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on Thursday, 21 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Spain (continued) (CCPR/C/95/Add.1; HRI/CORE/1/Add.2/Rev.2)

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, protection of the family and children, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 24, 26 and 27 of the Covenant) (section I of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Ibarra, Mr. Borrego and Mr. Zurita (Spain) took places at the Committee table.

2. Mr. IBARRA (Spain), replying to questions raised at the previous meeting regarding the so-called "State of Autonomies" in Spain and the nature of the autonomy system, said that article 2 of the 1978 Constitution recognized and guaranteed the right to autonomy of the "nationalities and regions of Spain", thereby referring implicitly to the territorial communities granted autonomous status during the Second Republic, namely, Catalonia, the Basque Country and Galicia, and, by extension, to the provinces and island territories referred to in article 143 of the Constitution. In exercising their right to self-government, territorial communities could become Autonomous Communities by adopting a Statute of Autonomy. Spain now had 17 Autonomous Communities and two autonomous cities. Under the Constitution, every Statute of Autonomy was both a basic institutional norm of the Autonomous Community in question and an organic law of the State with constitutional rank. Each Statute of Autonomy established the governmental structure and the legislative, regulatory and executive powers of the Autonomous Community. The scope of a Community's powers could be extended by periodic revisions of its Statute of Autonomy. There were three categories of powers: those reserved exclusively to the State; those reserved exclusively to the Autonomous Community; and those pertaining exclusively to the State that it transferred to the Autonomous Community. Each of the 17 Autonomous Communities had its own parliament and an autonomous government headed by a president who exercised executive power and directed an autonomous administration. As a result, some areas formerly administered by the central Government were now administered by each Autonomous Community, a process of political and administrative decentralization that had entailed a transfer of human, material and organizational resources and of financial resources. Since 1980, over 1,000 transfer decrees benefiting the Autonomous Communities had been adopted, and approximately 50,000 government officials had become Autonomous Community officials. The Autonomous Communities were currently responsible for 25 per cent of the public expenditure in Spain.

3. As to the difficulties or conflicts experienced in building the system of autonomy, in legal and political terms, they had been mainly jurisdictional conflicts that had had to be resolved by the Constitutional Court. The major problems of constitutional interpretation - based essentially on articles 148

to 153 of the Constitution - had largely been resolved by 1990. Such disputes, which had reached a peak in 1986 with 96 cases, had thus subsequently declined to the point where only 4 disputes had been adjudicated in 1994.

4. Concerning terrorism related to the development of autonomy, the problem had been referred to inaccurately by Mr. Prado Vallejo as the "Basque problem". There was no Basque problem as such, but rather the pitting of democratic Basques against non-democratic Basques with a separatist agenda. He would make available to interested members of the Committee the latest 1995 report on violence in the Basque Country. The nationality of the Basque Country was recognized, along with that of all other Autonomous Communities, but also its "historic rights", which, together with that of the former Kingdom of Navarre, had been accorded special protection under the first additional provision of the Constitution. The Basque territory, composed of Alava, Viscaya and Guipúzcoa, was the first in Spain to be granted the status of Autonomous Community following a 1979 referendum in which approximately 53 per cent of the electorate of 1.5 million had voted in favour of autonomy, 3 per cent against, and 40 per cent had abstained. The three distinguishing characteristics of the Basque Country were cultural, financial and administrative: the Basque language was recognized as an official language, together with Spanish; the Basque Country enjoyed a unique form of financial self-government inherited from the nineteenth century, under which it collected all taxes within the territory and reimbursed the central Government for any services provided; and it was the only Autonomous Community to recruit and maintain its own autonomous police force. Since 1979, elections had been held in the Basque Country as in all other Autonomous Communities for both its own and the national parliaments. Currently, however, 80,000 Basques voted under a special political option that also offered a framework for the activities of the terrorists belonging to the Euzkadi ta Azkatasuna (ETA), a separatist movement that advocated violence to achieve its objective and had caused 800 deaths since 1978, having thus far in 1996 alone murdered three high officials and kidnapped two civil servants. Spain's 1978 Constitution allowed constitutional reform as the only means to a change of status. With its primarily criminal dimension reinforced by the special political option available to it, ETA stood alone in Spain as a determined enemy of democracy.

