

## The German Democratic Republic's Declaration on the Anti-Torture Convention and its Consequences: an Attempt at Evaluation

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On 9 September 1987 the German Democratic Republic deposited its instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) of 10 December 1984 with the United Nations Secretary-General. The instrument of ratification was accompanied by reservations to the Article 20 investigation procedure and the Article 30 dispute settlement procedure. The German Democratic Republic further declared that it would "[b]ear its share only of those expenses in accordance with Article 17, Paragraph 7, and Article 18, Paragraph 5, of the Convention arising from activities under the competence of the Committee as recognized by the German Democratic Republic."<sup>1</sup>

According to Articles 17(7) and 18(5) of the Torture Convention, the States Parties are responsible both for the expenses of members of the Committee Against Torture (CAT) set up under Article 17 and for expenses arising in connection with meetings of the committee (and of the States Parties), in particular expenses resulting from recourse to the services of the UN Secretariat. The imposition of such a wide-ranging financing obligation on contracting states is unique in the human rights area. Other instruments provide either for complete financing by the UN,<sup>2</sup> or else for "mixed" financing, whereby States Parties to a convention bear the costs for committee members and the UN bears the rest of the costs.<sup>3</sup>

The identity principle governing the relationship between the agreeing and the implementing subject offers one approach to an international-law treatment of the financing issue. The identity principle stands for the proposition that States Parties to an agreement must also see to its implementation or guaranteeing, and must *inter alia* make

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<sup>1</sup> Gesetzblatt der DDR 1988 Teil II No.2, p. 25; see also *id.*, at 25 for the text of the Convention.

<sup>2</sup> Examples of complete UN financing include the Covenant on Political and Civil Rights, the Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women; see Article 35 of the Covenant on Civil and Political Rights, Article 17(8) of the Convention on the Elimination of Discrimination against Women and ECOSOC Resolution 1985/17, para.(c).

<sup>3</sup> For an example of mixed financing see Article 8(6) of the Convention on the Elimination of All Forms of Racial Discrimination and Article 11(7) of the Convention Against Apartheid in Sport.

## Anti-Torture Convention

financial provisions for specified international control activities.<sup>4</sup> For example, one expression of the identity principle is the fact that the costs of members of the *ad hoc* settlement commission to be established pursuant to the state complaints procedures embodied in the Anti-Racism and Civil Rights Conventions are to be borne by the parties to the dispute alone.<sup>5</sup>

Seen from the perspective of this general principle, the financing arrangement in the Torture Convention represents a very consistent solution. In the debate on Article 18(5) – which, incidentally, was taken word-for-word from a US proposal – it was stressed that UN member states are not legally obliged to finance an institution which, like the CAT, is outside the UN structure.<sup>6</sup>

Full or partial UN financing of the work of the respective monitoring bodies could derive in international law presumably only from the general duty of cooperation in the area of human rights laid upon UN member states by the UN Charter. It is, however, incorrect to assume that only UN financing guarantees the “complete independence” of human rights bodies. After all, the work of the Human Rights Committee has been adversely affected by the withholding of contribution payments by one UN Member state, a state which does not even belong to the Civil Rights Convention.<sup>7</sup> Even more severely, the Committee for the Elimination of Racial Discrimination (CERD) has suffered due to the UN financial crisis and the outstanding contribution payments of States Parties to the Convention on the Elimination of Racial Discrimination; the UN General Assembly has had to address this problem several times.<sup>8</sup> It is perhaps the case that the CERD has been particularly hard hit as a result of the “dual-source” nature of its financing: on *practical* grounds complete UN financing might have been more advantageous.<sup>9</sup>

At any rate, it is clear that the guaranteeing of adequate financing is an essential condition for the activity of all international human rights supervisory bodies; and this is specifically true for the CAT.<sup>10</sup> With regard to the financial situation what is important is rational, effective structuring of the monitoring mechanisms in international law, par-

<sup>4</sup> See M. Mohr, *Fragen der Durchsetzung von Völkerrechtsnormen, dargestellt anhand der Antirassismuskonvention von 1965 und der UN-Menschenrechtskonventionen von 1966* (diss. 1981) 72, esp. 80; *id.*, ‘Völkerrechtliche Verfahrensfragen bei der Durchsetzung von Menschenrechtskonventionen’, *DDR-Komitee für Menschenrechte, Schriften und Informationen*, (1983/2) 57.

