—115).

Mr. Villar y Ortíz de Urbina, General Secretary for Foreign Policy, made the following comments before the Congressional Committee on Foreign Affairs as regards the new Federal Republic of Yugoslavia:

"... this new Republic has proclaimed itself the successor to the old Yugoslavia. We, like the other republics, cannot accept this because this matter is still pending, and as we understand it, must be negotiated within the framework of the Peace Conference... In any case, I want to make it very clear that we have not accepted the new Yugoslavia's pretension to name itself the automatic successor to the old Yugoslavia.

(...)

As regard the more specific subject of economic and financial cooperation, I wish to point out that the institutional framework for economic and financial cooperation with the former Federal Republic of Yugoslavia was made up of a series of covenants and agreements: economic-industrial cooperation pacts, the highway transport agreement, the air transport agreement, the agreement on cooperation on questions of tourism. These were already in force and there were also some agreements that were in the negotiation phase ...

(...)" (DSC-C,IV Leg.,n.499,pp.14661—14662).

5. Self-determination

On the occasion of the appearance before the Congressional Committee on Foreign Affairs on 16 September 1992, at which time the content of the Friendship, Good Neighbour and Cooperation Treaty with Morocco dated 4 July 1991 was explained, the Minister of Foreign Affairs, Mr. Solana Madariaga, stated:

"Spain's position as regards the Western Sahara has not changed nor will it change as a result of this treaty. Absolutely nothing will change. Spain's position as regards Sahara remains the same...

(Spain understands that) there is a process of decolonialization that will not be concluded until a referendum is held. This is Spain's current position and the one it will maintain in the future. We have here an

incomplete process of decolonialization which will only be concluded when the referendum is carried out.

... We do not now, nor will we in the future, recognize sovereignty until the referendum has been called, and informative consultations will be maintained with both sides until that time...

... we continue to support the United Nations position to find a formula to resolve this conflict as we consider this conflict to concern us quite directly, but a final solution must be found through a referendum that clearly defines sovereignty in this area of the Sahara.

(...)" (DSC-C,IV Leg.,n.509,pp.14994—14995).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Nationality

In response to a Parliamentary question, the Government addressed the issue of the conditions and legal procedures involved in the so-called "children of war" (Spanish children who emigrated to the Soviet Union during the Civil War from 1936 —1939) recovering Spanish nationality.

"In recent years, a good number of dispensations have been granted in the area of the recovery of nationality. Since the month of March, 1988, exactly 76 have been granted and 166 are currently pending.

Therefore, there can only be a few "children of war" who are residents of the former USSR who have not yet recovered their Spanish nationality or are not about to recover it. A fundamental requirement for recovering Spanish nationality is legal residence in Spain or dispensation by the Government, in accordance with article 26 of the Civil Code as written by Law 18/1990 dated 17 December. Since by defmition these petitioners are Spanish emigrants, recovery is especially easy when compared with the situation of other individuals who do not fall in this category who can only be granted dispensation "if there are special circumstances involved". The only specific requirement for the dispensation is the processing of a file before the Spanish Consulate corresponding to the petitioner's domicile (article 365 of the Civil Registry Regulations). This file will be sent first to the Central Registry Office and then the Ministry of Justice will send it on to the Council of Ministers. Even though Spain's consulate general in Moscow has specific instruction on the way to process these files, it is useful to point out that the order issued by the Ministry of Justice on 11 July 1991

(*BOE* 24.7.91) states, in general terms, that the dispensation is meant to be applied to "those individuals in foreign countries who intend to live in Spain except in the case of a petitioner who has an unfavorable criminal record or any other especially serious incident on record that would be just cause for denial".

The Ministry of Justice is committed to facilitating the processing of these cases as much as it possibly can.

(...)" (BOCG-Congreso.D,IV Leg.,n.311,p.74).

2. Diplomatic and Consular Protection

a) Individual Assumption of Risk

In response to a question on efforts made as regards Mr. Molins, a Spanish diplomatic employee who was at the Spanish Embassy in Monrovia (Liberia) at the time the embassy was raided (presumably by the National Patriotic Front of Liberia whose leader is Charles Taylor) and whose whereabouts have been unknown ever since, the Government said:

"Mr. Molins received instructions to evacuate the Embassy as did all of the other personnel assigned to that embassy.

In spite of this, he insisted he wished to stay in the Embassy in Monrovia voluntarily.

Mr. Molins stayed there of his own accord and signed a document to that effect in which he also assumed all risks that might derive from his decision, a requirement for the granting of his petition to remain there.

Mr. Molins was not given any official mission as regards possible refugees or the care and custody of Embassy property given that his decision to remain there was personal and freely made.

(...)" (BOCG-Congreso.D,IV Leg.,n.276,pp.202—203).

On the other hand, on May 19, 1992, the Office of Diplomatic Information issued the following communiqué which included recommendations for Spanish citizens given the violence that existed in Thailand:

"1. Spanish citizens who have plans to travel to Thailand in the near future are advised to postpone all travel for as long as current conditions exist.

2. As regards Spanish citizens who are currently in Thailand, they are advised to remain in contact with the Spanish Embassy and to limit their

movement as much as possible".

b) Nationality of Claims

In response to a parliamentary request for information on the steps being taken to clarify the situation of Spaniards implicated in the assault on the La Tablada military barracks in Buenos Aires on 28 January 1989, the Government states:

> "The Spanish Government has always given special attention to the situation of Mr. Joaquín Ramos Mora, who was arrested after the events and condemned to life imprisonment in the trial that followed.
>
> Mr. Ramos Mora holds both Spanish and Argentinian citizenship. Therefore, as he resides in Argentina, according to the Covenant on Dual Nationality, he is considered by the authorities of that country to be only Argentinian. On the other hand, the events took place exclusively in Argentina, and an Argentinian court ruled on the case. These points are quite relevant as they in principle, exclude all of the traditional ways of extending consular protection. However, as Mr. Ramos Mora's parents live in Spain, and based on humanitarian considerations, the Argentinian Government has allowed the Spanish embassy and consulate in Buenos Aires to give as much support as possible to Mr. Ramos Mora (including any necessary health care and visits which are carried out periodically) as well as to his family.
>
> In addition to this direct assistance, Spanish authorities have informed the Argentinian Government on several occasions of its concern for the convicted party's situation and its confidence that the Argentinian judicial system will find a satisfactory solution to the issues related to the La Tablada record which need to be clarified, as do the circumstances surrounding the death of Mr. Pablo Ramos Mora.
>
> As regards possible clemency, the Spanish Government has made it known on several occasions that once all legal appeals have been exhausted, the possibility of asking President Menem to exercise the right to grant clemency granted to him by the Argentinian Constitution will be study carefully. In December, 1989, the defense lawyers of those who assaulted the La Tablada barracks filed an appeal before the Supreme Court which is still pending and therefore all legal recourse has not yet been exhausted. (...)" (BOCG-Congreso.D,IV Leg.,n.276,p.224).

c) Exercise of Diplomatic Protection

Note: See XVII.1. Humanitarian Law

On March 6, 1992, the Spanish Embassy in Washington sent the following Note Verbale to the Government of the United States of America regarding the case of the journalist J. A. Rodríguez:

"The Spanish Embassy in Washington sends warm greetings to the Department of State of the United States of America, and as regards the death of the Spanish subject Mr. Juan Antonio Rodríguez Moreno in Panama on 21 December 1989, it respectfully states the following:

I. Facts

1. On December 21, 1989, the Spanish photojournalist Juan Antonio Rodríguez Moreno, 32 years of age, died in the area surrounding the Marriott Hotel in Panama from gunshots fired by the Armed Forces of the United States, some members of which thought that the lens of the camera that he was carrying was a light anti-tank type weapon.

2. The parents of the deceased journalist formally requested that the Department of Defense of the United States compensate them. Their request was denied in a decision issued August 10, 1990, stating that the Spanish journalist died during combat and that according to the rules applicable to these cases, no type of compensation is required.

II. Legal grounds

3. The exercise of diplomatic protection is applicable to this case because the private individuals involved have exhausted the recourses available to them by the domestic law of the United States. The Spanish Government cites several decisions issued by a federal court in Washington in this regard that have recently rejected several suits related to military actions carried out in Panama based on lack of jurisdiction as the United States does not renounce sovereign immunity. In these cases, the United States has clearly adopted the position that no one is entitled to sue them for injuries suffered during combat in Panama, and if this is their position before the Courts, then the United States cannot now argue that individuals have not exhausted all internal recourses.

As a means of illustration of this, we would mention the order of the Permanent Court of International Justice in the case of the Chorzów Factory, which prohibited a State that impeded the utilization of internal recourses from alleging non-exhaustion of those recourses (PCIJ,*Series A*,n.9,pp. 25—31).

Therefore, it is possible to conclude that as there are no legal recourses to exhaust, the individuals who have been harmed in some way have complied with this requirement to exhaust internal recourses, and that for this reason diplomatic protection complies with the requirements of admissibility.

It is also important to add that the North American constitutional situation, derived from doctrine on "political matters", shows that the United States prefers a political rather than judicial handling of problems such as the one we are dealing with here.

4. As regards the merits of the case, the Spanish Government maintains that the shot that caused the death of Juan Antonio Rodríguez Moreno constitutes an illegal international act as it violated a deeply-rooted and basic principle of the so-called International Humanitarian Law which prohibits attacks on non-combat personnel. This principle is part of art. 51.2 of Protocol I dated 11 December 1977 which was added to the Geneva Conventions of 12 August 1949 on the protection of victims of armed international disputes, which states:

'The civilian population as such and civilian individuals will not be the object of an attack'.

In addition, art. 79 of the same Protocol is even more precise as regards the type of case here presented when it establishes that journalists "who are carrying out dangerous professional missions in zones of armed conflict will be considered civilians and are protected as such in accordance with the Coventions and this Protocol, provided that they abstain from any act that would affect their status as a civilian".

And even though it is true that the United States is not a party to this Protocol, it is important to emphasize that the principle of respect for civilians and the civilian population is part of the 'general basic principles of Humanitarian Law' which the Court of the Hague referred to in its judgment on 27 June 1985 [case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ *Reports* 1986, p.118]. In any case, art. 3 of all of the Geneva Conventions of 12 August 1949 — to which the United States is indeed a party — expressly prohibits attacks on the lives of persons who are not directly participating in the hostilities.

5. As regards conditions for attributability, it is clear that the event is attributable to the United States given that the shot was fired by a soldier of the American army. In any case, the Department of State itself informed the Spanish ambassador that it was willing to "assume that those responsible for the shot were North Americans" (in an interview the Ambassador of Spain had with the Assistant Secretary for Inter-American Affairs on 11 January 1990).

6. The United States, having incurred international responsibility as regards Spain, should remedy the harm caused. And as a *restitutio in integrum* or in-kind remedy is not possible in this case, equivalent monetary compensation is appropriate.

7. Finally, it might be helpful to add some information here about the practices followed by the United States in granting compensation for harm caused by its armed forces in two recent wartime events that support the Spanish Government's position.

In the case of the shooting down of the Iranian airliner flight 655 by the American cruiser USS Vincennes on 3 July 1988, the United States denied it had any international legal liability, but, as a humanitarian gesture, it offered to compensate the victim's families.

On the other hand, the United States had also granted a mercy payment of $1,600,000 to a group of individuals who had suffered personal injuries or property damage during the North American military intervention in Granada in 1983.

III. Final considerations

8. The tradition of friendship that unites our peoples and governments, which is reflected in the exercise of diplomacy based on collective consensus, favors a political gesture that would put an end to this dispute.

For all of the reasons expressed above, and so as to ensure justice is served, the Spanish Government has decided to extend diplomatic protection to the Spanish citizen Mr. Juan Antonio Rodríguez Moreno, and therefore seeks compensation from the United States in the sum of $1,000,000 for the harm caused to Mr. Rodríguez Moreno's family members.

The Embassy of Spain in Washington wishes to take this opportunity to express its highest regards".

On August 12, 1992, the North American Department of State issued the following response:

"The Department of State refers to Note Verbale N.53 from the Embassy of Spain, dated March 6, 1992, regarding the death in Panama of Spanish citizen Juan Antonio Rodríguez Moreno and provides the following response. In previous exchanges with Spanish authorities on this matter, the United States Government has extended condolences over the death of Mr. Rodríguez and once more expresses this sentiment. As a result of the Embassy's Note Verbale, the United States Government again has reviewed fully the possibility of payment of compensation and has concluded that it will not be possible to offer such payment.

In the interest of clarifying the record, the Embassy's Note Verbale contains statements which are at variance with events and facts as understood by the United States Government. This is the case in paragraphs I.1 and II.5 of the Embassy's Note Verbale, which attribute responsibility for Mr. Rodríguez's deatb to U.S. forccs. The Department's

concern in this regard also applies to other portions of the Note Verbale. Because of the exchange of gunfire between U.S. forces and Panamanian Defense Forces, the source of the particular shots which killed Mr. Rodríguez could not be accurately determined. His combat-related death was a tragic consequence of wartime conditions and not a deliberate attack on non-combatants, as appears to be implied in the Note Verbale, paragraph II.4.

This and all other information available to the Government of the United States pertaining to the death of Mr. Rodríguez has been previously communicated to the Government of Spain.

Department of State, Washington".

3. Aliens

Note: See XI.2.b) Maghreb.

In his intervention before the Senate, the Minister of Justice answered a question on the Government's intention to adopt measures to solve the problem of foreign prisoners in Spanish penitentiaries:

"In accordance with articles 21 and 26 of Organic Law 7/85 dated 1 July, as regards the rights and freedoms of foreigners in Spain, only a judge is competent to deport a foreign inmate who is in a Spanish penitentiary. Thus in 1991 the Congress, with the support of the *Partido Popular,* passed a green paper on this subject. Point 7 of this paper reads:

"To empower judicial authorities to use the possibility of authorizing deportation from Spain of foreigners involved in deportation cases, even if they are acused of lesser infractions".

Therefore the Administration lacks competence and cannot directly deport even one foreign inmate in a penitentiary from our territory.

The Ministry of Justice can only initiate the processing of deportation papers before the Attorney General's Office for those foreigners who are involved in one of the types of cases contemplated in articles 21 and 26 of Organic Law 7/1985 dated 1 July, on the Rights and Freedoms of Foreigners in Spain.

In light of the legal options available, the Ministry of Justice only proposes that the prosecutor's office, by means of the statuatory channels by which it communicates with the Attorney General's Office, present a request for judicial authorization by the competent organ, so that any foreigner involved in a criminal proceeding for a crime for which there is a

sentence of up to six years, can be deported during the processing of the trial, or, once a judicial judgment has been issued, can have the sentence commuted if he voluntarily leaves the country.

(...)".

In this same intervention, the Minister referred to the humanitarian and police measures adopted in Andalucía and especially in the province of Cádiz:

"1. The creation of uncontrolled internal borders, both within the framework of the EEC and of the Schengen Accord, was a determining factor in the imposition of visas for our neighboring countries in Northern Africa.

The current system for requiring visas generally works well and has no major stumbling blocks. Even Morocco considers it positive.

The system of requiring visas, from which residents or visa holders of any Community country are exempt, has nevertheless created a situation in which non-residents and those who do not have a visa look for points of entry other than official border crossings.

The creation of procedures by which foreign workers in Spain could legalize their situation probably brought about an initial attempt at entering the country at points other than border crossings in order to try to somehow prove physical presence in Spain prior to May 15 (the date on which visa requirements took effect and also the cut-off date for those who wanted to legalize their situation).

Of the first 100,000 legalization permits, 40.238 went to Moroccan nationals and 2,699 to Algerians.

Both the proposal for a convention on the external borders of the member States of the European Union, and the Schengen Accord and its application covenant stipulate that each State is responsible for monitoring border crossings. In the application convenant of the Schengen Accord, sanctions are fixed for unauthorized crossing of external borders at points other than official border crossing stations or outside of the established hours that the crossing points are open.

Within the framework of the European Union, the problems faced by countries with long coastal borders are given special attention.

(...)".

And finally, the Minister presented statistical data on arrests and deportations carried out in Andalucia:

"2. The following graph shows the total number of foreigners from Northern Africa deported from each of the provinces of Andalucia in 1991. Of these, Moroccan citizens accounted for the highest numbers:

	Deportations	Returns
Almería	35	370
Cádiz	165	1.072
Córdoba	4	18
Jaén	15	—
Granada	8	153
Huelva	30	—
Málaga	380	—
Sevilla	260	1

As regards police measures, I would point out that the coastal areas of Andalucia are being more carefully monitored in order to detect and arrest foreign citizens coming from Africa who try to avoid border controls and enter Spain at unauthorized points, often in very small boats that leave from the Moroccan coast.

In these cases, article 36 of the Organic Law 7/85 of 1 July on the Rights and Freedoms of Foreigners in Spain, establishes the procedure to be used to return these individuals. This procedure does not require a deportation procedure to be initiated if the individuals concerned have entered the country illegally.

According to article 26.2 of the aforementioned law, when the return cannot be carried out immediately, a deportation file must be opened and the individual must be held in a non-penitentiary center while the case is being processed.

As regards Cádiz specifically, the Port Work Commission in Algeciras made part of the Tarifa Maritime Station available as a holding center, made available all the necessary services, and entered into an agreement with the Station's restaurant to provide food.

The center can hold 80 people and is currently full. Those who are currently there are citizens of Central African countries who lack the proper documentation. Moroccan immigration causes fewer problems as Moroccan citizens usually have documents or they can be given the proper documents quickly which prevents them from being held in the center.

(...)" (BOCG-Senado.I,IV Leg.,n.334, pp.39—40 and 51—52).

