SPANISH DIPLOMATIC AND PARLIAMENTARY PRACTICE IN PUBLIC INTERNATIONAL LAW

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Except when otherwise indicated, the texts quoted in this section come from to the OlD, and more specifically from the OID publication *Pol. Ext.* 1991, and from the International Legal Service of the Ministry of Foreign Affairs, whose collaboration we appreciate. The Declarations signed by the twelve member States of the European Community, in the framework of European Political Cooperation, were translated from the Spanish communiqués.

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, Parlamentaries 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).

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).

I. INTERNATIONAL LAW IN GENERAL

1. Nature, Basis, Purpose

Note: See IV.1.a) *Non-intervention and Non-use of Force.*

The Heads of State and Government of Spain, Portugal and nineteen American republics were present at the First Ibero-American Summit Meeting held in Guadalajara (Mexico) on 18 and 19 July 1991, and they agreed to issue a declaration (known as the Guadalajara Declaration) in which they established the following objectives as regards International Law:

"I. The Effectiveness of International Law

A) To conduct the external affairs of our countries according to International Law and to act in a coordinated and joint fashion to contribute to the elimination of the use or threat of use of force.

B) To actively promote negotiation procedures as methods of regional conflict settlement and to support initiatives related to the control, reduction and trafficking of arms. To support negotiations in Central America by which an attempt is being made to establish a just, stable and lasting peace. In order to achieve this goal we pledge to abstain from participating in any action or measure that might hinder the speedy settlement of conflicts and we urge all members of the international community to do the same.

C) To support the right to develop and the establishment of more equal and equitable international economic relations.

CH) To actively participate in the restructuring of multilateral forums, especially the United Nations, in order to achieve a fairer and more democratic world order which would guarantee peace and promote the well-being of all peoples.

D) To promote the strengthening of democracy and pluralism in international relations while fully respecting the sovereignty, territorial integrity and political independence of the member States, as well as their sovereign equality and the people's right to self-determination.

E) To offer advice on the development and codification of International Law based on a process of consensus and oriented toward those topics

which due to their general character, seem to be the most urgent. The strengthening of the mechanisms for the pacific settlement of disputes, the rules applicable to situations of armed conflict, the promotion of disarmament as regards conventional, nuclear and weapons of mass destruction, the strengthening of the instruments which protect human rights, a definition of the legal framework needed for the protection of the environment, the fight against drug-trafficking, the law of the sea and outer space, and the transfer of technology are all items that merit priority treatment.

F) To strengthen cooperation between governments and both civil entities and multinational organizations with competence in the area of human rights, and to promote full compliance with the international instruments that promote and protect these rights be they universal or regional in nature.

G) To pledge to create, or in given cases to consolidate, national mechanisms in our States, that promote, protect and defend human rights and to establish a close working relationship between the member States themselves.

(...)".

This Declaration also emphasizes the importance of the principles of cooperation and solidarity in order to overcome the current division between the North and the South.

"The persistence of the current situation [of inequality in the world] could give rise to the substitution of ideological bipolarism with a division between the North — rich in capital and technology — and the South, poor and without much future. To overcome this problem we must on the one hand, develop effective forms of reciprocity and solidarity, and on the other, base these on ethical foundations guided by social justice and liberty, which will stimulate the creation of new methods to achieve true cooperation among the nations of the world.

(...)".

2. European Regional Subsystem

In his intervention to the Council of Ministers of the CSCE in Berlin (19 June 1991), the Minister of Foreign Affairs, F. Fernández Ordóñez, stated the principles the Spanish Government thought should prevail in the new Europe and emphasized the importance of the CSCE:

"I. Spain feels that there is one principle that should take precedence in the new Europe:'the principle of complementarity'. This means that no

single institution should monopolize the process of building a new Europe, but rather that all of them should collaborate with the others. Their efforts should complement those of other institutions.

2. The principle of a new subsidiarity. Each organization should do that which it does best and overlap or duplication of functions should be avoided.

3. As a consequence of the aforementioned, we come to the principle of coordination. In this area we find several proposals that have been formulated such as the sharing of information among the different institutions or the presence of representatives of these institutions at meetings. I support this type of proposal.

4. The scope of the CSCE, a stable organization and key instrument for the stability of Europe, should be decided. It should be more involved in the areas of economic cooperation (in this sense the Bonn Economic Conference served as a first step, but the process went no further), human rights (the importance of the upcoming meeting in Moscow at which the mechanism to bind the Council of Europe will be decided), and in matters of disarmament and political consultation.

And finally I wish to make a fundamental observation: the CSCE must be efficient. There are new risks, new points of conflict, and rapid, flexible and efficient tools must be developed to face these new challenges in Europe.

Lastly, it is important to pay attention to the external dimension of the CSCE in two senses:

1) Because its methods are useful and could be applied in other places throughout the world.

2) Because it sends a message to the rest of the world to share cooperative experiences in a wide variety of situations".

The success of the CSCE has encouraged the Spanish Government to propose the extension of its methods throughout the Mediterranean area, especially in the case of the Gulf Conflict. This is clearly seen in the Resolution regarding that conflict that was passed by the Congress of Deputies in a special plenary session on 18 January 1991:

"6. In support of an international conference...

(...)

... the Congress feels that once the crisis is past, it is advisable to establish a system to ensure security, peace and cooperation in Mediterranean basin countries, Northern Africa and the Middle East. It is in the best national interest of Spain to participate both directly and indirectly in the elaboration of these proposals.

Therefore it is essential that there be a plan for regional stability in an area that is particularly sensitive...

(...)

An international conference seems to be the instrument which has the most support and for which there is the most consensus among nations and appears to be the most appropriate method for diligently working towards a solution".

The Spanish Government once again recalled its position on this matter in a Declaration dated 1 March 1991, on the end of hostilities in the Gulf:

"7. Spain feels that it is necessary to create a new framework for cooperation and distension in the Gulf area, the Middle East and Maghreb which would serve as a complement to the security and stability systems that are being designed for the area. To this end, the Spanish Government is actively promoting a Conference on Security and Cooperation in Mediterranean Basin Countries, to be held at the appropriate time, which would be based on the principles and methods of the Conference on Security and Cooperation in Europe.

(...)".

II. SOURCES OF INTERNATIONAL LAW

1. Treaties

Lack of Effectiveness of the London Accord on Gibraltar Dated 2 December 1987.

British authorities constructed an airport on Gibraltar on an isthmus which, according to article 10 of the Treaty of Utrecht dated 13 July 1713, had not been ceded to Britain. During the negotiations on Gibraltar which began on 27 November 1984, and in accordance with the Declaration of Brussels, the British and Spanish ministers of Foreign Affairs signed two joint declarations in London on 2 December 1987. Once of them stipulated the joint usage of the aforementioned airport. However, four years after the signing of the Hispano-British agreement, it has still not been put into effect due to the opposition of local authorities on Gibraltar. In response to questions presented in both the Congress and the Senate as to the reasons for the delay, the Government stated:

"On 2 December 1987, in London, the Spanish Minister of Foreign

Affairs and his British counterpart, within the framework of the negotiations on Gibraltar established by the Declaration of Brussels of 27 November 1984, agreed to several measures that they considered beneficial to both countries and to the people living on Gibraltar and Campo de Gibraltar area, among which are:

- A system for better cooperation on the use of the Gibraltar airport, given that the implementation of the European Community's policy on air transport would produce increased civil use of said airport;
- The reestablishment at the earliest possible moment of the shuttle service between Algeciras and Gibraltar;
- A long-range study of other possible improvements.

All of these measures, each with its own scope and nature, comprise an interdependent and homogeneous set of measures which will be simultaneously implemented when possible. It was made clear to the British Government that the Spanish Government had no intention of implementing only one part of the agreement made in London without implementing the rest.

Given the special content of the measures regarding the joint use of the Gibraltar airport, a decision was made to draw up two separate texts which are the two joint Declarations done in London on 2 December 1987. Nevertheless, this separation of texts does not affect the unifying nature of the political agreement that was reached.

Within the framework of the negotiations, the British Government has defended the lack of connection between the two Declarations, a position which has been consistently rejected by the Spanish.

Madrid, 15 April 1991. — The Minister" (BOCG-Congreso.D, IV Leg., n.180, p.105).

"The failure to put the Agreement on the Gibraltar Airport into practice is due to the fact that the British Government has not announced the entry into force of the legislation which is referred to in number 8, in relation to 3.3, of the Agreement. The Spanish Government has reiterated to the British Government the need to approve this legislation on every possible occasion.

Madrid, 23 May 1991. — The Minister" (BOCG-Senado.l, IV Leg., n.217, p.105).

III. RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

1. In general

On the occasion of the debates of the Committee on Economic, Social and Cultural Rights, the representatives of Spain, in response to the questions posed by members of this Committee, reiterated the supremacy of conventional international law over Spanish law:

"269. In reply to other questions, the representative of the State party indicated that article 50 of the Constitution provided for some special support to the elderly similar to that provided for young people. If Spanish legislation was not in conformity with Spain's international treaty commitments, it would be modified since the Constitution stipulated the supremacy of international treaties over Spain's domestic law.

(...)" (Doc. UN E/1992/23, E/C.12/1991/4, p. 62).

"44. Mr. Mratchkov asked whether the Spanish Constitution established that international treaties and covenants ratified by Spain automatically took precedence over domestic law, or whether specific implementing legislation was required in order to make them effective in Spain.

45. Mrs. Cases (Spain) said that if Spanish legislation was not in conformity with Spain's international treaty commitments then it would be modified, as there was indeed an article of the Constitution that stipulated the supremacy of international treaties over Spain's domestic law.

(...)" (Doc. UN E/C.12/1991/SR.16, p.10).

IV. SUBJECTS OF INTERNATIONAL LAW

1. International Status

a) Non-intervention and Non-use of Force

In his appearance before the Senate Committee on Foreign Affairs on 4 September 1991, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, presented Spain's position on Yugoslavia and defended the principles of non-intervention and the prohibition of the use of force:

"... we were aware — at least the Spanish delegation was aware — of the fact that the majority of the problems are not legal but rather political

in nature...

(...)

... I want to remind you of what the Spanish position has been and what it is currently. This position is implicit in what I said and in the warnings included in the many declarations that I have made on Yugoslavia during the last few months and more recently those that I have made as President of the Council of Europe. You should not forget that it was Spain, in its role as President of the Council of Europe, that made significant efforts at the outset of the use of force to suppress the early independence movements.

The first point to make is the conviction that Yugoslavia's future belongs to the Yugoslavs — and I refer to statements that I have made on several different occasions —; that we, like many other European countries, would have preferred a democratic and united European Yugoslavia — further statements that I have referred to —; but that, once the rupture of 25 June had occurred with the subsequent military confrontations, our efforts, as we have said many times, should be directed towards providing a negotiated solution.

(...)

... I have said many times that people who do not want to live together cannot be forced to do so, but — and this is very important — the great principle that rules over coexistence in Europe is the rule of Law, the Helsinki and Paris Accords, and the law as the only alternative to war.

The second point is that to us, the Spanish, it makes no difference what the political model is; we have always supported and continue to support human rights, respect for minorities — there are 600,000 Serbs in Croatia —, and political and economic freedom. And we have also supported these reforms in the series of personal interviews that we have had with Yugoslav authorities.

The third point in our position is that the role of the European Community is fundamental. It would have been nice if the level of community consensus had been greater, but let's not forget that there has been consensus on all of the declarations made by the Community, we have all signed by mutual agreement, and the Community, in spite of every thing, is the only organization that has truly acted with resolve and that has carried out active diplomacy.

Spain has stated — and I have said this many times — that the case of Yugoslavia is a European problem that should be resolved by the Yugoslavs in collaboration with Europeans, and that we had understood that the United Nations should intervene only as a last resort, but the Europeans

should take the responsibility for this problem.

The fourth point is that any change in the borders should be done peacefully, and we reject boundary changes made by use of force or due to already completed deeds. This is one of the positions taken in both the Helsinki and Paris Charters and continues to be the doctrine of the European Community.

The fifth point is that we have asked both individually and collectively — and we were the first country to do so as President of the Council of Europe — for a cease-fire that would be internationally monitored, and I refer you to that declaration. We have sent Spanish observers, we have called from the very start for a conference on the future of Yugoslavia, we have been opposed to sending intervention forces when all parties do not agree to this, and when it has been suggested to us on occasion, we believed it would be a serious error to send military intervention forces if all parties did not agree to such an action.

Finally, in our opinion the desired outcome of this conference, if, as I hope, wish and trust, it were to be held, would be not only the acceptance in the conference itself of the existence of new subjects of International Law, but also the establishment of a certain higher entity capable of maintaining a common economic space, legal standards and the authority needed to be able to have a collective relationship with the Community. However, and in any case, I repeat that the Yugoslavs are the only ones who can decide their own future.

(...)" (DSC-C, IV Leg., n.97, pp.3-4).

b) Immunity of the State

The intervention made on 29 October 1991, by Mr. Lacleta, the representative from Spain, to the Sixth Committee on the Report of the International Law Commission on the work of its 43rd session:

"The term of the Commission's current membership has been brought to a very successful conclusion with the completion of the second reading of the draft articles on jurisdictional immunities of the States...

(...)

In my intervention I am going to refer specifically to a topic which, in the judgement of the members of my delegation, comprises the most important achievement of this Commission: the draft articles on the jurisdictional immunity of States which have been formally approved on second reading. The Commission recommends to the Assembly that these articles be submitted to an International Conference of Plenipotentiaries

with a view to concluding a convention on the subject.

My delegation enthusiastically accepts this recommendation as made by the Commission.

In fact, in our opinion the draft articles have sufficient merit to serve as an excellent base for an international conference of this type which could give rise to a new convention in which, as in several other great conventions based on the work of the ILC, the goals of codification and progressive development could be combined.

Moreover, this is a broad and complex topic which is of long-lasting and growing importance to international relations today and in the future.

Given the current international situation in a world that is more and more interdependent, in which relations between States themselves or between a State and an individual are multiplying rapidly in every sphere imaginable, it is wise to have a convention which would establish, codify and develop the necessary rules.

It is true that we cannot say that the draft is perfect from an objective point a view. But then, is it ever possible to make that type of a claim? We cannot even make such a claim from a subjective point of view as my delegation could indeed formulate some criticism of the draft. However, we do believe that these articles can serve as a satisfactory — I would even dare to say a very satisfactory — basis for the establishment of a convention on this topic by a conference of plenipotentiaries.

It is the opinion of my delegation that the Commission, guided by the excellent reports prepared by the Special Rapporteurs, managed to strike a satisfactory balance in an area in which extreme and apparently irreconcilable positions had been taken. I would like to express our admiration for the extensive work done by the first Special Rapporteur, Mr. Sompong Sucharitkul, and for the no less meritorious labor of synthesis carried out by the second Special Rapporteur, Mr. Motoo Ogiso.

From the first stage of the Commission's work, during which it had sought simply to reach a consensus on the limits to the absolute immunity of the State, we have now moved on to the formulation of texts in which the traditional principle of immunity was circumscribed with precise exceptions, generally worded in an acceptable manner, which guaranteed that a private citizen entering into a direct legal relationship with a foreign State, would not be unprotected or unable to secure a judicial ruling in the event of dispute.

The enormous number of cases and decisions presented by the Special Rapporteurs and considered by the Commission , which make not only the subsequent reports of the Rapporteurs but also the footnotes of the

report that we mentioned of special interest, show that this evolution has indeed been taking place. And, it certainly has not been an easy task to reduce the mass of data on the eight articles of Part III which contain the exceptions to the fundamental principle of immunity.

