

The International Practice of the European Communities: Current Survey

European Political Cooperation in 1991

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As indicated in the first issue of this *Journal*, the purpose of this survey is not to give an exhaustive account of the positions assumed by the Member States of the European Communities in the framework of European Political Cooperation (EPC). More modestly, it reports the opinions expressed by the Twelve on matters of international law, or on the legal aspects of current international issues.

1991 was rich in important events. Commencing with the Gulf war, the year saw the outbreak of hostilities in Yugoslavia and ended with the collapse of the Soviet Union. As the views of the Twelve on several of these problems have been analysed in detail in this and earlier issues,¹ I will limit myself to elements which have thus far attracted less attention.

I. Recognition

A. Baltic States

In the Spring of 1990, Lithuania, Latvia and Estonia declared their independence. By the end of the year, all the Republics of the Soviet Union had followed their example. Although the Member States of the Community, along with the majority of Western states, have always refused to recognize the annexation of the Baltic states, they reacted with great caution to the heightening of tension with the central authorities.

In the first phase, the Twelve limited themselves to inviting the Soviet authorities to refrain from any act of intimidation, in conformity with Soviet commitments under the Helsinki Final Act and the Charter of Paris. They were also urged to open negotiations with elected representatives of the Baltic Republics 'in order to meet, through a peaceful solution, the legitimate aspirations of the Baltic peoples'.² A similar invitation was made in a letter from the President of the Council, Luxembourg Foreign Minister Poos, to Soviet Foreign Minister Shevardnadze to condemn the use of force by Soviet troops in Vilnius.³ The importance attached by the Twelve to this issue was

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1 See, e.g., the contributions by Dominici and Malanczuk on the Gulf war in 2 *EJIL* (1991) No. 2 at 85-109 and 114-132, and the contributions by Rich and Türk in this issue at 36-65 and 66-71.

2 Declaration 8/91, 11 January 1991.

3 Press Release 9/91, 13 January 1991.

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such that an extraordinary ministerial meeting was convened on 14 January, i.e. on the eve of the outbreak of hostilities in the Gulf, to discuss the situation in the Baltic states.⁴

Despite the above initiatives, it was only after the failure of the coup against President Gorbachev that the Community went so far as to recognize the independence of those states:

The Community and its Member States warmly welcome the restoration of the sovereignty and independence of the Baltic States which they lost in 1940. They have consistently regarded the democratically elected parliaments and governments of these states as the legitimate representatives of the Baltic peoples. They call for open and constructive negotiations between the Baltic States and the Soviet Union to settle outstanding issues between them.

It is now time, after more than fifty years, that these States resume their rightful place among the nations of Europe. Therefore, the Community and its Member States confirm their decision to establish diplomatic relations with the Baltic States without delay. Implementing measures will be taken by Member States individually.

The Community and its Member States look forward to the early membership and participation of the Baltic States in all relevant international organizations, such as the United Nations, CSCE and the Council of Europe.

The Community and its Member States underline their commitment to support the Baltic States in their economic and political development. The Commission will explore all avenues for economic cooperation between the Community and the Baltic States and will put forward early proposals to that effect.

The Community and its Member States extend a cordial invitation to the Foreign Ministers of the Baltic States to attend their next meeting early September.⁵

B. Yugoslavia

On 16 December 1991, when it had become clear that there remained little hope for a peaceful settlement of the conflict among Yugoslav Republics, the Twelve agreed on a series of guidelines establishing the conditions which had to be met before new states could be recognized. The attitude of the Twelve *vis-à-vis* Yugoslav Republics is reviewed elsewhere in this issue.⁶

C. Former Soviet Republics

A similar scenario was followed for Soviet Republics. In a statement dated 23 December 1991, the Twelve underlined that their recognition of the members of the Commonwealth of independent states was conditional upon the latter conforming to all conditions set in the above-mentioned guidelines:

The European Community and its Member States have taken note with satisfaction of the decision of the participants at the meeting in Alma Ata on 21 December 1991 to form a Commonwealth of independent states.

⁴ See Press Release 12/91.

⁵ Press Release 81/91, 27 August 1991. See also the Joint Declaration adopted at the Meeting with Foreign Ministers of the Baltic States on 6 September 1991, Press Release 85/91.

⁶ See the contribution by Rich at 36 and the Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union adopted on 16 December 1991 at 72.

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They note that the international rights and obligations of the former USSR, including those under the UN Charter, will continue to be exercised by Russia. They welcome the Russian Government's acceptance of these commitments and responsibilities and in this capacity will continue their dealings with Russia, taking account of the modification of her constitutional status.

They are prepared to recognize the other republics constituting the Commonwealth as soon as they receive assurances from those republics that they are ready to fulfil the requirements contained in the 'guidelines on the recognition of new states in Eastern Europe and in the Soviet Union', adopted by Ministers on 16 December 1991.

In particular, they expect to receive assurances that these republics will fulfil the international obligations ensuing for them from treaties and agreements concluded by the Soviet Union, including the ratification and full implementation of the CFE Treaty by the republics to which that Treaty applies, and that they will ensure single control over nuclear weapons and their non-proliferation.

