

European Political Cooperation in 1989-1990

Renaud Dehousse *

As indicated in the first issue of this *Journal*,¹ the purpose of this survey is not to give the positions assumed by the Member States of the European Community in the framework of European Political Cooperation (EPC) but, more modestly, to report the opinions expressed by the Twelve on matters of international law, or on the legal aspects of given international issues.

While our first survey covered the eighteen months that followed the coming into force of the Single European Act, this report details developments which occurred in 1989 and 1990. The next survey, due to appear in the first issue of 1993, will cover 1991 and 1992, so as to bring this rubric up to date.

Unless otherwise indicated, all documents referred to in this section come from the *European Political Cooperation Documentation Bulletin*, published by the European University Institute in collaboration with the Institut für Europäische Politik in Bonn, which is by far the most exhaustive source of information on EPC.

I. Diplomatic and Consular Relations

1. Palestine

In reply to question No. H-1004/88 which was posed by Ms Dury, MEP, the Spanish Presidency indicated that:

The PLO has established information and liaison offices in several Member States, where their status in the various capitals ranges widely from full diplomatic status to purely private status without any diplomatic privileges.

The question of harmonizing the level of diplomatic representation is linked to that of recognition of a Palestinian State. As indicated in the answer to question No. H-726/88,² the question of the recognition of a Palestinian State has legal and political implications which have not been discussed in the framework of Political Cooperation.³

* Department of Law, European University Institute.

1 1 *EJIL* (1990) 378-399.

2 1 *EJIL* (1990) 380.

3 *EPC Bulletin*, Doc. 89/094.

2. Inviolability of Diplomatic Missions

a. Albania

In the summer of 1990, large numbers of Albanian citizens sought refuge in Western embassies, where they hoped to obtain immigration visas. The ensuing tension with Albanian authorities gave rise to fears for the safety of the embassies involved. After a few skirmishes, the Community and its Member States adopted on 5 July a declaration urging the Albanian Government:

... first, to take the necessary measures to ensure the physical safety of the persons who have taken refuge in embassies, to refrain from reprisals against their families, to allow them to receive such assistance as is necessary and to guarantee their free departure from Albanian territory, and secondly, to respect international law and the provisions of the Vienna Convention on diplomatic relations as regards the inviolability of diplomatic missions. Moreover, they express the hope that the Albanian authorities will rapidly adopt the reforms and measures necessary for Albania to become engaged in a process of democratization bringing about a situation in which human rights are fully respected. The European Community and its Member States recall that respect for human rights and the principles of international law is an essential condition for the establishment of normal relations with the Community. Albania has made clear its intention of drawing closer to the CSCE process. The events which are taking place at this moment in Tirana are in complete contradiction to the expressed wishes of the Albanian authorities.⁴

b. Liberia

A similar declaration was adopted on 2 August 1990 as regards the situation in Liberia, where civil war was raging.⁵

c. Kuwait

Following the invasion of Kuwait in August 1990 and its subsequent annexation, the Iraqi Government demanded the closure of all foreign missions in Kuwait City. This was firmly opposed by the Twelve:

The Community and its Member States, in the light of their condemnation of the Iraqi aggression against Kuwait as well as of their refusal to recognize the annexation of that State to Iraq, firmly reject the unlawful Iraqi demand to close the diplomatic missions in Kuwait and reiterate their resolve to keep those missions open in view also of the task of protecting their nationals.

The Community and its Member States note with satisfaction that this position is shared by a great number of countries and is confirmed by Security Council Resolution 664, which requires the reversal of the illegal demand to close the diplomatic missions.⁶

The Twelve subsequently denounced as 'a very grave violation of the provisions of the 1961 Vienna

4 Doc. 90/271.

5 Doc. 90/294.

6 Declaration of 21 August 1991, Doc. 90/309.

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Convention' the breaking into the premises of the French and Dutch embassies by Iraqi forces, and the removed and detention of several French nationals, including one diplomat. A *demarche* was made to the Iraqi authorities to demand the immediate release of the captured foreign nationals.⁷ The Community's reaction was made public on 17 September 1990:

The European Community and its Member States ... welcome the unanimous adoption by the Security Council of Resolution 667, condemning Iraq for its actions which constitute a flagrant violation of international law and confronting this country with its responsibilities. The Community and its Member States already stated clearly that they consider all acts perpetrated against one or more among them as committed against all. In response to new very grave illegal acts against their Embassies in Kuwait, and taking into account the measures already taken by some Member States, they have decided of one accord to expel the military personnel attached to the Iraqi Embassies and to limit the freedom of movement of the other Members of their staff.