<sup>5</sup> See Articles 12(6) and 42(9) respectively.

<sup>6</sup> See E/CN.4/1983/63, para. 47.

<sup>7</sup> See B. Graefrath, *Menschenrechte und internationale Kooperation – 10 Jahre Praxis des Internationalen Menschenrechtskomitees* (1988) 120 and 106.

<sup>8</sup> See Resolutions 41/105, 42/57, 43/96 (esp. paras. 1, 2, and 7); see also *inter alia* A/43/607 and the CERD Reports of 1987, A/42/18 (esp. paras. 35, 36, and Decisions 2 (34) and 1 (35) at 168) and 1988, A/43/18 (esp. para. 28 and Decision 1(36) at 50).

<sup>9</sup> See proposals in this direction by *inter alia* Austria, A/C.3/43/SR.41, para. 77; for proposals regarding bodies to be set up in the future, see the Netherlands Advisory Committee on Human Rights and Foreign Policy’s Advisory Report on Human Rights Conventions under UN Supervision. Summary, Conclusions and Recommendations, in 6 *SIM Newsletter* (1988/3) 65. On the (general) problem of financing see also Resolutions 1988/31 and 1989/47 (paras. 3-5) of the UN Human Rights Commission as well as the review produced by the UN Secretary-General, E/1988/85.

<sup>10</sup> See para. 3 of Resolutions 42/123 and 43/132 and the preamble, paras. 9-11, and operational paras. 11, 12 of (general) Resolution 43/115 as well as Res. 1989/29 (para.3) of the Human Rights Commission.

ticularly of the reporting procedure. The reporting procedure, a mandatory procedure whose importance is often underestimated, should be supported on a priority basis.

During the Working Group's debate on Article 17(7) of the Torture Convention, Ukrainian amendment proposals were withdrawn when the Soviet Union declared that it would recognize the Committee Against Torture and the reporting procedure as mandatory components of the implementation system under the Convention. The Soviet Union did, however, continue to have objections regarding the investigation procedure embodied in Article 20(8) of the Convention.<sup>11</sup> During the debate in the third Committee of the 39th UN General Assembly, the representative of the German Democratic Republic made the following declaration: "In approving Articles 17 and 18 of the draft [the German Democratic Republic] delegation agreed to the establishment of a special committee under the future convention. However, there are still serious objections to the functions of the committee as envisaged in draft Articles 19 (especially Paragraphs 3 and 4 - M.M.)<sup>12</sup> and 20. For reasons of principle, the German Democratic Republic [is] not prepared to accept such a competence of a committee of experts which might affect the sovereignty of states."<sup>13</sup> Other states also had difficulties with the draft, particularly with the Article 20 investigation procedure. It was only at the last moment, through the compromise of optional formation provided for in [new] Article 28, that it became possible to include the investigation procedure in the Torture Convention.<sup>14</sup>

The reservation made by the German Democratic Republic pursuant to Article 28 is thus wholly consistent with the position expressed by the German Democratic Republic during debate. Similar reservations were also made by other states.<sup>15</sup> The German Democratic Republic's position, however, goes the furthest, since it explicitly also covers, in accordance with the declaration reported above, the non-acceptance of costs arising from the Article 20 procedure. The German Democratic Republic has voiced the same position with regard to the optional procedures under Articles 21 and 22, to which it has similarly refused to make itself subject. Altogether, considerable costs are involved chiefly due to both the investigation procedure of Article 20 and the unique far-reaching financing arrangement of Article 18(5).<sup>16</sup>

At the first meeting of States Parties to the Torture Convention, the German Democratic Republic representative declared: "The making of the reservation on Article 20 and the non-application of Articles 21 and 22 are in accordance with the Convention. Consequently, the German Democratic Republic is acting in accordance with the Convention in

<sup>11</sup> See E/CN.4/1984/72, para. 45.