Once again, this does not mean that all of the texts are perfect, but we do believe the draft in general to be well enough developed and of sufficient enough quality to serve as a basis, a good basis, for a Conference of Plenipotentiaries. The interests of the States, including those of the developing States, and those of individuals, have been considered as has the problem of the special case of diplomatic and consular representations, a topic often mentioned by my delegation.

I do not wish to go into any more detail on the draft articles, Mr. President, but I do want to point out one more question of a more general nature before I finish, which my delegation, and really I myself, mentioned in my intervention on 6 November 1986, when I commented on the ILC report corresponding to its 38th session.

At that time I said that the Commission did not appear to have considered either the issue of how a State invoked immunity in the courts of another State or the issue of the authority called upon to decide, in the event of a dispute, whether in a specific case the principle of immunity should prevail or whether one of the permitted exceptions should apply. It was the current practice of some States for such a decision to be the responsibility of the judge of the State whose jurisdiction was in question (the State of the forum) and any challenge had to be settled in accordance with the legal rules of that State. In other words, it was the court of the State whose jurisdiction had been challenged which was responsible for the decision.

Expressed yet another way, there is never jurisdictional immunity to decide on matters of jurisdictional immunity.

Nevertheless, Mr. President, in the opinion of my delegation, a dispute of this nature constitutes an international dispute and should be dealt with as such.

It is true that the Commission has considered the question of how a State could invoke immunity, but articles 6, 8, 20 and 21, even when read in conjunction, as was necessary, did not solve the problem in a satisfactory manner.

In our opinion, a satisfactory solution could be provided only by a mechanism on the settlement of disputes which, as indicated in paragraph 26 of the report, the Commission considered could be looked at by the future Conference of Plenipotentiaries.

Thank you very much, Mr. President".

2. Recognition of States

a) Baltic States

In a Declaration dated 27 August 1991, on the Baltic countries, signed by the twelve member States of the European Community in the framework of European Political Cooperation, it is stated that:

"The Community and its member States enthusiastically accept the restoration of sovereignty and independence which the Baltic States lost in 1940...

After more than 50 years, the moment has arrived for the Baltic States to regain their legitimate place among the nations of Europe. Therefore, the Community and its member States declare their decision to establish diplomatic relations with these countries without delay...

(...)".

As a result of this, the OID issued a statement on 11 October 1991, that included the following:

"On the 7th and 9th of this month, joint statements reestablishing diplomatic relations between Spain and the Republics of Lithuania, Latvia and Esthonia were signed in Vilma (on the 7th), Riga (on the 9th) and Tallin (also on the 9th).

(...)".

The first paragraph of these joint communiqués read as follows:

"The Kingdom of Spain and the Republic of (Esthonia, Latvia and Lithuania) have agreed on this date to reestablish diplomatic relations and proceed, as soon as possible, to the accreditation of ambassadors before their respective Governments.

(...)".

In his presentation before the Committee on Foreign Affairs of the Congress of Deputies on 29 August 1991, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, briefly explained the legal problems related to the reestablishment of relations with the Baltic States.

"... I do want to say that there is one point that presents a special problem for Spain, and that is that when establishing relations with the Soviet Union in March, 1977, Spain did not formulate any exceptions to the annexation, which means that Spain accepted — or it could be said that Spain implicitly accepted — that these territories are part of the

Soviet Union. Other countries did not make this acceptance and therefore do not have the problem we have with the Soviet Union because not only was no reservation made to the annexation of these territories, but the ambassador of Spain also visited the Baltic countries.

According to the interpretation given by the International Legal Service, the mechanism to be followed in the reestablishment of diplomatic relations with the Baltic States is first, to obtain authorization from the Council of Ministers (because this is a Government action) to initiate negotiations for the reestablishment of relations. I must add that as regards this particular point, I have been informed that there is a consensus in this Chamber, and I am acting in the belief that this consensus exists. When this process is complete and the appropriate notifications have been given to the Soviet Union (a problem other countries do not have to face) we will formalize the reestablishment of relations, in the majority of cases by means of an exchange of notes...

(...)".

"... As regards the establishment of diplomatic relations with the Baltic republics, I must say one thing: there is consensus in this Chamber... I have reports issued by the International Legal Service that state that it is enough to have political agreement from the Government — articles 93 and 97 of the Constitution —, that recognition is not necessary, and that it is advisable to go directly to the issue in question and establish diplomatic relations. In any case, the necessary legal formula will be sought and, as might be expected, there is no good reason not to assign whatever rank we wish to the establishment of relations with Baltic countries and the Chamber, as would be expected, would decide what that is to be..." (DSC-C, IV Leg., n. 294, pp.8418-8419 and 8439).

b) Belize

In the Declaration regarding Guatemala's recognition of the independence of Belize, dated 9 September 1991, and signed by the twelve member States of the European Community within the framework of European Political Cooperation, it is stated that:

"The Community and its member States enthusiastically accept the declaration made by the Republic of Guatemala on 5 September 1991, in which the Government of Guatemala recognizes the independence of the State of Belize. This historic initiative undertaken by President Serrano represents an important step towards the solution of a long-standing bilateral problem and eliminates a source of international tension and should

therefore strengthen regional stability.

(...)".

c) Directives on the Recognition of New States in Eastern Europe and the Soviet Union

In the Declaration of 16 December 1991, signed by the twelve member States of the European Community in the framework of European Political Cooperation, there figured the acceptance of:

"... the following directives on the formal recognition of new States in Eastern Europe and the Soviet Union.

(...)

... a common position as regards the process by which these new States would be recognized which includes:

- Respect for the provisions of the United Nations Charter and the conditions of the Final Act of Helsinki and the Charter of Paris, especially those dealing with the rule of law, democracy and human rights,

- the guarantee of the rights of ethnic and national groups and minorities, in accordance with the terms and conditions of the CSCE framework,

- respect for the inviolability of territorial boundaries which can only be modified through peaceful means and mutual agreement,

- the renewal of all of the commitments related to disarmament and nuclear non-proliferation, as well as those regarding security and regional stability,

- a commitment to resolve all questions related to the succession of States and regional disputes through mutual agreement or, if necessary, arbitration.

The Community and its member States will not recognize any entity resulting from an aggression and will consider the effects recognizing a State will have on that country's neighboring States.

The commitment to these principles allows for recognition by the European Community and its member States and for the establishment of diplomatic relations, which could be established in agreements".

d) Recognition of the Republics of the Former Yugoslavia

In light of these Directives, in the Declaration dated 16 December 1991, which was signed by the twelve member States of the European Community within the framework of European Political Cooperation, recognition of the republics of the former Yugoslavia is subject to certain conditions:

"The Community and its member States agree to recognize the independence of the Yugoslav republics that meet all of the conditions that are enumerated below. This decision will take effect on 15 January 1992.

Therefore, all of the Yugoslav republics are invited to declare, before 23 December, if:

- they wish to be recognized as independent States,
- they accept the conditions of the aforementioned directives,
- they accept the stipulations of the proposed convention which is being studied by the Conference on Yugoslavia, and especially Chapter II of that convention on human rights and the rights of national minorities and ethnic groups,
- they continue to support:
- the efforts of the Secretary-General and the Security Council of the United Nations,
- the continued existence of the Conference on Yugoslavia.

(...)".

As regards the recognition of Macedonia, the Declaration establishes the following:

"The Community and its member States also require that before recognition of a Yugoslav republic can be granted, that republic must pledge to adopt institutional and political guarantees to ensure that they have no territorial pretensions to any neighboring State that is a member of the Community, and that it will not carry out any hostile propaganda activities against a neighboring country that is a member of the Community, including the use of any name that might imply territorial claims".

e) Recognition of the Republics of the Former Soviet Union

In a similar fashion, the Declaration dated 23 December 1991, signed by the twelve member States of the European Community within the framework of European Political Cooperation, also stipulates the conditions for the recognition of former Soviet republics with the exception of the Russian Federation, which for all effects and purposes is considered the successor of the former USSR (*See* IV.2):

"The Community and its member States have noted with satisfaction the decision that was adopted by the participants in the meeting held in Alma Ata on 21 December 1991, to form a Commonwealth of Independent States.

(...)

They are willing to recognize the other republics that make up the Commonwealth of Independent States as soon as those republics guarantee that they are willing to comply with the requirements set out in the 'directives regarding the recognition of new States in Eastern Europe and the Soviet Union' adopted by the ministers on 16 December 1991.

More specifically, they hope these republics will pledge to comply with the international obligations that affect them that are derived from treaties and accords entered into by the Soviet Union... and that they will guarantee to implement a unified system of control of nuclear arms and to commit to non-proliferation.

(...)".

These conditions had already been established in the Declaration dated 2 December 1991, on the Ukraine which was signed by the twelve member States of the European Community within the framework of European Political Cooperation:

"The Community and its member States have taken note of the referendum held in the Ukraine and the results which show that a clear majority is in favor of independence. They wish to congratulate the Ukrainian people for the democratic way in which they have manifested their desire for full sovereignty for their republic.

(...)

The Community and its member States hope that the Ukraine Republic will respect all of the commitments and obligations subscribed to by the Soviet Union in the Final Act of Helsinki and the Charter of Paris and in all other documents pertinent to the CSCE, especially those related to the protection of members of national minority groups.

The Community and its member States especially hope that the Ukraine Republic will respect and comply with all of the international obligations taken on by the Soviet Union which pertain to it in matters of arms control and nuclear non-proliferation and that it will refrain from any action that would compromise the control of arms within its territorial boundaries. They trust that the Ukraine will join the rest of the republics in accepting their joint responsibility as regards the Soviet Union's foreign debt".

In a Declaration dated 27 December 1991, the Spanish Government limited itself to restating that it would abide by the provisions of the aforementioned Declaration issued by the Twelve on 23 December 1991:

"Spain will establish diplomatic relations with other republics which form part of the Commonwealth of Independent States in accordance with the terms established for their recognition in the European Community

declaration of 23 December 1991".

3. Succession of States

On the other hand, in the aforementioned declaration of 23 December 1991, the Twelve recognized the Federation of Russia as the legitimate successor to the former Soviet Union in accordance with the Alma Ata Accords:

> "They confirm that the international rights and obligations of the former USSR, including those derived from the Charter of the United Nations, will continue to be exercised by Russia. They are pleased and satisfied that the Russian Government has accepted these obligations and responsibilities and on this basis they will continue to interact with Russia, in full awareness of the modifications that have taken place as regards its constitutional status.
>
> (...)".

In yet another Declaration on this topic (dated 25 December 1991), the Twelve ratified this position by stating that:

> "... from this date forward, Russia will be considered as the State that will exercise the international rights and obligations of the former Soviet Union, including those derived from the Charter of the United Nations...
>
> (...)".

In a Declaration dated 27 December 1991, the Spanish Government limited itself to echoing the provisions of the declarations made by the Twelve on 23 and 25 December 1991:

> "The Spanish Government has sent a message to President Boris Yeltsin on the occasion of Russia's acceptance of all of the international responsibilities that have until now pertained to the Soviet Union.
>
> On 25 December 1991, Spain, together with the other member States of the European Community, recognized that Russia now takes on the international rights and obligations of the former Soviet Union, a fact which is of the utmost importance for the peace and security of our continent and the entire world.
>
> The Embassy of Spain in Moscow will be charged with representing our country before the Russian Government.
>
> (...)".

4. Self-determination

a) Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Note: See II.1. *Lack of Effectiveness of the London Accord on Gibraltar dated 2 December 1987.*

The intervention made by Mrs. Menéndez on behalf of Spain, on 19 December 1991, on the Gibraltar matter:

"Mrs. Menéndez (Spain): Spain has supported and continues to support the fruitful efforts of the United Nations to eliminate colonialism. That is why my delegation is in full agreement with the fundamental goal of the International Decade for the Eradication of Colonialism, namely: the elimination of colonial situations in each and every one of the Non-Self-Governing Territories still in existence. In this context we recognize the particular importance of the right to self-determination of peoples living under colonial conditions.

At the same time, it is necessary to emphasize, in keeping with Resolution 1514 (XV) and various other resolutions and decisions of the General Assembly, that although the free exercise of peoples' right to self-determination is the most common method of ending colonial situations, there are Non-Self-Governing territories clearly identified by the General Assembly, in which this principle is not deemed applicable. Indeed, Resolution 1514 (XV) provides in paragraph 6 that

'Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations' (Resolution 1514 (XV), para. 6).

What is more, the General Assembly has even declared that the holding of supposed acts of self-determination in certain territories is a violation of its resolutions, most especially of the principles established in Resolution 1514 (XV). By virtue of this, the third paragraph of the Plan of Action for the International Decade for the Eradication of Colonialism recommends that the international community and the United Nations system together continue to support the holding and intensification of negotiations and consultations between States involved, with a view to resolving specific colonial situations of the type I have just referred to, one of which is that of Gibraltar.

These principles have been included in the Resolution and in the Plan

of Action of the International Decade for the Eradication of Colonialism, thus making it possible for my delegation to join in the support for the draft Resolution contained in document A/46/L.22/Rev.1" (Doc. UN A/46/PV.78, pp.22-23).

b) Western Sahara

On 4 May 1991, the OID made public the follow statement:

"The Spanish Government is pleased to endorse the Security Council's adoption of Resolution 690/91 which approves the report issued by the Secretary-General of the United Nations on the celebration of a referendum on self-determination for the people of Western Sahara.

This resolution is a very significant step towards a just solution to a problem which Spain considers to be of the utmost importance.

(...)".

The Declaration of 17 April 1991, signed by the twelve member States of the European Community within the framework of European Political Cooperation, reiterates this acceptance:

"The Community and its member States enthusiastically endorse the United Nations Security Council's adoption of Resolution 690 which approved the Secretary-General's report calling for a referendum on self-determination for the people of the Sahara. They find this to be a significant step towards a just and lasting solution to the Western Saharan conflict...".

This was the response given by the Minister of Congressional Relations, Mr. Zapatero Gómez, to an intervention on this problem given during a plenary session of the Congress:

"The honorable Minister of Congressional Relations and the Secretary of the Government (Zapatero Gómez): Mr. President, your Honor, in Resolution 690, the Security Council approved the Secretary-General's report establishing a plan for the calling of a referendum. The Spanish Government has greeted the approval of the Secretary-General's initiative with satisfaction and hereby states that we are willing to support the entire process involved in carrying out the referendum. That is to say that we are willing to offer all available means to help ensure the Secretary-General's initiative will be a success. Now then, as you know, according to the wording of the plan and the Resolution, the Secretary-General of the United Nations is responsible for proposing and establishing the different ways in which the governments of the member nations of the United Nations can cooperate.

We have communicated to the Secretary-General that we will be

available to assist in the process once the measures he believes necessary to carry out this referendum have been established; he knows that he can count on the Spanish Government and its commitment to the final success of this operation" (DSP-P, IV Leg., n.112, p.5398).

The Spanish contribution to the process was defined in the following way by the Minister of Foreign Affairs in his response on 12 June 1991, to another intervention in the plenary session:

"The honorable Minister of Foreign Affairs (Fernández Ordóñez): Thank you very much, Mr. President.

The agreement that we have adopted as regards the Sahara is to attend to the requests that meet two conditions: first, that they be requests made by the Secretary-General of the United Nations, and second, that none of the parties involved is opposed to the request. Up to the present time, we have given a positive response to three of the requests that we have received. First, a request for technical cooperation involving sending experts to improve the 1974 census which was one of the goals of the United Nations for the referendum. The second petition was for us to collaborate with the voter identification commission. We also complied with this request. The third request was that we help repatriate any possible Sahwari voter who is currently residing outside of the territory by providing transportation and financial assistance. We have already agreed to this.