4. Human Rights

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

Note: See XI.1. Economic Development Cooperation; 2.
b) Maghreb, c) Equatorial Guinea; XIII.8. External Relations; XVI.1.*a) Retorsion.*

In his intervention before the Congressional Committee on Foreign Affairs, the Secretary General of Foreign Affairs stated the following in response to a parliamentary question on the attitude the Government intends to maintain as regards the defense of human rights in its relations with the Government of Morocco:

> "In a general sense I would like to point out that an important element of our foreign policy that shapes our bilateral relations with all countries is the promotion and defense of human rights. Furthermore, the development of relations characterized by cooperation and the degree of intensity and warmth of our bilateral relations is always affected to a greater or lesser extent by respect for human rights, although this criterion is not the only one taken into account as there are many other factors and elements involved.
>
> As regards the specific case of Morocco, in spite of the fact that our bilateral relations are governed by elements that are of great national interest, we cannot make any exception to these general criteria. As a matter of fact, we have been particularly careful to include these criteria in the friendship, good neighbor and cooperation treaty that is pending ratification in both Spain and Morocco.
>
> We have also insisted that the defense and promotion of human rights be included in the report our country presented last March 2 to our Community partners in order to restudy the relations between the Community and the Maghreb and this report has had considerable impact. Moreover, we are going to try to ensure that this issue also be included in a declaration that we are quite confident will be passed the day after tomorrow in Lisbon by the Council of Europe. It will be the first declaration of its kind in history.
>
> (...)" (DSC-C,IV Leg.,n.499,pp.14665—14666).

Likewise, the Minister of Foreign Affairs responded to a parliamentary question on the situation of human rights in the Turkish part of Kurdistan which was at the time in a state of emergency by saying:

"Since 1984, the armed faction of the PKK, the Kurdistan Workers Party, has used terrorist tactics in the southwestern part of Turkey, causing many deaths. This is a terrorist organization functioning inside of Turkey, which, I repeat, is causing many deaths.

I believe that the first thing we must do is follow the lead taken by other European countries and recognize the legitimate right of Turkish authorities, like authorities of any country would, to respond to these acts of terrorism and maintain public order. I believe this should be made quite clear. However, it is true that the reprisals that took place on March 21 produced dozens and dozens of deaths on both sides and clear violations of human rights. This is also clear. This produced great commotion: in Germany it brought about enormous complications because of the sale of arms. On the other hand, Turkey is a very important country in today's world, a country whose role has increased as a result of the fall of the Berlin Wall and the disappearance of communism. Turkey has become a key country in Central Asia. It is a member of NATO, a member of the Council of Europe — and therefore it is also subject to Council of Europe controls —, it wants to be an associate member of the WEU — Great Britain is probably going to attempt this during this session — and it is a candidate for membership in the European Community. Therefore, this has created a big commotion in European countries.

... Nevertheless, the 'twelve' decided to make a public gesture on April 4 at which time we reiterated our condemnation of terrorism, which I referred to earlier, and at the same time called for the Turkish Government to fully respect human rights, especially as regards the Kurdish population of Turkey.

(...)" (DSC.C,IV Leg.,n.458,pp.13504—13505).

The twelve member States of the European Community, within the framework of European Political Cooperation, made the following declaration regarding Cuba on December 22, 1992:

"The Community and its member States have on a number of occasions drawn to the attention of the Cuban authorities the importance which they attach to respect for human rights and fundamental freedoms, in accordance with the Universal Declaration of Human Rights and other international agreements and undertakings to which Cuba has subscribed.

They have made known their concerns in private exchanges with the Cuban authorities, in public statements and in multilateral fora such as the United Nations Commission on Human Rights and the United Nations General Assembly. However, they note with deep diappointment the

negative response of the Cuban authorities to a recent demarch made by EC Troïka Heads of Mission in Havana on the case of Sebastian Arcos. This unsatisfactory reaction and the recently increased harassment of Human Rights activists, in particular Elizardo Sánchez and Yáñez Pelletier, can only reinforce the concerns of the Community and its Member States over human rights in Cuba".

Finally, the twelve member States of the European Community, within the framework of European Political Cooperation, issued the following comuniqué on December 11, 1992 regarding human rights activities carried out during 1992:

"The ministerial declaration of 21 July 1986, the European Council declaration on human rights of June 1991, and the Development Council Resolution of November 1991 define the basic principles and policies of the European Community and its member States on human rights. Through the action they have taken during 1992, the Community and its member States have reaffirmed their belief that the respect, promotion and safeguarding of human rights is an essential part of international relations. It forms one of the cornerstones of European cooperation and is an imortant aspect of relations between the European Community and its member States, and other countries. This principle has been followed in the definition of guidelines for recognition of new States, and in the updating of documents setting out the terms of the Community's formal relations with other countries and groups of countries.

The European Parliament has continued to play a significant role in raising public awareness, within and outside the European Community. By making use of the means at its disposal, and in particular by resolutions, parliamentary questions, and through the activities of its sub-committee on human rights, it has made a distinctive contribution to the promotion of respect for human rights.

The Community and its member States refuse to accept that State sovereignty can permit any country to carry out violations of human rights. On the contrary, they insist that the promotion and safeguarding of human rights and fundamental freedoms is a legitimate and permanent duty of the world community. In their paper on preventative diplomacy, peace-making and peace-keeping submitted to the United Nations Secretary-General, the Community and its member States stressed their growing concern at the lack of democracy in the world, at the massive violations of human rights which continue to take place and at the great number of internal conflicts. They called for specific measures to promote democracy, prevent human

rights violations and put an end to internal disputes.

In addition to action at the UN General Assembly and the Commission for Human Rights, the Community and its member States have issued over one hundred declarations and statements on specific human rights problems in 1992. These expressions of concern have concerned, for example, the situations in former Yugoslavia and the former Soviet Union, Peru, Sudan, East Timor and Burma. They have been given wide publicity and have been drawn to the direct attention of governments concerned, in the hope that this will bring about improvements in respect for human rights.

The Community and its member States wish to pay tribute to those who suffer in the struggle for human rights, for their relentless and courageous efforts. During the last year, over one hundred direct approaches have also been made to governments by the Community and its member States, to support those efforts and to raise specific human rights issues. The confidential nature of these approaches is designed to foster constructive dialogue while protecting the interestes of the victims of human rights violations, and human rights activists.

The Community and its member States have welcomed the report by the Commission on the implementation of the Development Council Resolution on human rights, democracy and development of November 1991. They emphasize that a positive approach, coupled with open and constructive dialogue, will continue to receive a high priority. On 18 November 1992, the Development Council agreed on practical arrangments to facilitate co-ordination of development policy in this area. This will further enhance the implementation of the 1991 Resolution.

The integration of human rights issues in political and economic relations, and in development cooperation with third countries, has increased. Human rights is now routinely addressed in cooperation agreements and specific human rights situations are discussed at consultative meetings. Direct support is given to human rights and democratization intiatives around the world, of which the many electoral assistance projects in which the EC is involved are the most obvious.

Over the last year positive changes have taken place in respect for human rights, and in particular in the respect for democratic freedoms. However, the overall situation still gives rise to concern: new-found freedom and extreme nationalism have combined to release waves of racism, xenophobia and ehtnocentrism. This has lead to political violence in many countries. The Community and its member States have firmly condemned these manifestations, and will make every effort to discourage them wherever they may occur.

The flagrant and continuing violation of basic human rights and humanitarian law in the former Yugoslavia continues to be of particular concern to the Community and its member States. They condemn such abuses unreservedly: the International Community must not acquiesce in the results of the policy and practice of 'ethnic cleansing', for which the Serbian authorities bear primary responsibility. They have strongly supported the appointment of the UN Special Rapporteur, fully endorse his recommendations on human rights, and welcome the call at the recent extraordinary session of the Commission on Human Rights for his work to continue. They also strongly support the CSCE decision to send fact-finding missions to the former Yugoslavia, to investigate allegations of human rights abuse. The Community and its member States, together with the United States, invoked the human dimension mechanism of the CSCE, to investigate atrocities in Croatia and Bosnia.

The Community and its Member States are very pleased that the Third Committee at the UN General Assembly approved the agenda for the World Conference on Human Rights by consensus on 4 December. The Community and its member States continue to believe that the World Conference, which will take place in June 1993 in Vienna, is an important opportunity for the world community to pursue a constructive dialogue on ways and means of confirming the universality of human rights, improving their implementation and thereby helping to promote progress in development. They remain committed to a successful outcome of the Conference, including a focus on practical measures in support of efforts by individual countries to improve respect for human rights".

b) Minorities and Self-Determination

On March 20, 1992, the twelve member States of the European Community, within the framework of European Political Cooperation, expressed their concern over the situation of the Muslim minority and other minorities in Burma, which was producing a large flow of refugees into Bangladesh:

"The Community and its member States express their deepening concern at the policies of the Burmese military authorities which have caused about 140,000 Muslim refugees to flee into Bangladesh. The refugees' suffering has created a sense of horror among the international community and places a burden on those providing essential humanitarian assistance. The Bangladesh authorities are making a great effort to cope with a difficult situation and attempting to reduce the suffering of refugees by allowing international relief organizations access to their camps. The

Community and its member States welcome the UN Secretary-General's statement on this matter on 6 March 1992 and wish to stress their concern at the threat to regional stability caused by the Burmese actions.

The Community and its member States note that other minorities in Burma are also suffering intolerable repression, and repeat the terms of the démarche they made to the Burmese authorities in Rangoon on 2 March 1992:

— To call on the military government to reassure all elements of the local population of their willingness to guarantee their human and civil rights in accordance with the UN Charter and related internationally recognized norms.

— To urge the military government to refrain from taking further military action against minorities.

— To call on the military government to confirm their readiness to seek peaceful solutions to all ethnic conflicts which will benefit all those living in Burma".

On April 15, 1992, the twelve member States of the European Community, within the framework of European Political Cooperation, once again referred to the situation of minorities in Burma and made mention of the fact that the arms embargo against this country was still in effect:

"The Community and its member States recall their statement of 20 March 1992 expressing great concern at the actions taken by the Burmese authorities against minorities, stressing the plight of Muslim Rohingyas that fled into Bangladesh currently estimated to number about 200,000.

They also regard with great apprehension the military offensive against Karens which has led to the influx of Karen refugees into Thailand.

In this context the Community and its member States recall their decision taken on 29 July 1991 to refuse the sale of any military equipment to Burma and call again on all other countries to take similar action.

(...)".

Likewise, and now within the regional confines of Europe, the twelve member States of the European Community, within the framework of European Political Cooperation, expressed their concern about the Greek minority in Albania in a declaration dated 17 February 1992:

"The Community and its member States express grave concern at a series of incidents against the Greek minority in Albania, in the course of the last days.

They appeal to the Albanian authorities to take the necessary steps urgently so that incidents of such a nature be put an end to and order re-established to the benefit of all the people living in Albania.

They also remind the Albanian government of its solemn commitments to abide strictly by CSCE provisions, particularly those pertaining to the respect of human rights and the rights of minorities, including those with regard to participation in national elections".

c) The Spanish Government's Response to the Special Rapporteur of the Human Rights Commission on Torture and other Cruel, Inhumane or Degrading Treatment

On August 21, 1992, the Special Rapporteur informed the Spanish Government of cases of torture that according to reports that had been received, could have been committed in Spain. The Spanish Government gave the following explanations:

"402. The Government states that all the persons listed were correctly treated. They were under judicial supervision at all times since the judge on duty at the high court and the judge of the place where the arrest took place were notified of the arrests immediately after they occurred. All the detainees, with the exception of José Felix Marias Maturana and José María Azpitarte, who were released at area headquarters, were taken to civil guard headquarters and remained there until they made a statement for later presentation to the national court. While at the headquarters they were visited on various occasions by national court forensic medical practitioners who did not report lesions on any of them".

But the Special Rapporteur indicated the following:

"403. The Special Rapporteur was informed that under the Criminal Proceedings Law persons arrested by reason of suspected connections with an armed band may, subject to judicial authorization, be held incommunicado for five days. Families are not informed of the fact of detention or of the place where the suspect is detained. A lawyer is appointed by the court. According to informants, this practice facilitates the practice of torture".

VI. ORGANS OF THE STATE

1. In General

In his intervention before the Congressional Committee on Foreign Affairs to inform the committee about diplomatic careers and the personnel policies of the Ministry in general, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, stated the following:

> "In the first place, the problems lie in the interdependence of today's world. Nowadays everyone travels for business, for pleasure, leaders communicate directly now that the so-called direct diplomacy is in place, and there is great economic development which has completely changed the nature of things. Many of the visits to our embassies include requests for assistance with economic affairs, something which a while back was absolutely unimaginable. An embassador dedicates a great deal of his time to helping Spanish firms deal with local authorities, and the integration of Spain in international organisms has undoubtedly brought about an increase in our relations. We currently have diplomatic relations with 169 countries. We have 102 embassies, 90 consulates and 640 honorary consulates. This is Spain's foreign deployment.
>
> (...)
>
> In recent years what we have done is: first, gradually increase the number of diplomatic civil servants. I would have liked to have increased the number even more. In spite of the limited number of public jobs, we have been able to ensure that new positions in the diplomatic field continue to appear. I would personally like the current number of 718 to be a little higher, but not long ago Spain had 462 diplomats and now there is 55% more. We lose few people to the private sector, but some do move into other sectors of the Administration — where they perhaps receive a better salary — such as the protocol or consulting services of other ministries, autonomous communities, etc. This really bleeds the service and we lose many valuable people.
>
> (...)
>
> We have also maintained, albeit with some modifications, the famous "bombo" Decree of 1976, which was based on the principle of advertising and transparency in the selection process, which to a certain extent introduced elements of cooperation. The minister has very little power to name anyone in the Ministry of Foreign Affairs other than ambassadors. This service, that includes consulates and all positions in foreign countries,

makes proposals to the minister, who accepts them — I have always accepted them — through the career board, and there is a system of minimum and maximum periods of time and of job classification. That is to say that there is a certain organized procedure in place, which does not at all mean that this system couldn't be improved.

(...)

And finally, as regards the 1976 Decree, the reform of which we are currently studying, we understand that we must adhere to the stipulations of the Civil Service Law. Assignments in Madrid should be separated from assignments to foreign countries, as I have said before, as they are freely assigned posts. Perhaps it would be wise to reserve the assignment of certain posts of great responsibility for the minister — although I have never exercised this prerogative — as at this time the only posts named by the minister of Foreign Affairs are ambassadorships. The Ministry makes 100 appointments. All of the rest, although they are technically appointments, are arranged ahead of time. Perhaps it would be wise for the minister, within this system, to reserve some of the posts. A consulate in Paris, for example, is simply not the same as others. Perhaps a consulate in Paris is more important than an embassy in an African country. I really don't name the consul in Paris and nevertheless I can name the embassador to the Sudan or to Zaire. This is a bit unbalanced. In any case, we are maintaining the current system, and we could define the career board as a consultative organ for the minister in two specific areas: in the system of promotions and in the provision of posts in foreign countries. In these areas there is still a lot of work to be done.

(...)

As regards how appointments are made in the Ministry, I would like to say that since I came to the Ministry I have made 177 appointments of ambassadors and only four are not career diplomats...

(...)

As regards other diplomatic posts in foreign countries, all of the others, those who are not ambassadors, are decided, as I said before, based on proposals made by the career board and approved by the minister. This is what I was referring to earlier when I was addressing whether or not it would be wise to introduce some changes"

(DSC-C,IV Leg.,n.413,pp.12151—12153).

2. Regulation of Foreign Service

The Minister of Foreign Affairs also referred to the principle of the unity of

foreign actions in the following way:

> "One thing that worries me a great deal is the unity of foreign action. I actually issued a decree that established the principle of unity of foreign action, but the problem is that issuing a decree in Spain doesn't necessarily mean resolving a problem. The experience that I have had with this decree is that the problem has been resolved in some places but not in others. What is going on then? The representatives and attachés of the different ministries in some embassies inform both of their corresponding ministries, which produces a totally undesirable situation. It depends a great deal on the ambassador. There are ambassadors who are able to create a team that includes all of the ministries, but it also depends on the ministries, because there are some who think that their attachés are some kind of parallel service diplomats who do not need to stay in touch with the embassy. This is a very serious problem. It is essential that there be true collaboration and we will talk about this when we address the foreign service law. I understand that the situation has improved a great deal, but it is still far from perfect.
>
> (...)
>
> I am not opposed to having a foreign service law, but in order to do so, some political problems related to the scope of the Ministry of Foreign Affairs that I consider to be quite important, must be resolved.
>
> Is [the Ministry] responsible for all types or cooperation or not? This is a basic problem because cooperation is divided up among many ministries. Is [the Ministry] responsible for aid to development loans or not? There are ministries, such as the Dutch ones for example, that cover this entire area. To pass a civil service law without clarifying this topic with the other ministries is truly risky, but let me make it clear that not only do I not oppose it, but I also believe that if it serves to solve some problems, as is to be expected, it would be useful.
>
> (...)" (DSC-C,IV Leg.,n.413,pp.12159—12160).

VII. TERRITORY

1. Parts of Territory, Delimitation

a) Internal Waters

In the absence of an agreement between Spain and the United Kingdom on the delimitation of marine spaces in the Bay of Algeciras, and in response to

alleged violations of this space by British vessels, the Minister of Defense, Mr. García Vargas, asnwered a question in the following way:

"... we have been trying to determine just what the maritime space of Gibraltar is for three centuries now and there are two interpretations: the Spanish one and the British one. There has been an on-going debate that derives basically from the way that each side interprets article 10 of the Treaty of Utrecht. Spain has always maintained that it is not possible to recognize British waters within the Bay of Algeciras except for those waters that are strictly within the Gibraltar port as the port existed in 1713, the year in which the treaty was signed, and not as it has changed since then. However, the British Government has always tried to impose the application of the rule of international law which states in article 12 of the 1958 Geneva Convention on Territorial Sea and Contiguous Zone that the criterion to be used to delimit territorial waters is the median line or a line that is equidistant between two countries when their coastlines face one another or are adjacent to one another.

I reiterate that this interpretation — the application of the 1958 Geneva Convention — is not acceptable to the Spanish Government, nor has it ever been. Therefore, there are mechanisms designed to detect violations that take place in Spanish maritime space according to our criteria which have been maintained by various Spanish governments.

Generally speaking there are not many incidents or cases of abuse by the British, except for one which is quite frequent and this is the anchoring of British merchant ships or those from other countries in the Bay of Algeciras while they wait for entry into the port of Gibraltar, in waters that the Spanish Government considers to belong to the port of Algeciras and are therefore Spanish waters. When this happens, the Commander of the Algeciras Marina sends an official to personally interview the captains of merchant ships that are anchored and he informs them that they are in Spanish territory, in Spanish maritime space.