<sup>12</sup> See *id.*, para. 49.

<sup>13</sup> A/C.3/39/SR.49, para. 16 (a declaration to the same effect was made at the 40th meeting of the UN Human Rights Commission; see E/CN.4/1984/SR.32, para. 103).

<sup>14</sup> See India, A/C.3/39/SR.48, para. 33; Indonesia, *id.*, SR.50, para. 59; USSR, *id.*, SR.48, para. 45; Hungary, *id.*, SR.49, para. 10; Poland, *id.*, para. 25; (with calls for a mandatory pattern of procedure) Sweden, *id.*, SR.44, para. 25; Ireland, *id.*, para. 29, France, *id.*, SR.51, para. 20 *inter alia*; on adoption (compromise solution) see *id.*, SR.60, para. 55 and SR.44, para. 25. On this see also Nowak, 'The Implementation Functions of the UN Committee Against Torture', in M. Nowak, D. Steurer, H. Tretter (eds.), *Fortschritt im Bewußtsein der Grund- und Menschenrechte. Festschrift für Felix Ermacora* (1988) 503.

<sup>15</sup> See CAT/C/2, Annex II.

<sup>16</sup> On the last-mentioned provision, Nowak observes: "Such a provision is very difficult to implement and provokes reactions such as the German Democratic Republic's declaration upon ratification that it was only willing to pay for the Committee's activities which it has explicitly recognized"; Nowak, *supra* note 14, at 495.

## Anti-Torture Convention

declaring that it will not finance activities that it does not accept. The German Democratic Republic will join in financing all other activities of the Committee."<sup>17</sup>

This makes it clear that the German Democratic Republic regards the "financial declaration" it made on ratification as a mere interpretive declaration and not as a reservation: it interprets the contribution obligations pursuant to Convention Articles 17(7) and 18(5) to mean that a state is responsible only for those implementation activities that it accepts. But Gornig/Ney advance a different interpretation and regard the German Democratic Republic declaration as a reservation.<sup>18</sup> This once again shows the difficulties of trying to ascertain the "substantive" distinctions between an interpretive declaration and a reservation.<sup>19</sup> But even if one views the German Democratic Republic declaration as a reservation, it does not follow that Gornig/Ney's analysis or the objections of Western states<sup>20</sup> may be used to assess its *admissibility*.

The German Democratic Republic declaration has been termed an inadmissible reservation, the following arguments having been adduced:

1. Accepting the German Democratic Republic's position would prevent the amount of its annual contribution allocation from being calculated.<sup>21</sup>

The fact is, though, that the paper prepared by the UN Secretariat on financing the CAT shows costs for procedures pursuant to Articles 20, 21 and 22 separately. I believe it to be totally plausible that cost estimates may be calculated on a *case-by-case basis* for investigative missions pursuant to Article 20 and settlement procedures pursuant to Article 21. If necessary the credits could be supplied from a special fund to be set up by the States Parties.<sup>22</sup> In that case the German Democratic Republic, for instance, in line with its declaration, would not participate in the establishment of the fund.

The first meeting of States Parties decided to use the UN budget proportions as the scale for allocating costs.<sup>23</sup> Accordingly, the German Democratic Republic presently pays a share of rather more than 4%. To date it has punctually paid the full amount of the sum indicated by the Secretariat for the year concerned (1988 and 1989). These contributions covered the costs of the first two meetings of the States Parties and the first, second and third CAT meetings including, for instance, documentation costs for procedures pur-

<sup>17</sup> Cited from the manuscript of the speech.