We are willing not only to do all of these things, which we have already done, but also to respond to any other request that the Secretary-General makes of us provided, of course, that it is not opposed by any of the parties to the referendum. Thank you very much" (DSC-P, IV Leg., n.117, p.5680).

The Congress, in full session, approved the following motion on 24 September 1991, with a vote of 246 in favor and one opposed:

"The Congress of Deputies does hereby declare:

First, that it is pleased that the United Nations has begun to implement the Peace Plan and the calendar approved by the Security Council for the referendum on self-determination for the people of Western Sahara.

Second, that it is fully convinced that the final outcome of the process that is being initiated now will provide a solution for one of the most challenging problems of the Mahgreb, one which is of utmost importance to Spain, and that, it is thereby quite possible that this process will bring about a very fruitful period of peace and well-being in the region.

Third, that the Congress of Deputies urges the Government to lend the broadest and firmest support possible to each and every measure included in the United Nations resolutions and the Peace Plan so that the referendum

on self-determination for the Sahwari people will be completely free and transparent.

Fourth, that [the Government] should make available to the United Nations, to the extent possible, the economic, material and human resources that together with the contributions made by other countries, will allow this international organization to guarantee the correct implementation of the referendum and the repatriation of all Sahwari refugees.

Fifth, that it strongly urges all parties to the conflict to abstain from creating difficulties or obstacles to the referendum or the implementation of the Peace Plan, and to respect the exact census figures of the Sahwari population as they were established in 1974, with the pertinent demographic corrections that have been established by United Nations authorities.

Sixth, that opting for a good-neighbor policy for all of the peoples and States of the Maghreb, the Spanish Government is firmly committed to respecting and ensuring respect for all of the United Nations and Security Council resolutions as well as for the results of the referendum.

Seventh, that it agrees to extend diplomatic coverage to the missions sent by the Congress of Deputies, which by carrying out the will of the Congress on this matter, can eventually make a significant contribution to compliance with the peace process and the referendum in accordance with the United Nations or its mandates.

Eighth, that it will take whatever measures it deems necessary to foment support for the Secretary-General's Plan among other nations and international organizations, especially the European Community" (DSC-P, IV Leg., n.132, pp.6378-6379).

At about the same time, the Spanish contribution to the referendum sponsored by the UN in Western Sahara was conditioned by the following aspects and details which were included in a response to a written question delivered by the Government on 19 September 1991:

"1. Since 1976, Spain has maintained the same position as regards Western Sahara. Here we have an unfinished process of decolonization and the only long-lasting and just solution is to hold a referendum on self-determination under the auspices of the United Nations.

Spain has always unfailingly supported the Secretary-General's efforts to organize and carry out the referendum by offering a substantial contribution that includes the following:

- Financial support: 2 million dollars as a compulsory contribution; 4 million dollars as a voluntary contribution and the equivalent of 1 million dollars in the form of means of transport.

- Contribution to the United Nations Mission for the Western Sahara

Referendum: Spain played a decisive role in the Civilian Unit of the Mission, especially as regards documentation and experts in demography. We also sent experts to work with the Repatriation Group. Likewise, Spain has offered the Secretary-General the use of Las Palmas de Gran Canaria as a secondary logistical base and as a third line medical base for the Mission's medical unit.

2. As has already been indicated, one of the fundamental ways in which Spain participated in the organization of the referendum was by contributing documentary material, especially the Census done in 1974.

In accordance with the provisions of sections 19 and 24 of United Nations Resolution 690/91, the Identification Committee which forms part of the Mission will be in charge of drawing up a voting list. This task will be divided into two parts: first, the updating of the 1974 Spain census, and second, in response to individual petitions, the incorporation of individual Sahwaris who were not included in that census.

The first step, that is, the updating of the 1974 census, has already been done by eliminating the deceased from the lists according to the information provided by the parties, all of which received a copy of the census in October 1990. The resulting list includes almost 70,000 people.

Based on this, we could have published a provisional list of voters on 9 August so that the second step could be implemented. That second step entails evaluating individual claims for inclusion on the list made by Sahwaris who have the right to vote but who were not on the 1974 census. However, due to difficulties of a different nature (delays in the work done by the Identification Committee, suspension of the deployment of the United Nations mission) this publication has not taken place.

It should be pointed out that the 1974 Spanish Census has served its original purpose which was to help in the elaboration of a provisional voting list.

Madrid, 19 September 1991. — The Minister" (BOCG-Congreso.D, IV Leg., n.225, pp.105-106).

V. THE INDIVIDUAL IN INTERNATIONAL LAW

1. Nationality

2. Diplomatic and Consular Protection

a) Individual Assumption of Risk

In the event of both international armed disputes or domestic conflicts, the Spanish Government has consistently warned its citizens about the risks of travelling to or through the region or country affected by these types of situations, and has recommended to them that they avoid these kinds of risks. The 12 January 1991, communiqué issued by the OID stated:

"As the 15th of January approaches and with it the risk of armed conflict in the Persian Gulf and the Middle East, the Office of Diplomatic Information reiterates its earlier recommendations to all Spanish citizens who are planning to travel to this area, to postpone their trips until the situation is resolved in order to avoid any difficulties or unnecessary risks".

The communiqué issued by the OID on 20 May 1991, states:

"In light of the current situation in Ethiopia, the Office of Diplomatic Information advises all Spanish citizens to desist from travelling to or through this country until normal circumstances are reestablished".

And also the OID communiqué dated 26 September 1991, which states:

"In light of the worsening domestic situation in Zaire and the increase in acts of violence throughout the country, the crisis center of the Ministry of Foreign Affairs recommends that Spanish citizens not travel to Zaire as long as the current situation persists.

At the present time there have been no reports of personal injury to Spanish citizens, and the Ministry of Foreign Affairs, in cooperation with the Embassy, has taken the necessary steps to evacuate all Spanish nationals who wish to leave the country.

(...)".

These warnings also apply to journalists, in spite of the nature of their work, as can be seen in the response provided by the Government on 5 March 1991, to a question asked regarding the evacuation and temporary abandonment of the Spanish Embassy in Bagdad on 11 January, just a few days before the beginning of the war with Iraq:

"2. When the Ambassador of Spain left Bagdad, apart from a small group of Spanish women holding Iraqi citizenship through marriage, the only Spanish citizens who remained in the Iraqi capital were a group of special correspondents representing various press organizations. These professionals had received a warning from the Office of Diplomatic Information of the Ministry of Foreign Affairs before leaving for Bagdad on the situation in Iraq and the risks that going to the Iraqi capital entailed. The Ambassador of Spain in Bagdad offered assistance to these journalists up until the very moment of his departure...

(...)" (BOCG-Senado.I, IV Leg., n.180, p.33).

b) Nationality of Claims

During his appearance before the Senate Committee on Foreign Affairs on 28 November 1991, Mr. Martínez Robles, President of the Interministerial Liquidation Committee, created by Act 19/1990 on 17 December to deal with the advanced compliance with the Hispano-Cuban Treaty of 16 November 1986, on the lump sum compensation for the goods of Spanish citizens affected by the laws and provisions issued by the Cuban Government after 1 January 1959, clearly stated the necessity of complying with the condition or requirement of being Spanish citizens in order to be able to claim the right to compensation:

"... The Royal Decree dated 15 March 1991, as you all know, requires that all those who claim the right to compensation must present certain documentation to accredit that right, especially proof of Spanish citizenship. In accordance with the Law, the beneficiary must have held Spanish citizenship from the date on which the Cuban Government promulgated a law or provision expropriating goods or property until either 16 December 1986, the date on which the Treaty with Cuba was signed, or the time of death or dissolution of a juristic person, which ever comes first.

The application of this principle, which is very clear, has provoked protests that have even been echoed in the press. The *ratio legis* is to compensate Spanish citizens, and therefore those individuals who were Spanish citizens but who acquired another citizenship, are excluded. It should be pointed out that pursuant to the legislation passed by the revolutionary Government that defeated dictator Gerardo Machado in 1933, many Spaniards became Cuban citizens either in order to be able to hold public services posts or to own more than 50% of the capital of a corporation.

Therefore Spanish citizens who became naturalized Cuban citizens during the period referred to in article 4.1 of the 1991 Royal Decree are not entitled to the compensation because they do not meet the citizenship requirements stipulated by the Law.

(...)" (DSS-C, IV Leg., n.117, p.4).

3. Aliens

4. Human Rights

a) Admission of Eastern block countries into the Council of Europe

In his intervention before the Parliamentary Assembly of the Council of Europe, the Spanish Minister of Foreign Affairs, F. Fernández Ordóñez, in his role as acting president of the Committee of Ministers, stated:

"I wish to make it very clear that in our relations with these countries, and especially as regards their possible accession to the Council of Europe, the Committee of Ministers that I preside over, is determined to maintain all of the Council's statutory criteria and requirements. This position is not incompatible with a generous and flexible application of these criteria as we look towards the future if there is complete respect for the principles of rule of law, parliamentary democracy and respect for human rights and fundamental freedoms. We must not forget the important role that membership in the Council of Europe can play in the consolidation of new European democracies.

(...)".

b) Allegation of Respect for Human Rights as an erga omnes *Obligation*

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

In the Declaration dated 10 January 1991, on the situation in Burma, signed by the twelve members of the European Community within the framework of European Political Cooperation, the following statement is made as regards the condemnation of the Burmese military authorities for their continual violation of the fundamental rights and freedoms of the Burmese people:

"The Community and its member States are seriously concerned about the lack of respect for human rights and they cannot sit by idly when civil and democratic rights are violated. Respect for these rights is a condition for maintaining peace, a responsibility that is more and more seen as pertaining to the collective international community. A call for the respect of human rights cannot be considered an incursion in the domestic affairs of another States.

(...)".

This position was reiterated *de facto* in the declarations made by the Twelve on 27 May and 30 July 1991, in which they demanded respect for the results of the elections that had been held in said country on 27 May 1990, and instituted an embargo on the sale of military material to this country.

c) Minorities and Self-determination

As was clearly stated in the section on the recognition of States (*See* IV.I. c and d), the Twelve, in a declaration dated 20 September 1991 signed within the framework of European Political Cooperation, declared that:

"For quite a long time, the Community and its member States have recognized that a new situation has emerged in Yugoslavia. In their opinion, it is quite obvious that this new situation demands new types of relations and new structures. They reaffirm that it is the strict responsibility of those who live in Yugoslavia to determine their own future. The Community and its member States accept any solution that is the result of good faith negotiations.

(...)".

And in their Declaration dated 7 October 1991, the Twelve agreed:

"... to seek a political solution which allows for recognition when a republic claims independence, and provided that the negotiation process was completed in good faith by all of the parties.

The right to self-determination for all people in Yugoslavia cannot be exercised without taking into account the interests and rights of the ethnic minorities that reside in the heart of each individual republic. These can only be guaranteed through peaceful negotiations...

(...)".

Finally, in the Declaration on Yugoslavia issued by the Twelve on 8 November 1991, there is an insistence on conditioning the right to self-determination on respect for the rights of national and ethnic minorities:

"In this context, [the Community and its member States] wish to reiterate that the recognition of the independence of the republics who wish to be independent can only be considered within a framework of an overall solution which would adequately guarantee the protection of human rights and the rights of national and ethnic groups. They urge all parties to the process to immediately prepare legislative measures to this effect.

(...)".

This position is also maintained *in genere* in the joint EC-US Declaration dated 9 November 1991, on peaceful and democratic political transformation in the East, which states:

"We appeal to the governments and citizens of the region to openly and publicly support the rules of the CSCE, especially the following:

(...)

- Rebuilding of societies on the basis of democracy and the rule of law, including democratic practices such as free and fair elections, adequate

judicial procedures, freedom of the press, and the promotion of tolerance and transcultural understanding. Democracy is not based solely on the principle of majority rule, but also on that of fundamental human rights of those in the minority,

- Protection of human rights, with full respect for the individual, including fair and equal treatment for members of national minorities.

(...)".

d) Concluding Observations on Spain in the Report of the Human Rights Committee

"*Spain*

142. The Committee considered the third periodic report of Spain...

(...)

Concluding observations

182. Members of the Committee expressed satisfaction with Spain's informative report and thanked the State party's delegation for engaging in a constructive and fruitful dialogue with the Committee, which had provided an opportunity to observe at first hand the progress of democratic Spain. The steady improvement in the human rights situation in Spain, particularly through the strengthening of the legal system and the judiciary, deserve respect and it could confidently be said that Spain was continuing to make progress on all fronts.

183. Nevertheless, members noted that there were a number of problems that still gave rise to concern, some of which were the same as had been expressed during the consideration of the second periodic report. Among such concerns were the number of offences carrying the death penalty; the suspension of the rights of terrorist suspects under article 55.2 of the Constitution and the fact that circumstances had given rise to what amounted to permanent emergency legislation; the need to take action aimed at preventing cases of torture and ill-treatment, such as police and security force training, as recommended in the report of the People's Advocate; the military nature of the *Guardia Civil*; the excessive length of the pre-trial detention period and its linkage to the length of the maximum allowable sentence; and conscientious objection. Members also expressed the hope that future reports would include more information on factors and difficulties encountered in implementing the Covenant.

184. The representative of the State party thanked the members of the Committee for their interest and cooperation and assured them that the Committee's concerns and observations would be duly conveyed to his

Government.

185. Concluding the consideration of the third periodic report of Spain, the Chairman thanked the delegation for the quality of the report and the dialogue it had initiated, which had revealed many positive factors, particularly the Government's commitment to strengthening the machinery of justice" (Doc. UN Supplement n.40 (A/46/40), pp.35 and 44-45).

As regards the abolishment of the death penalty in Spain, the Government, in response to a written question on whether it intended to present a bill that would make the total abolishment of the death penalty possible, responded in the following way:

"The Government does not feel it wise to present any bill for an organic law nor any proposal to modify the Spanish Constitution related to the total abolishment of the death penalty in Spain for the following reasons:

1. The most important of the fundamental rights, as can be seen by the fact that it is placed at the beginning of the First Section of Chapter Two of the Constitution, is the right to life contemplated in article 15. It is inseparably linked to the dignity of a person and is proclaimed and protected by the aforementioned constitutional principle, and therefore, it serves to abolish the death penalty in our legal system. This general rule does allow one exception however, which includes a double limitation. In effect, the possibility of establishing the death penalty — and this only after completing the legally established proceedings with all of the guarantees — is limited, on one hand, by the fact that it can only be regulated by military criminal legislation, and on the other, by the fact that it can only be applied in times of war.

(...)

3. All fundamental rights, including the right to life and physical integrity, must be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on this subject that have been ratified by Spain, and this according to article 10.2 of the Constitution. Although these rules, like the Spanish Constitution itself, tend to be abolitionist, they do not establish total and radical abolishment of the death penalty, but rather reserve the possibility of its use in exceptional cases.

The same is true of our Constitution and the legislation which develops it. Justification is found in the exceptional cases of declared war or a general outbreak of hostility and in the serious and grave nature of the incidents that would be sanctioned with this sentence, these being those that affect important protected legal concepts such as security or national

defense which are of utmost importance in conflict situations. This does not imply, however, that in such circumstances the appropriate procedural guarantees stipulated in the Constitution and Laws will not be observed.

4. In summary, it should be pointed out that the abolishment of the death penalty, in accordance with article 15 of the Spanish Constitution, is a possibility and not a legal imperative. According to the constitutional text, the effect of a law that would abolish the death penalty with no exceptions in the Spanish legal system would be very limited as there would always be the constitutionally allowed possibility of subsequent regulations; and in addition to this, its effects would be more apparent than real because by repealing the legislation currently in effect there would not be an immediate application of the prohibition because in order for that to be possible, a special set of circumstances would have to prevail which at the present time, do not exist.