Foreign merchant ships — I mean ships that are not Spanish or British — also frequently anchor to the east of the Rock waiting to load or unload in the port of Gibraltar, and when this happens, a launch is sent by the Navy to inform these ships that they are in Spanish territory, in Spanish maritime space.

The Spanish government could do nothing before trying to act within the legal field, once successive Spanish governments had rejected an aggressive solution — not an aggression — which is not at all at odds with the firmness Spanish governments have maintained in the past and that of the current Spanish government as regards this issue.

(...)" (DSC-C,IV Leg.,n.477,pp.14064—14065).

2. Territorial Jurisdiction

a) Territorial Sovereignty

Note: See IV.1.*a) Sovereignty and Independence.*

The Spanish civil guard discovered the presence of a group of military personnel from Gibraltar within Spanish territory as the result of an accident that took the life of British Captain Frank Galiano. The presence of these military personnel in the Sierra Nevada mountains on the one hand, and the declaration made by the head spokesperson of the United Kingdom's Ministry of Defense who connected their presence to the British military maneuvers known as "Snow Fox 92" which were defined as "adventure training" and were being carried out by the Air Force of the United Kingdom in Spain (*El País,* 5 March 1992, p. 15), required the Minister of Foreign Affairs, Mr. Fernández Ordóñez, to appear before the Congressional Committee on Foreign Affairs to explain why these alleged activities were taking place within Spanish territory with no type of information on or control of them.

In accordance with the reports provided by the Spanish Ministry of Defense, Minister Ordóñez explained that a few British military personnel had indeed carried out certain activities in the Sierra Nevada without the knowledge or authorization of the competent authorities. He also explained that his Ministry had already formulated a note verbale in protest of the unsatisfactory explanations given by the English ambassador. The Government of the United Kingdom then insisted that these activites were not official military activites and were undertaken privately by the group involved and regretted the imprecise declaration made by its Ministry of Defense which gave rise to the incident. They also regretted the lack of notification.

The Spanish Minister of Foreign Affairs first requested:

> "... the immediate suspension of these activities and, in the second place, [stated] that these activities cannot take place in spite of their recreational or leisure nature no matter what name it might be given, without the prior notification of and authorization of Spanish authorities.
> (...)" (DSC-C,IV Leg.,n.413,p.12168).

In response to a parliamentary question on the same issue the Government responded in the following way:

"... the Minister of Foreign Affairs considered the case closed and sees no reason for any type of further investigation nor demand for responsibility. In any case, the incident is one more example — in this case a quite serious one — of how the existence of a British colony in Spanish territory presents an implicit permanent threat to our relations with the United Kingdom that will only disappear when a satisfactory and definitive solution is found to this conflict.

(...)" (BOCG-Senado.I,IV Leg.,n.326,p.22).

3. Colonies

a) Gibraltar

Note: See II.2.*b) Conclusion and Entry into Force; XIII.7.b) Internal Market.*

In his intervention on 25 September 1992 before the General Assembly of the United Nations in its XLVII Period of Sessions, the Spanish Minister of Foreign Affairs, Mr. Solana Madariaga, said the following as regards Gibraltar:

"There is one issue whose importance for Spain is well known: the decolonization of Gibraltar. I wish to restate my Government's determination to continue, with dedication and in a constructive spirit, the negotiating process with the United Kingdom established by the Brussels Declaration of 27 November 1984, bearing in mind the doctrine of the General Assembly that this is not a case of self-determination but a situation that affects the territorial integrity of Spain. I trust that the negotiating efforts of both Governments will soon lead to a definitive solution that, while taking into account the legitimate interests of the people, will put an end to the colonial status of Gibraltar — a status that is clearly anachronistic and inappropriate to the times in which we live, especially since the General Assembly's proclamation of the International Decade for the Eradication of Colonialism until the year 2000.

(...)" (Doc. UN A/47/PV.13,pp.31—32).

The Under-Secretary of Foreign Affairs, Mr. Cajal López, made the following complementary comments before the Congressional Committee on Foreign Affairs:

"... From the perspective of International Law, Gibraltar, the Rock — not the isthmus — is a British colony, a non-autonomous territory governed

by the United Kingdom which lacks international legal personality, is not subject to international law and corresponds to the United Kingdom as regards administrative power and its responsibility in terms of international relations with Gibraltar. This is within a general framework.

Within the Community framework, Gibraltar is not a member State of the Community, as we all know, or even an integral part of the territory of a member State as defined by section 1 of article 227 of the Treaty of Rome. The status of Gibraltar is contemplated in article 227, paragraph 4 of the Treaty of Rome which defines it as a European territory whose foreign relations are controlled by a member State, in this case the United Kingdom.

What I mean to say by all of this is that the Government's position on this subject is well-known, and is consistent and coherent witb what we have traditionally maintained as regards principles, and the controversy — if we want to call it that — that might exist between the United Kingdom, between London and Gibraltar, is a question that affects only them, metropolis and colony. At no time have topics related to international relations, and much less those related to the European Community, not been under the control of the British Government. The position of the (Spanish) Government on the topic of Gibraltar has not undergone any variation, and I would even venture to say that whenever it has been necessary, the Government has maintained a very firm position. The most obvious proof of this is the attitude that has been maintained as regards the agreement on external borders in which precisely because it has been impossible to find a satisfactory commitment to the Spanish position, we have had to block the implementation of this agreement within the framework of the Community.

(...)" (DSC-C,IV Leg.,n.586,p.17645).

Furthermore, as regards the request made by the Head of the Executive in Gibraltar, Mr. Bossano, to British authorities to revise the 1969 Constitution in order to initiate a decolonization process, the Government made the following clarification in response to a question in the Senate:

"The Constitution of Gibraltar dated 23 May 1969, was sanctioned unilaterally by the United Kingdom and requests for its revision are determined by British public and constitutional law.

Two legally interesting aspects of this constitution which are probably a consequence of its colonial nature, are, firstly, that it does not explicitely express a system for the separation of powers, and secondly, that the person considered to be "head of the Executive" is the governor named by the Crown.

(...)

To the extent that Mr. Bossano's aspirations include the decolonization of Gibraltar through independence, it is clear that this position is equivalent to the transfer of sovereignty over the Rock to an international legal person other than Spain or the United Kingdom, and that this possibility is completely prohibited by the last paragraph of article X of the Treaty of Utrecht. The British Government, the only legitimate representative in the Spanish Government's view, has proclaimed its respect for this clause of the Treaty of Utrecht on several occasions both in its diplomatic contacts with Spain and in declarations before the British Parliament and contacts with local Gibraltar authorities. Therefore, the Spanish Government is fully convinced of the British Government's will to comply with the Treaty of Utrecht (which is, after all, it's only legal foundation for maintaining the colony), and no hypothetical reform of the Constitution of Gibraltar can include the disposition of this territory against the will of Spain.

Therefore, the Government feels that any actions in this sense are unnecessary and superflous.

Madrid, 2 April 1992.— The Minister" (BOCG-Senado.I, IV Leg.,n.317,p.69).

VIII. SEAS, WATERWAYS, SHIPS

1. Internal Waters

Note: See VII.1.*a) Internal Waters.*

2. Territorial Sea

In response to a question in the Senate on the Government's actions to put an end to the entrance of Moroccon boats into Spanish waters and what measures have been taken to protect boats that fish in our waters that are adjacent to Moroccan territorial seas, the Government responded in the following way:

"... any type of foreign vessel that navegates through Spanish territorial waters should do so in accordance with established international rules.

At times, presumed fishing infractions by Spanish ships take place in Moroccon territorial waters or in a place so close to them that it is difficult

to prove an infraction did not take place without a subsequent analysis of the facts.

Moroccon warships have the right to pursue presumed transgressors in international waters until they enter Spanish territorial waters or the territorial waters of a third country at which point all actions previously undertaken must cease.

When these actions do not cease, Navy forces that are on patrol in the area intervene to reestablish order in accordance with the applicable international rules mentioned earlier.

Madrid, 3 June 1992.— The Minister" (BOCG-Senado.l, IV Leg.,n.334,p.68).

X. ENVIRONMENT

1. United Nations Conference on Environment and Development (UNCED)

Note: See XI.1. Economic Development and Development Cooperation.

The comments made in his intervention before the United Nations General Assembly on 5 November 1992, by Mr. Yáñez-Barnuevo, the representative from Spain, on the Report of the United Nations Conference on Environment and Development were recorded in the following way:

"Mr. Yáñez Barnuevo: The United Nations Conference on Environment and Development, held in Rio de Janeiro in June of this year, was incontestably a historic milestone, owing both to the large number of Heads of State or Government that attended and to the importance of the agreements reached.

In Rio de Janeiro the Conference articulated the concept of "sustainable development", which harmoniously brings together the concepts of environment and development, highlighting the interrelationship between them. As my country's Minister of Foreign Affairs stated in his address to the Assembly on 25 September last:

"the concept of sustainable development was identified as a central element that should inspire the theory and practice of development policies in the coming years" (Doc. UN A/47/PV.13,p.28).

On the occasion of the Rio Conference, the international public witnessed the making of a commitment on the part of the Heads of State or

Government of both the North and the South to preserve the environment in which we live, while at the same time striving to achieve ever-higher levels of well-being for all peoples.

Besides the specific agreements that were reached at the Conference, namely the Rio Declaration, the adoption of Agenda 21, and the first world consensus on forests, two important legal instruments were signed there as well, namely, the United Nations Framework Convention on Climate Change and the United Nations Convention on Biological Diversity.

The countries that participated in the second Ibero-American summit meeting of Heads of State or Government held in Madrid on 23 and 24 July this year agreed to take action to ensure that the commitments entered into at the Rio Conference would soon be translated into reality. In this regard those 21 countries undertook to take all necessary steps to ensure that the negotiations intended to lead to their implementation would be successful at this session of the General Assembly.

My country is prepared to contribute in the most effective way possible to the practical application of the agreements arrived at in Rio. The first step, nationally, was the setting up of an interministerial Committee in which the various departments are represented. The Committee has already begun its work of following up and implementing the agreements reached at the Conference as far as Spain's participation is concerned.

The Conventions on Climate Change and Biological Diversity signed by the President of the Spanish Government in Rio have already been referred to our parliament for ratification, which we hope will take place in the first quarter of 1993.

As far as the Convention on Climate Change is concerned, immediately after the Rio Conference the National Climate Commission was set up with the purpose of advising the Government concerning policy in the area of climatic change and the response strategies to be integrated into a national climate programme.

(...)" (Doc. UN A/47/PV.58,pp.51—52).

2. Marine Pollution

In response to a question presented in the Senate on the protective measures being taken as regards marine environments over which Spain has sovereignty or jurisdiction, the Minister of Public Works, Transport and Environment, Mr. Borrell, made the following comments:

"There are two ways in which we can protect marine environments:

one is to adopt measures to prevent pollution, and the other is to act to fight pollution when a spill has occurred.

Measures for the prevention of pollution are framed in the rules established by the International Convention on the Prevention of Pollution by Ships, called MARPOL 73/78, which Spain subscribes to completely, including all of its annexes, and the sanctioning power that the current Coastal Laws grant. In this area, the Spanish Government has undertaken the following measures:

— Careful and thorough on-board inspections of vessels in order to detemine if they comply with the conditions stipulated in the Convention.

— A requirement to present a "Declaration of Wastes" and to unload these in authorized installations for those ships who are judged by the Local Maritime Authorities to be unable to continue sailing without producing uncontrolled discharges of residuals or waste into the sea.

— The establishment of a substantial security deposit for those ships for which a possible uncontolled discharge of residues or waste in territorial waters, the exclusive economic zone or internal waters was detected upon inspection. This deposit is strictly required in order for authorization for exit permits from any Spanish port to be granted.

— The application of sanctions in accordance with the Coastal Law in force proportional to the quantities dumped or spilled and the damage caused, in addition to compensation for said damages and costs related to the clean-up efforts.

All of these measures are applied to ships tbat enter into Spanish ports...

(...)

As for actions taken when there is a spill, they are basically the following:

— Immediate implementation of local or national contingency plans according to the magnitude of the spill.

— The concentration of all means for fighting pollution that are available in the area.

— Coordination with the Civil Government and local authorities as regards possible actions to be taken to protect vulnerable coastal areas and to arrange clean-up operations along the coastline.

— The use of other available measures in other areas when necessary.

— Communication to the EEC task force in order to obtain assistance from the other member nations of the European Community, if this were necessary.

— If the responsible party is known, immediate communication of this to the shipowner and to its insurance company in order to ensure coverage

for any possible damage done or expenses incurred.

Madrid, 21 May 1992.— The Minister" (BOCG-Senado.I, IV Leg.,n.330,p.55).

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Economic Development and Development Cooperation

Note: See X.1. United Nations Conference on Environment and Development.

In his intervention before the 47th Session of the General Assembly held on 25 September 1992, the Minister of Foreign Affairs, Mr. Solana Madariaga, stated the following:

"Spain welcomes all these achievements and hopes that they will lead to further progress in this field.

(...)

The achievements of the United Nations in the field of international peace and security contrast with the limited progress in the sphere of economic and social development. The world gap between rich and poor has been widening in an alarming way. The Human Development Report of United Nations Development Programme for 1992 shows that the richest 20 percent of the world population receive 82.7 percent of total world income, whereas the poorest 20 percent receive only 1.4 percent.

The international community cannot remain passive in the face of these grave and growing disparities. The Organization, owing to its universal membership and the breadth of its purposes and principles, must play a leading role to guide and stimulate the establishment of guidelines for the United Nations system as a whole, in order to find solutions to the important issues related to the development and well-being of all peoples.

It is necessary in this respect to strengthen the Economic and Social Council. Some progress has already been made in its restructuring, but it is necessary that such restructuring be continued and deepened in order to revitalize this principal organ of our Organization. It also seems necessary to envisage the reform of the United Nations Conference on Trade and Development (UNCTAD) in order to adapt it to the new realities, as was underscored at its eighth session, held in Cartagena de Indias last February.

We support the establishment by the Assembly during its current session of a high-level Commission on Sustainable Development that was

agreed to at the Conference on Environment and Development, held in Rio de Janeiro last June, where the concept of sustainable development was identified as a central element that should inspire the theory and practice of development policies in the coming years.

We should look for new ways of dealing with the main task of attaining sustainable development and assign greater financial resources to this task, in particular by those countries that are in a position to do so. My country is aware of the fact that it must make an effort in proportion to its economic capactiy. For this reason, the President of the Spanish Government at the summit at Rio de Janeiro, after recalling that Spain had tripled its official aid over the past 10 years, made a commitment to triple its aid again in the course of the coming decade. This is a difficult challenge that we have taken upon ourselves but one that we are ready to fulfil.

The world population has more than doubled over the past 40 years, and according to recent estimates it will double again in the next 30 years. This astounding growth demands a serious analysis on the part of the international community as well as a careful study of the consequences that it generates, such as migratory flows, the problems of large urban concentrations and the enormous demands it creates in the areas of food, housing, health care and education. These are all issues that should be studied in depth at the Conference on Population and Development, to be held in Cairo in 1994.

It is not surprising that social problems are gaining importance at the present time, when many economies are undergoing tough processes of adjustment and others are going through difficult transitions from a central planning system to one of market economy. The summit Conference on Social Development to be held in 1995 is therefore a timely initiative. Proper preparation is the best guarantee for its success. The basic guiding principle for its work should be the concept of human development; it should examine the necessary measures to provide greater opportunities for education, medical care and employment ot the world's inhabitants. It is becoming daily more obvious that economic growth in itself does not automatically improve people's living conditions, neither within nations nor internationally. Therefore, it is essential to give a social dimension to the concept of economic development.

(...)" (Doc. UN A/47/PV.13,pp.27—30).

Also, in his intervention before the General Assembly on the Report of the United Nations Conference on Environment and Development on 5 November 1992, Mr. Yáñez Barnuevo, the representative from Spain, pointed out the following:

"Spain's concern for the environment goes hand in hand with its understanding of and commitment to development problems. In this regard, I would remind members that in the last decade Spain has tripled the amount of its assistance aid. The President of the Spanish Government stated at the Rio Conference Spain's intention of once again tripling the volume of its assistance to development in the course of this decade.

The setting up by the General Assembly of the high-level Commission on Sustainable Development, in which my country plans to take a full, active and constructive part, will be one of the focal points of the activities of the international community in the domain of the interrelated issues of the environment and development. It is essential that the work of the Commission be properly organized so as to avoid duplication with other bodies and programmes of the United Nations system, enabling it to function in the most effective manner possible.

(...)

We believe that the Rio de Janeiro Conference was far from being the end of a process, it was in fact a point of departure by means of which the international community will do its utmost to attain higher levels of well-being for all, while respecting the environment in which we live. This is a vital task — the best legacy we can pass on to the generations to come.

(...)" (Doc. UN A/47/PV.58,pp.54—56).

2. Assistance to Developing Countries

In his intervention before the 13th Meeting of the Economic and Social Council, the representative of Spain, Mr. Arias, emphasized the importance of enhancing International Cooperation for Development and the role of the United Nations:

"Mr. Arias (Spain): Although the measures adopted by the General Assembly to improve humanitarian and emergency aid mechanisms and the proposed creation of a high-level commission on sustainable development were encouraging, much remained to be done if the United Nations was to meet the new challenges of a constantly changing world.

The economic and social sector was of particular importance, and the final report of the Nordic United Nations project, submitted in 1991, had identified the problems and proposed bold solutions, including the need to eliminate overlapping and achieve greater transparency in the functioning of decision-making and management structures. Careful consideration should be given to the proposals to increase funding levels and stabilize

them in the medium term, while available resources must be used as effectively and transparently as possible.

Proper account must be taken of the growing disparity between the economic and social situations of the developing and industrialized countries, and official development assistance programmes must be tailored accordingly. Particular emphasis had been placed in recent times on the concept of good governance and the relationship between human rights and economic and social development. A development policy must focus on the individual and his right to participate in political and social decisions. However, it was also important to apply such principles equally to all countries, both small and large, and to recognize that the close ties between good governance, democracy, human rights and development must be translated into a coherent approach at both national and multilateral levels.