5. A number of questions had been raised about the independence of the judiciary in Spain. Mr. Prado Vallejo had confused the selection of judges and magistrates with the selection of members of the General Council of the Judiciary. Judicial power in Spain was exercised by judges and magistrates who were independent and had life tenure to exercise the power to judge and enforce judgements. Judges were not elected by the parliament but were career officials, chosen by competition and review on the basis of knowledge and merit. The General Council of the Judiciary, on the other hand, was a body entrusted by the Constitution with responsibility for disciplinary matters involving members of the judiciary and the administration of justice, without any actual power to judge. Twelve of the 20 members of the Council were appointed from the legal profession and the remainder from a wide range of other professions, under a system reviewed and approved by the Constitutional Court on the basis of the 1985 Judicial Power Organization Act. The judges and magistrates serving on the General Council were, indeed, elected to their posts by the parliament.

6. With regard to the protection of minors, the reasonable and moderate punishment of children by their parents permissible under article 154 of the Civil Code, which was virtually identical to that provision in the Napoleonic Code, had never caused any problems or led to the physical mistreatment of children, which was an offence punishable under the Criminal Code. The punishment in question in the Civil Code fell rather under the legitimate right of patria potestas. In the recent debates before the adoption of the 1996 Organic Law on the Legal Protection of Minors, that article of the Civil Code had been considered and endorsed. Under article 3 of the Organic Law, all international protection must be accorded to minors, especially the guarantees embodied in by the Convention on the Rights of the Child and other treaties to which Spain was a party.

7. Mr. BORREGO (Spain), turning to the questions raised on non-discrimination, said that Spanish citizens had no problems with access to the courts. Indeed, Roma (Gypsies) in Spain were guaranteed free legal aid, even under the new 1996 law. No reference had been made in the report to religious minorities because there was no problem with discrimination against them in Spain. Article 14 of the Constitution and the 1980 Religious Freedom Organization Act stipulated that there was to be no discrimination or inequality before the law on the grounds of belief, nor could there be any religious grounds for excluding an individual from public or private employment. Spain's replies to a questionnaire of June 1995 from the United Nations Special Rapporteur on Religious Intolerance regarding religious freedom in educational institutions would be made available to interested members of the Committee. The Special Rapporteur had come to Spain to investigate the treatment of a religious sect, the Nuevo Movimiento Religioso or Familia, and had seen for himself that police and administrative authorities had absolved the sect of any wrongdoing, and that no religious conflicts had been involved.

8. On the language question, he said that Spanish was the official language of the country, but that each Autonomous Community had its own official language as well. The Constitution avoided using language as an offensive weapon to divide Communities and article 3, paragraph 3, of the Constitution in fact stated that the wealth of the different forms of language in Spain was a cultural heritage demanding special respect and protection. Spain had changed considerably in that respect, and it had been a gratifying sight to see the various political leaders speaking their own languages on national television during the recent election campaign.

9. With regard to discrimination in the cultural area, a distinction had to be made between pathological acts by disturbed groups and allegedly racist acts by normal people. Spain had gone from being a country of emigration to one of immigration and racial conflicts therefore did exist. The problem, however, was less one of conflict between races than of conflict between the rich and the poor, a social problem in which race was incidental. Certain forms of conduct had been criminalized whenever they had started to cause a problem, and training programmes had been put in place in a number of institutions to instil the notion of racial equality. Finally, the Government had launched effective advertising campaigns designed to raise awareness of equality issues and present positive solutions to the problems caused by racism.

10. Mr. IBARRA (Spain), responding to questions about immigration and measures to eliminate discrimination against foreigners, referred the Committee to Spain's latest report submitted under the International Convention on the Elimination of All Forms of Racial Discrimination. At the most recent count, some 500,000 foreigners were legally registered resident aliens; that figure represented a substantial increase and was probably paralleled by an increase in the number of illegal immigrants. The Spanish Government considered illegal immigration to be a major problem which it was attempting to address within the framework of the Schengen Accord. Over 12,000 asylum requests had recently been granted or were pending.