Madrid, 17 May 1991. — The Minister" (BOCG-Congreso.D, IV Leg., n.199, pp.119-120).

e) Concluding Observations on Spain in the Report of the Committee Against Torture

"Spain

57. The Committee considered the initial report of Spain...

(...)

Concluding observations

85. In their concluding remarks, members of the Committee thanked the representative of Spain for his detailed replies. They were of the view that Spain was endeavouring to respect its obligations under the Convention and that Spanish law embodied a number of relevant standards. In that connection, they said that it would be very useful to have at their disposal the texts of all the laws and regulations which had been mentioned in the report.

86. The members of the Committee were, none the less, concerned about certain issues relating to the implementation by Spain of the Convention, such as the direct application of its provisions in Spanish internal law. They considered that Spanish domestic law should provide a definition of torture that matched the terms of the Convention and, where the application of criminal law was concerned, universal jurisdiction should be clearly established in domestic legislation" (Doc. UN Supplement n.46 (A/46/46), pp. 13 and 17-18).

5. International Crimes

Note: See XIV.1. Responsibility of individuals.

Offences Against the Peace and Security of Mankind.

The intervention by Mr. Lacleta, Representative of Spain, on 6 November 1991, during the debates of the Sixth Committee, on the Report of the International Law Commission on the work of its forty-third session:

"79. Turning to the draft Code of crimes against the peace and security of mankind (Chapter IV), he said with regard to the question of penalties that his country, which had abolished the death penalty, could not, of course, agree to anything more than life imprisonment of the convicted criminal and, in some cases, to restitution of property. As for the problem of a graduated scale of penalties, it could no doubt be resolved by taking into consideration the gravity of the acts concerned and specifying that the maximum penalty of life imprisonment could be reduced based on the circumstances of each case. On the other hand, it seemed difficult at the present stage to decide upon the maximum duration of penalties for each of the crimes dealt with in article 15 and the following articles.

80. With regard to the question of competent jurisdiction, his delegation, which had always favoured the establishment of an international criminal court linked with the United Nations system, continued to hold the view that it was premature to decide whether the court should or should not have a permanent statute. An interim solution which might be considered was that of a court whose members would be appointed on a permanent basis but which would meet only from time to time.

81. Besides the complex problems arising in connection with the question of the jurisdiction of an international criminal court, dealt with in paragraphs 106 ff. of the Commission's report, he wished to draw attention to an issue which had not received due consideration, that of the distinction to be drawn between crimes which could only be committed by individuals acting or appearing to act as agents or organs of a State (e.g. aggression or the threat of aggression, colonialism, intervention, etc.) and those which could be committed independently of the State such as, in particular, drug trafficking and certain other crimes. The same distinction should also be considered from the point of view of the future court's jurisdiction" (Doc. UN A/C.6/46/SR.31, pp.15-16).

VI. ORGANS OF THE STATE

VII. TERRITORY

1. Territorial Jurisdiction

Note: See II.1. *Lack of Effectiveness of the London Agreement on Gibraltar dated 2 December 1987.*

VIII. SEAS, WATERWAYS, SHIPS

1. Delimitation of Spanish Internal Waters, Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Continental Shelf

In his appearance before the Senate Committee on Foreign Affairs on 3 December 1991, the Under-Secretary of Foreign Affairs, Mr. Cajal y López, explained the criteria that have been used to formulate the Government's policy on the delimitation of all of the State's coasts, internal waters, territorial sea, contiguous zones, exclusive economic zones and continental shelves, with special reference to the Canary and Balearic Archipelagos since the promulgation of Act 15/1978 dated 20 February:

"Internal waters are considered to be those located inside the straight base lines from which territorial seas are measured. Decree 2510/77 dated 5 August and published in the *Boletín Oficial del Estado* on 30 September 1978, established the base lines for our coasts. Both the Balearic Islands and the Canary archipelago were included when establishing these base lines. This delimitation is marked on several nautical maps: number 119 as regards the Balearic Islands and numbers 204, 206, 207, 519 and 520 as regards the Canary Islands. It was also necessary at one time to discuss with France the specific case of the mouth of the Bidasoa River and Higuer Bay. This problem was resolved in an Hispano-French agreement dated 19 June 1959, which maintained the delimitation that was made in March 1879.

As regards territorial sea, and in accordance with what today is a rule of general international law, Act 10/1977 of 4 January on territorial sea, fixes the territorial waters limit for Spain at 12 nautical miles from the

straight base lines referred to earlier which are stipulated in Decree 2510/77. Article 4 of Act 10/77 resolves the special situation that exists with countries with adjacent coasts or those facing Spanish coasts. In these cases, it has been established that territorial waters will not extend beyond the line half way between the two countries unless some other agreement in this regard is made with that country. At present, Spain has signed an agreement with France, dated 29 January 1974, to delimit the territorial sea of the Bay of Biscay and another with Portugal, which dates back to the treaty signed with this neighboring country on 27 March 1893, with reference to the mouth of the Miño River. In other cases, when there is no conventional agreement, the mark equidistant between the two countries takes effect if this median line is less than 12 miles from the Spanish coastline.

As regards contiguous zones, for quite a while now international law of the sea contemplates the possibility of establishing a maritime space that covers 24 nautical miles from the base lines within which the riverain State can use the control measures it deems necessary to prevent its customs, sanitation, tax or immigration laws from being violated and can sanction these violations in the same way they would be sanctioned in its territory.

Article 23.3 of the 1958 Geneva Convention on Territorial Sea and Contiguous Zones, to which Spain is a party, establishes the median line for the delimitation of contiguous zones when two zones of this type overlap. At present, and keeping in mind the new rules of international law, a new rule has been introduced by means of the appropriate provision in order to establish the contiguous zone adjacent to territorial sea as the zone between 12 and 24 miles. This provision is included in the draft bill on Ports and Merchant Marinas which is still being processed and which has been the object of several studies done by the Committee of Secretaries and Under-Secretaries of State. It has been proposed that in this contiguous zone between 12 and 24 miles from the coast, as we said before, the State will have the authority to deal with any infraction that might take place in these waters as regards customs, contraband, immigration and sanitation.

As regards the exclusive economic zone, its regulation is contemplated in Act 15/1978 dated 20 February, which his Honor refers to in his request for an appearance. In article 1, the Spanish exclusive economic zone was defined as the zone between 12 and 200 nautical miles counted, as always, from the base lines. This article establishes that within this space, Spain has the sovereign right to explore and exploit the natural resources of the ocean bed, subsoil and underlying waters.

Act 15/1978 thus defines not only the exclusive economic zone, but also, although not mentioned specifically, our continental shelf, which I will refer to later.

Article 2 of Act 15/1978 establishes the same criteria as the 1977 Act on territorial sea as regards the delimitation of our exclusive economic zone and our continental shelf, that is, it accepts the conventional agreements made between neighboring countries or, in their absence, the median or equidistant line between the countries.

At present, Act 15/1978 is applied exclusively to Spain's Atlantic coasts, including, of course, the Canary Archipelago, and its final provision allows the Government to broaden its application to the Mediterranean coasts, although up to the present time, this has not been considered appropriate. This caution is due in large measure to the European Community's policy on fishing in the Mediterranean. Spain has not entered into any bilateral agreement on the delimitation of its exclusive economic zone with States with adjacent coasts or those facing Spanish coastlines. In these cases, the Government accepts the median line as the limit of Spain's exclusive economic zone when this median line is located less than 200 miles from the Spanish coast.

As regards Morocco, and given that there is no specific bilateral agreement on the matter, the median line between the Spanish and Moroccan coasts serves as the limit for the Canary Islands' exclusive economic zone. It is important to emphasize in this regard that Moroccan legislation concurs with the Spanish position on this point as article 11 of the Moroccan Dahir dated 8 April 1981, which regulates this question, also states that as there is no conventional delimitation line, the median line should be the mark that limits the Moroccan exclusive economic zone.

This same criterion should be applied to the former Spanish Sahara, which is today under Moroccan control.

As regards Portugal, Spain presented a verbal note at the beginning of 1990 opposing the Portuguese pretension expressed in Act 30/1977 dated 28 May, on the Exclusive Economic Zone and a Decree-Law 119/1978 dated 1 July, to name the islands known as the *Islas Salvajes*, located between the Madeira and Canary Islands, as an exclusive economic zone. The Spanish position is that since these are uninhabited rocks, the Portuguese pretension is a direct contradiction of international law of the sea which only recognizes territorial sea and never exclusive economic zone status in relation to these islands. Hence, the Portuguese claim is not recognized and consequently, Spain considers the exclusive economic zone of the Canary coasts to extend median to Madeira.

As regards the continental shelf, as I mentioned a moment ago, article 1 of Act 15/1978 establishes the 200 mile point not only as the exclusive economic zone but also as the continental shelf, even though this is not explicitly stated, because it contemplates the exploration and exploitation of the natural resources of the ocean floor and subsoil. Its delimitation with neighboring countries is done in the same way and by applying the same criteria as are used to establish the exclusive economic zone, that is, the median line when there is no other international agreement.

Spain has agreements on the delimitation of the continental shelf with France and Italy. Both agreements predate the 1978 Act and are currently in effect. In specific terms, in the convention or agreement of 29 January 1974, Spain delimited its continental shelf with France in the Bay of Biscay.

However, it did not set any limits in the Gulf of León because France and Spain could not come to an agreement on this matter. Spain maintains that as regards the delimitation of the continental shelf in the Gulf of León the median line should be used, while France opts for a bisection which Spain does not consider to be in our best interest. With respect to Italy, on 19 February 1974, a treaty was concluded with this country which set the division of the continental shelves between Spain and Italy using the equidistance criterion. This line falls between the Balearic Islands and Sardinia.

Our conclusion therefore, your Honors, is that in the first place, the policy on the delimitation of maritime spaces with neighbouring countries is guided by the general criteria of giving preference whenever possible, to international agreements, but that when there is no agreement, the median or equidistant line method will be used. Agreements have been drawn up whenever the political opportunity to do so has arisen or when it has been in the best interest of our country to do so. Therefore, the Government feels that in some way the absence of agreements can be assimilable to the existence of a legal vacuum.

On the other hand, the Government continues to pay close attention to any changes that take place regarding this issue, especially as regards the law of the sea in its regional context, and it will continue to make the contacts that circumstances in the future might advise" (DSS-C, IV Leg., n.119, pp.2-3).

IX. INTERNATIONAL SPACES

1. Antarctic System

At the inauguration of the II Session of the XI Special Consultative Meeting of the Antarctic Treaty held in Madrid in April 1991, the Minister of Foreign Affairs, F. Fernández Ordóñez, expressed his belief in and support of the Antarctic Treaty System in the following manner:

> "Spain is especially sensitive to the future of the Antarctic System based on the consensus and cooperation that exists among the States which belong to it. We feel that the highly acceptable results achieved in the areas of scientific research justify maintaining the current configuration of the Antarctic System. During its more than thirty years of existence, the system has been able to successfully combine the demands of scientific research and the delicate ecological balance of the Antarctic region. In this sense, the Antarctic Treaty System is undeniably a model of responsibility for international organizations.
>
> (...)".

The Spanish government's position throughout the XI Special Consultative Meeting held in two sessions (the first in Viña del Mar, Chile from 9 November to 6 December 1990, and the second begun in Madrid, from 22 to 28 April 1991, with two subsequent sessions being held from 17 to 21 June and during the first week of October), is reflected in the following response made by the Government to a written question on topics that were dealt with and the agreements that were adopted at this Meeting:

> "The XI Special Consultative Meeting of the Antarctic Treaty System held a second session in order to try to finish the work done in Viña del Mar. It was agreed that upon the invitation of the Spanish government, this meeting would be held in Madrid and it took place from last 22 April to 30 April.
>
> Just as at the Viña del Mar session, two work groups were established and charged with submitting the results of their discussions at the plenary session.
>
> (...)
>
> The most important achievement was agreeing to a text that will serve as a Protocol within the Antarctic Treaty System and which contemplates the commitment made by all parties to protect the environment of the Antarctic region and its dependent and associated ecosystems and agreeing to name the Antarctic a Natural Reserve dedicated to peace and science.
>
> The Protocol to the Antarctic Treaty declares the Antarctic a natural

reserve, dedicated to peace and science and all parties pledge to protect the environment of this continent and its dependent and associated ecosystems.

(...)

Any activity related to the Antarctic's mineral resources, is indefinitely prohibited excepted for purposes related to scientific research.

(...)

A procedure is fixed for the modification or amending of the protocol similar to the one used for the Antarctic Treaty itself.

(...)

... the full membership decided to hold another meeting, as suggested by the Spanish Government, in order to provide a detailed profile of the protocol and its annexes. This meeting would be held from 10 to 15 June, and presided over by a technical-legal writing team with limited representation of almost all of the consulting parties, which would prepare the final versions in the four official languages, of the document that would be accepted as the Protocol of the Antarctic Treaty System on Environmental Protection and the four annexes on Marine Pollution, Conservation of Antarctic Flora and Fauna, the Treatment and Elimination of Residue and Procedures to be used in Environmental Impact Studies.

These texts were to be adopted in the Madrid session scheduled for 17 to 21 June, and each article of the text of the Protocol and the four annexes would be authenticated...

The proposed activities of the first session as stated above have been completed... but the Protocol has not yet been signed because at the last moment, one delegation asked for more time for reflection before accepting the modification and amendment procedures.

The Spanish government, aware of the fact that this is a shared collective task of the parties to the Antarctic Treaty, finds the studies and proposals made to be of great scientific and legal quality and appreciates the efforts made to meet the objective of producing a worldwide instrument for the protection of the Antarctic environment. In spite of the fact that the Protocol has not been signed, it expects there to be a positive outcome and so will make all means available and has offered once again to serve as host for what it believes will be the final session to be held the first week of October.

Madrid, 30 July 1991. — The Minister" (BOCG-Senado.I, IV Leg., n.237, pp.25-26).

2. International Watercourses

Intervention by Mr. Lacleta, Representative of Spain, on 6 November 1991, during the debates of the Sixth Committee on the Report of the International Law Commission on the work of its forty-third session:

"74. Mr. Lacleta (Spain), referring to the law of the non-navigational uses of international watercourses (A/46/10, chap. III), said that in fact the draft articles on the issue did no more than implement the general principle *sic utere tuo ut alienum non laedas* and create a notification, consultation and negotiation procedure between interested States with a view to achieving appropriate — equitable and reasonable — use of the common waters.

75. Nevertheless, certain articles continued to be of concern to his delegation. For example, the adjective 'appreciable' used to qualify harm in article 7 was not sufficiently precise. The Commission was no doubt seeking to indicate that the issue related to damage on a certain scale and not to a minor and unimportant disruption, even though such a disruption might be perceptible and measurable. However, the adjective 'appreciable' in Spanish as in other languages meant literally 'which can be appreciated', that was to say, measurable no matter how minute or insignificant.

76. His delegation was of the view that the basic concept which must be retained should be that the waterway passed from the territory of one State to that of another, and that in such circumstances the upstream State should be vigilant to ensure that there was no important qualitative or quantitative change in the waters. In that connection it might have been better if the Commission had tried to draw a distinction between uses for purposes of consumption and other uses. In the latter case, it would be logical to stipulate a total prohibition on the pollution of the water course — as part IV of the draft articles did — while in the first case the basic goal should be to ensure rational sharing as it would not be possible to prohibit consumption by the upstream State for such purposes as human consumption and some agricultural and industrial uses. Basically it was such sharing which should be the purpose of the negotiations and consultations to which part III of the draft articles referred.

