

European Political Cooperation 1 July 1987 – 31 December 1988

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European Political Cooperation has become known as the joint foreign policy of the now twelve Member States of the European Community. It manifests itself through a variety of documents: official declarations, speeches delivered on behalf of the Twelve in international fora, answers to questions by members of the European Parliament, etc. The range of topics treated in those documents is generally underestimated for the documents themselves are not easily accessible.

The purpose of this regular survey, which will appear once a year, is not to give the positions assumed by the Twelve on all international issues, since this is already provided for in the *European Political Cooperation Documentation Bulletin*, edited by the European University Institute in collaboration with the Institut für Europäische Politik, which publishes all public domain documents on issues covered by EPC.¹ Nor does this contribution purport to offer an overview of the activities of the Twelve in the framework of political cooperation.

The focus of this survey is more limited: Our ambition is to report the opinions expressed jointly by the Member States of the European Community on matters of international law or on the legal dimension of given international issues, since those statements, which express the *opinio iuris* of the Community and its Member States, represent evidence of an emerging "state" practice. Attention will also be paid to the institutional evolution of European Political Cooperation.

I. Recognition

1. Cyprus

On 27 September 1987, the Danish Foreign Minister, Mr Ellemann-Jensen, speaking on behalf of the Twelve at the 42nd session of the UN General Assembly, reiterated their refusal to recognize the state established in the zone occupied by Turkish forces:

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¹ This publication being by far the most exhaustive source of documentation on EPC, it will be our main reference. Unless otherwise indicated, all documents quoted in this section come from this source.

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... we reaffirm our strong backing for the independence, sovereignty, territorial integrity and unity of the Republic of Cyprus in accordance with the relevant United Nations resolutions. We stand fully by our previous statements and reject any action which purports to establish an independent state within Cyprus. We also express our support to the Secretary-General in his mission of good offices and ask those concerned to cooperate with him in the search for a solution to this problem of international concern and to refrain from words or actions that might adversely affect the prospects of a solution by peaceful means.²

2. Cambodia

In reply to question No. H-1034-88 by Mr Iversen, MEP, who invited them to recognize the Hun Sen government, established after the Vietnamese invasion, and to break relations with the Pol Pot regime, the Foreign Ministers stated on 9 March 1988:

The Twelve are following closely the recent developments in Cambodia. They have expressed their position on many occasions. They have also made clear their support for the courageous initiatives of Prince Sihanouk. In their statement during the UN General Assembly last year they said: "The present regime in Phnom Penh has no claim to legitimacy. However, the Twelve have no intention of contributing to the re-establishment of the Pol Pot regime in Cambodia. We share the collective abhorrence felt by the world community at the terrible abuses inflicted on the Cambodian people by Pol Pot and [the] Khmer rouge. But this provides no justification for Vietnam's illegal occupation and its imposition of an illegitimate regime."³ No partner has diplomatic relations either with Pol Pot or the resistance coalition.⁴

3. Baltic States

In her question No. H-175/88, Ms Boot, MEP, asked the Foreign Ministers in what way they had raised the Baltic question at the Vienna CSCE Conference. She noted that in her view the problem should be treated differently from the issue of other nationalities in the Soviet Union, since the majority of Western States had not recognized Soviet annexation.

In her reply, Ms Adam-Schwaetzer, President-in-Office of the Foreign Ministers, underlined that

The problem of the Baltic States as such and the question of other nationalities in the Soviet Union have not been explicitly raised by the Twelve in Vienna... The Twelve have discussed the situation in the Baltic States on several occasions since the beginning of the year. It was agreed that there is no reason for a change of mind on the annexation of the Baltic States by the Soviet Union and that political developments in these states will continue to be followed closely.

² EPC Bulletin, Doc. 87/333, at 112. The same views were expressed in a number of answers to questions of members of the European Parliament; see, e.g., Documents 87/481 and 88/087.

³ Statement at the Plenary Session of the UNGA on 13 October 1987, EPC Bulletin, Doc. 87/370.

⁴ EPC Bulletin, Doc. 88/063.

But I would add that there are two things we need to bear in mind: the legal situation – on this, as I have just said, the position of the Twelve has not changed – and the situation of the people in these areas. We are trying to ease the latter situation by means of a satisfactory final document at the current follow-up conference in Vienna.⁵

4. Palestine

Also of interest is the careful wording of the statement adopted on 21 November 1988 after the proclamation of the State of Palestine by the Palestinian National Council:

The Twelve attach particular importance to the decisions adopted by the Palestinian National Council in Algiers, which reflect the will of the Palestinian people to assert their national identity and which include positive steps towards the peaceful settlement of the Arab-Israeli conflict.

They welcome in this respect the acceptance by the Palestinian National Council of Security Council Resolutions 242 and 338 as a basis for an international conference, which implies acceptance of the right of existence and of security for all states of the region, including Israel. Respect for this principle goes together with that of justice for the peoples of the region, in particular the right of self-determination of the Palestinian people with all that this implies. For the Twelve it constitutes a necessary condition for the establishment of just, lasting and comprehensive peace in the Near East, as they have repeatedly asserted since the Declaration of Venice. The Twelve also express their satisfaction that the Palestine National Council has explicitly condemned terrorism.

The Twelve appeal to all parties concerned, while abstaining from any act of violence and any action which could further aggravate the tense situation in the Near East, to take this opportunity and contribute to the peace process in a positive way with a view to a just, global and lasting solution to the Arab-Israeli conflict. This solution can only be achieved through an international peace conference under the auspices of the United Nations, which represents the suitable framework for the necessary negotiations between the parties directly concerned.⁶

Later on, in reply to a question by Mr Dessylas, MEP, the President-in-Office of the Council of Ministers confirmed that “(t)he question of the granting of recognition to the Palestinian State has legal and political implications which have not yet been discussed in the Political Cooperation framework.”⁷

II. Diplomatic and Consular relations – Safety and Security of Diplomatic and Consular Missions and Representatives

The Twelve's views on the security of diplomatic and consular missions was expressed by the Greek Presidency on 5 October 1988 in a speech in the Sixth Committee of the UNGA. After expressing their concern at the number of violations of diplomatic immunities which had occurred in the elapsed year, the Greek delegate added:

⁵ 14 June 1988, EPC Bulletin, Doc. 88/150.