In the same spirit of solidarity they agreed that their Embassies in Kuwait will take charge collectively of the responsibilities, in particular those concerning the protection of nationals, of those Embassies of which the personnel is forced to leave Kuwait as the consequence of illegal actions of the Iraqi authorities. Since the withdrawal of personnel has only been brought about by the material impossibility of staying on, the Embassies are considered to remain open.⁸

II. Territorial Sovereignty

On several occasions, the Community and its Member States have reiterated the importance they give to the principle of territorial sovereignty of states. This was *inter alia* the case in statements concerning Lebanon,⁹ Kampuchea,¹⁰ Central America,¹¹ and of course Kuwait.¹²

The Ministers of Foreign Affairs also condemned the Iranian incitement to murder novelist Salman Rushdie in the following terms:

The Foreign Ministers view these threats with the gravest concern. They condemn this incitement to murder as an unacceptable violation of the most elementary principles and obligations that govern relations among sovereign States. They underline that such behaviour is contrary to the Charter of the United Nations.

They believe that fundamental principles are at stake. They reaffirm that the Twelve have the fullest respect for the religious feelings of all peoples. They remain fully committed to the principles of freedom of thought and expression within their territories. They will ensure protection of the life and properties of their citizens. In no case will they accept attempts to violate these basic rights.¹³

7 Declaration of 14 September 1990, Doc. 90/319.

8 Doc. 90/321.

9 Declaration adopted by the Strasbourg European Council, 8-9 December 1989, Doc. 89/316.

10 Doc. 90/322, 18 September 1990.

11 Statement adopted at the fifth ministerial conference between the countries of Central America, the European Community and its Member States and the countries of the Contadora group, held in San Pedro Sula, Honduras, on 27-28 February 1989, Doc. 89/073.

12 Declaration of 10 August 1990, Doc. 90/307.

13 Doc. 89/068, 20 February 1989.

Following this statement, the Member States of the European Community recalled their Heads of Mission in Teheran for consultation and suspended high-level contacts with Iranian authorities.

III. Armed Conflicts

1. Use of Force

a. Panama

The Twelve carefully avoided taking a strong stand on the legality of the operations conducted by US troops in Panama in December 1989. The statement which they adopted on that occasion is worth quoting as an example of diplomatic cautiousness:

Deeply concerned by the situation in Panama and by the loss of human lives, the Twelve expressed their strong wish that an early restoration of civil peace and safety can be achieved so that a return to constitutional and democratic order is secured.

The European Community and its Member States are ready to extend emergency aid to the victims of the events.¹⁴

b. Kuwait

In contrast, the Community and its Member States were first to react after the invasion of Kuwait by Iraq, and their statement of 2 August 1990 was not possessed of any ambiguity:

Following the breakdown of talks held in Jeddah under Arab auspices, the Community and its Member States are now gravely concerned at the latest developments in the dispute and in particular at the military aggression carried out by Iraq against Kuwait, not only a hostile action to a neighbour country, but also a dangerous threat to peace and stability in the region. The Community and its Member States strongly condemn the use of force by a member State of the United Nations against the territorial integrity of another State; this constitutes a breach of the UN Charter and an unacceptable means to solve international difference. They therefore fully support the resolution adopted today by the Security Council.

The Community and its Member States call upon all governments to condemn this unjustified use of force and to work for an early re-establishment of the conditions for the immediate resumption of peaceful negotiations. In this light they ask for an immediate withdrawal of Iraqi forces from Kuwait territory.¹⁵

The Community and its Member States refused to recognize the structures of authority imposed by Iraq in Kuwait,¹⁶ and their reaction to the subsequent annexation of Kuwait was quite firm:

... they reject the announced annexation of Kuwait, which is contrary to international law and therefore null and void, as stated in UN Security Council Resolution 662. The same applies

14 Doc. 89/345, 22 December 1989.

15 Doc. 90/293.

16 Doc. 90/297.

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to the announced removal of diplomatic missions from Kuwait and to any attempt by the Iraqi authorities to exert powers of government within the territory of Kuwait.¹⁷

The Twelve also condemned in strong terms the capture by Iraqi authorities of Foreign citizens resident in Iraq and Kuwait:

The Community and its Member States, deeply concerned at the situation of foreigners in Iraq and Kuwait, renew their condemnation of the Iraqi decision to detain them against their will as contrary to international law and fully support Security Council Resolution 664 which requires Iraq to permit and facilitate their immediate departure from Iraq and Kuwait. They denounce the fact that the Iraqi Government up to now has reacted negatively to many representations of the Community and its Member States.