77. While endorsing the principle of obligation to cooperate set forth in article 8, his delegation did not think it wise to designate optimum utilization of the watercourse as the objective of cooperation. Optimum utilization was difficult enough to achieve within the territory of one State because of the multiplicity of possible uses and of interests involved; in an international context, the difficulty was even greater. Optimum

utilization — which, moreover, was not easy to determine objectively — could at most be regarded as a desirable goal, but not as the sole object of cooperation.

78. The set of procedural rules constituting Part III of the draft articles appeared at first glance to be reasonable, although it was still necessary to devise a means of settling disputes in the event that consultations and negotiations failed to produce agreement; the only method of settlement envisaged in articles 17 and 18 was a moratorium of six months.

(...)" (Doc. UN A/C.6/46/SR.31, p. 15).

X. ENVIRONMENT

1. The Guadalajara Declaration. Towards a New Ecological Order

In the aforementioned Declaration (*See* I.1), the following is defended *in genere:*

"13. In light of worldwide ecological deterioration, which is closely linked to the models of development that have prevailed up to now especially in industrialized countries, we need a renewing force in the area of multilateral cooperation. This would allow deterioration to be eliminated and poverty to be overcome. It is absolutely necessary for this international cooperation to establish efficient mechanisms for the transfer of addition financial and appropriate technological resources under preferential and non- commercial conditions to developing countries with the realization that the responsibility for providing a solution falls squarely on those that most contribute to causing harm. These mechanisms should include innovative means based on the sovereign administration of natural resources and the promotion of economic growth. Likewise, the basis for a conventional, global legal system which contemplates development and the conservation of nature as two inseparable concepts, must be established. The existing inequality in the international economic system and its consequences for the great majority of the Earth's people who live in poverty, require the creation of a new order in order to achieve a healthful and balanced environment.

(...)".

And a specific objective is established:

"O) To seek and support solutions for the problem of environmental deterioration based on full respect for the sovereignty of States over their

own natural resources and environmental policies, recognizing that the responsibility of individual countries in this regard is proportional to their contribution to this deterioration...".

2. Antarctica

Note: See IX.1. Antarctic System.

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Assistance to Developing Countries

According to a note issued by the OID on the Council of Ministers' Agreement in which the Annual Plan for International Cooperation for the year 1991 is approved:

"[On 25 January 1991] the Council of Ministers approved the proposed *Plan Anual de Cooperación Internacional* (Annual Plan for International Cooperation) for 1991.

Every year, the *Comisión Interministerial de Cooperación Internacional* (Interministerial Commission on International Cooperation), through the Ministry of Foreign Affairs, submits a proposal to the Government regarding the Annual Plan for International Cooperation and the budgetary resources needed for its implementation.

The Annual Plan for International Cooperation requires significant reasoning and planning skills as it must bring together in one document all issues related to International Cooperation of the State. Consequently, it is a fundamental instrument in the Government's effort to coordinate and ensure the coherence of its policy on international cooperation through the Secretary of State for International Cooperation and for Ibero-America, who is charged with coordinating the activities related to international cooperation which are incumbent on other organs of State Administration.

The Annual Plan for International Cooperation for 1991 forecasts that the expenditure on international cooperation for Spain will reach just over 157,000 million *pesetas*. This represents a 40% increase over last year's figures. This growth is mostly due to increased participation in international financial organizations and contributions to the European Community as well as to the increase in proposed Funds for Aids to Development (FAD) credits and to bilateral programs and projects.

The amount of Official Aid to Development included in the area of international cooperation for 1991 is slightly more than 100.000 million *pesetas*, which represents an increase of 34.43% over 1990 figures. Funds for Aids to Development (FAD) totals 0.19% of the gross domestic product as compared to 0.16% in 1990.

Ibero-America is by far the principal recipient of Spanish aid".

On 26 June 1991, during a plenary session of Congress, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, on the occasion of an urgent request for information on the Government's criteria for the elaboration and application of a State policy on cooperation and aid to development, explained the data that we just mentioned:

"I must add that this policy in Spain is new — and I will explain why in just a moment —, that the resources we have are scarce — which is not what most worries me, and on this point I agree with your Honor —, and that it is quite clear that it can be perfected, that is, it is not possible for me to think that at this point we have reached perfection.

(...)

The amount for cooperation — I want to begin by stating the exact amount — is, at present, 108,000 million *pesetas*, which, as I said to Mr. Herrero, represents 0.19%. This is what Spain spends on cooperation. It is an absolutely insignificant amount when compared to what the important European countries spend, but it is just beginning to be a number that merits our attention.

How is this amount distributed so that we can see how to optimize its use and so that we can avoid some of the effects that Mr. Herrero has mentioned? First of all, these 108,000 million are spent in part on bilateral cooperation and in part on multilateral cooperation. There are two chapters under bilateral cooperation: one, financial cooperation and the other, technical cooperation. Financial cooperation refers to Funds for Aid to Development (FAD) credits administered by the Ministry of the Economy. These are the funds Mr. Herrero alluded to, and they represent a much higher amount than the funds administered by the Ministry of Foreign Affairs. Exhaustive information is available on FAD credits and can be easily provided. The current purpose of FAD credits is twofold: one, to help sell Spanish goods and services because they are related, and two, to facilitate developing countries (especially Latin American countries) access to certain investment opportunities that they would not normally have. FAD credits amount to 44,000 million *pesetas* and we estimate that this amount will increase to 55,000 next year. This falls in the category of bilateral action.

The other category corresponds in part to the Ministry of Foreign Affairs — the bilateral aspect — and this is the so-called technical cooperation. This category receives 29,000 million *pesetas*, a much lower amount. Ninety percent of these 29,000 million *pesetas* belong to Foreign Affairs, that is, there is a certain concentration of expenses, but there should be complete concentration or coordination, as we have already said. Of this amount, 20,000 million are for the Agency for Cooperation which spends them in Ibero-America, sub-Saharan Africa, the Arab world, and on emergency humanitarian aid, a topic I will address now as it is beginning to be a very serious problem.

(...)

... Now we will enter into another important area which is cooperation with multinational agencies and institutions. Some of the funds are earmarked for cooperation with non-financial multilateral agencies (Unesco, Unicef, FAD) to which we pay quotas; others go to international financial institutions such as the International Bank for Development; and still others comprise the contribution we make to Community cooperation funds, and together they amount to 29,000 million *pesetas*.

(...)

Another chapter in the area of decentralized cooperation is in the area of Non-Governmental Organizations which continue to gain importance. At present, the Ministry is subsidizing aid to the Non-Governmental Organizations in the amount of 2,000 million *pesetas* — not really too much, but significant nevertheless.

Finally, I would like to refer to a point that Mr. Herrero made which is the decentralized cooperation of municipalities, provincial governments and autonomous communities. There is no rule which obligates them to coordinate their efforts, but it would be wonderful if they would. For example, City Hall in Vitoria has earmarked 0.7% of its budget for international cooperation. The Autonomous Community of the Basque Country has earmarked no less than 1,100 million *pesetas*...

(...)

I believe that Spain is still in its adolescence, so to speak, in terms of a policy on cooperation. We must try to perfect what is currently being done. In some countries, such as Germany, the amount is so important that there is a Ministry for this specific purpose; that is to say that they are no longer attached to the Ministry of Foreign Affairs, and in other countries such as Holland, for example, cooperation and the commercial section (FAD credits) are in Foreign Affairs, which is another possible formula. In Spain, only one of these parts is in Foreign Affairs.

(...)" (DSC-P, 1V Leg., n.123, pp.5940-5942).

2. International Terrorism

The Declaration of 2 December 1991, signed by the twelve member States of the European Community within the framework of European Political Cooperation, on the possible involvement of Libyan civil servants in the bombings of Pan Am flight 103 and UTA flight 772, states that:

"The Community and its member States have taken note of the issuance of warrants for the arrest of Libyan citizens by French judicial authorities in relation to the bombing of UTA flight 772 in September of 1989, and by the judicial authorities of the United Kingdom in relation to the bombing of Pan Am flight 103 in December of 1988. The Community and its member States consider the accusations lodged against the employees of Libyan governmental agencies to be of the utmost seriousness.

The Community and its member States have also noted the petitions presented to Libyan authorities on 27 November by the Governments of France, the United Kingdom and the United States. In accordance with their reiterated condemnation of terrorism, the Community and its member States fully subscribe to these petitions and demand that the Libyan authorities respond fully and immediately to them".

A few days earlier, on 27 November 1991, the General Director of the OID made the following declaration regarding the joint communiqué issued on this subject by the United States, Great Britain and France:

"The Spanish Government reiterates once again its condemnation of terrorist violence wherever it may occur. The Spanish Government supports the position taken by the United States, Great Britain and France, and it urges the Libyan Government to cooperate fully and efficiently with the judicial proceedings being held in these three countries, and in all ways possible in order to eradicate terrorism".

3. Cooperation in Judicial, Criminal and Civil Matters

Intervention by the member of the Government of Spain responsible for the National Drug Control Plan before the Commission on Narcotic Drugs, on 29 April 1991:

"277. The member of the Government of Spain responsible for the national drug control plan noted the importance that his Government attached to the fight against illicit traffic abuse of drugs. Spain, a party to the 1988 Convention, had recently become a major donor to the fund for

Drug Abuse Control and was actively involved in drug control activities at the European level, in particular under the aegis of EEC. He informed the meeting that, while the illicit traffic in and abuse of heroin were on a downward trend in his country, the illicit traffic in and abuse of cocaine were on the increase. He described law enforcement measures adopted in his country that had led to major seizures of cocaine and cannabis resin, destined for illicit markets elsewhere in Europe, and to the dismantling of illicit drug trafficking networks. He stressed the importance of monitoring precursors and of implementing measures against money-laundering, such as those recommended by Financial Action Task Force on money-laundering. He also stressed the importance of cooperation in developing economic alternatives, in particular, alternatives to the coca economy" (Doc. UN E/1991/24, E/CN.7/1991/26, p. 80).

XII. INTERNATIONAL ORGANIZATIONS

1. United Nations

Note: See IV.4. Self-determination.

2. Other International Agencies

International Labour Office.

The intervention of the Minister of Labour, Mr. Martínez Noval, on 11 June 1991, during the discussion of the Reports of the Governing Body and of the Director General, emphasizing the incompatibility of human and social rights with the informal sectors of the economy of developing and developed countries, and the interdependence that exists between economic and social policies in the development process:

"Original — Spanish: Mr. Martínez Noval (Minister of Labour and Social Affairs, Spain) — I should like, first of all, to congratulate the President upon his unanimous election and for the wisdom that he has shown in conducting the work of this Conference.

The Director-General, in the report which he has submitted to this Conference, analyses the working conditions in the so-called informal sector of our national economies; he defines the sector as being composed of small-scale units located in urban areas of developing countries, with

very little capital — or none at all —, basic technology, a poorly skilled labour force, low productivity, very low and irregular incomes and highly unstable employment.

It is extremely important to analyze this phenomenon, not only because of its significance in developing countries — where it is more apparent — but also because economic and labour activities similar to those described may be found in geographical areas with a high and medium level of industrialisation. This is due to the fact that the development process has not always led to the establishment of a well-structured and harmonious economy in terms of productive transparency and social protection.

Furthermore, the economic profile of this informal sector assumes an international nature, in so far as a number of developing countries do not restrict their role to suppliers of raw materials, but through various and changing schemes, become the competitors of developed countries by selling low-cost products — as a result of the extremely low labour costs prevailing in their very large informal sectors.

It is precisely this aspect which poses one of the most complex problems, for we have to find a balance that will allow these countries to break through the barrier of underdevelopment by incorporating them in international markets, and to do away with working conditions which are absolutely incompatible with inalienable human and social rights.

In the final analysis, economic and social policies must be brought in line with each other, because a progressive social policy cannot be sustained without a solid economic basis; neither can an economic policy overlook the requirements of redistribution of wealth and better levels of social protection.

In order to regulate these informal sectors it is therefore necessary to adopt a series of broad and complex measures, such as: the promotion of investment in small enterprises, the establishment of financial and fiscal aid to help unemployed or underemployed workers set up their own businesses, the strengthening of the social economy and cooperative activities and the stepping up of vocational training.

In more general terms, all workers, whatever sort of contract they have or whatever sector they work in, must be guaranteed the same rights as those in a 'typical' working relationship; and this should not only apply to individual rights but also to collective rights — such as those that relate to trade union activities or collective bargaining — and to social protection.

These efforts take on special importance in the area of international solidarity. It is particularly necessary that financial bodies provide economic

assistance — in adequate conditions — and that specialised agencies within the United Nations system cooperate within an international development strategy.

Special reference should be made to the stepping up and diversification of technical cooperation by the ILO.

In this respect, I should like to recall that Spain is working with the ILO on many technical cooperation programmes, in fields such as cooperatives, vocational training and occupational safety and health; we are particularly satisfied with these projects, not only because of their effects on the beneficiary States but also because of our involvement in the important work undertaken in the ILO.

However, this cooperation is of particular interest to our Government because the bulk of it is with the Latin American States, with whom Spain — precisely now that it belongs to the European Community — wishes to maintain and strengthen ties; furthermore, it is an effective means of commemorating an historic event — the discovery of America — whose fifth centenary will be celebrated next year.

I would like to point out that Spain, as a European country attempting to consolidate its position in a geographical context in which economic and social levels — especially when we joined the European Community — were generally higher than those in our country, is now in a position to speak upon the suggestions made by the Director-General in his Report on the informal sector.

First of all, I would like to reiterate that even in developed countries, there are — to a greater or lesser extent — situations similar to those in the informal sector of developing countries, in the form of a hidden economy. It goes without saying that the above-mentioned solutions to overcome the most negative aspects of the informal sector, such as the legal guarantee of equal rights and vocational training, are also applicable to these segments of the labour market.

Second, I would like to point out that the situation in the informal sector could, as it were, be exported to the developed countries, accompanied by another phenomenon — the migration of workers from the developing countries to the developed countries. In the final analysis, we should do everything we can to avoid host countries harbouring informal economy sectors, made up of migrant workers coming from countries where the informal sector is very strong.

Spain has experienced a major change; from being a country of emigration, it has become a country taking in migrants. And we must face this new situation by being aware of migrants' problems, granting

them equal rights which allow them to integrate into society. In this way, we can avoid xenophobia, experienced unfortunately by countries which due to their higher level of economic development, had to face this situation before us.

A review of migration flows, both from South to North — which is more usual — and the new trend from East to West, shows how important it is that there is cooperation between countries and coordination through the ILO and other international organisations, in order to reconcile respect for freedom of movement with other values and rights implied in the dynamics of migration.

Turning more specifically to the Eastern European countries, political solidarity with its transition to democracy should be replaced by a new solidarity, in which migration, although controlled, can only be part of a broader co-operation; and at this point aspects such as training or technical assistance should assume particular importance. In any case, my Government believes that attention to these migrations from the East should not make us forget the problem of emigration from the South, because only a joint evaluation of these issues can help us identify appropriate policies.

This leads me once again to stress the need to harmonise economic and social policy...

(...)

Economic and social policies are not autonomous; they are interdependent. This means that increased production and an improvement in the distribution of wealth should be considered together. The soundest social welfare systems have been established on the basis of this inter-relationship of policies; they can only be sustained if there is a commitment to cooperation by all the social partners.

(...)

I would like to conclude by saying that when we consistently talk about a new international order and think about our own role, we must always bear in mind the social aspect of these new situations. And it is in this direction that the ILO has been working since its creation: we are confident that it will continue its good work" (Doc. ILO, Provisional Record, 78th Session, 9th Sitting, 1991, pp. 9/13-15).

XIII. EUROPEAN COMMUNITIES

Note: See IV. Subjects of International Law: 2. Recognition of States, 3.