⁶ EPC Bulletin, Doc. 88/447.

⁷ Doc. 88/512, 13 December 1988.

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In our view it is essential that all states observe scrupulously the obligations incumbent on them by virtue of general international law as well as the international conventions relevant to the immunities, protection, security and safety of diplomatic and consular missions and representatives. Every failure by a state to respect these obligations weakens the whole framework of international relations. This is to be deplored; it cannot serve any state's interests.

The Twelve are determined, as they have always been, to resort to all lawful means, whether on the basis of general international law or of international conventions relating to the protection of diplomatic and consular missions and representatives, in order to prevent violations of immunities of diplomats and combat crimes against them. They remain firmly committed to strengthening international cooperation to this end.

The Twelve wish to repeat that privileges and immunities of missions and representatives have not been granted for personal benefit, but for the smooth and efficient exercise of their functions, to the benefit of international relations as a whole. While sending states have a right to expect that their diplomatic and consular representatives be adequately protected and their immunities strictly observed, it is also of the greatest importance that such missions and representatives operate strictly within the limits prescribed by international law and, in particular, fully respect the laws and regulations of the receiving state. Abuses by missions or representatives of their privileges and immunities can only undermine the public's understanding of the need to respect such privileges and immunities. Prevention of abuses is among the primary concerns of the Twelve who will continue their cooperation in this field.

Mr Chairman, it is imperative that all states fully observe their obligations, whether conventional or deriving from general international law, on these matters. There is, in our view, no lack of international instruments. Indeed, the existing ones do, for the time being, cover all the ground needed and, in this respect, the Twelve hope that states which have not become parties to the relevant conventions will soon decide to do so. The main difficulty does not lie in the lack of international instruments, but in the lack of determination of states to apply them to the full. It is, therefore, in this area that efforts should be concentrated.⁸

III. Territorial Sovereignty

As is known, an important part of EPC activities is dedicated to the monitoring of regional conflicts. In this context, the Member States have stressed on a number of occasions the importance they give to the principle of territorial sovereignty. Such was *inter alia* the case of the statement on the Horn of Africa issued on 24 October 1988, in which they expressed their satisfaction with the agreement concluded between Ethiopia and Somalia on 3 April 1988.⁹

On other occasions, they expressed their condemnation of the violations of states' territorial sovereignty.

⁸ Doc. 88/309. Similar views had already been expressed during the previous session of the UNGA; see Doc. 87/342.

⁹ Doc. 88/366.

1. Cambodia

Vietnam's occupation of Cambodia, already referred to above, has been defined as a "violation of the Charter of the United Nations and (of) the fundamental principles of international law."¹⁰ In a later statement, it was further stressed that

a decisive element in any settlement is the immediate and complete withdrawal of Vietnam's occupation forces and guarantees that the Vietnamese forces will not re-enter Cambodia after their withdrawal. Partial withdrawal is inconsistent with the resolutions endorsed by the General Assembly. Vietnam's intention to withdraw all its forces by 1990 remains insufficient and unacceptable. It is not for the occupying power to put a timetable on the restoration of Cambodian independence and there is no guarantee that Vietnam will actually live up to its declared intentions. The prolonged Vietnamese occupation of Cambodia is acquiring colonial overtones.¹¹

In the same statement, the Twelve condemned Vietnamese border incursions in Thailand.¹²

2. Southern Africa

The Twelve protested against South African incursions in Botswana¹³ and Angola¹⁴ as violations of international law.

3. Lebanon

In a statement on 6 May 1988, the Member States of the Community presented Israeli military action in Southern Lebanon as "a further violation of Lebanese sovereignty and territorial integrity". They added that

In their view, even hostile groups' incursions, which are equally unacceptable, do not justify military actions of this kind ... Peace and security in the Lebanese-Israeli area can only be achieved by the full implementation of Security Council Resolution 425 (1978), which calls for the withdrawal of Israeli forces from all Lebanese territory; and by an ending of all fighting in the Lebanese-Israeli border area. International peace and security must be restored through the United Nations Interim Force for Southern Lebanon.¹⁵

¹⁰ Statement at the Plenary Session of the UNGA, 22 September 1987, Doc. 87/333.

¹¹ Statement of 13 October 1987 at the Plenary Session of the UNGA on the situation in Kampuchea, Doc. 87/370.

¹² See also Doc. 88/389 of 2 November 1988.

¹³ Doc. 88/074, 31 March 1988.

¹⁴ Doc. 87/491, 23 November 1987.

¹⁵ Doc. 88/115.

4. Afghanistan

The Twelve's declarations in the period under review reflect the evolution of the Afghan conflict. Speaking at the 42nd session of the UNGA, the Danish delegate Mr Bierring reiterated their condemnation of Soviet invasion:

The issue before us today is a tragic reminder of one of the most serious violations of the Charter of the United Nations. The large scale military intervention by the Soviet Union in Afghanistan in 1979 represented the beginning of an era of unprecedented hardship and suffering for the Afghan people.

The Soviet military occupation has continued for nearly eight years. The Afghan people is still deprived of their fundamental human and political rights by a regime set up and kept in power by military force. An overwhelming majority in the General Assembly has each and every year condemned the occupation and called for the immediate withdrawal of foreign troops and a negotiated settlement which would make it possible to restore to Afghanistan its independent and non-aligned status.

... We welcome indications that the Soviet Union would like to find an early political solution. But we have yet to see deeds to match these words. More than 110 000 Soviet troops remain in Afghanistan against the will of the Afghan people. Their military operations are not confined to Afghanistan itself. Attacks on Pakistani territory, including the refugee camps, have continued and escalated; and we have recently seen a campaign of terrorist incidents in Pakistan.

The Twelve once more urge the Soviet Union to agree to a rapid and complete withdrawal of their troops according to an irrevocable timetable. We utterly condemn the continued bombings of Pakistani territory which constitute a clear threat to peace and stability in the region as a whole.