A particular cause for concern was the frequently unjustified propensity of certain developing countries to devote substantial resources to the purchase of arms rather than to economic development, while continuing to receive aid often in excess of that given to countries which had concentrated spending in the social sector. Giving priority to social measures was especially important for developing countries beset by illiteracy, unemployment, and lack of basic education and health-care facilities, which could lead to racism, xenophobia and drug addiction, thereby increasing social and political tensions.

In recent years his country had played an increasingly prominent role in development cooperation and the President of the Spanish Government had announced at the Rio Conference that, having tripled its development aid during the previous 10 years, Spain was firmly committed to tripling the volume of its aid once again in the forthcoming decade.

He attached considerable importance to strengthening the aid and cooperation provided through non-governmental organizations, most of which undertook selfless and important work, achieving an impact in many cases beyond the scope of Governments and international organizations.

(...)" (Doc. UN E/1992/SR.13,pp.15—16).

The Secretary of State for International Cooperation and Cooperation with Ibero-America, Mr. Arias Llamas, explained the amounts Spain earmarked for cooperation and the objectives of these funds to the Senate. He first referred to the decompensation that exists between bilateral aid and multilateral aid:

"... Spanish aid this year will be just under 200 billion pesetas overall, with aid to specific development accounting for approximately 140 of the 200 billion.

Curiously enough, within this aid this year, multilateral aid has increased considerably. In other words, aid which is given through international organizations. However, bilateral aid remains about the same as the amount given by the FAD, while non-recoverable, bilateral aid, the amount we simply give away, will stay about the same thanks to budgetary adjustments... This means that there is a considerable decompensation from a strictly foreign policy point of view, which is the main objective of the aid, apart from solidarity, in my opinion.

I do not remember the exact figures, but I would venture to say that multilateral aid is around 45 — 47% and bilateral aid around 52 — 54%. Therefore, even though this guarantees a good level of solidarity, it is clear that there are fewer objectives related to visibility and immediate political profit. That is, if we look at aid as strictly support for Spanish foreign policy, the more multilateral aid there is, the less evident it is to the recipient that Spain is providing the aid. If aid is given by UNICEF — to which we contribute — UNESCO or the European Community, and their percentage grows while the aid that we give directly through FAD or as non-recoverable aid shrinks, it is obvious that the political benefit to be had from the visibility of this aid in the recipient country is low.

This year our contributions to the European Economic Community have increased considerably both as regards FED and the community budget for aid to development — Spain's percentage of the overall Community budget in these two areas is 5.9% in the first and a little over 7% in the other one — the amount Spain gives to Community aid programs has increased while the amount for non-recoverable aid that is administered by the central government, specifically by the Office of the Secretary of State for Foreign Aid, since the percentage that we give bilaterally hasn't increased, does not grow at the same rate the other does. As I said before, from an *estricto sensu* point of view, this is not important, but from a foreign policy point of view, it is.

(...)" (DSS-C,IV Leg.,n.138,pp.4—5).

In his appearance before the Congressional Committee on Foreign Affairs, the Secretary of State also gave the following information on the 1992 Annual Plan for International Cooperation and again expressed his concern about the relationship that existed between multilateral and bilateral aid:

"I have alread said that I do not like this situation of decompensation in favor of multilateral aid in comparison to bilateral aid. The mere fact that Spain gives more resources to the European Economic Community than it does by means of direct bilateral aid is not at all to my liking, because

regardless of how well the European Economic Community administers this aid, Spanish visibility is greatly reduced, as is that of any country. Community aid is not seen when foodstuffs are sent to a country or when emergency aid is given or when five airplanes are sent. The political authorities of the country [that receives the aid], or the general population for that matter, have no idea who sent the aid, if it was England, France, Italy or Spain, and sometimes the aid doesn't even come from within the Community. In other words, from the point of view of political benefit, it is unfortunate that in 1993 we are sending 25% of our non-recoverable aid to the European Economic Community and that by adding that amount to the amount the Spanish Government and other Spanish institutions such as the regional governments, grant directly, the total represents approximately 16.5%. In my opinion, these percentages are harmful; I don't like them, and the only way to correct this, given that our contribution to the European Economic Community and other international financial or non-financial institutions is determined by the percentages that we must contribute to the budgets of these organizations, is to increase and not to freeze non-recoverable aid so that our visibility is greater. Of course the fact that our contribution to the European Economic Community is clearly higher than the bilateral aid that we give is not true for most countries in our environment. Two or three years ago this wasn't the case; the proportions were much more balanced. This is a tendency that must be broken. I hope that when the budgetary troughs are fuller, this tendency will be clearly reversed.

(...)" (DSC-C,IV Leg.,n.541,p.16292).

At another point in his intervention before the Senate, the Secretary of State referred to "decentralized aid" in the following way:

"Finally, as regards the topic of aid, I would like to mention what we might call `descentralized aid´, and by that I am referring to both the aid given by public entities and that given by the NGOs. The aid given by public entities not pertaining to the national government, that is to say, those that pertain to regional governments or local corporations, has been increasing steadily if not spectacularly. We calculate that this year approximately 3.5 billion pesetas will be dedicated to international aid from regional governments and local entities...

(...)

... The NGOs contribute a significant amount of aid and we wish to reenforce, favor and even assist in creating public awareness of this. These Spanish NGOs will make use of some 8 billion pesetas this year which they

have obtained through their own efforts, and another 2 billion they received from the Secretary of State's Office. These will be distributed in various grant selection procedures, one of which will distribute 800 million pesetas that we have in the budget this year and in another procedure we will distribute the amounts that the Secretary of State's Office has provided which represents 20% of the personal income taxes collected this year.

(...)

The overall figure invested in aid this year is approximately 200 billion pesetas of which 140 billion will be dedicated to official aid to development. This represents 0.2354, or in other words, 0.23% of the GNP. We haven't yet reached our desired goal, which is 0.35%, but we are at a level that is not at all bad considering that the United States gives .21% and England and Great Britain .27%.

(...)" (DSS-C,IV Leg.,n.138,pp.8 and 14—15).

According to a note issued by the Office of Diplomatic Information on the Council of Minister's Agreement in which the Annual Plan for International Cooperation for the year 1992 was approved:

"The 1992 Annual Plan for International Cooperation includes all types of international cooperation that come from the public sector; part of them — those that meet development finality and deregulation criteria — are considered Official Aid to Development (OAD). In 1992, the amount budgeted for international cooperation was 1.807 billion pesetas which represents a 14.62% increase over the 1991 Plan. Of this amount, 1.406 billion is considered Offical Aid to Development. This represents a 30.05% increase over 1991. These amounts in Official Aid to Development represent .2368% of the gross national product.

International cooperation is divided into two large sections: multilateral and bilateral cooperation. Bilateral cooperation accounted for approximately 100 billion pesetas, of which a little over 87 billion was considered Official Aid to Development. Multilateral cooperation accounted for 80 billion pesetas, with approximately 53 billion being Official Aid to Development.

Multilateral Cooperation:

(...)

Amounts earmarked for multilateral cooperation for 1992 equal approximately 80 billion pesetas. This is an increase of 4.8 billion over 1991, or in other words, a 6.35% increase.

(...)

The community policy on aid to development:

(...)

Spain's estimated contribution is 38.7 billion pesetas for 1992, a 33.12% increase over the previous year, which is considered to be entirely Official Aid to Development; 13.259 billion more than in 1991...

International financial organizations for development:

(...)

Spain's estimated contribution for 1992 is 13.052 billion pesetas, which represents a slight increase of .67% over the previous year. Of this amount, 10.4 billion pesetas are considered to be Official Aid to Development. This is a decrease of 19.78% as compared to 1991 estimates.

Non-financial international organizations:

(...)

Our country's estimated contribution to these organizations is 28.816 billion, of which 4.151 billion are considered Official Aid to Development.

Bilateral Cooperation:

(...)

Estimated bilateral cooperation for 1992 is 100.175 billion pesetas, an increase of 22.27% over 1991's Annual Plan. Of this amount, 87.383 billion pesetas is considered Official Aid to Development.

The three basic elements of bilateral cooperation are:

— Aid to Development Fund (ADF) loans. For 1992, the estimated total of these loans is approximately 63 billion pesetas, which is an increase of 8 billion over the estimated figure for the previous year. The distribution of ADF loans that can be considered OAD totals about 60 billion pesetas, which is 20 billion more than in 1991.

— Programs/Projects... The estimated expenditures for 1992 are 33.675 billion pesetas, an increase of 6.746 billion or 25.05% over 1991. Of this amount, the OAD is around 23.883 billion, a decrease of 5.82% as compared to the previous year. This decrease is mainly due to budget cuts to the Spanish Agency for International Cooperation.

—Decentralized Official Cooperation. This is the first time that these expenditures are included in the Annual Plan. This is aid given by regional governments or local entities.

The estimated expenditures in this category for 1992 are 3.5 billion pesetas.

The entire amount of these expenditures can be considered OAD given the nature of the programs and cooperative efforts that these entities carry out".

Finally, the Minister of Foreign Affairs, Mr. Solana Madariaga, explained the following when the budget of the Ministry of Foreign Affairs was presented to

a plenary session of the Congress of Deputies:

> "... we still spend very little on cooperation. We should spend more and I hope that in coming years, this chamber recognizes the need for Spain to spend more on international cooperation. We hope to dedicate approximately .7% of our gross national product, even though we are still a long way from that figure. This .7% is more or less the level that the United Nations has set for countries with the degree of development that Spain has. We are committed to multiplying our expenditures on international cooperation in terms of our GNP in this decade. The president made this commitment in the Rio de Janeiro Conference not too long ago.
>
> What are our principle points of international cooperation? It is true that the world has poverty zones, and even zones of misery, areas where our help can be of great utility. However, we must make sure our solidarity with these areas is compatible with the general interests of our country. Therefore, the direction or general lines of our aid through non-recoverable aid (ADF loans are another thing altogether with a broader scope) are principally concentrated in Ibero-America on the one hand, and in the Maghreb on the other. This is where we are trying to show our solidarity and make the greatest efforts at cooperation.
>
> (...)" (DSC-P,IV Leg.,n.230,p.11533).

a) Ibero-America

In his appearance before the Senate Committee on Ibero-American Affairs, the Secretary of State for International Cooperation and Cooperation with Ibero-America reported on the current state of affairs and future prospects for cooperation with Ibero-America:

> "As regards Spanish cooperation — with Ibero-America — the general lines of cooperation for development that were formulated in 1978 are still valid, and it continues to be true that as regards bilateral cooperation, and especially non-recoverable bilateral cooperation, Ibero-America is still a clear priority for us. For example, for the year 1992, for the current year, and just to cite one figure, Ibero-America will receive approximate 62% of Spain's official non-recoverable aid to development, in other words, the official aid to development that we simply give to other countries. Furthermore we give it bilaterally.
>
> Focusing on this non-recoverable aid, between 62 and 63% of this aid goes to Ibero-America. I am going to examine how this non-recoverable aid — for which I am directly responsible — is distributed.

In this type of cooperation we have defined a few strategic objectives among which, in a general sense, I will mention support of self-sustained economic growth for these countries, the reenforcement of State institutions, support for democratization processes, the transformation of structures, etc.

To a great extent, these principles are included in the Declaration of Guadalajara, the site of last July's summit meeting. In that meeting it was stated that Ibero-American countries should support access to mimimum health care, educational, nutritional, and social security services, the reenforcement of a more democratic system, cultural exchanges, the granting of scholarships, the transfer of technology, etc. Without a doubt, Guadalajara covered many of the high priority areas that Spain has always included in its general aid, and especially in its aid to Ibero-America...

(...)

As regards cooperation between the European Economic Community and Ibero-America, I would like to say briefly that it is not what it should be, given this is a very needy part of the world which is reestablishing democracy and which in many ways is quite similar to Europe. It is true that collaboration has increased considerably in the last few years, and I do not think that it is a coincidence that ever since Spain and Portugal entered into the European Community, cooperative efforts have increased considerably: from the Dominican Republic and Haiti being admitted to the Lomé Commission, to the Community granting the System of Generalized Preference to the Andean countries a little over a year ago as part of their program to help in the fight against cocaine, to the extension of this generalized preferential treatment to the point that a very high percentage — almost 90% — of the products from these countries enter into the Community duty free with the recent extension of these conditions to Central American countries as well, and even to the fact that during the last meeting of the 'San José 8' which took place in Lisbon, the Community approved an aid package worth 50 million ecus for El Salvador. Finally there is our country's daily battle to convince the different Community foreign aid and cooperation agencies to be generous to Ibero-America...

(...)

We continue to make clear to the NGOs just what our priority zones and topics are, and therefore we try to channel this aid to Ibero-America. In 1991, of the 2.024 billion pesetas that were distributed as a result of the calls for aid made by the Secretary of State's office, 1.504 billion came from personal income taxes and 520 from ordinary calls for aid. Of this total, 1.669 billion was distributed to Ibero-America, the equivalent of no less than 82 percent. Therefore, it is clear to see that our NGOs are aimed at

Ibero-America, especially as regards the resources that are received from the Secretary of State's office. As regards the bulk of the funds administered by this department, even though the percentage that goes to Ibero-America is somewhat inferior, it is still quite significant as compared to the percentage that goes to other countries, for example, Arab countries.

(...)" (DSS-C,IV Leg.,n.130,pp.4 and 7—8).

b) Maghreb

Note: See XIII.8. Foreign Relations.

During a session of the Congressional Committee on Foreign Affairs, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, made reference to Spanish policy on the Maghreb:

"... Algiers and the Maghreb are, of course, a priority area for Spain. This is our border with the Third World, our border with the Arab world, our border with the Islamic world. Trade with this area equals 4 billion pesetas. This is greater than our trade with all of the Eastern European countries, and this gives us an idea of why we must take great care in our relations with these countries. [The Maghreb] is of strategic, political, energy, and economic interest, among other things; it represents a little less than Ibero-America, but ranks very high as regards the distribution of Spanish foreign trade.

(...)

We must help maintain the economic development that social peace, political dialogue and cooperation make possible. We must understand that these societies, all of them, are in a very difficult process of transition and therefore, decisions such as the one issued by the European Parliament a few days ago against Morroco, can produce a chain effect that negatively affects Spanish interests. These decisions come from countries that no doubt have good arguments, as is to be expected, but we are obviously dealing with a very sensitive area here and this makes me even more prudent than usual in my statements.

(...)

... So what should we do? Reenforce the Office of the Under-Secretary for North African Affairs in the Ministry which has very limited resources. Increase aid, which is indeed a matter of money. We are currently spending a total of six million dollars in the whole region, and this is not much. Perhaps it would be wise — I think it would and you all know that I am not an extravagant man on economic matters — but I say that perhaps it would

be wise to put forth a great effort as regards aid for the Maghreb. This seems to me to be more important than anything else we have talked about.

(...)

... a proposal was made in the meeting of Ministers of Foreign Affairs in Brussels to cut back Community aid to Algiers. I opposed the French minister on this vigorously and said that this is not the right moment to cut aid, but rather the time to maintain it. What is necessary now is for us to cut some types of aid, because it could produce even more catastrophic effects.

(...)

We need a greater political commitment to this region by the European Community. It is an extremely important region. Now it is one thing for me to state this so emphatically, and another for it to come true. But this fact does seems clear, at least to us, I believe to all of us. We must also support the new community policy on the Mediterranean...

(...)" (DSC-C,IV Leg.,n.379,pp.11167—11168).

c) Equatorial Guinea

The Secretary of State for International Cooperation and Cooperation with Ibero-America, Mr. Arias Llamas, explained the Government's policy on Equatorial Guinea to the Congress and made reference to the link that is beginning to appear in Spanish foreign policy between cooperation and respect for human rights:

"As regards political cooperation with this country, which holds an important place both from a qualitative and quantitative point of view, I think that we are very much aware in this Chamber of the general lines of our plan for cooperation with Guinea. At this time the second framework for cooperation is being implemented for the third year. The budget for this year for cooperation with Guinea, is approximately 1.904 billion pesetas which is spent on a variety of programs. The most important ones I might mention are: the program for human resources training — which receives a significant sum —, the program for cultural cooperation, the program for cooperation in the area of health care, and a program for institutional support and advising, etc...

(...)

Establishing the feasible and desirable link between aid and the democratization process is beginning to be more common among all of the countries that offer aid. The European Economic Community is making advances in this area, but as regards this principle, which is a desirable one and one that we should practice, we must try not to penalize the people for

which the aid is intended. In other words, in those cases in which the regime receiving the aid persists in non-democratic practices, which are sometimes in clear violation of human rights, we must try to cut back certain types of aid to this country, but it is questionable, in my opinion, to cut aid completely, which often clearly penalizes, and often violently so, the human beings meant to receive the aid.

(...)

Guinea receives almost 15% of our non-recoverable aid. This is a very considerable sum in my opinion when compared to the total amount because it represents approximately 1.9 billion pesetas. I don't believe that amount will be reduced this year, and if it is, it will be by a very small amount. In other words, it will remain more or less the same.

I believe that even though Guinea's needs are enormous in spite of its being such a small country, given that more than two-thirds of Spanish aid there is used for humanitarian purposes (Spain to a large extent maintains the health care and educational systems of this country), it would be unfair and unreal to contemplate a reduction in the overall aid given to Guinea if it would mean the freezing of a program that supports a Guinean institution. We have already delayed the construction of some housing for our collaborators due to budget cuts.

(...)" (DSC-C,IV Leg.,n.541,pp.14654,14657 and 16292).

XI. INTERNATIONAL TERRORISM

Note: See XVI.2.*b) Libya.*

In his intervention before the 47th Session of the United Nations General Assembly, the Minister of Foreign Affairs, Mr. Solana Madariaga, made reference to the problem of international terrorism:

"Terrorism, for its part, continues to pose a threat to human life and to coexistence between nations. It is a threat of an international character and as such requires internaitonal efforts for its eradication. General Assembly Resolution 46/51, adopted by consensus last year, was a further step in United Nations work aimed at developing greater international cooperation for this purpose.

Those two threats, especially that of terrorism, are interrelated with illegal arms dealing, which must be combated just as firmly by the international community.