Succession of States, and 4. Self-Determination; V. The Individual in International Law: 4. Human Rights, *b) Allegation of Respect for Human Rights as an erga omnes Obligation*, and c) *Minorities and Self-Determination;* XI. Legal Aspects of International Cooperation: 2. International Terrorism; XIV. Responsibility: I. Responsibility of Individuals; XVII. War and Neutrality: 4. Belligerent Occupation, and 5. Civil War: Rights and Duties of States.

1. Accession Negotiations

The President of the Government, Mr. Felipe González, during the debate on the State of Nation, 20 March 1991, said the following on this matter:

> "... At the same time, or perhaps immediately subsequent to this [Political Union], the Community should reflect on how to expand. We should not forget that the waiting list is getting longer and that the current candidates (Turkey, Austria, Cyprus and Malta) will very probably be joined shortly by Sweden and most likely Norway. I have had several occasions to state that I feel it would be more prudent to initiate the next accession negotiations once the future members know what to expect, and in that sense, we would have a clear idea of the shape of the community after the modifications of the Treaty of Rome..." (DSC-P, IV Leg, n.98, p.4780).

2. The Political Union

The basic position taken by the Spanish Parliament on this matter is clearly explained in the Introduction of the text approved in the plenary sessions of the Congress of Deputies and the Senate regarding the Opinion of the Joint Committee for the European Community on Political Union, 20 December 1991:

> "As regards Political Union, this concept should include the transformation of what is essentially an economic configuration into an integrated space based on three main pillars:
>
> 1) foreign policy and common security;
> 2) the development of democratic legitimacy;
> 3) common citizenship.
>
> Therefore, in this integrated space which transcends economic issues, citizens would become the protagonists of a supranational political structure.
>
> The principle of economic and social cohesion and providing the Union with the means and budget it needs to put its policies into practice form

the basis of this political unity.

The Joint Committee of the Congress and the Senate fully agree with this objective, and is completely convinced that building a political union with these characteristics will justify the required transfer of authority to the Community level which will be exercised in common with the other member countries through the institutions of the Union, according to the principle of subsidiarity. We are convinced that this would be beneficial to our country.

Our conviction in this regard is based on the idea that the Political Union of the States that currently make up the Community, just as at the national level, requires intra-community solidarity that will affect not only the States but also regions and citizens themselves.

(...)

Therefore, the recognition of the principle of intra-community solidarity and providing sufficient mechanisms and funds will be essential elements of the new treaties.

(...)" (BOCG-Cortes Generales.A, IV Leg., n.28, pp.2-3).

The President of the Government, Mr. Felipe González, during a plenary session of the Congress to give information on the Summit Meeting of the European Council in Maastricht, said the following on the Treaty of the European Union:

"As regards the Treaty on the European Union, as you well know, it consists of the common provisions and the three pillars of the Union: the European Community, common foreign and security policy, and cooperation in the area of justice and internal affairs.

The Union is based on a federal model, even though that term does not appear in the final text of the treaty; another formula has been chosen to describe the contents, and this term is not used.

(...)" (DSC-P, IV Leg., n.155, p.7759).

The President offered also the following assessment of Spain's contribution to the said Treaty:

"... I believe that we can qualify Spain's participation, without either over or under-emphasizing it, as active, constructive, and of course, coherent with the decisions of Parliament. This participation has, in some cases, consisted of sharing initiatives with other countries, and I would like to offer some examples: with Germany and Italy on matters of reinforcing the European Parliament; with Germany as regards the proposals of the Committee for the Regions, and with Germany and France on positions regarding foreign and security policy. But in other matters we have worked alone and presented proposals that later won the support of the Conference.

For example, the Conference has accepted our proposals on citizenship; the Spanish delegation played a relevant role in the defense of economic and social cohesion, even though it would not be fair to forget the role played by other delegations and the invaluable support of the Commission in this area. In summary, Spain's role in the area of cohesion has been one of a European country with a society that fully shares in the solidarity needed to build the Community.

(...)" (DSC-P, IV Leg, n.155, p.7763).

3. Common Foreign and Security Policy

In the debate on the State of Nation, 29 March 1991, the President of the Government, Mr. Felipe González, explained the need for an EC common foreign and security policy in the following manner:

"The events taking place in Eastern Europe clearly show that, as regards the Community, there is a need to improve political cooperation and foreign relations. The Gulf crisis has shown us how important it is to have a common security policy as an indispensable element in the gradual development of a common foreign policy. We believe that, during the transition phase, the Western European Union should deal more closely with the European Community, which is the best proven instrument that we have available to us now. But any progress towards consolidating a European security policy must be based on an understanding of the relationship between Europe and America and cannot diminish cross-Atlantic ties.

(...)" (DSC-P, IV Leg., n.98, p.4780).

In the quoted text approved in the plenary session of the Congress of Deputies and the Senate (See XII1.2), the following is stated on this matter:

"A common foreign and security policy will allow the Community to better defend its international interests, to contribute more and more to stability in Europe, and to respond more efficiently to the demands of peace, stability, democracy and solidarity in the world.

The twelve member States of the European Community have signed the Charter of Paris, a milestone in the CSCE process and therefore, their common security and defense proposals should be congruent with the spirit of the CSCE.

(...)

... The Joint Committee feels that this policy should:

- To ensure coherence, through appropriate institutional provisions, with the foreign policy of the Community.

- To improve the quality of the Single European Act regime and European political cooperation through a spirit of universality and progress during its development...

- To develop security measures according to the perspective of a common European defense system, without in any way affecting the obligations of the members States and their trans-Atlantic solidarity. The reinforcement of the Western European Union and its gradual convergence with the political union will contribute to meeting this goal.

(...)" (BOCG-Cortes Generales.A, IV Leg., n.28, p.3).

The president of the Government, during a plenary session of the Congress of Deputies, on 17 December 1991, to give information on the European Council in Maastricht, explained the terms of the agreement made on this matter:

"But the most outstanding item as regards content is, in my opinion, article d), to cite one of the articles (I do not want to give an article by article account as that would be quite cumbersome), because it confirms that foreign policy and mutual security cover a set of questions related to the security of the European Union, including the formulation at the appropriate time of a common defense policy which could lead to a common defense. The Western European Union will form an integral part of the development process of the European Union and that is why its member States have agreed to reinforce their role with a view to creating a common defense policy for the Union that is compatible with the Atlantic Alliance. The European Council defines the principles and the general orientation of foreign policy and the policy on common security, but the Commission will be fully associated with the work done in this field. The Presidency will consult — this is the term that is used — the European Parliament and will inform it of the foreign and security policy of the Union.

(...)" (DSC-P, IV Leg., n.155, p.7762).

4. Democratic Legitimacy, Increased Competencies and Institutional Effectiveness

The basic position taken by the Spanish Parliament on this matter is explained in the quoted text approved in the plenary sessions of the Congress of Deputies and the Senate (*See* XIII.2):

"2. *Democratic Legitimacy*

The Spanish delegation should support the goal of reinforcing the democratic legitimacy of the decisions adopted by the future Union, by

means of a series of measures the represent the various legitimate interests that exist within the framework of European integration in a balanced and adequate manner. In this regard, the Joint Committee feels the following to be fitting...

- That the European Parliament play a determining role in the designation of the president and the members of the Commission by means of the implementation of a formal investiture proceeding.

- That the European Parliament acquire greater protagonism in the community legislative process so that based on the concept of double community legitimacy, it will truly share decision making authority with the Council in accordance with the final perspective of a European union based on a federal model...

- The competencies transferred to the Community and exercised by community institutions should be subject to parliamentary control. This increase in the European Parliament's control capacity should be formally reflected in the Treaties...

- That greater cooperation between national parliaments and the European Parliament be established through regular meetings of specialized commissions and the exchange of information, so that the community legislative process can be as coherent as possible.

- That participation by all regions in the institutional scheme of the Community be reinforced so that their interests can be adequately taken into account in the decision making process. The creation of an independent 'ad hoc' consultative body which would be obligatorily consulted in cases that affect the competencies and fundamental interests of the regions, is the most appropriate solution.

3. Increased Competencies and Institutional Effectiveness

One of the goals of the Intergovernmental Conference on political unity is to complete, expand, and modify the articles of the Treaties in order to provide the Community and its institutions with the legal and economic means needed to exercise the competencies that are considered inherent to political unity and to make pertinent decisions... The Joint Committee feels it is necessary:

- that the Spanish delegation should maintain coherent positions... by presenting and supporting proposals that ensure that the Community extends its scope of activities to include areas that go beyond economic interests such as education, culture, health care, child and youth issues, consumer protection and environmental concerns...

- that the Court of Justice should be given sufficient power to enforce compliance with the agreements signed by the different member States

and with community legislation;

- that the control authority of the Court of Auditors should be reinforced, and

- that the respect for community law and the enforcement of decisions handed down of the Court of Justice should be guaranteed by the Union, and sanctions should be applied in cases of non-compliance with Court decision.

(...)" (BOCG-Cortes Generales.A, IV Leg., n.28, p.3).

The President of the Government, during a plenary session of the Congress of Deputies on 17 December 1991 to give information on the European Council in Maastricht, explained the terms of the agreement made in this matter:

"As regards institutional provisions, I would like to make special mention of the creation of the figure of Mediator or People's Advocate; the notable increase in the role of the European Parliament which has been given the power to share in the decision making process in its new competencies and in some of those it already had; the designation of the Commission for the European Parliament, and an additional element that comes from the debate held in Maastricht, which is the modification of the period of effectiveness or life of the Commission to coincide with the legislative session of the European Parliament so that not only the control and investiture mechanisms coincide, but also the legislative period itself.

In general, it was preferred to maintain the current scheme and composition of the institutions even though there is a mandate to study some modifications in the composition of the Commission that would directly affect us, and which caused a certain kind of imbalance, but this has been avoided for the moment.

(...)

An important modification that has been made in this area is the creation of the Committee on Regions made up of representatives of regional and local administrations. Spain will have a total of 21 representatives on this Committee. As you know, this is a consultative body whose competencies include deliberating on questions that affect regions. I would like to mention this because this was passed without debate at the Council of Maastricht, but we shouldn't undervalue something which took a good deal of effort to insert during the intergovernmental conferences as one more element in the institutional development of the Community which is important in the shaping of the will of the European Union.

(...)" (DSC-P, IV Leg., n.115, p. 7762).

5. Economic and Social Cohesion and the Principle of Sufficient Means

The fundamental position taken by the Spanish Parliament on this matter is offered in the quoted text approved in the plenary sessions of the Congress of Deputies and the Senate (*See* XIII.2):

> *"4. Economic and social cohesion and the principle of sufficient means*
> The Joint Committee thinks it is equally necessary that:
> - the renewed demands for solidarity that will result from the implementation of political union be converted into a reinforcement of economic and social cohesion. In order to achieve this, the articulation of sufficient mechanisms for intracommunity solidarity will be included in the reform of the Treaties and relations between States, regions, and citizens as well as the convergence of levels of social well-being will be based on these reforms...
> - any broadening of competencies or changes in the decision making process that cause the Community to adopt measures that are binding on its member States, require that sufficient financial means be made available to the Community for these purposes...
> - the current regulation of community income and expenditures has proven to be unable to shorten the enormous distances that currently exist in the Community between regions and States. Therefore, these procedures must be modified so that these differences can be gradually reduced.
> (...)" (BOCG-Cortes Generales.A, IV Leg., n.28, p.4).

The President of the Government explained the terms of the agreement made on this matter in Maastricht:

> "As regards economic and social cohesion, I want to begin by saying that, for us, this is a three-fold concern. First, because we believe that it is an element needed for the construction of the community. Second, because it directly affects our national interests, not only as a country that is participating in the building of the community, but also as a country which is somewhat less developed than some of the other countries in the Community. And in the third place, it concerns us because perhaps recently too much emphasis has been put on classifying the Maastricht Summit as a failure or success based on the results achieved in the area of economic and social cohesion. Therefore, it is of serious concern to us, and probably if it were the parameter by which the Maastricht Summit were to be measured, we would have to say that the Spanish delegation has almost totally achieved what it originally set out to achieve as regards economic and social cohesion. Development in this area is reflected not only in the

Treaty but also in a Protocol that is equally as binding and has the same applicability from a legal point of view as the Treaty.

(...)" (DSC-P, IV Leg., n. 115, pp. 7759-7760).

6. Citizenship

The basic position taken by the Spanish Parliament on this matter is offered in the quoted text approved in the plenary sessions of the Congress of Deputies and the Senate (*See* XIII.2):

"5. Citizenship

The initiative presented by the Spanish government to consider the creation of European citizenship as one of the fundamental pillars of Political Union is supported by the Joint Committee. In order to define this concept in the future Treaty of Political Unity, the Joint Committee feels it is necessary:

- to include in the Treaty a definition of the 'status' of a citizen of the Community and to bind that citizenship to national citizenship in one of the member States as an element that supersedes national citizenship but in no way affects the identity of the citizens of the member States;
- to ensure that the 'status' of this citizenship evolves at the same pace as European development as regards the rights and duties of holders of that citizenship;
- to include in the current reform of the Treaties, in spite of the previous point, a minimum starting point right from the beginning, comprised of the declaration of fundamental rights and freedoms adopted by the European Parliament on 12 April 1989, and the accession of the Union to the European Convention on Human Rights, the recognition of the right of Europeans to live and travel freely throughout the Community independent of their place of business or economic activity and the right to vote in the municipal and European elections in the country in which they reside;
- to contemplate the establishment of a Community ombudsman to protect the rights of citizens when dealing with Community administration;
- to gradually establish a common migratory policy based on the principles of cooperation and solidarity that takes into account the special historical ties between Europe and Latin America" (BOCG-Cortes Generales.A, IV Leg., n.28, p.4).

XIV. RESPONSIBILITY

1. Responsibility of Individuals

In response to the continued attacks waged by the Yugoslav federal army on Croatian cities, and especially on Dubrovnik, the Twelve, within the framework of European Political Cooperation, issued a Declaration on 27 October 1991, condemning these attacks and added that:

"The Community and its member States firmly remind the leaders of the federal army and all of those who exercise control over it, that according to international law, they are personally responsible for their actions, including those actions which violate the rules pertaining to international humanitarian law...".

As regards the same matter, the Declaration of the Twelve dated 8 November 1991, states that:

"They are deeply concerned by the persisting combat and the indiscriminate bloodshed that is taking place in spite of the reiterated pledges of a cease-fire. Within this context, they have drawn attention to the unacceptable threats and use of force against the people of Dubrovnik...

(...)

The Community and its member States are also profoundly concerned about the humanitarian aspects of the crisis and they insist that all parties allow emergency aid to be provided to the communities that need it and to those people who are displaced as a result of the fighting. Every one involved in the fighting must be fully aware of their personal responsibility to respect the fundamental humanitarian rules found in the Geneva Convention.

(...)".

2. Injurious Consequences Arising out from Acts not Probibited by International Law

Intervention of Mr. Lacleta, Representative of Spain, on 13 November 1991, during the debates of the Sixth Committee on the Report of the International Law Commission on the work of its forty-third session:

"Mr. President:

In this last intervention on behalf of my delegation on the topic of the report of the International Law Commission, I wish to first refer to chapter five, that is, to the topic of international responsibility for injurious

consequences for acts not prohibited by international law.

We wish to note here the diligent work of the special rapporteur, Mr. Julio Barboza, and thank him for his untiring efforts to clarify and accurately define concrete questions.

It is true, as is stated in the report itself, that this topic has been a part of the Commission's program since 1978 and that the progress that has been made does not seem to match the time the Commission has dedicated to this area. But it is also true that this topic is especially difficult as it is not limited to the mere codification but rather to the progressive development of law.