<sup>18</sup> See Gornig, Ney, 'Die Erklärungen der DDR zur UN-Antifolterkonvention aus völkerrechtlicher Sicht. Ein Beitrag zur Zulässigkeit von Vorbehalten und ihren Rechtsfolgen', 43 *Juristenzeitung* (1988) 1050.

In situations where divergent treaty interpretations exist, Bowett recommends that states refrain from treating such interpretive declarations as reservations and from objecting to them and instead seek clarification through dispute settlement measures. "The state making the declaration," he writes, "might feel justifiably aggrieved by such reactions to its interpretive declaration"; D.W. Bowett, 'Reservations to Non-Restricted Multilateral Treaties', 48 *British Yearbook of International Law* (1976/77) 69.

<sup>19</sup> See *inter alia* R. Kühner, *Vorbehalte zu multilateralen völkerrechtlichen Verträgen (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Bd.91)* (1988) 15, 37, 42; A. Verdross, B. Simma, *Universelles Völkerrecht. Theorie und Praxis* (1984) 470; Graefrath, *supra* note 7, at 75.

<sup>20</sup> To date (May 1989) declarations exist by: France, Luxembourg, Sweden, Austria, Denmark, Norway, Canada, Greece, Spain, Switzerland, the Netherlands, Italy, Great Britain and Portugal; see the (appropriately confirmed) respective notifications of deposit from the UN Secretary-General.

<sup>21</sup> See Gornig, Ney, *supra* note 18, at 1050.

<sup>22</sup> See CAT/SP/4, para. 17.

<sup>23</sup> See CAT/SP/SR.1, para. 54.

suant to Article 22 and costs of CAT meetings which were devoted to the discussion and adoption of procedural rules for all types of procedures.<sup>24</sup> Consequently some practical flexibility was called for, and the German Democratic Republic indeed displayed it.

2. It is claimed that the German Democratic Republic's declaration is not, within the meaning of Article 19(b) of the Vienna Convention on Treaty Law, among the reservations provided for by the Convention, and is therefore inadmissible.<sup>25</sup>

It is the general view that this argument does not hold weight.

Kühner, who has dealt very thoroughly with the reservations issue in his monograph, writes in this regard: "Where a treaty contains a reservation clause according to which 'particular' reservations within the meaning of Article 19(b) of the Vienna Convention may be made and this clause does not provide that *only* these reservations may be made, then in principle other reservations too may be made on the same treaty."<sup>26</sup> This is exactly the case with the Torture Convention (with its provisions on reservations in Articles 28(1) and 30(2)).

If the argument adduced by critics opposed to the admissibility of the German Democratic Republic declaration were accepted, it would then follow, for instance, that only reservations pursuant to Article 29(2) of the Convention on Discrimination against Women (on the dispute settlement clause) would be admissible; its Article 28(2) (the incompatibility rule) would be rendered meaningless. The fact is, however, that several states, including the Western states objecting to the German Democratic Republic declaration, have made various reservations to the Convention on Discrimination against Women.<sup>27</sup>

3. The German Democratic Republic's declaration has been termed incompatible with the aims and object of the Treaty within the meaning of Article 19(c) of the Vienna Convention. This is stated either without further explanation or by referring to the interference allegedly caused to control activities.<sup>28</sup>

For Gornig/Ney, the German Democratic Republic's position, because of "unsecured financing", endangers the effective functioning of the "implementing organ" of the Convention, which for them is of "central importance" ("aim and object" of the Convention).<sup>29</sup> But in reality, as we have seen, the German Democratic Republic's declaration and corresponding practice do not extend to the CAT as such or to the obligatory components of the implementation system of the Convention. They relate only to the special costs arising from non-mandatory procedures not accepted by the German Democratic Republic, specifically those of Article 20.