(...)

The Twelve are confident that the General Assembly will once again vote to confirm its rejection of aggression and foreign occupation and its support for a genuine solution to the Afghan problem. The Soviet Union must now demonstrate in deed its commitment to international peace and security by complying with the United Nations resolutions and honouring its proclaimed commitment to the principles of international law by withdrawing all its troops from Afghanistan.¹⁶

Given this categorical condemnation of Soviet occupation, the Twelve could only welcome the evolution in this country. In a statement of 25 February 1988, the Member States indicated their appraisal of the Soviet Union's proclaimed readiness to withdraw its troops from Afghanistan.¹⁷ Less than two month later, they welcomed the successful conclusion of the Aghanistan talks in Geneva.¹⁸

5. Central America

The fourth conference between the European Community and its Member States and the countries of Central America and of the Contadora Group, was held in Hamburg on 29 February - 1 March 1988. This conference was a follow-up top the political dialogue in-

¹⁶ Doc. 87/452, 9 November 1987.

¹⁷ Doc. 88/049.

¹⁸ Doc. 88/094, 14 April 1988.

augurated in San Jose, Costa Rica, in September 1984 and continued in Luxembourg in November 1985 and in Guatemala City in February 1987. The Joint Political Declaration signed on that occasion by the Foreign Ministers of the countries concerned expressed full support to the Central American peace process pursued on the basis of the plan of Costa Rican Prime Minister Arias. This joint declaration contained a judgement on foreign aid to non-regular forces:

13. (The Ministers) pointed out that the commitment on the part of regional or extra-regional governments providing aid to non-regular forces or insurrectional movements to discontinue such aid was vital to the achievement of stable and lasting peace in the region.

The Ministers also stressed the importance of the commitment to prevent their territory being used and neither to provide nor to permit logistical military support for persons, organizations or groups whose aim is to destabilize the Governments of the Central American countries.¹⁹

Referring later to this declaration in the course of a debate before the European Parliament, the President-in-Office of the Foreign Ministers, Ms Adam-Schwaetzer, implicitly admitted that it might be read *inter alia* as an invitation to the United States administration to suspend its support to *Contra* forces in Nicaragua.²⁰

IV. Armed Conflicts

1. Non-use of Force

The views of the Twelve on the Draft Declaration on the enhancement of the effectiveness of the principle of non-use of force in international relations, drafted by a Special Committee in accordance with General Assembly Resolution 41/76, were expressed in a statement before the Sixth Committee on 8 October 1987:

The position of the Twelve on this topic has been consistent and well known since the Special Committee first met in 1977. We always believed that the principle of non-use of force was adequately covered by Article 2(4) of the Charter of the United Nations and that attempts to interpret or elaborate on this unambiguous text might create doubts about or even undermine Member States' obligations enshrined in the Charter. That is why the proposal to draft a world treaty on the non-use of force in international relations gave rise to serious objections amongst the Twelve.

However, in light of the views expressed in the debate on the present item at the 41st session of the General Assembly, in particular by the original proponent of a world treaty, and taking into account the general willingness to follow a more realistic approach, we agreed under certain conditions to engage in discussions about the drafting of a Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, thus enabling the Committee to bring its work to an end. The Committee's mandate was changed accordingly and Resolution 41/76 was adopted by consensus.

¹⁹ Doc. 88/052.

²⁰ Doc. 88/056, 8 March 1988.

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The result of this endeavour is a draft of a non-normative nature. On the one hand, it repeats well-established formulations of the principle of refraining from the threat or use of force as contained in the Charter of the United Nations and in the Declaration on Friendly Relations. On the other hand, it indicates certain fields in which cooperation could enhance the effectiveness of the principle. The paragraphs that repeat terms of the Declaration on Friendly Relations certainly do not subtract from or add to that declaration, nor do they change the meaning these terms have in the context of that declaration. The remaining paragraphs, especially those in parts II and III, seem to us generally positive; they illustrate the complex interrelations that exist between the principle of non-use of force and other principles, such as that of the peaceful settlement of disputes and that of the protection of human rights; they single out specific fields of cooperation between states, such as disarmament, economic development and confidence-building measures, which, as they are pursued, may help in enhancing the effectiveness of the principle of non-use of force; they indicate in some detail how full implementation of the United Nations Charter in the field of maintenance of peace and security may play a fundamental role in the same direction.

Mr Chairman, ... As might be expected some delegations may have difficulties towards particular provisions of the draft declaration. We ourselves have such misgivings. We are, however, not proposing to reopen the text on the understanding that others will likewise refrain from doing so in the interest of achieving consensus on the draft declaration as it stands. What remains of lasting importance, however, is the political will of states faithfully to carry out their international legal obligations in accordance with the Charter of the United Nations and other rules of international law. If the draft declaration can make a contribution in that respect and thereby be a step towards a more favourable international climate our endeavours during all these years will not have been in vain. Thank you, Mr Chairman.²¹

2. Law of Warfare

a. Afghanistan

In their declaration on Afghanistan of 9 November 1987 at the UNGA,²² the Twelve "strongly condemned the attacks on the civilian population which are irreconcilable with the norms of international behaviour and violate fundamental human rights."

b. Iran-Iraq Conflict

In a statement on the situation in the Middle-East at the UNGA, the Danish delegate, speaking on behalf of the Member States of the Community, deplored the breach by belligerents of international law rules governing armed conflicts:

It is indeed imperative that both parties respect all relevant international instruments, including the four Geneva conventions of 1949 and the 1925 Geneva Protocol banning the use of chemical weapons. The Twelve were deeply concerned by the unanimous conclusions reached by experts sent to the region by the Secretary-General earlier this year. According to their report, Iraqi forces had once again used chemical weapons against Iranian troops. Furthermore, the experts established both that Iraqi

²¹ Doc. 87/365.

²² Doc. 87/452.

troops had suffered losses caused by this type of weapon and that civilian population in Iran has been subjected to attacks with chemical weapons. The Twelve condemn these flagrant breaches of the 1925 Geneva Protocol.