11. As far as specific measures with regard to minorities were concerned, he stressed that education was a key plank in the Government's integration strategy. A substantial number of Roma children were entitled to educational assistance or compensation, and significant sums had been made available to provide new housing for Roma communities.

12. Turning to the issue of crimes of race hatred and xenophobia, he stated that it was still impossible to evaluate the true effectiveness of the preventive legal measures that had been taken. The only certainty was that xenophobic crime was a Europe-wide phenomenon that could only be dealt with through effective concerted action within the European Union. There was also a need to tighten up extradition procedures. Measures had also been taken to suppress the spread of xenophobic propaganda. Penalties for such crimes in Spain were not limited to those provided for in the Penal Code; the judicial authorities had a certain amount of latitude in matching a specific punishment to a specific crime.

13. Mr. BORREGO (Spain) said that, on the issue of the domestic application of the Covenant and specifically with regard to the question regarding provisional prison sentences, he wished to stress that reading the Spanish Constitution in isolation from the international treaties and agreements ratified by Spain might create the wrong impression as to how the system of provisional prison sentences worked. Essentially, there was not much in the way of constitutional jurisprudence on such sentences, and, consequently, the law had to be supplemented by article 9, paragraph 3, of the Covenant. The fact that the Covenant and other international instruments had been incorporated into the law of the land made such a procedure possible.

14. He confirmed that the Covenant was known to and applied in lower courts, and that its provisions were included in training programmes for judges and court officers. The Ministry of Justice and the Interior frequently received requests for clarification of points of law in the light of the Covenant from courts at all levels.

15. Regarding the question about conflicts between the Covenant and European human rights instruments, he explained that procedurally it was impossible for a communication to be examined simultaneously by two international human rights bodies. At the domestic level there was no conflict because the Covenant had been incorporated into Spanish legislation in the form of the new Constitution. Finally, Spain's experience in incorporating international legal instruments into its legislation had been highly successful in helping to resolve human

rights issues and shedding light on how Spain should interpret its constitutional requirements. As far as the sensibilities of Spanish citizens were concerned, he stressed that the pronouncements of international human rights bodies were accepted without question as part of Spanish law.

16. With regard to questions raised in connection with article 2 of the Covenant, he explained that Spain had assumed the obligation to provide effective administrative recourse regarding any violation of the Covenant. Assuming that the Committee had identified a violation, such a finding would give rise to a judicial recourse in Spain, and once the available recourses had been exhausted the matter would revert to the Committee. The only way to change that procedure would be to formulate a new Protocol. The Human Rights Committee was not the highest authority in the legal order of a ratifying State and there was no provision in Spain for the review of trials resulting from any view which the Committee might issue.

17. The views of non-governmental organizations had not been incorporated into the periodic report since its compilation was the sole responsibility of the Government and the opinion of any other organization would simply give rise to confusion.

18. He confirmed that to serve as a public official in Spain and to participate in Spanish elections it was necessary to be a Spanish national. He also indicated that article 14 of the Covenant was an integral part of Spanish law and as such guaranteed equality before the law of both Spanish and foreign citizens.

19. With reference to the controversial legislation on maintenance payments introduced in 1990 as part of the new Penal Code, he said that maintenance was payable to children as well as spouses. The Spanish legislation on that matter in no way violated article 11 of the Covenant; likewise, insolvent individuals could not be sent to prison merely on the grounds of being unable to fulfil a contractual obligation.

20. The formerly discriminatory distinction between legitimate and illegitimate children had been removed and both parents now had the right to exercise parental authority, whereas previously only the father had enjoyed that right in the eyes of the law. In certain circumstances where the traditional family unit had broken down, parental rights could be exercised by just one parent. Wherever possible or practicable, the views of the minor were sought in any arrangement where parental responsibility was not exercised jointly.

21. Finally, he confirmed the existence of a programme for training officials with a view to preventing discriminatory behaviour patterns, and stated that any attempt by the Government to set quotas for women's participation in public life would be unconstitutional and unfair. On the other hand, specific measures had been put in place to ensure equality of opportunity for women in public life. A detailed account of those measures could be found in the report Spain had submitted to the Fourth World Conference on Women in Beijing.