As members of the international community, which is founded not only on law but also on clear ethical standards, the European Community and its Member States express their indignation at Iraq's publicized intention to group such foreigners in the vicinity of military bases and objectives, a measure they consider particularly heinous as well as taken in contempt of the law and of basic humanitarian principles... They warn the Iraqi Government that any attempt to harm or jeopardize the safety of any EC citizen will be considered as a most grave offence directed against the Community and all its Member States and will provoke a united response from the entire Community. They also warn Iraqi citizens that they will be held personally responsible in accordance with international law for their involvement in illegal actions concerning the security and life of foreign citizens.¹⁸

The Twelve's reaction was not limited to rhetorical statements. A series of sanctions were adopted as early as 4 August,¹⁹ to be followed by a programme of economic assistance to the countries most affected by the embargo, such as Egypt, Jordan and Turkey.²⁰ Special coordination efforts were also made with third partners like the Soviet Union²¹ and the Gulf Cooperation Council.²²

Yet, in spite of this promising start, it became increasingly difficult to reach a common position as the likelihood of a military confrontation grew. The strong support given by the European Council to UN Security Council Resolution 678, which demanded a complete Iraqi withdrawal from Kuwait by 15 January 1991,²³ can be seen as the apex of the Twelve's efforts to adopt a common stand. Ensuing developments showed once more that in the current institutional setting, it is more difficult to implement a common policy, especially when military matters are concerned, than to adopt a reactive stance. But, as Kipling would have said, this is another story...

17 Doc. 90/307, 10 August 1990.

18 Doc. 90/309, 21 August 1990.

19 Doc. 90/297.

20 See the statement adopted on 7 September at the extraordinary meeting of the foreign ministers in Rome, Doc. 90/313, and the declaration of 17 September 1990, Doc. 90/321.

21 Declaration of 26 September, Doc. 90/339.

22 Declaration of 27 September, Doc. 90/340.

23 Doc. 90/470, 15 December 1990.

c. India

In a declaration dated 12 April 1990, the Twelve react to the heightening of tension in early 1989, between India and Pakistan by emphasizing 'their attachment to the principle of the peaceful settlement of disputes'.²⁴

2. Occupied Territories

The Member States of the Community have recalled in several statements their traditional view on the applicability of the Geneva Conventions on the protection of civilians in wartime in the territories occupied by Israel.²⁵ They also deplored the deterioration of the situation in the occupied territories:

Monsieur le Président, toute occupation ne peut qu'engendrer, à plus ou moins brève échéance, un cycle fatal de résistance et de répression. La situation dans les territoires occupés par Israël n'échappe pas à cette règle. Nous en voyons aujourd'hui les effets.

Les Douze observent avec inquiétude la montée de la violence dans les territoires occupés qui a déjà fait de trop nombreuses victimes, parmi lesquelles des adolescents et de jeunes enfants. Ils tiennent à souligner le caractère excessif – et souvent inapproprié – des moyens employés par les forces d'occupation, qui ne peut qu'aviver les rancœurs et perpétuer l'engrenage de la violence. A cet égard, ils déplorent l'utilisation sur une large échelle de balles en plastique avec les résultats que l'on connaît.

Monsieur le Président, la répression prend d'autres formes, que les Douze jugent également inadmissibles. S'agissant des châtiments collectifs, qui sont proscrits par la Sixième convention de Genève, les Douze déplorent en particulier les sanctions économiques et la fermeture répétée et prolongée d'établissements d'enseignement par les autorités d'occupation, qui ne saurait rester sans graves conséquences pour l'avenir de plusieurs générations d'une jeunesse privée de son droit élémentaire à l'éducation.

*Par ailleurs, les Douze réprovent les arrestations arbitraires et les détentions sans jugement auxquelles a fréquemment recours la puissance occupante, ainsi que les mesures d'expulsion qui ont frappé de nombreux civils palestiniens et qui ont fait l'objet de condamnations répétées par la communauté internationale et, en particulier, par le Conseil de sécurité, dans ses résolutions 636 et 641. Il est choquant en effet, de priver des individus du droit à résider sur leur propre territoire, là où ils sont nés et où ils ont toujours vécu.*²⁶

Reacting to Israeli suggestions that Soviet Jews might be allowed or even encouraged to settle in Gaza and the West Bank, the Twelve recalled their long-standing view that Jewish settlements in occupied territories are illegal.²⁷

24 Doc. 90/180.

25 See, e.g., a statement presented on 20 April 1989 at the UNGA on the question of Palestine, Doc. 89/133, or the declaration adopted on 9 October 1990, Doc. 90/356.