The Twelve also deplore frequent attacks on civilian targets and urge parties to refrain immediately from any such action.²³

On 7 September 1988, the Twelve issued in Athens a statement on military actions taken against the Kurdish civilian population in the aftermath of the cease-fire in the Iran-Iraq war:

The Twelve are greatly concerned at reports of the alleged use of chemical weapons against the Kurds. They confirm their previous positions, condemning any use of these weapons. They call for the respect of international humanitarian law, including the Geneva Protocol of 1925, and Resolutions 612 and 620 of the United Nations Security Council.

The Community stands ready to play its part in the efforts already made in the region to ease the plight of the refugee Kurdish population.²⁴

c. Elimination of Chemical and Bacteriological Weapons

The following statement was presented in the First Committee of the UNGA on 9 November 1988:

The Twelve continue to see the complete elimination of chemical weapons as one of the central and priority tasks of the international community. To this end, the Twelve attach particular importance to the chemical weapons negotiations under way in the Conference on Disarmament in Geneva.

They strongly advocate an early establishment of a global, comprehensive and effectively verifiable ban on chemical weapons and reaffirm their dedication to the total elimination of these weapons. It is only by means of such a convention that mankind can once and for all be freed from the scourge of chemical weapons.

The negotiations for a global ban on chemical weapons have made encouraging progress... From the outset of the negotiations, it was clear that reliable verification would be a crucial issue. Substantial progress has been made towards establishing an effective verification system. A recent positive development has been the initiation of trial inspections of chemical facilities. It is the hope of the Twelve that these inspections should help clarify some of the remaining problems in this area and contribute to their expeditious resolution.

In this context of constructive parallelism between the bilateral and multilateral process, the Twelve reiterate that they welcome the ongoing discussions between the United States and the Soviet Union on issues related to the prohibition of chemical weapons. Those discussions have contributed positively to the negotiating process in the Conference on Disarmament.

The use of these terrible weapons in the Iran-Iraq conflict and the compelling indications of their use against the Kurdish civilian population underline the compelling need for [a] comprehensive, verifiable and global convention on the elimination of

²³ Doc. 87/505, 1 December 1987.

²⁴ Doc. 88/249.

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chemical weapons. The Twelve are gravely concerned by the reports of the Secretary-General and confirm their position condemning such use of chemical weapons. They call for respect of the Geneva Protocol of 1925 and other relevant rules of customary international law. They also call for full implementation of Resolutions 612 and 620 of the United Nations Security Council. The Twelve endorse the Security Council's call on states to continue to apply, to establish or to strengthen strict control of the export of chemical products serving for the production of chemical weapons. This is particularly so in respect of parties to a conflict, when it is established or when there is substantial reason to believe that they have used chemical weapons in violation of international obligations. They commend its decision to consider immediately, taking into account the investigations of the Secretary-General, appropriate and effective measures in accordance with the Charter of the United Nations, should there be any future use of chemical weapons in violation of international law. In this context, the Twelve welcome the consensus accorded to UNGA Resolution 42/37 [C] which, inter alia, urged all states to be guided in their national policies by the need to curb the spread of chemical weapons, requested the Secretary-General to investigate reports of chemical weapons use and requested him to develop further technical guidelines and procedures to assist in the timely and efficient investigation of such reports.

Mr Chairman, the Twelve warmly support the timely initiative of the Presidents of the United States and France, made before the General Assembly in calling for a conference with the aim of reaffirming the authority of the Geneva Protocol of 1925. We expect this conference, at the same time, to give a new forceful impetus to the ongoing negotiations at the Conference on Disarmament in Geneva. We welcome the invitation by President Mitterrand to hold such a conference in Paris, from 7 to 11 January 1989.²⁵

3. Occupied Territories

On 14 September 1987, the Twelve released a declaration condemning Israel's settlement policy in the occupied territories:

The Foreign Ministers of the twelve Member States of the European Community have noted with serious concern the continuing Israeli policy of establishing new settlements in the occupied territories, most recently at the Avnei Hefetz site on the West Bank.

They reiterate their strong conviction that progress towards a just, comprehensive and lasting peace in the region depends on the creation of a climate of confidence between the parties to the conflict. The Twelve believe that the opening of new settlements as well as the disturbing increase of the number of settlers in existing settlements pose a serious risk of jeopardizing the prospects for peace.

They consider that every new and every existing settlement is in violation of international law and call upon the Israeli Government to put an end to the illegal policy of settlements in the occupied territories.²⁶

²⁵ Doc. 88/406.

²⁶ Doc. 87/312.

As the unrest in occupied territories grew, the Twelve urged Israel to fulfil its obligations as occupying power in accordance with the provisions of the Hague Convention of 1907 and the fourth Geneva Convention of 1949.²⁷ This position was expressed to the Israeli authorities in a number of *démarches* made on behalf of the Twelve by their Ambassadors in Tel-Aviv.²⁸ Their analysis of the situation was exposed at greater length at the UNGA during a debate on occupied territories on 18 November 1988:

... the Twelve attach, as a matter of principle, the greatest importance to all matters affecting the rights of the population of the Arab territories occupied by Israel since 1967. We have followed with deep concern the dramatic deterioration of the human rights situation in these territories since the beginning of the uprising of the Palestine population against the Israeli occupation and we have, on every occasion, expressed our firm commitment to the respect of international law and human rights.

The Twelve feel that a peaceful political situation is now more necessary than ever before. In that respect, the policy of the Twelve continues to be based on the one hand on the recognition of Israel's right to existence within secure and recognized borders and on the other on the right of the Palestinian people to self-determination with all that this implies. These principles have also been set out within the framework of European political cooperation in the Venice Declaration.

(...)

Mr Chairman, the Twelve also reiterate that the provisions of the Hague Convention of 1907 and the fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war are applicable to the territories occupied by Israel since 1967. Israel's persistent refusal to acknowledge this can in no way be justified and is a matter of great concern to the Twelve. The Security Council has confirmed in many resolutions that the fourth Geneva Convention does indeed apply to the Israeli-occupied territories, recently so in its Resolutions 605 and 607 which the Twelve unreservedly support.