22. Mrs. CHANET asked the delegation to clarify whether the Covenant had actually been used as a basis for judicial decisions rather than simply as a

source of reference. The Covenant was more specific than Spanish law and did not seem to have been fully respected.

23. While the Spanish delegation had provided information on measures to combat racial discrimination and xenophobia there was a more serious problem, namely, the Basque problem. She had been surprised, in fact, to hear from the representatives of Spain that the Basque problem did not exist. She noted that the Statute of Autonomy had failed to put an end to violence by ETA and the grupos antiterroristas de liberación (GAL) and requested more details on that situation.

24. Mr. KLEIN asked whether the Basque population was considered by the Government to be a linguistic minority within the meaning of article 27 of the Covenant.

25. Mr. IBARRA (Spain) said that the situation of peace in the Basque Country could not be described as "the Basque problem". The democratic political parties represented over 90 per cent of the population of the Basque Country. The conflict was not between Basques and non-Basques or between Spain and the Basque Country but between those who used democratic means to resolve their problems and those who used violence and other crimes to achieve their political objectives, while exploiting the issue of the Basque independence as a pretext. The "Basque problem" was therefore a problem of political violence by ETA; the other problems were those entailed by the development of an autonomous State.

26. The Statute of Autonomy was not a perfect document, but it provided the organizational structure for self-government and set forth the legislative and executive powers of the Basque people.

27. The activities of the GAL organization had been prosecuted by the Spanish courts and judgements had been handed down on 9 December 1985, 13 November 1987, and 20 November 1991; the third judgement had been partially annulled by a judgement by the Supreme Court on 12 March 1992 which exhaustively defined the criminal activities of GAL and sentenced two former police officers for the crime of belonging to an illegal political association and for a series of murders and a number of other crimes all in connection with activities carried out in 1985, 1986 and 1987. Another case concerning the GAL organization was currently before the Supreme Court; two of the defendants were the former Minister of the Interior and Director of State Security.

28. All those trials demonstrated the strength of the Spanish legal system, which guaranteed the rights recognized in the Covenant, especially the right to equality before the courts, and also the right of the accused to a fair trial and to be presumed innocent until proven guilty.

29. There was now a conviction among the public that the activities of ETA must never be permitted to limit freedoms in Spain; the anti-terrorism policy was supported by the public and by all democratic political forces. In the years of struggle against terrorism, it had been found that the rule of law, and international cooperation, could effectively suppress terrorism; the enemies of democracy were well aware that the forces of democracy were determined to enforce the law.

30. The people who spoke Euskara, the Basque language, were not a linguistic minority within the meaning of article 27 of the Covenant. Under the law governing the use of Euskara the Basque administration was bilingual, the Basque parliament was bilingual, and all documents were issued in Spanish and Euskara. Translation and interpretation services were provided in the courts, and trials were often conducted in Euskara. The percentage of people speaking Euskara varied from district to district but was never more than 50 per cent of the population; and in most districts it was 20 to 30 per cent of the population.

31. Mr. BORREGO (Spain) said that normally the provisions of the Covenant were applied in Spain through interpretation of the law. Replying to the questions asked by Mrs. Chanet, he said there had been a case in which the accused had been kept in pre-trial detention because of the risk that he would escape and because of the very serious nature of the economic crimes of which he was accused.

Right to life, liberty and security of person, treatment of detainees and other persons deprived of their liberty and the right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, right of assembly and of association, and right to take part in the conduct of public affairs (articles 12, 13, 17, 18, 21, 22 and 25 of the Covenant) (section III of the list of issues)