26 Statement before the Special Political Committee of the UNGA, 21 November 1989, Doc. 89/285. See also the declaration concerning the situation in school and universities released on 6 October 1989, Doc. 89/224.

27 Declarations of 31 January and 20 February 1990, Docs. 90/027 and 90/096.

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3. Arms Control

a. Disarmament

A general statement on disarmament was presented before the First Committee of the UNGA on 16 October 1989.²⁸ The European Council also released a declaration on nuclear non-proliferation on 26 June 1990.²⁹

b. Chemical weapons

In the wake of the Iran-Iraq conflict, which saw a massive use of chemical weapons by Iraqi forces, against both civilian populations and military personnel, an international conference was convened in Paris to discuss the possibility of a total ban on chemical weapons. The following statement was presented by the Spanish Presidency on behalf of the Member States of the Community:

During the last few years considerable progress in the ongoing negotiations on chemical weapons has been achieved within the Conference on Disarmament in Geneva. Although there still remain important issues to be solved, the structure of the future convention has already been established, and considerable progress has been achieved in the field of verification. On the basis of this progress, the Twelve commit their wholehearted efforts to reaching agreement on a durable and effective convention, and to bringing to the final stage the negotiations of a new and very necessary multilateral contribution to disarmament: the total ban of chemical weapons. This would result in the disappearance from the face of the earth of a whole category of extremely cruel mass destruction weapons.

However, improvement in the international situation and progress in the negotiations of Geneva contrast with the recent use of chemical weapons, which has been strongly condemned, not only by the Twelve but also by Security Council resolutions on the matter, which we fully support.

The use of such weapons, which due to their nature deserve particular reprobation, violates and consequently undermines the Protocol of 1925 is a serious warning and a reminder of the urgency to undertake new efforts geared to the achievement of a total and comprehensive elimination of chemical weapons. The Twelve hope that the new momentum reached by this conference will help to solve outstanding problems in the ongoing Geneva negotiations.

The countries on whose behalf I speak today have all adhered and strictly conform to the Geneva Protocol of 1925. We take this opportunity to declare our strong and firm commitment to this important protocol. We call upon all States who have not yet done so to become parties to the Geneva Protocol. We hope that this will be the first success of the Paris Conference. (...)

Mr Chairman, the Twelve believe that the international community faces today the risk of proliferation of a kind of weapons we regard as particularly loathsome. As Europeans, we cannot forget that it was precisely in our continent where, for the first time, mankind was exposed to the massive use of chemical agents. Since then, scientific and technological progress has allowed the development and modernization of chemical weapons, dangerously increasing their potential to inflict abhorrent damages to the human being.

28 Doc. 89/238.

29 Doc. 90/268.

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Therefore, this conference is for us of paramount importance and we consider it must underline our full commitment to the goal of an early conclusion of a global, comprehensive and verifiable convention on the prohibition of development, production, stockpiling and use of chemical weapons and on their destruction.

Different reasons may have led the international community to believe, in the past, that there was no urgency for reaching agreement on a total ban on chemical weapons. However, their recent use has shown the need to strengthen the international prohibition[s] already existing on the matter and their authority. Therefore, the Twelve believe that this conference should have two main objectives: on the one hand, we should reaffirm at the highest political level the commitment of the States parties to the Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare and the rejection by the international community of the said weapons. On the other hand, the Twelve believe that the recent use of such weapons has shown that the prohibition of the use of chemical weapons established by the Geneva Protocol must be completed by the prohibition of the production and stockpiling. Consequently, this conference must give a strong impetus to the ongoing Geneva negotiations on a global, comprehensive and effectively verifiable convention banning chemical weapons, as the complete elimination of chemical weapons is the best way to prevent their use. (...)

Mr Chairman, together with these two main objectives, the Twelve believe that this conference should serve to urge and encourage the adherence of new States to the Protocol. In this context, the Twelve welcome with satisfaction the recently announced new accessions, which we hope will soon be followed by other States.³⁰

A similar plea in favour of a complete ban was made before the First Committee of the UNGA on 6 November 1989.³¹ Later on, deploring the threat by Iraq to use chemical weapons against Israel, the Twelve stressed that such a threat was in contradiction with the purpose and spirit of ongoing negotiations, and further recalled 'the obligation on all Member States contained in the Charter of the United Nations to refrain from the threat or use of force.'³²

IV. Human Rights

1. United Nations

Many statements were presented on behalf of the Twelve in UN bodies; among the most important were statements on racial discrimination,³³ on the ECOSOC report on human rights,³⁴ and on apartheid.³⁵