(...)" (Doc. UN A/47/PV.13,p.31).

In the Conclusions Document agreed to at the Second Ibero-American Summit of Heads of State and Government held in Madrid on 23 and 24 July 1992, the following was emphasized:

"11. We wish to express our conviction that terrorist violence can not be justified under any circumstances. We unequivocally condemn all terrorist acts, methods and practices that endanger innocent human lives or cause loss of life, that compromise basic freedoms and that seriously affront the dignity of a human being. We pledge to intensify our cooperative efforts in order to eradicate it.

(...)".

4. Cooperation in Judicial, Criminal and Civil Matters

In his intervention before the 47th session of the United Nations General Assembly held on 25 September 1992, the Minister of Foreign Affairs, Mr. Solana Madariaga, also made reference to international cooperation in the fight against the illegal trafficking of drugs:

"The drug-trafficking business is so grim and complex and has so many ramifications that efforts to combat it must be based on the strengthening of national measures and on effective international coordination and cooperation.

The producer countries must receive the assistance needed to grow alternative crops and to enable them to confront the powerful and well-armed drug-trafficking organizations. Those countries producing substances likely to be used in the manufacture of drugs should inspect and control the exports of those substances. Consuming countries — also responsible for the drug-trafficking — must strengthen programmes and measures aimed at decreasing domestic demand. Moreover, perseverance is necessary in inspecting bank accounts used by drug traffickers and in reporting money-laundering when suspicions of its connection with this illegal activity exist. Concealing information on the drug-trafficking business amounts to complicity in criminal activity.

(...)"(Doc. UN A/47/PV.13,p.31).

On the other hand, the Second Ibero-American Summit of Heads of State and Government, held in Madrid on 23 and 24 July 1992, agreed to a Conclusions

Document in which the following is stated:

> "10. We reaffirm our commitment to intensify cooperation and fight by all means possible against the production of, trafficking in and illegal consumption of narcotics and psychotropic substances. We consider it absolutely essential to adopt effective measures for the fiscal control of monetary assets of illegal origin...in accordance with the 1988 Vienna Convention.
>
> We recognize that drug-trafficking is a multilateral problem that seriously affects the institutions and people of the different countries involved and the relations that exist between States. Our response should be based on the principle of shared responsibility.
>
> (...)
>
> 12. We consider it absolutely essential and of the utmost importance to strengthen State judicial systems, while maintaining full respect for their independence.
>
> We repeat our commitment to fight crime in all of its manifestations, and we emphasize the need to foster international judicial cooperation in a framework of respect for the sovereignty of each State.
>
> (...)".

In response to a question presented in the Senate on Spain's application of the recommendations adopted by the 1988 Vienna Convention on Drug-Trafficking, the Government replied:

> "As the Government has repeatedly stated, the majority of the provisions of the 1988 Vienna Convention were contemplated in our country in the Law to Reform the Criminal Code of 24 March 1988 on matters related to drug-trafficking, even before the aforementioned Convention entered into force.
>
> Therefore, the only things left to be classified are the manufacturing, transport and distribution of the so-called chemical precursors, as well as the behaviours listed in section 1.b).i) and ii) of the Convention which refer to the crime of laundering in two ways: as a way to convert or transfer illegal goods and as a means to hide or cover up the nature, origin, location, destination or illegal owner of goods or rights.
>
> (...)" (BOCG-Senado.I,IV Leg.,n.324,p.47).

XII. INTERNATIONAL ORGANIZATIONS

1. United Nations

Note: See XI.1. Economic Development and Development Cooperation.

On 27 October 1992, the Office of Diplomatic Information announced Spain's election as a non-permanent member of the United Nations Security Council. It also published the results of the vote taken on this issue: Spain received 118 votes (more than two-thirds of the member States present and voting as is stipulated in article 18.2 of the Charter), New Zealand received 109 votes and Sweden 108.

Once these results were known, the Spanish ambassador to the United Nations, Mr. Yáñez Barnuevo, took up his role as the Spanish representative to the Security Council.

2. North Atlantic Treaty Organization

In response to a question presented before the Congressional Committee on Defense regarding Coordination Agreements C and F related to the carrying out of operations for the defense and control of the Strait of Gibraltar, the use of Spanish territory and Spanish installations as support material, and the collaboration with our allies within the context of the Treaty of Washington, the Secretary of State for Military Affairs, Mr. Suárez Pertierra, stated the following:

> "By signing these agreements we will put an end to the development phase of the coordination agreements that began in 1988. From this moment forward, the writing stage for the different plans that are stipulated in each of the agreements should begin. During the development phase, the type of collaboration that the Spanish armed forces will offer to the Atlantic Alliance will be determined.
>
> All of the coordination agreements, not only agreements C and F, have been developed in accordance with the provisions of the document called directives for coordination agreements, which is a classified document... but whose directives are in keeping with the approach that was submitted to referendum.
>
> As regards its content, little can be said because these agreements are subject to the well-known classification system.

In any case, the first of them, a coordination agreement for the defense and control of the Strait of Gibraltar and its access, defines the terms and conditions for the carrying out of operations in this area, which is recognized as a strategic zone in an of itself and also in terms of the control of the Strait of Gibraltar.

(...)

... responsibility for the operations that are carried out lies principally with the Spanish Armed Forces, and as regards Naval and Air operations in the western Mediterranean, the provisions of other agreements, namely E and D, that is, Eco and Delta, will be adhered to.

(...)" (DSC-C,VI Leg.,n.501,p.14742).

Likewise, the Minister of Defense, Mr. García Vargas, made reference to NATO's role in the future during his address to the Senate Committee on Defense:

"... What will become of NATO in the future? Will it be another Marshall Plan? I doubt that that could happen. It is unlikely that it would become an economic type organization, but it could become a specialized forum for security matters, and as a matter of fact, we are already beginning to see this happen. But this forum should never replace the European Security Conference, which is a broader organization with clearer and more specific functions in this sense. NATO can, in any case, be a complement to it, as the Secretary General so officiously suggested, even as a specialized agency. All in all, the Spanish Government views the future of NATO with a great deal of caution. It would be enormously dangerous to introduce changes in its make-up or in the Treaty of Washington which created it right now... We should try to make NATO as flexible as possible... We should adapt to the changes that are taking place as quickly as possible and to the extent possible, but let's not touch the Treaty of Washington and let's not touch the basic purpose for which NATO was created, the mutual defense of member countries.

(...)" (DSS-C,IV Leg.,n.142,pp.19—20).

3. Western European Union

Article J.4 of Title V of the Treaty of the European Union on Foreign Policy and Common Security, charges the Western European Union with the elaboration and implementation of Union decisions as regards defense. Referring to these new responsibilities for the WEO, the Minister of Defense,

Mr. García Vargas, pointed out the following in his address to the Senate Committee on Defense:

> "The member countries of the WEU produced two declarations adjunct to the Treaty [of the European Union] and I would like to point out the following as regards these declarations: first of all, the relationship between the WEU and the Atlantic Alliance is established, with the former being seen as a means to strengthen the European pilar. Thus, the WEU maintains its autonomy without weakening NATO, but rather by complementing it. In the second place, the operational function of the WEU is developed. Work is now being done to provide the Union with an instrument with which to plan the missions that are assigned to it. A planning team will be created for this purpose which we hope will begin to work at the beginning of next year. Meetings of Military Chiefs of Staff have been set and have already begun to take place in which the instruments of operation are being studied. Finally, military units will be made available to the WEU, and the Institute of the WEU will become the European Defense and Security Academy. In the third place, in order to consolidate this new conceptualization and organization of the WEU, it has been decided to transfer the headquarters of the Council and the Secretariat to Brussels. The Spanish Government feels that this decision, which will bring together the organs of both the Community and the Alliance, should be implemented as soon as possible. In the fourth place, the date of 1996 is established as the point in time at which a review of these provisions should be initiated in both the WEU and in the Political Union, and an evaluation should be done on the experience acquired taking into account the importance of 1998 as regards the effectiveness of the Treaty of Brussels. In the fifth place, in the second declaration adjunct to the Treaty, the question of the enlargement of the WEU is addressed, keeping in mind the Union's desire to converge with the political union, strengthen ties and reenforce the European pilar of the Alliance.
>
> (...)" (DSS-C,IV Leg.,n.142,p.3).

XIII. EUROPEAN COMMUNITIES

1. Enlargement

In his intervention before a plenary session of the *Congreso de los Diputados,* the President of Spain, Mr. González Márquez, reported on the European

Council meeting in Lisbon held on the 27 and 28 of June 1992, and he explained the conclusions that were reached on the possibility of enlarging the European Community and Spain's position on this matter:

"The European Council studied the Commission's report on the possibility of enlarging the Community and came to one basic conclusion... the basic conclusion was the Community's willingness to initiate negotiations with some countries that are very close to the Community from an economic and political point of view, and to initiate these conversations as soon as the Maastricht Treaties have been ratified and an agreement has been reached on financial issues. Thus we leave behind the artificial debate on expansion versus deepening of the Community, although this topic will surely come up again. It has been made quite clear that new countries will be acceding to the European Union and not to the former European Community. Therefore, they will have to accept the Community in its entirety, once, I repeat, the Treaty of the European Union has been ratified by all of the member States. So, there does exist an agreement to initiate official negotiations under these conditions. Which countries will be involved? Those that have petitioned the Community and are members of the European Free Trade Association. It is even possible that in the next few months some other country will become a candidate for accession.

(...)

The Spanish delegation suggested that countries that want to accede to the Community would have to meet a series of requirements — the main one being the acceptance of the Community in its entirety — and that there could not be any exceptions made, that there could not be any 'opting out', as there has been by some of the member countries. (New members) would have to accept all Community values as regards both economic and monetary unity and political unity. There will be some internal problems, which have been mentioned, but it is not the Community's responsibility to resolve problems such as the neutrality statutes which these countries feel have already been overcome in the historical moment which Europe is currently experiencing. It was clear that these were the requirements that had to be met by the acceding countries, and that the Community had some of its own to comply with. The member countries had to comply with their commitment to ratify the new treaties, a *sine qua non* requirement for being able to carry out the negotiations on a true legal base, on something that would give the acceding countries some limits to or some definition of what the Community is. Furthermore, the member countries would have to fulfill another basic, instrumental requirement, especially as regards some of the countries that we have defended to the very end, which is the decision on

the financial package, that is, the Community's pluriannual financial perspectives.

There is another group of countries which I am naturally going to speak about. These countries are seeking accession and the Community must continue to evaluate whether or not conditions are evolving, sometimes not in a strictly socioeconomic sense, but as regards political circumstances...

Therefore, as regards the debate on expansion, this gives you an idea as regards countries — there are approximately four of them — that meet the conditions to begin negotiations but for which a decision cannot yet be made, those countries that have petitioned for accession but do not yet meet the conditions that the Community requires to be able to give them a response on acccssion, countries that clearly aspire to becoming part of the Community and say so publicly, but on which we will undoubtedly have to wait a while, and those with which we have decided to create a special relation, from an economic and political point of view, during the waiting and adaption period.

(...)" (DSC-P,IV Leg.,n.204,pp.10023—10024).

2. Institutions

In his address to a plenary session of the *Congreso de los Diputados,* the President, Mr. González Márquez, reported on the European Council meeting in Birmingham and made reference to the problems that can arise related to the co-decision procedure introduced in the Treaty of the European Union:

"... the twelve Member States, the twelve Governments, can find themselves involved in a contradiction that we are not currently in a position to resolve. This contradiction arises from the fact that the twelve member States are, undeniably, legitimate representatives of the representative democracies of the twelve member countries, and therefore they are representatives of these countries and it is possible that the majorities they represent, expressed in the Council of Europe debates, are altered by a parliamentary majority in the European Parliament, which does not correspond exactly to the domestic political structure of the twelve member countries. I believe I am being sufficiently clear in what I am saying. The will of the twelve member countries, which have a certain type of political-parliamentary structure, could be affected by the majority that is reached at a specific point in time on a given matter by the European Parliament.

This brings up a question that is extraordinarily difficult to answer. Up until now, the answer has been that the Council of Europe attempts to reach an agreement, a co-decision with the European Parliament, and when there is a discrepancy, the European Council can go ahead with its decision, even though there is a majority against it. The problem is the conflict between what has more weight in the construction of Europe, the political-representative structure of the member countries, or the political-representative structure of the European Parliament. This problem is not resolved by the Treaty nor will the process of European construction resolve it in the future. The best thing to do would be to negotiate in order to find a solution that is agreeable to everyone. But if it is impossible to agree on the procedures for co-decision, then the Council of Europe will inevitably have the final word.

Spanish Diplomatic and Parliamentary Practice(...)" (DSC-P,IV Leg.,n.220,p.10843).

As regards the seat of Community institutions and agencies, the Spanish Government expressed the following to the Senate:

"A decision is pending on the final adjudication of the location of institutional seats as well as those of other existing Community agencies and organizations or those that will be created. On this topic the Spanish Government has made it very clear that it would like the seat of one of these organizations or agencies to be located in Spain. It has presented a formal candidacy for the European Environmental Agency or the Community Trademark Office to be located in Madrid. Both applications were presented with the proper information about the site, and support for and defence of the candidacy in the appropriate fora.

(...)" (BOCG-Senado.I,IV Leg.,n.339,p.31).

The Secretary of State for the European Community, Mr. Westendorp y Cabeza, also reported on the most important questions related to the European Economic Community in his address to the Joint Committee on the European Community, and made reference to the seats that would be of interest to Spain:

"The Trademark Office is one of our priorities as regards its location in Spain. In terms of the large non-institutional agencies, we have priority as regards the creation of the Environmental Affairs Office, the Trademark Office and the Medications Agency. We are continuing to pursue our goals and we are willing to negotiate for any of these in order to obtain the

conditions that most favor us. Each of the three is of equal interest for different reasons.

(...)" (DSCG-C-IV Leg.,n.60,p.1637).

3. Internal Market

a) Free Movement of Goods

Note: See III.2. Community Law and Municipal Law.

Article 8A of the EEC Treaty, introduced by the Single European Act, provides for the establishment of an internal market which implies a space without internal borders in which the free movement of goods, people, services and capital is guaranteed in accordance with the provisions of the Treaty.

In order to eliminate internal borders between the member States, the method used was the establishment of a White Paper on measures for the internal market.

In response to a question on the barriers and residual controls that still exist in Spain as regards the free movement of goods and services which must be eliminated in order to achieve the internal market, the Secretary of State for the European Community, Mr. Westendorp y Cabeza, summed up the situation in his address before the Joint Committee on the European Community in the following way:

> "... there were 282 measures in the White Paper that had to be adopted. Well, at this point 254 have been adopted or do not need to be adopted, and that leaves 28 legislative measures pending adoption... By the end of this year, of those that must be adopted of these 28, approximately five directives will be approved and that will leave 15 still to be done, so to speak... As regards border obstacles that must still be eliminated, some 234 types of control have been identified throughout the Community according to a list published by the Commission on November 6. Of these controls, Spain only had 31 at that time, which ranked us in more or less fifth position in relation to other Community countries, behind Denmark, which always sets a good example to follow as regards complying with the rules of the Single Act, and also behind the Low Countries, Belgium and Greece. Now, of these 31, there are two lists: one listing those that we are going to eliminate before the end of this year, and the other listing those that we cannot yet eliminate because measures must be adopted. Of those to be eliminated before the end of the year, we are going to put quite a few on list

B, that is, those that will be eliminated as soon as appropriate measures are adopted. By doing this, Spain will basically move towards the top of the list, if not be in first place, as regards the elimination of controls.

There are still a few controls that we cannot eliminate either because we do not have the appropriate measures to do so or because they are the fruit of the Treaty of Accession: for example, the agricultural controls derived from a Treaty of Accession that has a transitory process of more than seven years...

There are also some controls on precious metals and the exploitation of strategic products. As regards national treasures that are of historical, artistic or archeological value, in other words, cultural patrimony, these are governed by the directive and rule that we passed in the last Council on the Internal Market and will enter into force sometime next year.

These are the controls that in principle, and together with the control on bananas — as I said before — will still exist in our country.

(...)" (DSCG-C,IV Leg.,n.60,p.1638).

b) Freedom of Movement of Persons. Schengen

Note: See II.1.*b) Conclusion and Entry into Force; III.3.a) Gibraltar.*

The problem of the free movement of persons does still exist because on the one hand, the member States have interpreted article 8A of the EC Treaty in many different ways, and on the other, because this is a matter that affects competencies that have not been granted to the European Community. Mr. Westendorp y Cabeza made reference to this in the following way:

"The majority of countries, including Spain, interpret article 8.A in one way, and the United Kingdom, Denmark and Ireland interpret it in another. These last countries interpret the article to mean that as regards persons, for example, only Community citizens are affected. There are no controls, but controls do still exist even in intra-Community traffic, for people who are not Community nationals... They also interpret the article to mean that border controls can still be exercised, just as they are at any other point of national territory...

... The problem still revolves around the free movement of people. This is not a purely Community issue, and therefore there are no clearly established Community legal foundations for its development given that this affects drugs, the fight against terrorism and criminality, etc. which are still the competence of the member States. Therefore these issues have to be resolved by means of intergovernmental conventions such as the

convention on border crossings for example, which the two ministers referred to yesterday.

This is why the Schengen group exists. The idea is for Schengen to stimulate compliance with the objectives of the European Union, especially since these different interpretations do exist among the member States. Spain took over the presidency during this last crucial semester well aware of the importance that the Schengen group and its activities have in serving as a stimulus for the realization of the objectives of the Treaty of Rome...

(...)" (DSCG-Comisiones Mixtas,IV Leg.,n.49,p.1327).

As regards the Convention on the Exterior Borders of the European Community, the Minister of Foreign Affairs, Mr. Solana Madariaga, explained the Government's position in his address before the Congressional Committee on Foreign Affairs, and made reference to the problem that exists as regards Gibraltar:

"We belong to the group of countries that has decided to go a step further as regards the free movement of people by means of the Schengen agreements.