32. The CHAIRMAN read out section II of the list of issues concerning the fourth periodic report of Spain, namely: (a) any difficulties in the implementation of the regulations governing the use of weapons by the police and the national security forces during the period under consideration, and measures taken to prevent them from recurring; (b) general laws and regulations introduced to combat terrorism, rights and freedoms provided for under the Covenant which could be the subject of derogations or whose exercise was limited or restricted, and specific measures in response to the concerns voiced by the Committee during consideration of the third periodic report with regard to article 55 of the Constitution and the existence of "permanent emergency legislation" in that area; (c) follow-up to the Constitutional Court decision of 3 March 1994 declaring article 504 bis of the Criminal Procedure Act to be partially unconstitutional; (d) measures taken to prevent the recurrence of acts of torture and ill-treatment, and number of complaints lodged with the authorities during the period under consideration, alleging that persons deprived of their liberty had been victims of acts of torture or other inhuman or degrading treatment or punishment or of arbitrary detention, and prosecution of the perpetrators of such acts; (e) factors and difficulties, besides overcrowding in prisons and detention centres, likely to make it hard to implement article 10 of the Covenant; (f) specific measures taken after 1990, apart from the creation of new courts, to make tangible progress towards reducing the duration of trials, and overall impact of such measures on criminal and civil proceedings.

33. Under section III the issues were: (a) the situation regarding the amendment of legislation governing the right of asylum and refugee status, and details of the content and application of that legislation, particularly with

regard to the length of detention of those persons whose application for asylum had been rejected; (b) information in practice of legislation on the exercise of the right to freedom of religion, and differences between the status of the Catholic Church and that of other denominations; (c) legislation concerning the collection and protection of personal data referred to in paragraph 101 of the report and its practical implementations; (d) amendments relevant to the freedom of expression introduced in the draft reform of the Penal Code.

34. Mr. IBARRA (Spain), referring to issue (a) in section II, said that under the disciplinary regime for the police and security forces, the use of weapons in violation of the regulations for their use was a serious offence. There were similar provisions for the police of the Autonomous Communities in the Basque Country (17 July 1992), Navarre (3 February 1987) and Catalonia (21 October 1982). As noted in the report, the question was regulated in article 5 of the Organization Act No. 2/86. No difficulties had arisen in the implementation of those regulations, and therefore no measures had been taken in that respect; there was no reported situation in which the regulations had been violated with impunity.

35. On issue (b), regarding article 55 of the Constitution, he said that article 17, paragraph 2, of the Constitution provided for the maximum duration of pre-trial detention and article 18, paragraphs 2 and 3, guaranteed the inviolability of the home and of communications. That principle was further developed in the Criminal Procedure Act, as indicated in the report. No emergency legislation, permanent or otherwise, had been enacted under article 55 of the Constitution.

36. On the question of the application of the provisions in article 55, it should be borne in mind that that article referred to armed gangs as well as terrorist elements. In 1994, extensions of detention had been requested in 119 cases, and there had been extensions in 45 cases: in 22 cases, by over 48 hours; in 14 cases, by 24 to 48 hours; in 2 cases, by 12 to 24 hours; and in 1 case, by less than 12 hours. In 1995, there had been 133 cases, and extensions had been requested in 33 cases: in 3 cases, by 48 hours; in 19 cases, by 24 to 48 hours; in 3 cases, by 24 hours; in 2 cases, by 12 to 24 hours; and in 6 cases, by less than 12 hours.

37. Mr. BORREGO (Spain) said that, with regard to issue (c), article 504 bis of the Criminal Procedure Act had now been declared unconstitutional.

38. Mr. IBARRA (Spain), referring to issue (d), said that measures had been adopted to prevent ill-treatment of detained persons at all stages of the detention process; those measures had been recommended by the Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. At the time of detention, specialists in forensic medicine could examine a detainee, if he so wished. A common protocol had been adopted to standardize medical reports issued by forensic medical practitioners. Within detention centres, medical control was directly exercised by the judicial authorities and there was no risk that preventive measures would not be taken. Medical examinations were carried out at every stage to monitor the state of health of detainees. Medical registers had been standardized.

39. The crime of torture and other crimes against physical integrity were defined in paragraphs 173 to 177 of the new Criminal Code. Torture was punishable by imprisonment for two to six years in serious cases, and one to three years in less serious cases.

40. Mr. ZURITA (Spain), responding to issue (e), said that the detention policies of the Spanish Government were entirely guided by the principles of rehabilitation and reintegration of convicts, and modern prisons were designed not only for detention but also for social, cultural and occupational re-education of prisoners. As of 30 September 1995, the prison population of 46,266 was made up of 34,876 persons who had been convicted and 11,390 persons in pre-trial detention.