Liability in the absence of a wrongful act — or what in Spain is called *responsabilidad objetiva* — is not an accepted concept in international law. It was not many years ago, and I am referring to the eighth English language edition of the Treaty of International Law by Professor Openheim, edited by Sir Hersch Lauterpacht, that a harmful act by a State which affects another State did not constitute an international offence if it was committed involuntarily, with no malice or willful negligence. And it was further stated in a note that among modern authors there is an ever-growing tendency to reject the theory of absolute liability and to base responsibility for the offence on the States.

These draft articles are based on the belief — which my delegation shares — that the innocent victim should not be left to bear the loss alone even if the party that caused the damage was not guilty in the legal sense of the word.

Of course, the task is quite difficult. The Commission's experience shows this to be true. And it is also quite clear that upon studying the different drafts carefully, there seems to be a tendency to underline the necessity to prevent and avoid damage, primarily through the regulation of 'activities' that imply some kind of risk. Importance must also be attached to the preservation and protection of the environment.

My delegation is not opposed to those trends, provided that they do not obscure the original meaning of the topic. Even if it were possible to determine precisely which activities involved risk with a view to regulating them — which would imply the disappearance of no fault liability — we do believe it would be impossible to include all possible cases of transboundary harm that did not entail culpability.

Any activity is potentially dangerous; where there is life there is risk. Risk only ceases when life ceases, that is, when there is no activity.

It is clearly difficult to secure wide acceptance of norms or a code of conduct in a field that is so broad and difficult to categorize and which

would include liability in the absence of a wrongful act. Acceptance will depend on other important possibilities which have been referred to by several of my colleagues on this Sixth Committee when they mentioned the need for some type of insurance, a question that is also mentioned in the report issued by the Commission when in paragraph 249 it refers to the possible establishment of an intergovernmental fund to guarantee the payment of compensation to victims.

I do not wish to go any further into this question, Mr. President, but I do wish to add that, like many other delegations, mine does not feel that it would be useful to establish a hypothetical list of hazardous substances. Nor do we feel it would be useful to try to determine ahead of time what the legal nature of the instrument to be drafted by the Commission at the appropriate time might be. For the time being, efforts should be directed at drafting a set of coherent, reasonable and politically acceptable articles. While we would welcome a convention, it is too soon to make this the only objective.

In any case, Mr. President, before going on to the next topic of discussion, I wish to reiterate that my delegation fully supports the statement made by 'many members' of the Commission which appears at the end of paragraph 241 of its report to the effect that the principle of liability should be based not on risk, but rather on the concept of harm.

(...)".

3. Matters Excluding Responsibility

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

XV. PACIFIC SETTLEMENT OF DISPUTES

1. Diplomatic Modes of Settlement

Note: See XV.2. Judicial Settlement.

a) Settlement of the Palestinian Question

During the war against Iraq, the Spanish Government enthusiastically supported the celebration of an international conference on the solution of the Palestine problem. The communiqué issued by the Government

spokesperson on 15 January 1991, related to Spain's position as regards the Gulf Conflict, reads as follows:

"7.2. The international community should actively seek a solution to the Palestinian question, and enforce the United Nations Resolutions on this matter. An International Peace Conference seems to be the instrument that has inspired the greatest amount of international consensus and appears to be the most appropriate means by which to move towards a solution. Therefore, as both the European Community and the president of the Security Council in a Declaration dated 20 December 1990, have stated, this Conference should be called at the appropriate time and with the appropriate structure.

(...)".

In response to a question formulated in the Plenary session of the Congress on 10 April 1991, the Minister of Foreign Affairs, Mr. Fernández Ordóñez, clarified the Spanish position on the establishment of a security framework in the Mediterranean which would contemplate the settlement of the Palestinian question and the peaceful coexistence of all States in the Middle East:

"I believe that at present, perhaps in order to contribute some new information in response to the question posed by his Honor, I could explain Spain's position taking into account that the day before yesterday an informal meeting of the European Council was held and Spain stated the following points as part of its own position: First, the establishment of a registry in the United Nations on the sale of weapons. We are quite concerned about the problem of arms proliferation. Second, the expanded role of the Community in this region and the requirement that it associate itself with the peace process. Third, the indivisibility of international legality. There can not be two weights and measures. Fourth, the implementation of Resolutions 242 and 338 with the so-called principle of peace in exchange for land. Fifth, the opening of a dialogue or two dialogues — to use the classical formula — with nothing *'a priori'* as regards the basis for, on one hand, Israel's right to secure and recognized borders, and on the other, the Palestinian people's right to self-determination. Sixth, respect for the rights of man and an improvement in the living conditions in the occupied territories. Seventh, the importance of the reciprocal trust measures and one or several conferences.

(...)" (DSC-P, 1V Leg., n.101, p.4924).

b) Conciliation

The intervention by Mr. Yañez-Barnuevo, Permanent Ambassador from

Spain, on 3 October 1991, during the debates of the Sixth Committee on the Report of the "Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" regarding the work of the sessions held in February 1991:

"As regards the peaceful settlement of disputes... new possibilities are available for the Committee to continue to contribute to the strengthening of the mechanisms for the peaceful solution of disputes as provided for in the Charter of the United Nations. In this regard, in our opinion the proposal presented by Guatemala for United Nations rules on conciliation merits the attention of the Committee.

This is not the appropriate time to offer detailed comments on the text of the proposed rules. My country, together with the other member States of the European Community, has already submitted some preliminary observations on this subject which are included in the Secretary-General's report together with the often interesting observations made by other States and international organizations. At this time I simply wish to make two observations in relation to the proposal.

First of all, we accept the idea of examining the proposal made by Guatemala in the Committee with views of precisely defining its contents and improving it as much as possible. Specifically, it would be wise to soften a certain tendency towards formalism that is present in the draft and orient the rules towards greater flexibility.

The second observation is that we believe that an examination of the draft should be carried out within a broader context of efforts intended to strengthen recourse to conciliation as a means of peaceful settlement. If serves no purpose to have a set of perfect rules of conciliation if the States are not going to appeal to this means of settling disputes. It is necessary to study ways to encourage States to accept the participation of a third party which could help in resolving disputes. To this effect, conciliation is an ideal way to solve politically sensitive disputes because of its flexibility and simplicity and the informal way in which it can be organized. Moreover, as its very name states, this method allows the reconciliation of legitimate claims and interests and seeks just and honorable solutions for all of the parties involved.

In this sense, we believe that it would be worthwhile to study the Procedure for the Peaceful Settlement of Disputes drawn up at Malta in the Conference on Security and Cooperation in Europe and distributed as an official United Nations document, reference number A/46/335. It represents a good example of conciliation in the broadest sense because of its flexibility and adaptability. It is, in fact, an example of conciliation

in the broad sense of the word, which allows an impartial third party to be invited in to help not only in setting the procedure which should be followed to settle a dispute, but also in matters dealing with the issues of the dispute itself.

(...)".

2. Judicial Settlement

The intervention of Mr. García Muñoz, Ambassador for CSCE Affairs, on 16 January 1991, at the Meeting of CSCE Experts on the solution of disputes, held in La Valetta from 15 January to 8 February 1991:

"... my government realizes that decisions are adopted by consensus in this meeting and that, therefore, the system to be established must be widely accepted. For this reason, Spain is not trying to implement mechanisms that would mean the complete establishment of the rule of law in international relations. As admirable as this goal may be, we must recognize that achieving it is a utopian venture given the actual state of international affairs. What my government would like, however, is that for certain kinds of disputes — the least sensitive from a political point of view — the 34 participating States could agree that it is compulsory to appeal to a means of jurisdictional settlement (arbitrational or judicial).

In other words, my delegation's position is going to move with as much flexibility as possible and in a spirit of constructive contributions, between two main coordinates. The first, an idealistic coordinate, points toward a compulsory jurisdictional settlement for some types of disputes — those with the least political impact. The second, a realistic coordinate, which out of the need to make decisions that will be widely accepted, will be satisfied with the compulsory appeal to political means of settlement (negotiation, good offices, mediation, investigative committees and conciliation) for most disputes — those which are most sensitive from a political point of view. A wide range of intermediate solutions clearly fit between these two coordinates.

We do understand, on the other hand, that the system for settling disputes that comes out of the meeting in La Valetta will have to complement already existing systems.

It is the opinion of my delegation that this complementarity has two aspects that must be discussed: 1) the obligations assumed in this area by the participating States; 2) the forums and procedures for settlement.

As regards the first aspect, there already exist conventional ties between the 34 participating States that contemplate recourse to certain means of

settlement. It is quite clear that these ties, which are fragmentary and scattered, should be broadened and made as uniform as possible and that they must prevail in all cases over any commitment that might be established in the agreements made here. The system that is established in La Valetta should be subsidiary to those already in existence.

As regards already established forums and procedures it is clear that we must take as much advantage of their potential as possible. We are thinking in terms of already regulated fact finding committees (for example, those regulated by the 1907 Convention of The Hague on the peaceful solution of international disputes), or already established conciliation commissions (for example the Annex to the 1969 Vienna Convention on Treaty Law), or jurisdictional organs such as the Permanent Court of Arbitration or the International Court of Justice, which have been established and working for a long time. It is the opinion of my delegation that rather than create new forums, it would be preferable to appeal to well-tested, experienced institutions. We also understand that it is not appropriate for the time being to assign any responsibility in the area we are discussing to the newly emerging institutions of the CSCE. We do not yet know how well these institutions are going to carry out the functions assigned to them in the Charter of Paris on the new Europe, and, under these circumstances, it would be premature, in our judgement, to assign them functions in the area of dispute settlement.

(...)

Our final consideration has to do with the nature of the document on which the system is founded. It is clear that CSCE rules only allow for the adoption in La Valetta of a document that, based on good faith, generates only political obligations. However, if we want the system to work efficiently, we should not lose sight of the fact that, when the time comes, the 34 participating States will have to design a legally binding instrument, that is, an international treaty. The characteristics of the obligations assumed in this field require a legal basis. Merely political commitments could, in some cases, enervate the operation of the mechanism. My delegation believes that for all these reasons, the fact that it is necessary, or at least advisable, to eventually adopt a conventional instrument should be mentioned in the final document of this meeting".

3. The International Court of Justice

Intervention by Mr. Yañez-Barnuevo, Permanent Ambassador from Spain, during the 46th General Assembly held on 8 November 1991, commenting

on the Report of the International Court of Justice:

"Mr. President:

First of all, I would like to thank the Secretary-General and Sir Robert Jennings, the President of the International Court of Justice, for their very interesting words. From them and from the report of the Court on its activities from 1 August 1990 to 31 July 1991, which has been circulated to us, we can see that the situation of the Court is highly encouraging, with an increasing number of cases being submitted to it, irrefutable evidence of the growing confidence of States in this institution.

This situation is the cause of particular satisfaction in my country which fervently believes in the need to settle disputes between States by peaceful means, using all the procedures provided for this purpose in the United Nations Charter and other international instruments.

In these new and very encouraging times in international relations it is particularly necessary for international society to be based on respect for the rule of law and therefore, as provided in Article 1 of the Charter, disputes between States should be settled in conformity with the principles of justice and international law. One important means to that end is through recourse to the International Court of Justice, the principal judicial organ of the United Nations.

Mr. President, the use of the Court in most cases presupposes the existence of two conditions: political will and the financial means of doing so.

Political will is particularly expressed in the acceptance of the jurisdiction of the Court, which may be a general acceptance or on a case-by-case basis. In this regard, may I point out, as indicated in paragraph 16 of the Court's report, that Spain accepted this compulsory jurisdiction when on 16 October 1990, it deposited its optional declaration as provided for in article 36 of the Statute of the Court.

But in addition to the political will, there must be the economic resources for embarking on proceedings which in most cases are lengthy and costly. Two years ago, the Secretary-General had the excellent idea of establishing a trust fund as a means of assisting less developed States in this regard. Today we can note with satisfaction that the fund has begun to work and I am pleased to say that my country has just made a contribution to it.

Mr. President, I said before that the situation of the International Court is encouraging, but in the pursuit of such an ambitious goal as respect for justice and international law in international relations, it is also true that we must never become complacent. We must therefore exert constant efforts towards that goal.

The Secretary-General, continuing his thinking in this area, has presented to us in his last two annual reports and in his statement this morning, a specific suggestion aimed at refining the existing system on the basis of the Charter.

He requests, in effect, that the General Assembly authorize him, as provided for under article 96 of the Charter, to request advisory opinions of the Court on legal questions arising within the scope of his activities. In our view, we should give serious consideration to the possibilities of acceding to that request and finding the right ways and means of doing so. The text of article 96 of the Charter provides ample scope for finding a generally acceptable solution that would enable the Secretary-General to use the experience and authority of the Court when, in the exercise of his duties, legal questions arise which require clarification at the highest possible level.

We are convinced that we would thereby be serving the ultimate goal of the Organization, which is none other than the maintenance of international peace and security under conditions that may serve the aim of justice and progress for mankind.

Thank you very much, Mr. President".

In the aforementioned intervention by Mr. Yañez-Barnuevo before the Sixth Committee on 3 October 1991, (*See* XV.1.b) the Secretary-General's proposal that the General Assembly authorize him to request advisory opinions from the International Court of Justice is once again supported:

"Mr. President, another question that deserves to be dealt with in this Committee in the framework of its work on the Peaceful Settlement of Disputes, is the role of the International Court of Justice in this area and ways to reinforce that role. It is certainly true that, as the President reminded us a few days ago, the Court hears more cases today than at any other time in its history. Nevertheless, my delegation believes that improvements could still be made in this area.

In this regard, there is the suggestion, restated in the Secretary-General's annual report this year, that the General Assembly authorize the Secretary-General to request advisory opinions from the Courts on legal questions that arise within his competence, as provided for in article 96 of the Charter.

My delegation feels it would be wise to explore the possibility of acceding to this request made by the Secretary-General, and to finding the right ways and means of doing so. This would be one more way of strengthening this recourse to jurisdictional means for the settlement of disputes for those conflicts that, due to their nature or special circumstances,

are best suited to this type of solution. In effect, as the Heads of State and the government of the Ibero-American countries stated in their Guadalajara Declaration in July this year, 'only an international society ruled by the law can guarantee peace and security for all people'.

(...)".

XVI. COERCION AND USE OF FORCE SHORT OF WAR

1. Collective Measures. Regime of the United Nations

a) Sanctions Against South Africa

The Minister of Industry, Commerce and Tourism, Mr. Aranzadi Martínez, on the occasion of an address to the full Congress on 14 March 1991, was optimistic about the reform process which had been initiated by President DeKlerk in the Republic of South Africa and he announced the lifting of some of the EC sanctions:

"The Minister of Industry, Commerce and Tourism (Aranzadi Martínez): Your Honor, in keeping with the declarations made by the President of the Government and with the declarations of the European Council of Rome on South Africa, the Spanish government, within the framework of the set of actions taken by the Community countries, proposes that we welcome the initiatives that you have mentioned that the Government has taken to abolish a series of laws that have been the pillars of 'apartheid' and initiate, together with other Community countries, a series of interconnected measures to be put into practice as soon as those laws are abolished which would relax some of the sanctions that have been adopted against South Africa.

Among the measures that the Community has already adopted, as your Honor knows, are the lifting of the prohibition of new investment and the agreement to intensify the set of positive measures — those that basically favor the people affected by 'apartheid' — and essentially to emphasize those related to the return and reassimilation of exiles.

Spain and the entire Community hope that the measures that are already being adopted will contribute to accelerating the process that has already begun, and additionally, will serve as a concrete sign to all the implicated parties coming together to negotiate of the support that there is for the dismantling of 'apartheid' and the creation of a new united,

non-racist, democratic South Africa that can be incorporated into the international community of nations" (DSC-P, IV Leg., n.97, p.4756).