At this time I would like to mention the blockage of the Convention on the Community's Exterior Borders. Once again we are faced with the long-standing problem of Gibraltar... Spain wishes to reach an agreement with the United Kingdom that can be signed and put into effect before the end of the year, and if possible, by the Twelve. The Government will stand firm on its position to not accept any solution that can in any way undermine our stance on the dispute over Gibraltar and our legitimate intention of recovering sovereignty over the colony...

We hope the Gibraltar problem does not turn out to be an unresolvable obstacle to the suppression of the Community's internal borders, but we, of course, are not willing to put aside the negotiating process that was begun with the 1984 Brussels Declaration...

(...)

Spain has tenaciously, rigorously and seriously maintained that the Convention on Exterior Borders cannot be accepted until the dispute over Gibraltar is resolved...

(...)

Therefore, we maintain a firm position on the Convention on Borders, which is one of the most important cards that Spain has ever had in its hand as regards Gibraltar, because the convention affects not only Spain, but also all other Community countries...

(...)" (DSC-C,IV Leg.,n.509,pp.14951—14952 and 14968).

4. Economic and Social Cohesion

In his address before the Joint Committee on the European Community, the Minister of Foreign Affairs, Mr. Solana Madariaga, reported on the consequences of and impact that the Treaty of Maastricht would have in the area of the competencies of the Ministry, and he defended cohesion as a shaping principle of the Treaty of the European Union:

> "One of the achievements of Maastricht is that it recognizes cohesion as a principle that shapes the entire Treaty. In some cases, the application of this principle is based on structural foundations, but not only on these. A consideration of the principle of cohesion in other Community policies does not necessarily mean a transfer of resources, but rather something much more important, much deeper which is a balanced definition of the objectives of these sectorial policies. There are many examples and I am going to mention just one. Perhaps one of the clearest examples of what this policy of technological research and development means is the policy concerning industrial competition.
>
> The application of the principle of cohesion to the field of scientific research and technological development means that Community proposals as a whole must contemplate not only initiatives related to applied research in specific fields related to our economies, or to scientific research, but also something very important which is the correct treatment of basic precompetitive research that includes fields in which research in less productive countries, those with lower per capita levels of prosperity, are sometimes at the forefront of Community research. This is the case of Spain in many areas of basic research.
>
> (...)
>
> But the principle of cohesion that is included in the Treaty of Maastricht is, as I said earlier, a broader concept that is not limited to this budgetary debate. It is one which imbues the model of political union that is now being submitted to parliamentary ratification with something as noble as a sense of solidarity, which is after all, the way in which this word might be translated in our country.
>
> (...)" (DSC-Comisiones Mixtas,IV Leg.,n.49,pp.1327—1328).

However, in his address before a plenary session of the Congress to report on the European Council meeting held in Lisbon, the President of Spain, Mr. González Márquez, warned that:

> "Cohesion must be one of the key elements of Community construction,

but our country should aspire to being a country that quickly becomes one of the net contributors and not one that receives a net transfer from the Community, because this will show that we have passed the threshold of relative prosperity or per capita income that distinguishes countries in the Community that contribute from countries that receive.

(...)" (DSC-P,IV Leg.,n.204,p.).

5. Subsidiarity

In his address before the Joint Committee on the European Communities to explain the contents and conclusions of the General Affairs meeting of Community Ministers of Foreign Affairs held in Brussels on 9 November 1992, the Minister of Foreign Affairs, Mr. Solana Madariaga, explained the Spanish Government's position on the principle of subsidiarity:

"The principle of subsidiarity and its development is found in article 3B of the Treaty, which as you know, is made up of three paragraphs.

From our point of view, as regards the principle of subsidiarity we should only make reference to section 2 of article 3B. Sections 1 and 3 of article 3B are not strictly related to the development of the principle of subsidiarity since they speak about other things in addition to this principle such as hierarchies and rules and also the proportionality of actions. But really the problem we should focus on, and the section Spain thinks the document of subsidiarity should be centered on, is article 3B, section 2, which clearly defines which questions subsidiarity should be applied to. I think it is very important to point this out because the development of the principle of subsidiarity should be centered on those questions and those competencies that are shared by the member States and the Commission. We believe that it makes no sense to try to apply the principle of subsidiarity to the competencies that are transferred or 'community-ized' because these are already clearly defined from the point of view of the Treaty of the Union which it corresponds to. The principle of subsidiarity (that is, the principle that defines who should do what) should only be applied to those competencies that are shared by the member States and the Commission.

Therefore, the Spanish position in this case is clear. First, the principle of subsidiarity should not assign itself competencies. The development of the principle of subsidiarity should not be a document that assigns competencies. Competencies are already assigned in the Treaty; we know which competencies correspond to the States and which ones correspond to the Community... and we know which ones are shared by the States and the

Commission... Therefore, our idea is that the principle of subsidiarity should be strictly focused as regards this issue.

I must also tell you in all frankness that there are other countries that feel that the principle of subsidiarity is much broader and that it should be applied not only to shared competencies, but to all competencies. We do not believe that this is the philosophy or the spirit of article 3B, section 2 of the Treaty, and therefore we are defending the position which I just explained to you.

We have the impression that what other governments or other countries are trying to do by using the principle of subsidiarity is stop the process of transferring competencies to the Community and move towards a renationalization of the policies, or towards a greater intergovernmentalization of the policies which goes beyond what is contemplated in the Treaty, even as regards those policies that are already within the competence of the Community.

Second question. We believe that the principle of subsidiarity should not include proportionality of actions. It is true that the proportionality of actions is contained in article 3B, section 3, but we believe that this is not a development of the principle of subsidiarity but rather something that says that all actions should have a proportionality that does not exceed the level that is attributed to them in the Treaty. We do not, however, believe that the development of the principle of subsidiarity should only be developed in article 3B, paragraph 2 of the Treaty of the Union, as I said earlier.

Spain also believes that the principle of subsidiarity should be dynamic in nature. Of course the Community is going to continue to progress... and therefore there will be questions that are currently at a different level of transfer than we hope they will be in the coming years and in future situations. Therefore, we would also like the principle of subsidiarity to be flexible, to allow for dynamic progress over time because many questions that today seem clearly at one level or another, tomorrow or the next day... will be transferred to the Community and thus applicable to the principle of subsidiarity or shared competencies...

(...)" (DSC-C,IV Leg.,n.61,pp.1646—1647).

The President of Spain, Mr. González Márquez, also made reference to this principle during the debate on the proposed organic law by which Spain's ratification of the EU Treaty would be authorized:

"I believe that the 'judicialization' of the control of the principle of subsidiarity must be avoided at all costs, because it will be political, not legal criteria that allow us to progress as regards the application of the principle

of subsidiarity. Sometimes the reason will simply be related to opportunity. When we talk about environmental policy, there are certain aspects of this policy that have a transnational or supranational dimension and should therefore be dealt with in that sphere. But there are some aspects of environmental policy that affect the environment that are the responsibility of cities in Spain and it would be quite difficult for Brussels to dictate what each and every city should do. This type of reglamentation should be avoided. But another danger must be avoided which is trying to make the Commission the scapegoat for responsibilities that really pertain to all of the governments that make up the Community. We must avoid this because the uncontrolled non-transfer of some policies can bring about a loss of identity and 'intergovernmentalization' which as a general phenomenon, does not seem to me to favor the European Political Union.

(...)" (DSC-P,IV Leg.,n.216,p.10633).

6. Political Union

Note: See III.2. Community Law and Municipal Law.

In his address before a plenary session of Congress to report on the European Council meeting in Lisbon, the President of Spain, Mr. González Márquez, indicated Spain's support for the European Union:

"The Spanish Government is going to continue to support the European Union and will participate fully in it because we understand that this is the project that most favors our country. Of course a simple look around us clearly shows that this is the project that provides the most stability and security and at the least expense. We must be consequent with our own acts, and if we want a European Union, we must make sure that it has at its disposal all the resources it needs to function. This means an exercise in solidarity in many areas, not only internal solidarity with the Community, but also solidarity in our relations outside of the Community by all of the member countries.

The Government wants Spain to be in the European Union because it is the most appropriate framework in which to ensure a future of well-being for our citizens...

When the Constitutional Court issues its order, the Government will propose immediate ratification of the Treaty in both chambers...

(...)" (DSC-P,IV Leg.,n.204,p.10026).

On this same subject, the Minister of Foreign Affairs, Mr. Solana Madariaga, made a pronouncement on the importance of the Treaty of the Union in his address to the Joint Committee on the European Community:

> "What does the Treaty of Maastricht essentially mean? In my judgment the most important aspect of the Treaty of the Union is that for the first time since the signing of the treaties of Paris and Rome, the fact that the project for European construction has a political objective has been accepted, and explicitly so. This objective is to create a European union. What are the most important objectives of this European union? First of all, the Union intends to create a totally integrated economic zone which will culminate in economic and monetary union. Second, the Union will have an identity outside of the Union, and will have a common foreign and security policy which will eventually include a common defense. In the third place, the Union will legitimize the concept of European citizenship and give body from this point forward to this sphere of political participation with specific rights such as the right to vote and to stand for office in municipal and European Parliament elections for all Community citizens based merely on that citizenship without any restrictions imposed by the States of origin. Finally, the Treaty recognizes the goal of economic and social cohesion as one of the principles that shapes the construction of the union. What was introduced in the Single Act as a sectorial concept, has now been rightly elevated to the rank of a general principle.
>
> Specific institutional reforms that were agreed to in Maastricht to facilitate progress towards these goals of political union are all meant to provide three things to the European Union system: more democracy, more efficiency and more solidarity, in other words, more cohesion.
>
> (...)" (DSC-Comisiones Mixtas,IV Leg,n.48,p.1277).

In his intervention before a plenary session of the *Congreso de los Diputados,* the President of Spain, Mr. González Márquez, reported on the European Council meeting in Lisbon, and made reference to foreign policy stating that one of the most hotly debated topics of the meeting was the situation of the former Yugoslavia:

> "As regards foreign policy, undoubtedly the most important, most intense and most frustrating debate we had was on the situation in the former Yugoslavia. On the one hand, the Community's current inability to intervene decisively in the evolution of international events, such as those taking place in Yugoslavia, which affect us as Europeans very directly was brought to light.

For this reason, the Council decided to support the United Nations Security Council in adopting all of the measures needed to reopen the Sarajevo airport and deliver humanitarian aid...

(...)" (DSC-P,IV Leg.,n.204,p.).

7. External Relations

Note: See XI.2.*b) Maghreb.*

As regards our relations with the Maghreb, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, informed the Senate Committee on Foreign Affairs of the Spanish proposals for European-Maghrebi cooperation.

"... The Spanish position that we have defended during the last four or five months in the Community is that we must elaborate a new concept of 'neighborhood' which would mean, as regards the Maghreb, that we cannot talk about a stable European political space if we ignore the unstable reality of our entire southern border, which is a border that is not only vulnerable for Spain, but also for Europe.

Therefore it is an interdependent border in the sense that we cannot ignore anything that happens or any of the demographic, social or cultural imbalances that exist.

(...)

... all of [the Maghreb countries] have a high unemployment rate, extremely high, unemployment reaching 60%. Illiteracy is also very high. There exists a galloping demography which they do not know how to contain, and a very disordered kind of growth.

(...)

The consequence of all of this is that recurring social crises are taking place — bread in Tunis, semolina in Algiers, Fez, etc. — over and over again. Secondly, and this is more recent, there is a growing fundamentalism... And then there is a third phenomenon which is also a consequence of all of the above, and this is the migrations that are taking place towards the European Community. As can be expected, this is producing many effects, even some political ones, such as what we see by the number of votes for certain political parties in France and Germany, although not yet in Italy, because in the European Community we calculate that there are approximately five and a half million Maghrebi citizens, and that figure is growing quickly.

(...)

I believe that what the Community is doing is clearly not enough, and this is the complaint we have presented. This does not mean that [the Community] will change its course of action based on our concerns. If we compare the aid given by the Community to the countries of central and eastern Europe to that given to the Maghreb, we find some rather depressing results. We have given 29,700 mecus to Eastern European countries, which is a considerable amount... This is what central and eastern Europe and the Soviet Union are costing us. The cost of all of this is very high for every one... The figure for the Mediterranean, for all of the Mediterranean, is 2,000 ecus; 2,000 ecus versus 29,000 mecus. And according to our calculations, Maghreb receives around 1,000 ecus; 1,000 ecus as compared to 29,000 mecus for the countries of Eastern Europe.

This shows us that the concern Europe has for its two borders is quite disparate, although this is really nothing new...

(...)" (DSS.C,IV Leg.,n.150,pp.2—3).

In his address before the Senate Committee on Foreign Affairs, Mr. Solana Madariaga made reference to the Lisbon Declaration of the European Council on the relations between Europe and the Maghreb:

"Spain's recent actions in this area to sensitize the Community countries has resulted in the adoption last June 27 of the solemn Lisbon Declaration of the Council of Europe on the relations between Europe and the Maghreb, in the creation of which, as I said just a moment ago, Spain played a very relevant role. The comuniqué emphasizes a new concept of cooperation, a concept based on what could be called a partnership which basically should be understood as a shared responsibility between the two parts. It also offers the idea of establishing the goal of the gradual creation of a free trade zone which would have all of the necessary guarantees at some time in the future, and then the development of a series of especially important political issues such as the definition of some principles of coexistencc based on International Law, the advance and implementation of participatory political systems, all of the set of values that sooner or later must exist on both sides of the Mediterranean which we all, in some sense, share.

(...)

... we are trying to sensitize the Community to the fact that it not only has a border with the countries of central and eastern Europe but also has a very important, sensitive and uniquely strategic border in southern Europe. The joint effort made by Spain and France which was initiated a short while back, covers four mail areas: politics, culture, economics and social issues...

(...)" (DSS-C,IV Leg.,n.206,pp.6—7).

8. Common Foreign and Security Policy

In his address before the Joint Committee on the European Communities to report on the consequences and impact that the Treaty of Maastricht will have in the sphere of the Ministry's competencies, the Minister of Foreign Affairs, Mr. Solana Madariaga, made reference to Common Foreign and Security Policy:

"... common foreign and security policy was another of the issues that was dealt with in the European Council meeting in Lisbon. This is an essential and fundamental ingredient of the European Union. If we were to reduce the Union to its very essence, what we would have is the following: more integration and more solidarity within the Community and a greater capacity for the Community to act outside of itself. The Common Foreign and Security Policy (CFSP), therefore, responds to a series of needs that have always been and continue to be quite urgent. The Community needed to assert its identity on the international scene, strengthen its presence in the world and better defend its interests.

As for Spain, I believe that any kind of progress made in articulating the Community's foreign policy is beneficial for all of us. It assures us a place in the areas in which Spain has traditionally not had a very large presence — for example central or eastern Europe — it greatly increases our presence in these areas and strengthens our ability to act in other areas around the world in which we have had a privileged presence such as the Maghreb.

... I think that we could all agree that what we currently have in place in terms of the Community's foreign policy, what we loosely call European political cooperation, is proving to be insufficient for several reasons...

In the first place because it is not flexible or efficient enough to articulate responses in a rapidly changing Europe, in a rapidly changing world...

In the second place, because as it is a strictly intergovernmental scheme, it is not in tune with the rhythms of community integration. In fact, a type of asymmetry was emerging with what in our opinion were very perverse effects, between the degree of economic integration and the degree of political integration. The result is that this process was a bit unbalanced, a bit unequal.

In the third place, because it almost totally excludes the issue of

Community security and defense.

Therefore, in our judgement, the CFSP is a step, albeit a modest one, in the right direction. It represents a transaction hetween the countries that we could call intergovernmentalists and the countries that we could call more federalist. Its greatest virtue is that it establishes a potential framework and it begins a process that can lead to much more if we so desire. The fundamental variable will be the will of all of the parties involved...

In order to be able to put the CFSP into practice, from the time the Treaty of the Union entered into force, prior orientation was needed. This is stated in the report that was commissioned in Maastricht and approved in Lisbon. Having defined exactly what the CFSP was in the Treaty, we must now identify how, in what ways and in what areas it is going to be applied.

I would like to point out the four most important points of the CFSP. First of all, the CFSP hopes to provide a strategy for the foreign policy of the Union. The goal is for the Community's foreign policy to become more active in the future and therefore less reactive, and for it to be able to predict and prevent certain problems by understanding their causes instead of only their effects.

Second, the CFSP reconfirms the concept of the totality of an issue. The CFSP is a more advanced mechanism, one of common action, that will begin to be applied in a series of areas but which will be gradually extended, as the need arises, to all areas of foreign and community policy.

Third, it develops the provisions on the security and defense of the Union. The Union can gradually put into practice a common security policy, beginning with four fundamental areas. First, the CESCE; second, disarmament, and measures to build confidence in Europe; third, nuclear non-proliferation; and fourth, the economic aspects of security...

In the fourth place, the CFSP defines the Union's foreign priorities based on an unquestionable reality: geographic proximity. Four large areas have been identified: two in Europe — Central Europe and Eastern Europe — and two in the Mediterranean — the Maghreb and the Middle East.

(...)" (DSCG-Comisiones Mixtas,IV Leg.,n.48,pp.1282—1283).

XIV. RESPONSIBILITY

1. Responsibility of Individuals

Note: See SYIL, vol. I (1991), p.91; XVII.1. Humanitarian Law.

As regards the violations of Humanitarian Law in the former Yugoslavia, the twelve member States of the European Community, within the framework of European Political Cooperation, stated the following on 5 October 1992:

> "The increasing evidence of atrocities, including mass killings and ethnic cleansing, principally by Serbian groups, must be collected systematically and investigated. The Community and its member States support the action in hand in the United Nations to establish a mechanism for the collection of data and a commission of experts to assist the Secretary-General in the analysis of the evidence. The perpetrators of mass killings and other grave breaches of international humanitarian law will be held individually responsible for their actions and the Community and its member States will cooperate with the United Nations and the relevant bodies in ensuring that justice is done.
>
> (...)".