The Twelve, on several occasions, have reiterated their concern with human rights and living conditions in the occupied territories. We have called upon the Israeli authorities to ensure the immediate protection of the inhabitants of the occupied territories in compliance with international law and human rights obligations.

(...)

Mr Chairman, in accordance with their firm commitment to upholding international law, including in particular the principle of the inadmissibility of the acquisition of territory by force, the Twelve have repeatedly rejected the illegal Israeli practices in the territories occupied since 1967, such as the establishment of settlements and other measures affecting their demographic structure. All Member States are under the obligation to abide by this binding principle which is enshrined in the Charter and is referred to in Resolution 242 of the Security Council.

The Twelve firmly believe that any increase of the number of settlements is bound to set back prospects for a comprehensive and lasting peace in the area. Establishing new settlements and enlarging existing ones are indeed the reverse of the kind of confidence-building measures which could contribute to a peaceful solution. The Foreign Ministers of the Twelve have declared that every new and every existing settlement is

²⁷ Press release on the international day of solidarity with the Palestinian people, 30 November 1987, EPC Bulletin, Doc. 87/370.

²⁸ See the statement of 12 January 1988 on the situation in the occupied territories, Doc. 88/009, and the answer to question No. H-123/88 by Ms Lizin, Doc. 88/124.

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a clear violation of international law. They have also called on Israel to put an end to this illegal policy.

(...)

The Twelve are seriously concerned at the restrictions of media freedom, the reported detention and harassment of journalists and the extension for a further year of the closure of the Palestinian Press Service: acts which undermine the Palestinian press and deny freedom of expression.

Furthermore, the Twelve have, on several occasions, reiterated their concern at Israel's policy of expulsions and deportations from the occupied territories carried out in violation of Article 49 of the fourth Geneva Convention which states that individual or massive forcible transfers from [the] occupied territory are prohibited, regardless of their motive. This policy under which, even now, further deportations are pending, exacerbates the already tense atmosphere and indicates the readiness of the authorities to make increasing use of this practice despite international pressure.

(...)

Mr Chairman, the Twelve view with particular concern the question of the status of Jerusalem which is a holy city for three religions and of extreme importance to all the parties concerned. The Twelve will not accept any unilateral initiative designed to change the status of Jerusalem. The freedom of access for everyone to the Holy Places must be guaranteed in any future agreement on Jerusalem.

We continue to condemn Israel's decision to extend Israeli law, jurisdiction and administration to occupied Syrian territory in the Golan Heights. Such an extension, which is tantamount to annexation, is contrary to international law, and therefore invalid. This decision prejudices the possibility of the implementation of Security Council Resolution 242 and further complicates the search for a comprehensive peace settlement in the Middle East.²⁹

4. Conflict Resolution

a. Binding Force of Security Council Resolutions

On 5 December 1987, the European Council adopted in Copenhagen a statement on the situation in the Middle East. Part of this document dealt with the Iran-Iraq conflict:

The European Council expresses its profound concern about the continuation of the war between Iran and Iraq and reiterates its firm and wholehearted support for Security Council Resolution 598 as the means to bring an end to this armed conflict. The Twelve continue to give their unreserved and strong support to the efforts of the United Nations Security Council and the Secretary-General to obtain the immediate and full implementation of this resolution. Continued non-compliance with this mandatory resolution is not acceptable to the world community and the appropriate action should now be taken to enforce its implementation by means of a follow-up resolution.³⁰

²⁹ Doc. 88/443.

³⁰ Doc. 87/509.

b. Peace-Keeping Operations

A statement on the role of UN peace-keeping operations was presented in the Special Political Committee of the UNGA on 19 October 1987³¹ and on 17 October 1988.³²

V. International Security

1. General

Statements have been presented at the 42nd and 43rd session of the UNGA in the general debate on international security.³³

2. Disarmament

As is known, European Political Cooperation does not cover the whole range of security issues, but only their political and economic aspects³⁴ to the exclusion of military questions. Yet the number of statements made on behalf of the Twelve on the multiple facets of disarmament during the period under review is impressive: common positions were presented on conventional disarmament,³⁵ on the necessity of objective information on military matters,³⁶ on the relationship between disarmament and development,³⁷ on the reduction of military budgets,³⁸ in the general debate on disarmament,³⁹ at the session of the United Nations Disarmament Commission⁴⁰ and at the special session of the UNGA on disarmament⁴¹. Also of interest in this respect is the speech presented before the European Parliament on 20 January 1988 by Mr Genscher as President-in-Office of the Foreign Ministers.⁴²

3. Helsinki Process

A general evaluation of the role and limits of the CSCE process was presented on behalf of the Twelve at the closing of the fourth session of the Vienna CSCE meeting:

Mr Chairman, the delegations of the twelve Member States of the European Community are convinced that they share a feeling of some bewilderment with all other dele-

31 See Doc. 87/393.

32 Doc. 88/352.

33 19 November 1987, Doc. 87/483, and 24 November 1988, Doc. 88/456.

34 Article 30(6)(a) of the Single European Act.

35 28 October 1987, Doc. 87/418, and 7 November 1988, Doc. 88/400.

36 2 November 1987, Doc. 87/443.

37 11 September 1987, Doc. 87/311; 2 November 1987, Doc. 87/445; 9 November 1988, Doc. 88/405.

38 9 November 1988, Doc. 88/404.

39 13 October 1987, Doc. 87/371, and 11 November 1988, Doc. 88/353.

40 2 May 1988, Doc. 88/113.

41 6 June 1988, Doc. 88/145. See also the statement of 28 January on the issues to be debated at the Special Session, Doc. 88/031.

42 Reply to question No. 0-119/87 by Mr Poettering and others, Doc. 88/026.

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gations in this room at the realization that the Vienna follow-up meeting has now kept us busy for more than a year. What in the eyes of the twelve delegations is even more startling is the meagre harvest so far reaped from all our labours.