Consequently, the attitude of the Spanish Government as regards the Republic of South Africa, has also changed in the United Nations. This can be seen in the Mr. Serrano's intervention on 13 December 1991, explaining Spain's decision to abstain on two resolutions on South Africa found in item 37 of the Agenda ("Policies of Apartheid of the Government of South Africa"):

"Mr. Serrano (Spain): First of all, I should like to express our support for the comments just made by the representative of the Netherlands on behalf of the Twelve member States of the European Community.

The important events taking place in South Africa — and, most especially, the Conference for a Democratic South Africa that will be convening on 20 December and will form the basis for building a democratic, pluralistic and non-racist State — are now being given careful attention and firm support by the international community.

My delegation is pleased that, for the most part, those vital changes have been reflected in the draft resolutions submitted this year under agenda item 37. Draft Resolution A/46/L.32, 'International efforts towards the complete eradication of apartheid and support for the establishment of a united, non-racial and democratic South Africa', was the outcome of a constructive negotiating process which was in turn a result of the Declaration the Assembly adopted in December 1989. It highlights the important role the international community can and must play in support of the political change towards democracy that is under way in South Africa.

In that context, I wish to explain Spain's position on draft Resolutions A/46/L.31 on the oil embargo against South Africa and L.42 on military and other collaboration with South Africa. In past years my delegation voted in favour of draft resolutions on the oil embargo; we have cooperated and continue to cooperate with the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. But the text of draft Resolution A/46/L.31 does not seem to take sufficient account of the changes occurring in South Africa and the new spirit of cooperation in the international community in that regard. For that reason, the delegation of Spain will abstain this year on the draft resolution.

With respect to draft Resolution A/46/L.42 on military and other collaboration with South Africa, my delegation acknowledges the important changes made in the text with a view to adapting it to current circumstances. But certain formulations, imperative in tone, make it impossible for us to

support the draft resolution, as we would have wished to do" (Doc. UN A/46/PV.72, pp.30-31).

b) Iraq

The position that the Spanish Government has taken towards the Gulf Conflict is clearly stated in the communiqué issued by the Government spokesperson on 15 January 1991. This position fully endorses the sanctions adopted by the Security Council against Iraq and pledges to collaborate faithfully in their application, including the use of force:

"1. The basic objective of the Resolutions of the Security Council of the United Nations is the withdrawal of Iraq from Kuwait and the reestablishment of sovereignty and territorial integrity for this member of the Community of Nations.

This position has an undeniable basis in international law and it is in keeping with the principles established in the Charter of the United Nations.

2. In order to meet this objective, the use of force is considered a last resort; that is, when evidence exists that the aggressor will not withdraw by any other means. Justification for the use of force to uphold the Law is clearly for cases in which there is a case of illegally utilized force.

3. The position taken by Iraq has been to completely refuse to accept the United Nations' objectives. Up to now, their official position has been unshakable: they will not withdraw from Kuwait, and they consider the annexation of Kuwait as irreversible.

4. Aggression cannot be rewarded. Therefore, it is impossible to imagine any compensation for withdrawal. The international community, however, has made an effort to ensure that compliance with the United Nations Resolutions would not be a humiliation for Iraq.

5. If the Government of Iraq accepts the Resolutions of the Security Council and agrees to comply with them, it should be given the following guarantees:

5.1. Iraq will not be attacked.

5.2 The embargo will be lifted.

5.3 A negotiated settlement of Iraq's disputes with Kuwait will be possible, in accordance with international law.

6. The United Nations will try to facilitate a solution by:

6.1. Supervising the withdrawal of Iraq from Kuwait by sending observers;

6.2. Monitoring borders after the withdrawal;

6.3 Deploying a peace force when foreign military forces withdraw.

(...)".

The President of the Government, Mr. Felipe González, before a plenary session of the Congress of Deputies to inform on the crisis in the Persian Gulf, on 18 January 1991, said the following on this matter:

"Thanks to the Charter of the United Nations and the Security Council resolutions, the international community finds itself legally able and morally bound to use all of the means necessary, including the use of force, to reestablish peace and international order in the Gulf region. Serious consideration of what is in play here is needed if we consider adopting a posture avoiding the legitimate use of force against Iraq at all costs and at whatever price.

(...)

If we wish to have a world order worthy of its name, and one which it seems we are entitled to after the changes that have taken place in Eastern Europe and the end of the Cold War, this must mean that the international community is able to confront those that violate international peace and security. If this were not so, we would find ourselves helpless and defenseless against any aggression. At the same time, if Iraq were to achieve some of its objectives, it would undoubtedly set a very dangerous precedent for the society of States in which we live. No small or medium-sized State would be able to consider itself safe against the ambitions of those that are most daring and least scrupulous.

(...)

Spain, through its government, has accepted and supported all of the Security Council resolutions. It has considered Resolution 678 as an opportunity for Iraq to accept a peaceful solution to the situation it has created. Once Iraq made it clear that it would not comply with the resolutions, the international community had no choice but to act to reestablish the Law.

(...)

Spain considers itself to be within the group of countries that has been called upon by the United Nations to support the efforts of the countries that are more directly involved in the use of all means to achieve the withdrawal of Iraqi forces from Kuwait. We are thus fulfilling our commitment as members of the United Nations, in accordance with paragraph 5, article 2 of the United Nations Charter... And also in accordance with article 49...

Therefore,... we have taken on the responsibility of lending logistic,

medical and humanitarian support of many kinds, within what we feel to be is Spain's ability to act, to the countries that are directly participating in the acts of force at this time, in order to reestablish the national sovereignty and territorial integrity of Kuwait.

As regards compliance with the embargo, which is still in force, Spain is maintaining the naval units sent to the area and has adapted the instructions given to these naval units to the situation.

(...)" (DSC-P, 1V Leg., n.81).

In a special plenary session of the Congress of Deputies held on 8 January 1991, the Congress supported the Government's position by means of a resolution issued on that same day:

"2. Acceptance to the United Nations — We manifest our acceptance of all of the Resolutions approved by the Security Council of the United Nations and especially Resolution 678.

3. Support for the Government — We support the measures taken by the Government in the framework of the directives approved by the Western European Union in order to apply Resolution 678 of the United Nations Security Council.

4. Support for the multinational forces — We also back the Government's actions in support of the multinational forces whose actions are based on the application of paragraph 2 of Resolution 678 of the Security Council of the United Nations.

(...)".

After hostilities ceased in the Gulf, the Spanish Government reiterated its support of the collective measures that were adopted in the United Nations which had made the liberation of Kuwait possible. The Government spokesperson issued a communiqué on 1 March 1991 which read:

"2. In accordance with the principles and objectives of the Charter of the United Nations, Spain has lent its support to compliance with the Resolutions of the Security Council, which were aimed at restoring the sovereignty of a member country of the Community of Nations...

(...)

4. Spain considers the United Nations to be the appropriate framework in which to overcome the divisions that have emerged as a result of the conflict, to find solutions for other problems that exist in the region, and to ensure peace and security in the area so that a future of stability and progress for its peoples can be achieved.

(...)".

The President of the Government, before a full session of the Congress of Deputies to inform the members on the outcome of the Persian Gulf Conflict

on 5 March 1991, offered the following assessment of Spain's contribution to these collective measures:

"Logistical support, as members of the Congress know, was given during the Gulf crisis basically to the United States, which was the main protagonist of the deployment carried out in the area. But it was also provided to countries such as Turkey, the United Kingdom, France and other members of the Western European Union. As regards the United States, for example, we can say that approximately 20,000 round trip flights have been made from Spanish bases, and the tonnage transported surpasses 205,000 tons and more than 105,000 military personnel participated in military tasks.

There were 294 missions flown by the famous B-52 aircraft, which makes up approximately 2.5% of the total number of flights...

The Air Force transported more than 800,000 kilos of material from several air bases in Spain including the ones in Zaragoza, Torrejón and Morón... and the flow of fuel pumped for aviation use increased 400%, and 835,000 tons of fuel were provided, and certainly not free of charge, while 237 North American ships were serviced in Spanish ports and naval bases.

(...)

... I would like to mention that we have renounced an isolationist policy with the conviction that such a policy is not in Spain's best interest. We have taken a new approach in our foreign affairs based on the idea that it is in our interest to merge our destiny with that of the European Community and other Western countries. This will also bring about greater cooperation on our part in areas of the world such as Northern Africa or Ibero-America, and will strengthen the ties and relationship we have with the United States and the Soviet Union. None of these parameters, if analyzed objectively and correctly, have prevented Spain from strengthening the position it has adopted. And not only are we able to overcome our history of isolation, sometimes falsely masked as neutrality, but we are also able to renounce a bell-tower or pulpit type of policy which is based on telling everyone else what they should do without making a commitment to do what one feels must be done" (DSC-P, 1V Leg., n.92, pp.4500-4502).

In April 1991, the Spanish government also decided that Spanish forces would participate in the humanitarian intervention authorized by the Security Council to protect Kurdish refugees in northern Iraq after the military defeat of their uprising against Sadam Hussein's regime in March 1991:

"Mr. Viqueira (Spain)...

Upon instructions from my Government, I have asked to be allowed to speak in order to express before the Security Council Spain's complete support for Resolution 688 (1991), which has just been adopted.

My country has been very concerned about the brutal repression unleashed by the Iraqi authorities on its own civilian population, in particular the Kurds and the Shiites, and it fears the repercussions this may have on peace and security in the region.

In addition to the enormous magnitude of the suffering and the loss of human life, this repression has created a problem of displaced persons and refugees of epic proportions, has deeply moved the public opinion of the world, and of Spain in particular, and has inspired a number of States Members of the Organization to take an initiative whose result is the resolution just adopted.

Spain joins the rest of the international community in firm condemnation of the systematic violation of human rights committed by the Iraqi authorities against their own civilian population, and also demands an immediate end to these inhumane practices, as well as respect for the human and political rights of all Iraqi citizens.

In conclusion, my Government is prepared to cooperate with the Secretary-General and the United Nations in all efforts aimed at alleviating the suffering of the Iraqi civilian population" (Doc. UN S/PV.2982, 5 April 1991, p.81).

The Minister of Foreign Affairs, Mr. Fernández Ordóñez, on the occasion of an intervention during a plenary session of the Senate on 23 April 1991, explained the Government's position on the situation of the Kurdish people in northern Iraq and the humanitarian intervention that had been ordered by the Security Council under the following terms and conditions:

"... when Resolution 688 is approved, we will order our Ambassador to the Security Council to expressly support said resolution, even though Spain is not a member of the Security Council...

(...)

... As regards the humanitarian aspect, we sent our first shipment in January 1991, when the tragedy did not yet exist, in response to a request made by Turkey. A Hercules aircraft was sent to help the Turkish government with the first great exodus. On 8 April, two Hercules aircraft were sent to the Turkish airbase at Yabararkakir, with a series of provisions (tents, blankets, etcetera). On 11 April, we sent two more aircraft, this time to Iran. On 19 April, we sent two more, also completely full of cargo, once again to Turkey. We have made voluntary financial contributions as everyone knows, and everyone also knows how Spanish

public opinion, the Red Cross Committee, etcetera have responded.

What are we going to do from now on? Beginning now, this week, we are going to send two more aircraft to Iran; we are going to send a ship with more than 1,500 tons of humanitarian aid to Turkey and Iran, and as the Minister of Defense said this morning, we are sending a field hospital and the material needed to house refugees in camps as well as specialized personnel to run the hospital, construct refugee camps, transport material, and guard and defend these installations. The government of Spain is going to coordinate these actions within the framework of the Western European Union, and the personnel, as the Minister of Defense has stated, will be professional or volunteer.

(...)

What are the political precedents that support this decision? Well, simply, as your Honor has very correctly stated, there has been a commotion created in international public opinion which has brought about a sensation of urgency. On the one hand, Resolution 688 classifies the Iraqi aggression as a threat to international peace and security and it asks all member States to lend their assistance...

What are the characteristics of this decision? And with this I will finish up. I would underline several which are obvious.

First, this in an act of international rescue, of emergency humanitarian aid, for which I am not certain that there are many precedents, but one that is justified by the enormity of the problem we are facing.

Second, the respect for human rights has an international dimension. There is a revolution, there is commotion in international law. When the violation of human rights reaches these massive proportions, we can probably speak of a true state of international need which requires urgent action.

Third, this is not the isolated act of one country or another, but rather an international effort that will be coordinated at the international level.

Fourth, this is not a permanent action, but rather a temporary one, and it is not meant to question the sovereignty or territorial integrity of Iraq. It is temporary and exceptional and the goal is to save lives and achieve the return of the refugees to their homes under safe and dignified conditions as soon as possible.

(...)" (DSS-P, IV Leg., n.63, pp.3486-3487).

The Minister added the following during the same debate:

"I want to say that what we have here is an issue that has long been debated in the arena of international law: the problem of the inviolability of national boundaries. We are all aware of this and I believe that all of

the interventions have been prudent in this regard. We must remember that when Hitler came to power, the legal positivism of that time and the doctrine of unlimited sovereignty allowed the Nazi atrocities to happen. Nevertheless, later on, the world evolved little by little and now we are rediscovering a doctrine that was being discussed in the 19th century: the doctrine of humanitarian intervention, the idea that genocide is a violation of international *ius cogens* and that, as such, it creates a state of necessity which justifies a prudent intervention. This represents a fundamental change which we are experiencing right now, one which we should administer carefully, but one which is a reality...

(...)" (DSS-P, IV Leg., n.63, p.3491).

XVII. WAR AND NEUTRALITY

1. Humanitarian Law

Note: See XIV.1. Responsibility of Individuals.

2. Treatment of Prisoners of War

The OID made the following communiqué on 22 January 1991:

"The Spanish Government emphatically condemns the inhumane manner in which Iraq treated the prisoners of war it took from the multinational forces, and the manipulation of the situation that was clearly evident from the biased way in which they [the POWs] were presented to the press and the threat to use them as human shields in military installations. These all constitute a flagrant violation of international law and elementary rules of humanity".

3. Protection of Non-combatants

A communiqué issued by the Government spokesperson on 15 February 1991 states that:

"The Spanish Government expresses its concern and regret upon hearing of the bombing of Bagdad that has caused the death of an unspecified number of civilians.

(...)

The Executive is convinced that the international coalition is committed

to saving human lives and casualties among the civilian population, and it therefore suggests that an investigation be opened to clarify the facts surrounding the bombing of the Iraqi shelter. The Government believes that this investigation could be carried out under the auspices and supervision of the United Nations or the International Red Cross. The Government also believes that the results of this choice should be made public so that it could be determined whether this occurrence was an error on the part of the multinational forces or a deplorable use of the civilian population by Sadam Hussein.

(...)

The Spanish Government feels that the multinational coalition should cease to fly attack missions over Bagdad and other cities and concentrate their forces on operation theatres around Kuwait.

(...)".

4. Belligerent Occupation

In a Declaration dated 2 May 1991, the Twelve, within the framework of European Political Cooperation, stated their position on the policy of Israeli settlements in occupied Arab territory in the following manner:

"The Community and its member States reconfirm their long-standing position which is that the Jewish settlements in the territories occupied by Israel after 1967, including East Jerusalem, are illegal according to International Law and more specifically according to the IV Geneva Convention.

(...)".

5. Civil War: Rights and Duties of States

Note: See IV.1.a) *Non-intervention and Non-use of Force.*

In a Declaration dated 8 July 1991, the Twelve, within the framework of European Political Cooperation, decided to institute an embargo on arms trade with belligerents:

'In light of the current situaton in Yugoslavia, the Community and its member States agree to an embargo on the sale of arms and war materiel and applicable to the entire country. Theyurge other countries to follow suit...'.