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-Fourth Session, and explained Spain's position in favor of the creation of an International Criminal Court within the framework of the work of the ILC on the "Draft Code of Crimes Against the Peace and Security of Mankind":

> "My delegation, Mr. President, firmly supports the creation of an International Criminal Court and not only because a court of this nature would allow for compensation for international crimes, but also because its existence could produce noteworthy dissuasive effects. What is happening at the present time in some areas of the world proves that neither the principle of conferring universal criminal jurisdiction on the courts of all States, nor the existing mechanisms for international judicial cooperation provide an adequate solution to the problem of prosecuting persons accused of international crimes. The International Community cannot be a passive onlooker in the light of such events.
>
> Of course, we are well aware of the political and technical difficulties that the implementation of this international court would entail, but we believe that we can overcome the political difficulties with political will, and the technical difficulties with this will and a balanced use of imagination and prudent realism. The type of qualitative jump in International Relations and International Law that the creation of an International Criminal Court implies requires a great dose of prudence, of flexibility and of gradualism. We must take small but steady steps. This is my delegation's basic approach

to this topic. And we are glad to see that this is also the general approach adopted by the Commission's Working Group. This approach is a good starting point, and therefore we support is completely.

We understand from the Group's report (paragraph 437) that the international criminal court must be created by a treaty concluded under the auspices of the United Nations. In fact, it is important that the new court benefit from the universal representativeness which this Organization enjoys. And in this sense, Mr. President, I would like to point out one problem, which is the problem of determining the correct number of ratifications, or when appropriate, of accessions required for the entry into force of the statute. In our opinion, an excessively low number would detract from the court's representativeness, but an excessively high number could unduly delay the commencement of the Court's functions. The solution should therefore be a balanced one.

We also agree with the Working Group's recommendation (paragraph 396—v) that, at least at the outset, the Court should not be a standing, full-time body. For the time being, its statute should only create a mechanism for the administration of universal criminal justice that can be put to use whenever necessary. This is an example of the gradualism that we mentioned earlier. Of course, this would not have any effect whatsoever on the possibility that in the light of experience, consideration could be given to setting up a permanent structure.

Based on this same concept of gradualism, the Working Group also proposes that at least at the outset, the Court's jurisdiction should not be obligatory. That is, it would not suffice for a State to be party to the Statute for it to be understood that that State accepts the Court's jurisdiction, but rather such an acceptance would only be the result of an independent, *ad hoc* act. We agree with this idea, and we would like to remind every one that this system is well-known in practice (for example, and this is not the only case, the provisions of the 1950 European Convention on Human Rights on the competence of the Commission and the Court).

Another example of prudence and gradualism is the Working Group's recommendation that, at least at the outset, the Court only exercise jurisdiction over individuals, not over States. This idea, which my delegation approves of, has already been accepted by the International Law Commission.

The Working Group has also addressed the question of the objective competence of the Court, that is, the determination of which international crimes would be heard by this Court. My delegation was once again in agreement with the answer that was given since it satisfies the requirements of the principle of legality in criminal matters (*nullum crimen sine previa*

lege). The crimes dealt with should be international crimes specified in existing international treaties, including the Draft Code of Crimes Against the Peace and Security of Mankind once it is passed and enters into force (paragraph 449 of the Report).

(...)".

2. Injnrious Consequences Arising from Acts not Prohibited by International Law

Note: See SYIL, vol. 1 (1991), pp.91—93; X. Environment.

Mr. Pastor Ridruejo, Spain's representative to the Sixth Commission of the United Nations General Assembly, stated in his comments on the ILC Report on the Work of its 44th Session in relation to the codification process being carried out by the ILC on the State's international responsibility for acts not prohibited by International Law, that:

"My delegation has always been aware of the great complexity of the conceptual framework of this subject; a complexity that has been the source of difficulties, and that, in the final analysis, has been the cause of the slow pace of the Commission's work. In order to speed up this pace, we think it would be good for the Commission to understand (paragraph 291 of the Report) that it has an important function to carry out in the area of environmental protection. In fact, it is in this area that States can be required to provide compensation for certain types of behaviors, although here the most important question is if States are responsible for obligations created by primary rules of International Law. To the extent that they violate ohligations of this type, the resulting responsibility pertains to the subject of Chapter III of the Report which I already commented upon in the first part of my address. In any case, the Commission should be very careful, as regards the subject of chapter IV, to involve itself only in the requirement to provide compensation, in other words, in the secondary rules. The primary rules on environmental protection could only be dealt with, as regards common spaces, if the Sixth Commission decided at some point to charge the International Law Commission with a study of one of the subjects that is found in the long-term program of the 1991 Report, to wit: 'Legal aspects of environmental protection in areas not subject to national jurisdiction'. The codification and progressive development of international rules on environmental protection is also a very complex subject, but my delegation would not be opposed, in the long run, to this being one of the

future topics for the International Law Commission.
(...)".

3. Reprisals or Countermeasures

Note: See II.1. Codification and Progressive Development of International Law; XVI.1. Unilateral Acts.

Mr. Pastor Ridruejo, Spain's representative to the Sixth Commission of the United Nations General Assembly, commented on the ILC Report on its Work during its 44th session, and the process of codification that the ILC is carrying out as regards the international responsibility of the State, and more specifically, on the topic of countermeasures:

> "The first important question regarding chapter III is to determine whether or not the topic of countermeasures falls within the legal regime governing the international responsibility of States and therefore, in the draft articles that we are concerned with here. Throughout the debate that took place in the Commission, several opinions have been expressed and different arguments have been offered in favor of exclusion or inclusion. One group, albeit a minority, was of the opinion that regulation of the countermeasures would not really protect the interests and positions of all of the States, particularly the weakest and least powerful. However, the Special Rapporteur and many other members understood that the Commission cannot ignore the realities of international life and that regulation of the countermeasures should be established in the draft articles. My delegation firmly agrees with this last position: the Commission should address the issue of countermeasures in the draft articles on the international responsibility of States.
>
> Experience shows that in a fairly decentralized international community, the exercise of countermeasures is a tributary of power among the States. A powerful and developed country is going to be in better condition to adopt countermeasures than a smaller, less-developed one. This is inevitable. However, we must not forget that countermeasures can also be applied between States, large or small, of comparable might.
>
> It is also true on the other hand, and many examples could be given, that countermeasures can give rise to abuses and a dangerous escalation of actions and reactions, which certainly don't help solve disputes, but rather aggravate them.
>
> In spite of this, and for the reasons that we will outline below, my

delegation feels that countermeasures must be regulated and this should be done in the draft articles we are commenting on. The first reason is that these countermeasures belong to the sphere of international sociology. They have been practiced throughout history, and given the international community's structural deficiencies, they will continue to be practiced. Given these conditions, the establishment of a legal regime for the countermeasures will help us avoid, or at least limit, the abuses and disadvantages that have been pointed out. My delegation believes that this legal vacuum favors the more powerful States and fosters abuse. On the other hand, the Law protects the weakest. In any case, international jurisprudence has already had the opportunity to establish general foundations for a general regime on countermeasures which are considered licit under certain conditions. The next step must be to complete and define this regime through codification and the progressive development of International Law.

Should the draft articles also address the regulation of retorsion? We know that this question provoked a lively debate in the International Law Commission (paragraph 150 of their report). My delegation agrees with the Special Rapporteur's position that measures of retorsion should not be included in the draft articles we are discussing. Retorsion, by its very essence, implies licit behaviors, although not always friendly ones from a political point of view, and its unleashing enters into the sphere of the sovereign powers that international law recognizes as belonging to the States. Conceptually, the distinction between countermeasures and retorsion is quite clear. It is possible, however, that in some specific cases, the qualification of a State action as a countermeasure or retorsion could be disputed, for example, in the case of a discussion of the effectiveness, content or scope of an international obligation. But in these cases we are really faced with a problem of the primary rules of international law and not of the regime of international responsibility. From this we can therefore logically conclude that the Commission should not deal with the issue of retorsion in the draft articles at hand.

Mr. President,

It would be premature, in our opinion, to begin a serious debate at this time on articles 11—14 proposed by the Special Rapporteur in his most recent reports on the conditions for the legality of the countermeasures. My delegation only wishes to make a few preliminary comments on these articles.

We do agree with the general orientation of these articles. However, we would like to say that the wording of article 14 on prohibited countermeasures could be improved. In specific terms, the wording of part

iii of section b) of paragraph 1 which reads 'any other behavior that is contrary to an imperative rule of General International Law' could lead to an incorrect interpretation of the nature of the rule found in section a) of this same paragraph: prohibition of the use and threat of use of force. It is generally recognized that this rule is imperative in nature, and article 14 should be reworded so that this imperative nature could not be questioned by means of an *a contrario sensu* interpretation. Exactly the same could be said about part i of section b), which refers to any 'behaviour that is not in accordance with the rules of international law relating to the protection of basic human rights'. This is so because my delegation understands that the basic nucleus of these rules pertains to international *ius cogens*. So, to continue with this brief evaluation of article 14, my delegation would point out that the idea found in part ii of section b) of paragraph a — 'that causes serious harm to the normal functioning of bilateral or multilateral diplomacy' — while well focused, is extremely vague. More precise wording is needed.

Mr. President,

During the oral presentation of his report, the President of the International Law Commission, Professor Tomuschat, pointed out the usefulness of the comments made by the delegations on the topic of the relation between the draft articles on international responsibility and the United Nations Charter, keeping in mind the text of article 4 of the second part of the draft which has already been provisionally approved by the Commission. This article submits the legal consequences of an illicit international act to the provisions and procedures of the United Nations Charter on the maintenance of international peace and security. Does this mean that by exercising the functions assigned to it by Chapter VII of the Charter as regards maintaining international peace and security, the Security Council could impose conditions and settlement procedures on States as regards disputes or situations that are contemplated in chapter VI? This question is related to the topic of countermeasures, and the opinions of the Commission on this topic have already been expressed.

This is undoubtedly a very complex question and we would like to make a few preliminary comments on this subject. My delegation agrees with the Special Rapporteur and other Commission members (paragraph 264 of the report) that the obligatory nature of Security Council resolutions are limited to the scope of Chapter VII of the Charter (reestablishment of international peace and security), and that as regards conditions or settlement procedures for disputes, Chapter VI only authorizes the Council to make recommendations. In addition to this, Article 33 of the Charter confirms this point of view by condoning the principle of freedom to choose

the means with which to resolve disputes. In our opinion, a Security Council resolution cannot impose a specific means of settlement for a dispute nor the definitive core conditions for its resolution. We say definitive core conditions because article 40 of the Charter does authorize the Council to encourage the interested parties to comply with the provisional measures that it considers necessary and advisable in order to avoid a worsening of the situation that is threatening peace, a breach of the peace or an aggression. Therefore, in this type of consideration, the distinction between definitive and provisional measures is of utmost importance.

We would like to end our preliminary comments on this question by posing the following questions: Is it really necessary for the Commission to retain art. 4 of the second section? Don't the general provisions of article 103 of the Charter suffice given that the obligations found in these provisions prevail over those contracted by the member States in other international treaties?"

XV. PACIFIC SETTLEMENT OF DISPUTES

Note: See XI.2.*a) Ibero-America.*

1. Diplomatic Modes of Settlement

a) Good Offices, Mediation

In response to a parliamentary question, the Government reported on the role that Spain played in the negotiated settlement of the conflict in El Salvador:

"The Republic of El Salvador has been a source of constant conflict in Central America due to the endemic situation of social injustice that provoked and later prolonged a bloody civil war during the 80s, with more than eighty thousand victims.

The directives that we have followed in our foreign policy as regards all of the conflicts in Central America — and especially in El Salvador — have always promoted peace through negotiations and dialogue. In this sense, the efforts first made by Contadora, and then those of the Esquipulas Accords and finally those of the United Nations Secretary General were always encouraged and supported.

In keeping with this, strict neutrality was maintained. This put us in a

position of moral authority and prestige so we could serve as a mediator — always within the framework of the United Nations and with the full consent of the parties involved — which culminated in our contribution to the signing of the Peace Accord on 16 January 1992, in collaboration with the countries 'friendly' to the Secretary General of the United Nations.

The government of El Salvador, through its president, Mr. Cristiani, the Secretary General of the United Nations and the leaders of the FMLN have all thanked us publicly on several occasions for the role Spain played, which on many occasions they considered to be decisive to obtaining the peace accords.

(...)" (BOCG-Congreso.D,IV Leg.,n.345,pp.111—112).

2. The International Court of Justice

Note: See SYIL, vol. I (1991), pp.97—100.

Spain's permanent mission to the United Nations, through Note Verbale n. 442 dated 10 July 1992, in response to a Note from the Secretary General of the United Nations on 28 January 1992 (Ref. LA/COD/27) regarding the United Nations Decade of International Law, informed the Secretary General of Spain's position regarding the fostering of means and methods of pacific settlement of disputes between States, including recourse to the International Court of Justice and full respect for that Court:

"Spain supports recourse to pacific means for the solution of international disputes, having accepted both bilaterally and multilaterally numerous obligatory settlement procedures, especially those of a jurisdictional nature.

This commitment has been clearly seen during the first part of this Decade by Spain's acceptance of the mechanisms of peaceful settlement of disputes elaborated in La Valetta, within the framework of the Conference on Security and Cooperation in Europe.

In this universal sphere, we must point out Spain's acceptance in October of 1990, of the compulsory jurisdiction of the International Court of Justice, by means of its subscription to the empowering clause found in article 36 of section 2 of the Court's Statute.

Spain's adherence to the principle of peaceful settlement of disputes, and specifically the acceptance of recourse to the International Court of Justice, can be equally seen in the financial contribution given to the Fiduciary Fund created by the United Nations General Secretary to

facilitate access to the Court by countries with limited resources. The Spanish Government has contributed to this fund for two years now, and its contribution this year was double that of last year.

In keeping with its support of the principle of peaceful settlement of disputes, and specifically of the International Court of Justice, Spain feels that this should be an area of priority during this Decade. However, as the Secretary General of the United Nations pointed out in his recent report on Preventive Diplomacy, the Establishment of Peace and the Maintenance of Peace, if there still exist disputes that have not been resolved, it is not because techniques for peaceful settlement do not exist or do not suffice. The failure to resolve these disputes is in the first place, because the parties involved lack political will, and in the second place, because if a procedure involving an impartial third party is chosen, that party lacks the necessary authority.

The Spanish Government has been pointing out the need to achieve a greater degree of utilization of the International Court of Justice, and has favored greater interdependence between other United Nations organizations within a framework of coordinated actions for the resolution of international disputes. In this context, Spain supports an examination of the means and modes that would allow the Secretary General of the United Nations, in application of art. 96 (2) of the Charter, to have direct recourse to the Court for an advisory opinion on legal questions that arise within the sphere of its activities".

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Unilateral Acts

a) Retorsion

Note: See IV.1.*b) Domestic Jurisdiction; 3. Recognition of Governments.*

In response to a parliamentary question, the Government explained the measures it adopted against Peru due to President Fujimori's coup d'etat:

"Immediately after being informed of President Fujimori's institutional coup on the 6th of April, the Spanish Government issued a declaration in which it exprcssed our country's deep concern over the events that were taking place in Peru, and restated our firm conviction that no

matter how difficult the circumstances, the solution to any type of crisis should be based on the strict observance of the constitutional legality in force, the maintenance of a balance between democratic institutions, free play among political parties and a scrupulous respect for human rights and basic freedoms. A few days later, after assessing how events were developing, the Spanish Government decided to do the following:

— To suspend pending negotiations with Peru on a friendship and cooperation treaty and our participation in the Advisory Support Group for the solution of Peru's financial problems.

— To freeze governmental aid.

— To maintain humanitarian aid channeled through NGOs.

— To suspend all types of bilateral contacts or visits.

— To reduce to a minimum any contact with Peruvian authorities by our embassador in Lima, and to increase our relations with Máximo San Román, constitutional political parties, and social, civil and religious organizations in favor of reestablishing democracy and defending constitutional order.

These measures were made public and maintained by the Spanish Government until the Fujimori government, having accepted the stipulations set by the OAS, and after several meetings with the delegation appointed by this organization, agreed to call a Constitutional Assembly with the guarantees set by the OAS and with the participation of opposition political parties.

(...)" (BOCG-Senado.I,IV Leg.,n.351,pp.55—56).

2. Collective Measures. Regime of the European Community and its member States

Note: See SYIL, vol. I (1991), p.109.

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on Bosnia Hercegovina on 11 May 1992, weeks before the United Nations Security Council — through Resolution 757 dated 30 May 1992 — established the economic embargo against the former Yugoslavia (Serbia and Montenegro):

"The Community and its member States furthermore decided to:

— recall their ambassadors in Belgrade for consultations; — demand the suspension of the delegation of Yugoslavia at the CSCE from taking part in the proceedings for the time-being; this situation will be reviewed on

29 June;

— further pursue, should the situation remain unchanged, the increasing isolation of the Yugoslav delegation in international fora, bearing in mind, in particular, the impending OECD ministerial meeting;

— ask the Commission to study the modalities of possible economic sanctions.

(...)".

3. Collective Measures. Regime of the United Nations

a) Iraq

Note: See SYIL, vol. 1 (1991), pp.102—108.

The twelve member States of the European Community, within the framework of European Political Cooperation, made the following declaration on Iraq on 9 December 1992:

> "On 7 December, the Foreign Affairs Council approved a Council Regulation prohibiting the satisfying of Iraqi claims with regard to contracts and transactions whose performance was affected by United Nations Security Council Resolution 661 (1990) and related Resolutions.
>
> The Community and its member States note with concern Iraq's persistent failure to comply with its obligations under SCR 687 and other relevant Resolutions of the UN Security Council. The Community and its member States underline the importance of paragraph 29 of SCR 687 and agree that Iraq must comply in full with the provisions of operative paragraph 29 of SCR 687, whether by legislation, renouncing claims, returning bonds cancelled to their originators or otherwise releasing parties to contracts and transactions from obligations under them. The Community and its member States consider that, in deciding whether to reduce or lift measures taken against Iraq, pursuant to paragraph 21 of SCR 687, particular account must be taken of any failure by Iraq to comply with paragraph 29 of the same Resolution. Iraq should not expect such measures to be reduced or lifted in the absence of full compliance with paragraph 29".