Moreover, I regard it as inadmissible in principle to reduce the aim and object of a convention – in this case the Torture Convention – to its international monitoring mechanism (and even further to a few special procedures subject to special agreement!). This mechanism can and should always only make a *contribution* to implementing the various substantive obligations, and is therefore never an end in itself. And in the case of

24 Interestingly, at its first meeting the CAT decided to postpone discussion of the rules of procedure for proceedings under Article 20 to the second meeting "owing to the complexity of the matter"; see A/43/16, para. 15.

25 See the declarations of Greece, Spain and Italy.

26 Kühner, *supra* note 19, at 133; and with the same finding, Gornig, Ney, *supra* note 18, at 1050 and n. 18.

27 See ST/HR/5, at 142.

28 See declarations by France, Sweden, Luxembourg, Canada, Switzerland and Portugal.

29 Gornig, Ney, *supra* note 18, at 1050.

## Anti-Torture Convention

the Torture Convention, these obligations entail a (far from inconsiderable) clarification and specification of the international (customary) law prohibition on torture, and provisions for its domestic implementation.<sup>30</sup>

The German Democratic Republic's declaration is thus, if a reservation at all, an *admissible* one in every respect.<sup>31</sup> Its effect is that payment obligations arise for the German Democratic Republic only to the extent indicated in the declaration.<sup>32</sup> The other States Parties to the Convention are not thereby – as long as they have not themselves made a similar reservation – freed from their own (full) financing responsibilities. This result emerges irrespective of whether states at issue accept or oppose the reservation. In the former case, since the Torture Convention follows the pattern of an “integral” multilateral treaty structure, the “reciprocal abridgement of rights” provision of Article 21(1)(b) of the Vienna Convention does not arise.<sup>33</sup> In the event of an objection the question at issue is not regulated by the treaty.<sup>34</sup> Thus customary law governs, and under customary law – which is ultimately reflected in the German Democratic Republic declaration – a state need be responsible only for the costs accepted by it. In my view this can be derived from the principles of sovereign equality as well as from general organizational law.

The other States Parties to the Torture Convention can either accept the German Democratic Republic declaration, or oppose it, thus “cutting out” the corresponding treaty arrangement.<sup>35</sup> The contracting parties cannot, however, “reinterpret” the content of the declaration or talk the German Democratic Republic into obligations which are in conflict with its expressed will, and this is precisely what the Western states are attempting to do by issuing statements asserting that the German Democratic Republic's declaration is without legal effect and that its (payment) obligations under the treaty remain unaffected.<sup>36</sup> The fact is that the German Democratic Republic need be responsible only for the procedures and costs accepted by it in accordance with the scale of allocation agreed upon by the states. As previously discussed, the German Democratic Republic has so far fully met these obligations. Future costs for procedures carried out pursuant to Articles 20-22 of the Torture Convention should be borne by the other States Parties; this may lead to additional expenditures for these states and a modification of the scale of allocation (with respect of the procedural costs associated with Articles 20-22).<sup>37</sup> But the scale of allocation is, in any case, subject to constant modification due to shifts in Convention membership.

30 The latter is the object of, for instance, an amendment by the German Democratic Republic to the criminal law, formulating *inter alia* a special offence of torture in the form of para. 91a of the Penal Code. See *Gesetzblatt der DDR* (1989/I) No.3, at 51. See also Duft, 'Realisierung völkerrechtlicher Verpflichtungen im 5. Strafrechtsänderungsgesetz', 43 *Neue Justiz* (1989/3) 94.

31 Bowett stresses that the admissibility of a reservation depends not on the reactions of the parties to the treaties but only on the treaty itself, on its construction. Bowett, *supra* note 18, at 80, 89.