From the very beginning of the debates in Vienna the delegations of the Twelve have collectively and individually repeatedly underlined what in their view are the essential tasks of this meeting:

– reestablishment of faith in the CSCE process through precise and unambiguous commitments here to improvements in the implementation of existing CSCE texts, particularly in areas like the human dimension of the process which present real problems,

– to proceed further along the road mapped out for all delegations in the documents agreed in Helsinki and Madrid, that is, further to develop the integrated and balanced concept of security and cooperation in Europe expressed in those documents.

Those objectives have found their most recent confirmation in the declaration issued by the European Council on 5 December 1987.⁴³

From the beginning of this meeting the delegations of the Twelve thought that this reasonable view with regard to their responsibilities in Vienna was shared by most, if not all, delegations. Never have they suspected nor would they like to suspect that anyone could have the aim of twisting the consensus which we are all called upon to strengthen and improve to the detriment of one of its important component parts. From the beginning as well they felt encouraged by developments at the international level and at the national level in a number of participating States to believe that the road towards a consensus here would be reasonably short and smooth. They are surprised that this expectation should be proven wrong by the number and depth of the potholes they have encountered all along the uphill trek of the proceedings so far.

On occasion and such occasions seem to have multiplied over the last several weeks the delegations of the Twelve have been told by some partners to be realistic in their expectations with regard to what can be achieved at this meeting. In some of the drafting groups and contact groups this counsel on occasion adopts the shape of proposals for inserting into the concluding document of Vienna of references to laws and regulations in existence in participating States.

One reason why the delegations of the Twelve cannot heed the advice of this kind of realism is that it is a call for resignation in the face of an unsatisfactory situation. They never saw this meeting as intended to produce a realistic picture of existing conditions within and among participating States. They have confidence that scholars and learned institutions are acquitting themselves honourably of this arduous task wherever they are free to do so. Instead they thought and persist in thinking that the CSCE process, including the Vienna meeting, is there not in order to describe reality but in order to change reality first and foremost by establishing conformity between reality and commitments.

This brings me to the other reason why the delegations of the Twelve feel reluctant to heed the counsel of this kind of realism. What is the reality in CSCE terms that they are told to accept as their aim at this meeting?

As all reality, it presents both bright and sombre elements, salient features of black and white and a good deal of grayish twilight.

In the course of the last several months developments in a number of participating States have taken place which are relevant in terms of CSCE commitments.

⁴³ Doc. 87/510.

(...)

These facts among others provide an illustration of the distance still separating reality from commitments, word from deed. Before such states press others to adhere to the United Nations Covenants on Human Rights they should first ask themselves whether they sound credible to the rest of us. Are participating States who so clearly are seen to honour the legal obligations of those covenants more in the breach than the observance really a proper source of such advice?

Against this background it should be understandable that the Twelve see some difficulty in accepting present reality as the limit for the ambition of the Vienna meeting.

The delegations of the Twelve would like to hope that they will not have to dwell upon facts of this nature in future follow-up meetings. What is so badly needed are legal and institutional guarantees that the present trends in some participating States are, indeed, irreversible and that those trends will be adopted by those participating States where so far only limited developments have taken place. The Twelve see a challenge and an opportunity before this meeting in endeavouring to contribute to the establishment of such guarantees in the form of clear commitments here.

As I said a while ago, progress on the path towards this goal is far from satisfactory at this stage. Only to a very limited extent has it been possible to engage the delegations of the East in a cooperative effort to secure language in the concluding document of the Vienna meeting that would contribute to confidence that the fundamental concepts of Helsinki are still the basis of the CSCE process.⁴⁴

VI. United Nations

1. General

Many statements were delivered in UN fora on the role of the organization and of its organs in a number of areas. One may mention the following ones:

- statements of 24 November 1987⁴⁵ and on 25 November 1988⁴⁶ in the First Committee of the UNGA on the establishment of a comprehensive system of international peace and security, in which the Twelve advocated a systematic use of the United Nations Charter as an alternative to the establishment of a new system;
- statements of 29 October 1987⁴⁷ and 7 November 1988⁴⁸ and in the First Committee on the role of the United Nations in the field of disarmament;
- memorandum to be included in the report of the Special Commission for the in-depth Study of the United Nations intergovernmental structure and functions in the economic and social fields;⁴⁹

⁴⁴ 18 December 1987, Doc. 87/534.

⁴⁵ Doc. 87/494.

⁴⁶ Doc. 88/457.

⁴⁷ Doc. 87/432.

⁴⁸ Doc. 88/401.

⁴⁹ 31 March 1988, Doc. 88/194. See also the statement made on 11 May 1988 on the same topic, Doc. 88/117.

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- statement of 1 September 1987 on the role of the ECOSOC in the economic and social fields.⁵⁰
- a review of the role of the Organization in the protection of human rights can be found in the statements on human rights presented in the ECOSOC.⁵¹

2. Functioning of the United Nations

a. Financial Questions

Two statements on the financial crisis of the Organization were delivered on 10 September 1987⁵² and 13 December 1988,⁵³ respectively.

b. Privileges and Immunities of UN Officials

A statement deploring the increase in violations of the 1946 Convention on the Privileges and Immunities of the United Nations was delivered on 18 November 1988 in the Fifth Committee of the UNGA.⁵⁴

c. Headquarters Agreements

The Twelve have reacted against the decision of the United States Attorney-General to close the Palestine Liberation Organization's Permanent Observer Mission in application of the Anti-Terrorism Act passed by Congress in 1987. Their disapproval of this decision was rendered public in a statement delivered on 24 November 1987 in the Sixth Committee of the UNGA⁵⁵ and conveyed to the State Department in a number of *dé-marches*.⁵⁶ The Twelve's analysis of the legal situation was developed in a later statement:

We regret that, despite a series of consultations between the United Nations and the host country, no satisfactory solution to the problem has so far been found.

We share the concern expressed in the Secretary-General's reports of 10 February 1988 (A/42/915) and 25 February 1988 (A/42/915 Add. 1) in which he informs the General Assembly of the most recent developments in accordance with the terms of Resolution 42/210 [B] of 17 December 1987.