In addition to this, the Office for Consular Affairs of the Ministry of Foreign Affairs, published an "Announcement by which companies, juridical persons in the private sector and public enterprises are informed of the compensation available for losses due to Iraq's invasion of Kuwait":

"In accordance with the instructions received from the Office of the United Nation's Commission on Compensation, and in accordance with Decision 7 of the Administrative Council, any company, private juridical entity or public enterprise (partnerships and other entities) that are interested in applying for compensation for losses, damage or harm that directly resulted from Iraq's invasion and occupation of Kuwait, can request compensation request form E from the Office of Consular Affairs (Madrid, Calle Imperial, number 9) in order to be able to file a claim.

Corporations and other entities can also use this form to request the reimbursement of payments made or help given to others (to employees or other contracted parties for any loss they suffered resulting directly from this invasion).

Corporations and other entities interested in this should file an annex to form E along with documents that prove the creation, incorporation or registration of the company, the date on which the event on which the claim is based took place, and the date the claim itself is filed.

Additionally, along with form E these corporations should also file separate declarations (written claims) in which they specify their claims with documentary proof that show the circumstances and the amount of their losses, in accordance with the instructions that are provided with form E.

This form and any additional documentation must be filed with the Office of Consular Affairs before December 31 of this year.

Madrid, 24 September, 1992.—7.102—A" (BOE 29.10.92, pp.1134—1135).

b) Libya

Note: See XI.3. International Terrorism

As regards Libya, the twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on 17 February 1992:

"The Community and its member States welcome the unanimous adoption by the Security Council on 21st of January of Security Council Resolution 731.

Recalling the statement issued by the Maastricht European Council on the bombing of flights Pan Am 103 and UTA 772, they underline the great importance which they attach to Libya's compliance with Security Council Resolution 731, and they urge Libya to fulfil the requests to which the

Resolution refers without delay".

Later, on 6 April 1992, they stated that:

"The Community and its member States urge Libya to comply unconditionally with UN Security Council Resolutions 731 and 748, which will be scrupulously implemented by the Community and its member States. (...)".

c) South Africa

Note: See SYIL vol. I (1991), pp. 100—102.

On 6 April 1992, the twelve member States of the European Community, within the framework of European Political Cooperation, reported on their decision to lift the oil embargo and other sanctions against South Africa:

"The Community and its member States, which have been following very closely the positive developments taking place in the framework of the Convention for a democratic South Africa, reaffirm their commitment to the creation of a democratic and non-racial South Africa and the well-being of all its people.

Recalling the Rome European Council decision of December 1990 of gradually reviewing restrictive measures adopted towards South Africa, the Community and its member States have decided the lifting of the oil embargo in effect since 1985.

As to the restrictive measures in the cultural, scientific and sporting fields, the Community and its member States, recalling the declarations issued by the Ministerial Meeting of 20 February 1990 and the European Council of Luxembourg of June 1991, have also decided their formal lifting.

The Community and its member States express their willingness to continue to support the positive measures programme put in place in 1985 to help the victims of apartheid.

The Community and its member States hope that these measures will encourage positive developments in South Africa, in particular the establishment of an interim government".

d) Yugoslavia

On 25 June 1992, the Secretary of Foreign Policy informed the *Congreso de los Diputados* about Spain's application of the sanctions set of the Security Council

against the new Federative Republic of Yugoslavia:

"... the pertinent United Nations Security Council resolutions — basically Resolution 757 — which is binding on all UN members in accordance with article 25 of the Charter, have imposed a series of measures, of sanctions against the new Federative Republic of Yugoslavia, that is, against Serbia and Montenegro.

This resolution has been accepted and put into practice by our country and this means that all imports and exports, all trade of any kind with the new Republic is prohibited, with the exception of medications, foods, etc. Likewise, this means that all transfers of funds to Yugoslavia are subject to prior approval. It also stipulates — this is another of the fundamental elements of Resolution 757 — a series of restriction on air, sea and land communications with that country.

(...)

As regards the specific measures of application of the embargo dictated by the United Nations Security Council, several of them have been adopted within the Community framework. On 1 June, the European Community made public a declaration on Security Council Resolution 757, in which, among other things, it is pointed out that the legal measures needed to assure the immediate application of the provisions of the resolution would be adopted without delay. That same day, the COREPER (Committee of Permanent Representatives) approved the draft regulations for the entry into force of the trade embargo with the European Community to take effect on June 3.

As regards Spain's application of sanctions, and as regards the prohibition of the import and export of goods and services, including oil and excluding medical and health care provisions and food, we must also say that the regulations adopted in the Community framework are obviously compulsory in their entirety and directly applicable in each member State, including Spain, from June 3 forward, the date, as I said earlier, that these regulations enter into force. But, in addition to this, on a strictly national level, some time ago the Office of the Secretary of State for Trade published a ministerial order to make more complete information on the trade regime with the Federative Republic of Yugoslavia available to economic operatives. Likewise, the Customs Department was instructed to apply the new trade regime imposed on this republic.

As regards having to acquire prior authorization for any kind of transfer of funds, or any action having to do with the disposal of bonds, accounts or financial assets held in Spain — and with this I believe I will answer your question more directly — by any natural or juridical person

acting on behalf of the aforementioned, the Council of Ministers, on 5 June, approved a Royal Decree proposed by the Minister of Economy and the Treasury, which subjects all of these types of transactions to prior authorization.

Furthermore, as regards restrictions on air, sea and land transport, the appropriate agencies of the Ministry of Public Works and Transport and of the Ministry of Defense have been informed of the sanctions that have been imposed, with a request that they adopt the pertinent measures for compliance with these sanctions, and these ministries have put into practice those measures that did not require a royal decree or ministerial order and could be put into practice through internal procedures. As regards air transport specifically, sanctions are being applied one hundred percent.

(...)" (DSC-C,IV Leg.,n.449,pp.14661 and 14663).

Likewise, the *Congreso de los Diputados* adopted the following accord on the crisis in Yugoslavia on 15 September:

"The Congress of Deputies encourages the Government to:

1. Express its most vigorous condemnation of all of those responsible for having carried out acts of aggression against the former Yugoslavia.

2. Condemn specifically the continual violations of human rights that are taking place in conjunction with these acts of aggression against the civil population, such as the forced displacement of ethnic minorities.

3. Express its support for a resolution of this conflict based on compliance with United Nations Security Council resolutions and the agreements that are adopted at the International Conference on Yugoslavia.

4. Support the Government of the Nation on any actions that are meant to comply with or obtain compliance with United Nations Security Council resolutions in order to implant and enforce the embargo that has been declared.

5. Continue diplomatic efforts in conjunction with other members of the European Community aimed at stopping the conflict and addressing the many problems that have arisen throughout the region, and specifically, to respond to humanitarian type needs.

6. Express its support for the Spanish forces that have been sent to this region, and every one who contributes to peace in the former Yugoslavia.

7. Encourage the Government to periodically inform the Congress of Deputies on the evolution of the crisis and the repercussions that it may have on Spanish security policy.

(...)" (BOCG, IV Leg., 18.9.92).

e) Peace-keeping Operations

In his intervention before 47th Session of the United Nations General Assembly, the Minister of Foreign Affairs, Mr. Solana Madariaga, made reference to Spain's contribution to the United Nations peacekeeping forces:

> "The increase and enhancement of peace-keeping operations requires a growing effort on the part of us all. Spain is aware of this and, after participating in a noteworthy manner in the United Nations Transition Assistance Group (UNTAG) in Namibia and in the United Nations Observer Group in Central America (ONUCA), is contributing with a large number of army and police officers to the work of the United Nations Operation in El Salvador (ONUSAL). Moreover, Spain is participating actively in the United Nations Angola Verification Mission (ONAVEM II) and is collaborating with the United Nations Missions for the Referendum in Western Sahara (MINURSO). Spain is also prepared to participate with a military contingent in the task of the United Nations Protection Force (UNPROFOR) in Bosnia and Herzegovina. Finally, Spain provides aid — mainly humanitarian — within the framework of other operations established by the Security Council.
>
> The peace-keeping operations have also undergone a qualitative change, as new and different activities have been undertaken that go beyond their traditional limits. These new dimensions require special training and a rapid response that can hardly be obtained if we do not follow the Secretary-General's suggestion of establishing special national units ready to be rapidly deployed at the service of the Organization. Spain is prepared to consider this proposal seriously after appropriate consultations with the other Member States and with the Secretary-General.
>
> (...)" (Doc. A/47/PV.13, pp.22-23).

f) Interfering with Humanitarian Aid

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on Somalia on 7 December 1992:

> "The humanitarian crisis in Somalia continues to cause the gravest concern. The increasing looting of aid supplies and obstruction to their distribution cannot be accepted.
>
> The Community and its member States fully support the adoption on 3 December of UNSCR 794, which constitutes an important development in

international law, since it authorizes the UN Secretary General and member States to cooperate to provide for a multinational force to establish a secure environment for the delivery of emergency and relief supplies. They welcome the humanitarian efforts made by the Community and its member States and the contributions of a number of member States to the force as a European initiative. The swift deployment of the force is vital to the success of the efforts of NGOs and international agencies to bring food to the starving in conditions of security. They attach particular importance to ensuring the safety of the personnel involved in the relief effort.

The Community and its member States reaffirm their full support for existing UN operations and the efforts by Ambassador Kittani. They hope that the implementation of UNSCR 794 will encourage national reconciliation that will lead to a lasting political settlement".

Two months earlier, in response to a parliamentary question, the Government had reported on the quantities Spain and the European Community earmarked for humanitarian aid to Somalia:

"The Spanish Government, through the Spanish Agency for International Cooperation, proposed to send 5,000 metric tons of foodstuffs to Somalia. This amount would come from the general funds that Spain earmarks for world nutrition programs (10,000 metric tons of foodstuffs).

Furthermore, Spain, within the framework of the European Community, has contributed to the Community funds from which 185,000 metric tons of foodstuffs have been assigned to Somalia. In fact, the European Community has earmarked 47.3 million ecus in food aid to Somalia, 9 million ecus for emergency aid, and 2.6 million ecus for Somali refugees in Kenya and Yemen. In addition to this, Spain, through its contribution to the European Community, will support and pay for a 500 strong Belgian armored battalion to be sent to Somalia to ensure the distribution of the food from the ports and airports to the people. This Community aid will equal 27 million dollars.

(...)" (BOCG-Congreso.D,IV Leg,n.338,p.104).

XVII. WAR AND NEUTRALITY

1. Humanitarian Law

Spain is one of the party States to Protocol I of the 1949 Geneva Conventions for the Protection of the Victims of Armed Conflicts, who on 21 May 1989 issued a declaration of acceptance of the competence of an international fact-finding commission (The "Commission") to enquire into allegations of serious violations of the Geneva Conventions and the Protocol, according to a *Memorandum* from ICRC:

> "After the required number of such declarations had been reached in November 1990, the representatives of twenty States concerned met in Berne, Switzerland, on June 25, 1991, to elect the 15 members of the Commission.
>
> The Commission held its initial meeting on March 12th/13th, 1992, thus becoming operational, and subsequently adopted its rules of procedure.
>
> The seat of the Commission is in Berne, Switzerland. The Swiss government, in its capacity as the depositary of the Geneva Conventions and the Additional Protocols, exercises the functions of the Commission's secretariat as provided for in article 90.
>
> Under article 90 of the Protocol, there are two prerequisites to the Commission's competence to enquire without the consent of the party to the conflict against which the enquiry is to be conducted:
>
> 1. The facts alleged must constitute a grave breach as defined in the Geneva Conventions and the Protocol or other serious violation of those instruments;
>
> 2. The State bringing the allegations, whether or not it is itself a party to the armed conflict, and the one against which the allegations are brought, must both have made the declaration according to article 90 of the Protocol.
>
> The Commission is not only competent to enquire, however, but to facilitate, through its good offices, the restoration of an attitude of respect among the parties to an armed conflict for the Geneva Conventions and the Protocol.
>
> (...)".

2. Belligerent Occupation

Note: See SYIL vol. I (1991), p. 109.

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on 18 December 1992:

> "The European Community and its member States firmly condemn the Israeli decision to deport more than 400 Palestinians. They regret that the Israeli authorities failed to respond to the Presidency's appeal not to pursue the policy of deportations, which is a violation of the Fourth Geneva Convention, and, in this case, an infringement of the sovereignty of Lebanon. They urge the Israeli authorities to allow the deportees to return immediately. Recent events underline the fact that the peace process is the only way to resolve the problems of the region. The European Community and its member States call on all parties to redouble their efforts to negotiate a just, lasting and comprehensive settlement".

3. Civil War. Rights and Dnties of States

Note: See XIV.1. Responsibility of Individuals.

The twelve member States of the European Community, within the framework of European Political Cooperation, issued the following declaration on the civil war in Bosnia-Hercegovina on 11 May 1992:

> "... Although all parties have contributed, in their own way, to the present state of affairs, by far the greatest share of the blame falls on the JNA and the authorities in Belgrade which are in control of the army, both directly and indirectly by supporting Serbian irregulars. The killings and expulsion of populations in Bijeljina, Zvornik, Foca and other towns and villages, the siege and systematic shelling of Sarajevo, the holding of Sarajevo airport preventing even the safe passage of humanitarian relief from the ICRC are actions deserving universal condemnation.
>
> The Community and its member States demand:
>
> — the complete withdrawal of the JNA and its armaments from Bosnia and Hercegovina or the disbandment of its forces and the placing of its armaments under effective international monitoring.
>
> — the reopening of Sarajevo airport under conditions of safety,

allowing for the urgently needed humanitarian aid to be distributed.
(...)".

On 6 August 1992, the twelve member States of the European Community within the framework of European Political Coopration recalled that:

"... The Community and its member States are appalled by the blatant disregard for humanitarian principles shown by some parties to the conflict. They have repeatedly made clear that they condemn all forced expulsions on the grounds of ethnic background and all attacks on civilians, whoever is the perpetrator. Attacks on unarmed civilians are wholly contrary to the basic precepts of international humanitarian law.

The Community and its member States recall that the UN Security Council has made clear that all parties to the conflict in former Yugoslavia are bound to comply with obligations under international humanitarian law and in particular the Geneva Conventions. Persons who commit or order the commission of grave breaches of the Conventions bear individual responsibility for such hreaches."

4. Disarmament

Spain's representative to the First Committee of the United Nations General Assembly, Mr. Pérez Villanueva, explained Spain's general position on the Conference on Disarmament:

"... in this spirit of cooperation and progress, allow me to emphasize a few points that, to Spain, are close to reaching, or have already reached, consensus. They are in any event shared by broad sectors of opinion, both among the member countries and those who aspire to become members.

First, the Conference is the sole permanent and multilateral negotiating forum, and it remains the only adequate organ for global negotiation via consensus with respect to arms regulation and disarmament.

Secondly, as a negotiating forum, the Conference on Disarmament must maintain a certain specific status with respect to the other United Nations organs dealing with disarmament. It must therefore continue to be in a position to remain the master of its own agenda and its own composition.

Thirdly, the Conference on Disarmament has begun a process of review, *inter alia,* of its composition, in order to ensure that it appropriately reflects reality and thus that it will be able to meet future requirements.

Fourthly, there is considerable support for the idea of a significant expansion in the number of members of the Conference on Disarmament, both among countries that are already members and those that aspire to be members.

Fifthly, the expansion of the Conference should be such as to permit satisfaction of the legitimate aspirations of those countries that are interested in participating and that at present are barred from becoming full-fledged members, although they have formally requested this on repeated occasions.

That is the case for Spain and has been for many years.

The expansion, therefore, must be carried out with realistic criteria and should not in any event, we believe, be a source of dissatisfaction because of the frustrated aspirations of any country, something that would work to the discredit of the Conference itself.

In conclusion, the ideas I have just expressed are intended to convene a constructive and conciliatory spirit oriented towards a solution which, we hope, will be satisfactory to Spain's aspirations by the end of 1993" (Doc. UN A/C.1/47/PV.42, pp.94—95).

In addition to this, in response to a question from a senator, the Government explained its position on the situation of the Soviet atomic arsenal during the process of dissolution of the former Soviet Union:

"The Government feels that it would be highly undesirable for the process of emergence of new Republics in the Soviet Union to bring about a process of nuclear proliferation, and therefore, it feels it is extremely important to ensure adequate, responsible and effective monitoring of nuclear arms under one authority. In this sense, the Declaration emitted by the Ukraine Parliament and the declaration of Ukrainian leaders in favor of a future non-nuclear statute for this republic is a positive step, of which this Government has taken note. However, we feel it is still necessary to maintain a prudent attitude until we know what deadlines and terms the new Ukrainian authorities have set for putting the statute into effect. Spain will continue to transmit to these authorities, both bilaterally and multilaterally, the importance of their adopting an unequivocal position on the great questions in the sphere of European security and disarmament, and especially as regards the monitoring of the proliferation of nuclear arms.

More recently the Government took note of the decision of the republics of Belorussia, Ukraine and Russia to form a 'Community of Independent States' and it approves of the fact that these three republics

have repeatedly stated their willingness to respect the international obligations contracted by the Soviet Union, especially in the area of security and disarmament in Europe, and to ensure single control of the nuclear arms that are located in their territories.

Our country, as a signator of the non-proliferation treaty, favors accession to this treaty of the greatest number of countries possible and feels that a speedy incorporation of the Ukraine into this control mechanism would be a very wise step towards avoiding the risks of nuclear proliferation" (BOCG-Senado.I,IV Leg.,n.278,pp.21—22).

Finally, on 4 December 1992, the Office of Diplomatic Information of the Ministry of Foreign Affairs made public the following comuniqué on the United Nations General Assembly's adoption of Resolution 47/39 which includes the draft of the Convention on Chemical Weapons:

"The Ministry of Foreign Affairs congratulates the United Nations General Assembly on the passage by consensus of Resolution 47/39, which incorporates and offers the International Community a draft convention on the prohibition of the development, production, storage and use of chemical weapons and on their destruction.

This is, indeed, a very significant draft, the result of which will be to ban an entire category of weapons of mass destruction. The scope and nature of the convention on chemical weapons will make it one of the most important achievements of this decade in the area of disarmament.

The Minister of Foreign Affairs recalls Spain's intention of becoming an original signer of the convention and trusts that the great number of States that are also original signers is proof of the hope that exists for this very important project".