At the forty-fifth session of the United Nations Commission on Human Rights, an intervention was made for the first time on behalf of the Member States of the Community. Speaking on this occasion, the Spanish Foreign Minister, Mr Fernandez Ordonez, reviewed United Nations activities aiming at the promotion and protection of human rights. He dwelt at some length on three

30 Doc. 89/001, 9 January 1989.

31 Doc. 89/254.

32 Doc. 90/181, 20 April 1990.

33 Doc. 89/100, 21 March 1989.

34 Doc. 89/279, 20 November 1989.

35 Doc. 89/302, 22 November 1989.

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mechanisms which are of increasing importance: special rapporteurs, the confidential inquiry procedure established by ECOSOC Resolution 1503, and the Commission's advisory services.³⁶

2. CSCE

Of further interest are statements presented at the London Information Forum³⁷ and at the Paris Conference on the Human Dimension, where the Twelve presented a number of proposals to enlarge the scope of human rights commitments in the CSCE framework and to improve the effectiveness of the implementation machinery.³⁸

In a declaration dated 19 December 1989, the Foreign Ministers condemned the repression of popular demonstrations against the Ceausescu regime as a violation by Rumania of its CSCE commitments.³⁹

V. Self-determination

As suggested elsewhere in this issue,⁴⁰ the concept of self-determination is today widely invoked in Europe. In this respect, it may be noted that the Member States of the Community were among the first to do so, even if not without some hesitation. Their initial reaction to the collapse of the Berlin wall was extremely cautious:

The Twelve hope that this represents a stage in a process of far-reaching reforms that will allow the people of the GDR to define their future and to enjoy their democratic rights in full freedom.⁴¹

Later on, however, the Twelve clearly hinted at the fact that the restoration of German unity was to be seen as an application of the self-determination principle. This was exemplified by the declaration by which they welcomed unification:

Germany regains its unity today, thus ending an anomalous situation which has been for so many years the most visible sign of Europe's division, the legacy of a now long-past war. A people which has so enriched our common civilization is recovering its rightful place in Europe and in the world. It is finally witnessing the fulfilment of a yearning unswervingly supported by the Community and its Member States, which accordingly share all the more the German people's joy at this event.

This historic change has happened peacefully and democratically, in full compliance with the principles of the Helsinki Final Act. The Community and its Member States pay tribute to the steadfastness of the German people, which has nurtured through difficult years its desire for freedom and democracy today fulfilled, and to the wisdom of the Governments and the Statesmen who made it possible.⁴²

Similar caution was displayed in reaction to the proclamation of independence in Lithuania and the tension that ensued between Moscow and Vilnius, as was illustrated by the following declaration of 24 March 1990:

36 Doc. 89/069, 22 February 1989. See also the statement on Sri Lanka released on 22 October 1990, Doc. 90/216.

37 Doc. 89/132, 18 April 1989.

38 Doc. 89/169, 31 May 1989, and 89/176, 14 June 1989.

39 Doc. 89/343.

40 See the contribution by Alain Pellet, *supra*, p. 178.

41 Doc. 89/262.

42 Doc. 90/353, 2 October 1990.

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The Twelve have heard with concern the reports from Lithuania. They appeal for maximum restraint on all sides. They hope for a respectful, open and fair dialogue between Moscow and Vilnius, avoiding the use of force or the threat of the use of force on the basis of the principles of the Helsinki Final Act.⁴³

VI. United Nations

In these times of renewed interest in United Nations, it is worth noting that the Member States of the Community have been very supportive of its action in regional conflicts. This was made clear *inter alia* on statements on Kampuchea,⁴⁴ on the Middle East,⁴⁵ on Central America,⁴⁶ and of course on Kuwait.⁴⁷ The Twelve were also very supportive of peace-keeping operations in a report presented at the *ad hoc* committee of the United Nations.⁴⁸

43 Doc. 90/142. See also a declaration of 4 April 1990, Doc. 90/145, and the answer to question No. H-287/90 by Mr Garakoetxea Urriza, Doc. 90/150.

44 Doc. 90/098, 20 February 1990.

45 See, e.g., the declaration released by the Rome European Council on 28 October 1990, Doc. 90/399.

46 See the Joint Political Declaration adopted at the ministerial conference held at San Pedro Sula, Honduras, with Central American States and Members of the Contadora Group, Doc. 89/073, 28 February 1989.

47 See, e.g., the declaration adopted by the European Council on 15 December 1990, Doc. 90/470.

48 Doc. 89/074, 28 February 1989.