With regard to the matter under discussion, the Twelve reiterate their position: they fully share the views already expressed by both the Secretary-General of the United Nations and US Secretary of State George Shultz to the effect that the United States are under an obligation to permit PLO observer-mission personnel to enter and remain in the United States to carry out their official functions at the United Nations Headquar-

50 Doc. 87/543.

51 See, e.g., the statement of 17 May 1988, Doc. 88/195.

52 Doc. 87/513.

53 Doc. 88/508.

54 Doc. 88/445.

55 Doc. 87/495.

56 See the answer to Question No. H-32/88 by Mr Bru Puron, Doc. 88/089.

ters. They therefore supported Resolution 210 [B] adopted by the 42nd General Assembly.

The Headquarters Agreement is binding under international law. The Twelve urge the host country to abide by its international legal obligation, and not to implement its legislation in a way that would prevent the discharge of the official functions of the PLO Observer Mission to the United Nations; at the very least, the host country should settle this matter through the procedure set out in Section 21 of the Headquarters Agreement and therefore agree to the request of the Secretary-General to enter formally into the dispute-settlement procedure and consent to the establishment of an arbitral tribunal.

We expect that the present arrangements for the PLO Observer Mission will not be curtailed or otherwise affected pending a decision by the arbitral tribunal.

The Twelve express their hope that this matter can still be resolved in a way which corresponds to the Headquarters Agreement and which would allow the PLO Observer Mission to establish and maintain premises and adequate functional facilities, and would enable the personnel of the Mission to enter and remain in the United States to carry out their official functions.⁵⁷

Subsequently, the District Court for the Southern District of New York ruled that the Anti-Terrorism Act did not require the closure of the PLO's Mission, since Congress did not intend that piece of legislation to take precedence over the Headquarters Agreements.⁵⁸ On 29 August 1988, the Department of Justice announced that it had decided not to appeal that decision. The Twelve approved this attitude in a statement in the Sixth Committee.⁵⁹

d. Observer Status

General remarks on the granting of observer status by the United Nations have been presented in an explanation of vote on draft resolution L.10/Rev.1., which purported to give observer status to national liberation movements recognized by the Organization of African Unity or by the League of Arab States. The Twelve abstained on this resolution.⁶⁰

VII. Human Rights

1. Universal Declaration on Human Rights

The Twelve released a declaration on the occasion of the 40th anniversary of the Universal Declaration on Human Rights.⁶¹

⁵⁷ Doc. 88/051, 29 February 1988.

⁵⁸ *United States v. Palestine Liberation Organization*, No. 88 Civ. 1962 (ELP), S.D.N.Y., 29 June 1988.

⁵⁹ 1 December 1988, Doc. 88/485.

⁶⁰ Doc. 88/460, 28 November 1988.

⁶¹ 9 December 1988, Doc. 88/506.

2. International Covenants on Human Rights

a. Indivisibility and Interdependence of Human Rights

The Twelve abstained in the vote on UNGA Resolution 43/113. This decision was motivated by their refusal to accept the assumption that all human rights are interdependent.⁶²

b. International Covenant on Civil and Political Rights

Interrogated by Mr De Gucht, MEP, on their intention to invite the Member States which had not already done so to ratify or accede to the Optional Protocol, thereby enabling the Human Rights Committee of the United Nations to deal with individual complaints, the Foreign Ministers responded as follows:

all Member States have already either signed or ratified the International Covenant on Civil and Political Rights.

As far as individual complaints are concerned, the Presidency wishes to point out that the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 3 September 1953 and was ratified by all Member States, offers in Article 25, which is explicitly adhered to by all Member States, provisions to this effect and provides the European citizens with substantial guarantee as, contrary to the Optional Protocol to the International Covenant on Civil and Political Rights, it may lead to binding decisions.⁶³

3. Racial Discrimination

a. Convention on the Elimination of All Forms of Racial Discrimination

The problems arising in the implementation of this convention have been discussed in a statement on racism and racial discrimination in the Third Committee of the UNGA.⁶⁴

b. Apartheid

The Twelve criticized the wording of several provisions of UNGA Resolution 43/97 on the International Convention against Apartheid.⁶⁵

4. Torture

The following statement was presented in the Third Committee of the UNGA on 10 November 1988:

... Torture is an affront to civilization.

As we all know, the ban on torture was laid down in the Universal Declaration of Human Rights in its Article 5 and in the International Covenant on Civil and Political

⁶² See the explanation of vote given on 23 November 1988 in the Third Committee, Doc. 88/455.

⁶³ Answer to Question No. 2711/87, Doc. 88/112.

⁶⁴ 10 October 1988, Doc. 88/313.

⁶⁵ Explanation of vote in the Third Committee, 27 October 1988, Doc. 88/385.

Rights in its Article 7. But the international community did not limit itself only to those provisions. It went even further in its attempt to combat this abhorrent practice. The General Assembly adopted in 1975 the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In 1984, as an additional and more effective means to combat torture the General Assembly adopted the Convention Against Torture and the Human Rights Commission appointed a Special Rapporteur on the question of torture. However, in spite of all these efforts, we note with regret that in the last few years there has been an increase in the number of countries that practice torture, as pointed out, among others, by the Special Rapporteur on torture in his report.

The Twelve have welcomed the entry into force on 26 June 1987 of the Convention Against Torture, which they regard as a major step in promoting universal respect for and observance of human rights and fundamental freedoms. The Member States of the European Community have either become party to the convention or hope to do so at an early date.

We have studied carefully the report of the Committee Against Torture as well as the report of the Secretary-General on the status of the convention and note with regret that one more supervisory instrument of a human rights convention cannot function effectively. As a result of the financial problems that the Committee Against Torture faces, it was able to meet only for five days in its very first meeting, instead of three weeks.

The Twelve, therefore, urge all States Parties to make the necessary financial arrangements in order to enable the Committee to carry out in an effective and efficient manner the functions entrusted to it under the convention.

Concerning the declaration made by one State Party at the time of ratification regarding expenses for the Committee Against Torture, the Twelve hope that the party in question would reconsider its position, since it is not in conformity with international law. We strongly urge that State Party to withdraw its declaration.