32 See Article 21(1)(a) of the Vienna Convention.

33 See Verdross, Simma, *supra* note 19, at 469; Kühner, *supra* note 19, at 202; Gomig, Ney, *supra* note 18, at 1052.

34 See Article 21(3) of the Vienna Convention.

35 See, e.g., Bowett, *supra* note 18, at 90, *inter alia*.

36 See (altogether) the declarations by Norway, Austria and Great Britain.

37 See the (opposing) declarations by the Netherlands and Great Britain.

Gornig/Ney essentially arrive at similar conclusions. They therefore recommend that other states enter a qualified objection, thereby preventing the Convention's entry into force with respect of the German Democratic Republic. According to Gornig/Ney, this will "induce" the GDR to withdraw its "unlawful" objection.<sup>38</sup>

This is precisely the type of behavior that the International Court of Justice re-nounced in its 1951 advisory opinion on the Genocide Convention. Given the "purely humanitarian and civilizing purpose" of this Convention, "an objection to a minor reservation" should not prevent a state from being party to it. Yet at the same time, the object of the Convention ought not to be sacrificed merely for the sake of securing as many member states as possible. The ICJ put it this way: "The object and purpose of the [Genocide] Convention thus limit both the freedom of making reservations and that of objecting to them."<sup>39</sup>

The ICJ advisory opinion on the Genocide Convention was, as is well known, an essential starting-point for the development of the right of reservation in its presently valid form, as fixed in the Vienna Convention. The instrument of reservation, with its inherent flexibility, permits conventions with universal and specifically humanitarian orientations like the Genocide or Torture Conventions to attain universality. Despite all the existing shortcomings of the Vienna Convention provisions on reservations, the principle embodied therein is an important and indispensable component of modern international law in general, and of treaty law in the human rights area in particular.<sup>40</sup> A glance at the practice of states shows that a multitude of reservations have been made on human rights conventions, some of them on far from trivial provisions of a substantive nature, whereas socialist states have consistently made reservations only on procedural provisions.<sup>41</sup> The decisive factor on which the admissibility of a reservation turns is whether the content of the reservation contradicts the aim and object of the treaty concerned.<sup>42</sup> If it does not, the reservation is generally admissible. Bringing it down to the general legal policy point: better the ratification of a universal human rights instrument with an (admissible) reservation than no ratification at all!

The worst thing that can happen, of course, is the combination of a restrictive ratification policy with an extensive reservation policy. This is just what characterizes US

<sup>38</sup> See Gornig, Ney, *supra* note 18, at 1053. This kind of qualified objection has not yet been declared by any (Western) state; instead, it has in part been explicitly stated that the objection entered does not prevent the Convention's entry into force in respect of the German Democratic Republic; see the declarations by Switzerland, Denmark, Greece, Luxembourg, France and Portugal.

This of course means that the convention enters into force for the German Democratic Republic without the treaty provisions to which its reservations relate.

<sup>39</sup> ICJ Reports (1951) 24 and 23 respectively.

<sup>40</sup> I therefore cannot follow Bindschedler's (wholesale) criticism appearing in Bindschedler, 'Treaties, Reservations', 7 *Encyclopedia of Public International Law* (1984) 498.

<sup>41</sup> See, e.g., Graefrath, *supra* note 7, at 70; Werchan, 'Vorbehalte und Auslegungserklärungen zu Menschenrechtskonventionen', *DDR-Komitee für Menschenrechte, Schriften und Informationen* (1983/2) 64.

<sup>42</sup> This is - by way of confirmation - explicitly stated in Article 20(2) of the Convention on the Elimination of Racial Discrimination and Article 28(2) of the Convention on the Elimination of Discrimination against Women. An absolute prohibition on reservations is by contrast contained in, for instance, Article 9 of the Convention against Discrimination in Education of 1960. It is important in this connection that the control bodies involved as a rule have no power to decide on the admissibility or inadmissibility of reservations; cf. Graefrath, *supra*