41. In 1991, the Government had adopted a plan for the restructuring of the prison system, which currently comprised 75 detention centres; the plan provided for the investment of 120 billion pesetas, the closure of the majority of detention centres built before 1980, and the construction of 15 new prisons, specially designed to take into account the new priorities and needs embodied in the plan. It was the Government's policy to have detention centres in all areas of the country, so that as many prisoners as possible could serve their sentences in facilities near their homes and families.

42. One of the most serious problems facing the Spanish prison system was that of drug addition and its treatment. A new action plan had been adopted in 1994, the main priorities of which were to control the supply and demand for illicit drugs by means of programmes of prevention and of assistance to drug abusers. The Ministry of Justice had distributed a number of circulars to those involved in the implementation of the plan, on subjects such as the treatment of detainees, government policy regarding illegal drug use among prisoners, and measures to prevent drug traffickers from continuing their activities while in detention. In addition, a new set of regulations for the prison system had been promulgated by royal decree in early 1996. The principle of scientific individualized treatment was being applied in order to provide detainees with the best possible preparation for their reintegration into society.

43. He gave the Committee detailed statistics regarding the number of prosecutions based on complaints of ill-treatment or torture. There had been a total of 5 convictions and 11 acquittals for minor offences (faltas) and 13 convictions and 6 acquittals for more serious offences (delitos).

44. Mr. BORREGO (Spain), commenting on issue (f), said that societies with high degrees of freedom, education and economic development were also those where there was the greatest number of court cases. A case in point was the large number of paternity suits in Spain in recent years. Such suits had been virtually non-existent under the old system. The State had an obligation to provide a system of justice which was free from undue delays. That entailed a duty on the part of the State to increase the numbers of judicial bodies when necessary, with appropriate geographical distribution and improved economic and human resources, and to improve the efficiency of the system of justice through computerization and other productivity measures, and appropriate inspection to ensure the proper functioning of the courts. A major restructuring of the basic rules governing legal proceedings was under way; it was a task of great

complexity and difficulty. One example of that restructuring was the introduction of accelerated proceedings in cases where the offender had been caught in flagrante delicto. A number of tasks, such as the auditing of accounts, had been removed from the jurisdiction of judges and entrusted to State employees and notaries public. Improved coordination between registrars and notaries had been introduced, thereby expediting real estate and other transactions. It was expected that that measure would lead to a reduction in the number of cases of fraud and also in the quantity of litigation involving real estate and property issues.

45. Turning to section III of the list of issues, he confirmed, with regard to the right of asylum and refugee status, that the bill amending Act No. 5/1984 of 26 March 1984 had been passed. As a result, a foreigner would not be deported while his request for asylum was still pending, and his situation would be the same as that of any other foreign national concerning residence permits and work permit, unless he fell into certain exceptional categories, such as persons having committed crimes against humanity or acts of racial persecution, terrorist acts, or offences against the safety of air or sea transport.

46. Mr. BORREGO (Spain), referring to issue (b), said that agreements had been signed with representatives of Islamic, Evangelical and other religious groups for the designation of persons who would provide instruction in those religious creeds in State schools, and whose salaries would be paid by the State. Apart from the fact that the majority of the people of Spain belonged to the Catholic church, there was absolute legal equality between it and the other religious groups in Spain. The various religious groups received equal treatment in all public institutions. There was no problem of discrimination on grounds of religious belief.

47. On the question of the enforcement of legislation concerning the collection and protection of personal data (issue (c)), he said that the goal of the legislation was to protect the right to privacy, which was among the most basic human rights. The highest degree of protection was given to data relating to such matters as political or religious beliefs; but information on matters such as credit history, racial origin, medical record and sexual orientation was also protected. An agency for data protection had been set up and had conducted campaigns to increase public awareness of the importance of protecting the privacy of individuals and what steps could be taken if that right was infringed.

48. As to issue (d), concerning amendments to bring the law on freedom of expression into line with the judgement of the European Court of Human Rights in the case of a person who had been prosecuted for the offence of "insulting the Government", he said that the Court had held that the principle of exceptio veritatis should have been applied in the case, and Spanish law had been amended accordingly.

The meeting rose at 1.05 p.m.