The Twelve fully support the work of the Special Rapporteur on torture, whose mandate has been extended by the Commission on Human Rights for two more years. The usefulness of the Special Rapporteur mechanism in this area is, of course, enhanced by the fact that it fulfils a different function from that of the Committee on Torture. Whereas the latter is essentially concerned with the largely quasi-judicial function of monitoring compliance with treaty obligations, the Special Rapporteur has to tackle the issue of torture in all its aspects and review the situation in all UN member States. We nevertheless support the conclusion reached by the chairpersons of treaty bodies at their recent meeting in Geneva regarding the value of exchanges of views – perhaps on an informal basis – between the Special Rapporteur and the treaty bodies on directly relevant issues. We would also like to point out that the Special Rapporteur on torture and the Committee must receive adequate support and staff assistance so as to fulfil their respective tasks.

(...)

In concluding, Mr Chairman, we would like to stress that we are looking forward to the day that the fund will no longer need to exist; to the day when there will no longer be victims of torture. There is, however, still much to be done in this respect. And the Twelve will continue to do whatever is necessary to reach that level of civilization where the heinous act of torture shall no longer exist.⁶⁶

⁶⁶ Doc. 88/410.

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6. Questions Relating to Information

A general statement was presented by the Danish Presidency on 16 November 1987.⁶⁷

VIII. Self-Determination

A statement was released in Athens on the occasion of Namibia Day.⁶⁸ The Twelve also expressed their views on the situation in Namibia in the course of the general debate on this question in the Fourth Committee:

Mr President, over the years the policy of the Twelve has been clear, consistent and unequivocal. We remain firmly committed to Namibia's independence in accordance with the United Nations settlement plan endorsed by Security Council Resolution 435 (1978) and reaffirmed by subsequent resolutions. This plan embodies the only internationally agreed framework to ensure Namibia's independence and its people's authentic expression of will through free elections under the supervision and control of the United Nations. The Twelve, in rejecting the establishment of a so-called transitional government in Namibia, have repeatedly called for the implementation of the settlement plan without further delay or preconditions. In this respect, we believe that the role of the Secretary-General will continue to be of great importance and we wish to reiterate our wholehearted support for his resolute action with a view to the implementation of Resolution 435.

The Twelve express their satisfaction for the ongoing negotiations among Angola, Cuba and South Africa, mediated by the United States. We strongly support the endeavours to find a peaceful solution to the conflict in the area and to secure an early independence of Namibia in conformity with Security Council Resolution 435. We welcome the progress achieved so far. We regret that November 1, the date set forth by the parties involved for an eventual beginning of the implementation of the settlement plan was not met. Nevertheless, we reiterate our wish that the momentum of the negotiations should not be lost and that the transition period under United Nations control leading to Namibia's total independence will at last start in the very near future.

Mr President, as the Secretary-General of the United Nations put it, 'Namibia's independence is long overdue'. The question of Namibia has been before the United Nations virtually since its inception; a decade has passed since the adoption of Security Council Resolution 435 (1978) and still the people of Namibia have not exercised their right to self-determination. The Twelve share the frustration felt by the international community and its anxiety for the early and full independence of Namibia.

The process leading to this independence is the responsibility of the United Nations – and in particular of the Security Council and the Secretary-General. However, the question of Namibia constitutes a moral responsibility of the international community as well. For their part, the Twelve wish to recall their established position on Namibia's independence and their previous statements deploring specific policies and acts of the Government of South Africa in this regard.

⁶⁷ Doc. 87/87/463.

⁶⁸ 26 August 1988, Doc. 88/248.

(...)

Mr President, our attention on the question of Namibia should remain focused on the fact that it is a question of illegal occupation in defiance of repeated resolutions of the United Nations. No excuse can justify the prolongation of this situation which constitutes a breach of fundamental principles of the United Nations Charter. The international community must spare no effort to secure Namibia's independence. We urge the Government of South Africa to comply forthwith with its obligations and to help to turn into reality the spirit of determination demonstrated over the last month and thus bring about a peaceful settlement of the Namibia question. We are convinced that an early and just solution to this problem will have positive repercussions for peace, stability, further settlements and cooperation in the region. Thank you, Mr President.⁶⁹

IX. Miscellaneous

Many interesting declarations cannot be reproduced here for lack of space. They dealt with the following topics:

- drafting of an international convention against the recruitment, use, financing and training of mercenaries;⁷⁰
- peaceful uses of outer space;⁷¹
- measures to prevent international terrorism;⁷²
- new international economic order;⁷³
- good-neighbourliness between states.⁷⁴

X. EPC Structure and Procedure

Legal nature of EPC decisions

The following abstract is worth reproducing for it illustrates well the limits of the commitments assumed by the Member States in the framework of political cooperation. Asked by Mr Iversen, MEP, to comment on some declarations of the Spanish Foreign Minister, who had defined the sanctions adopted against South Africa "as recommendations and not as binding sanctions", the President-in-Office of the Foreign Ministers answered that

all of the restrictive measures the Twelve have decided to take against South Africa are politically binding and are being implemented in full. The restrictions on which the Foreign Ministers meeting in European political cooperation agreed on 10 September 1985 have been applied by the authorities and legal systems of the Member States. The restrictions approved by the Foreign Ministers meeting in European political

⁶⁹ 14 November 1988, Doc. 88/415.

⁷⁰ 23 November 1987 (Doc. 87/490) and 26 October 1988 (Doc. 88/380).

⁷¹ 5 November 1987, Doc. 87/450.

⁷² 28 October 1987, Doc. 87/421.

⁷³ 15 November 1988, Doc. 88/419.

⁷⁴ 18 November 1987, Doc. 87/468.

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cooperation on 16 September 1986 have been applied either by Council decision or by decision of [the] representatives of the Member States' governments meeting in the Council. The positive measures agreed on 10 September 1985 are being applied either by the Member States meeting in European political cooperation or under the Community's special programme for positive measures in South Africa.⁷⁵

⁷⁵ Answer to Question No. H-250/88, Doc. 88/153.