## Anti-Torture Convention

conduct to date. For example, the US did not ratify the Genocide Convention until four decades after signature and only did so with a reservation that throws the meaning of the ratification into question.<sup>43</sup> Moreover, ratification of the Torture Convention is still outstanding, as is that of the Covenant on Political and Civil Rights, the Covenant on Economic, Social and Cultural Rights, and other important human rights instruments. And here too a range of reservations, including declarations, has been announced. In the case of the Torture Convention, the reservations concern non-recognition of procedures under Articles 20-22, the ICJ procedure, the definition of torture and the characterization of the Treaty as "non-self-executing."<sup>44</sup> The US policy of delaying ratification and issuing multiple reservations while at the same time continually criticizing other states for alleged human rights infringements has rightly met with sharp opposition.<sup>45</sup>

The universal recognition and implementation of the Torture Convention are not endangered by the German Democratic Republic's financial declaration. The German Democratic Republic has become a member of the Convention and of the international-law implementation mechanism accepted by it, and to that extent has assumed responsibilities which it to date has met. The Western states' inappropriately massive campaign against the German Democratic Republic declaration therefore seems risky to me.<sup>46</sup> It could frighten states away from Convention membership and thus cut into the requisite universality of the Convention. Ultimately, it is better if a state accedes to the Convention and clarifies the extent to which it is prepared (and, as the case may be, simply able) to make financial provisions than for it either to stay away from the Convention or, if a Treaty State, to fail to meet its payment obligations at all. At any rate, objections to a reservation, in this case coming from a relatively small and politically well-defined group of states, cannot impose upon a state any financial obligations that it has publicly declined to assume. Cooperation between states in the area of human rights does, after all, call for respect for sovereign rights, which include the right to make a reservation and the freedom to decide whether or not to accept treaty obligations.

note 7, at 74, 79; Oeser, 'Rechtsfragen im Frauenkomitee (CEDAW)', *DDR-Komitee für Menschenrechte, Schriften und Informationen* (1988/2) 97.

43 It runs: "[N]othing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States", reprinted in Martin, 'A Human Rights Agenda: The Routine and the Special', 28 *Virginia Journal of International Law* (1988) n. 5, 887. On the inadmissibility of general reservations in favour of national law see Verdross, Simma, *supra* note 19, at 471.

44 See the 82 *American Journal of International Law* (1988) 806. On the actual meaning and effect of the concept of "self-executing" according to the US Constitution see Paust, 'Self-Executing Treaties', *id.*, at 760, and 781 in particular.

45 Thus, Hannum calls for careful review of the reservations planned on the Torture Convention, to prevent the impression arising "that the United States is more interested in shielding a widespread pattern of torture from international scrutiny than in cooperating to prevent its occurrence"; Hannum, 'A Human Rights Agenda for 1989 and Beyond', 28 *Virginia Journal of International Law* (1988) 870. See also, e.g., Bilder, 'Realistic Suggestions for the New Administration', *id.*, at 840; Buergenthal, 'U.S. Human Rights Policy: A Modest Agenda for the Future', *id.*, at 847; Martin, *supra* note 43, at 886.

46 This is not confined to the objections made to the declaration, but extends to the activities of the Third Committee of the UN General Assembly and the UN Human Rights Commission and to general foreign policy diplomatic activities; see, e.g., Spain, A/C.3/43/SR.41, para. 14; the Netherlands, *id.*, para. 52; Resolution 1988/36 of the Human Rights Commission, para. 3.



# The International Practice of the European Communities: Current Survey (July 1987-July 1989)

## Summary

- A. Principal Decisions of the Court of Justice of the European Communities  
Pertaining to International Law (C. Vedder)
  
- B. Commercial Defense Actions and other International Trade Developments  
(E. Vermulst)
  - I. Dumping
  - II. Other Trade Protection Laws
  - III. Miscellaneous
  - IV. Tables
  
- C. European Political Cooperation (R. Dehousse)
  - I. Recognition
  - II. Diplomatic and Consular Relations
  - III. Territorial Sovereignty
  - IV. Armed Conflicts
  - V. International Security
  - VI. United Nations
  - VII. Human Rights
  - VIII. Self-Determination
  - IX. Miscellaneous
  - X. EPC Structure and Procedure
  
- D. International Agreements  
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