The Presidency will approach the Republics concerned in order to obtain from them the required assurances in good time for recognition to be effective as from the moment the dissolution of the Soviet Union enters into force.⁷

Having received the required assurances from a number of CIS members, the Member States of the Community moved on to recognize them on 31 December 1991:

The Community and its Member States welcome the assurances received from Armenia, Azerbaijan, Belarus, Kazakhstan, Moldova, Turkmenistan, Ukraine and Uzbekistan that they are prepared to fulfil the requirements contained in the 'Guide-lines on the recognition of new States in Eastern Europe and the Soviet Union'. Consequently, they are ready to proceed with the recognition of these Republics.

They reiterate their readiness also to recognize Ryrghyzstan and Tadzhhikistan once similar assurances will have been received.

Recognition shall not be taken to imply acceptance by the European Community and its Member States of the position of any of the Republics concerning territory which is the subject of a dispute between two or more Republics.

Recognition will furthermore be extended on the understanding that all Republics participating with Russia in the Commonwealth of independent states on whose territory nuclear weapons are stationed, will adhere shortly to the Nuclear Non-Proliferation Treaty as non-nuclear weapon States.⁸

II. Armed Conflict

A. Use of Force

1. Kuwait

As noted in the last instalment of this survey, the Twelve reacted promptly to the invasion of Kuwait by Iraq. They expressed strong support for UN Security Council Resolution 678, which demanded a complete Iraqi withdrawal from Kuwait by 15 January 1991.⁹ Yet the structural limits of political cooperation became apparent as the likelihood of a military confrontation grew.

7 Press Statement 133/91.

8 Press Statement 137/91.

9 See 3 *EJIL* (1992) at 208-9.

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Although the Twelve supported a number of initiatives aiming at convincing Iraqi authorities to abide by Security Council resolutions, no common views were expressed on the necessity of a military action in case of failure of those initiatives. This issue was conspicuously absent from the declaration released at the expiration of the deadline set by Security Council Resolution 678:

Following a meeting between the President of the Council and the Secretary-General of the United Nations, Ministers for Foreign Affairs of the European Community were informed of the substance of the conversations of Mr Perez de Cuellar with the President and Foreign Minister of Iraq.

They note that the Secretary-General will this evening report on his mission to the Security Council of the United Nations, which will have the task of evaluating the results.

For their part, the Community and its Member States have from the beginning of the Gulf crisis supported unreservedly the full and unconditional implementation of the relevant resolutions of the Security Council.

They have spared no effort in exploring all paths to a peaceful solution in conformity with these resolutions. In this spirit, the European Community had made known its readiness to meet at the level of the Troika of Foreign Ministers the Iraqi Foreign Minister, Mr Tarek Aziz, first in the Presidency capital and then in Algiers.

Through the Presidency statement of 4 January 1991, the Twelve had clearly indicated that if the resolutions of the Security Council were fully and unconditionally implemented, Iraq should receive the assurance that it would not be subject to a military intervention.

In the same statement, the Twelve had also clearly reaffirmed their commitment to contribute actively to the settlement of the other problems of the region and to establish there a situation of security, stability and development, as soon as the Gulf crisis is resolved.

On the occasion of the Rome European Council on 15 December 1990, the European Community and its Member States had indicated that they remained completely in favour of the convening of an international peace conference on the Middle East at the appropriate moment.

It is a fact that unfortunately must be acknowledged that the readiness thus displayed to contribute to a peaceful solution of the crisis opening the way to an equitable settlement of all the other problems of the region has not, up to this point, received a response from the Iraqi authorities.

In the face of the continued refusal of the Iraqi authorities to implement the resolutions of the Security Council and in the absence of any signal in this sense, the European Community and its Member States regret to have to conclude that the conditions for a new European initiative do not exist as of this moment.

Nevertheless, the invitation to Mr Tarek Aziz to meet the Ministerial Troika remains on the table.

The European Community and its Member States are conscious of having done everything that was possible to find a peaceful exit from the crisis. They remain determined to explore all possibilities for the preservation of peace in the respect of international legality. In this context, they request Arab countries and organizations to continue to devote every effort to bringing the Iraqi authorities to understand that it is in the interest of Iraq, as of the whole Arab world, that it should abide by the resolutions of the Security Council.¹⁰

¹⁰ Press Statement 11/91, 14 January 1991.

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Reacting to the initiation of military operations, the Twelve stressed that the resort to force had become necessary to restore international legality. Yet, again, no view was expressed as to the legality of this action, and the display of unity was limited to the support expressed to those Member States that were involved in military operations:

The Ministers of Foreign Affairs of the Twelve and the Commission, assembled at an extraordinary meeting in Paris, express their deep regret that use of force was necessary to oblige Iraq to withdraw from Kuwait and, in order to re-establish international legality. It falls upon the Iraqi authorities only to stop the conflict which has just broken out by complying with the relevant resolutions of the United Nations.

The European Community and its Member States have spared no effort to allow for a peaceful solution. These efforts as well as those undertaken by other members of the international community, including Arab countries, as well as by the Secretary-General of the United Nations, have met no reaction whatsoever from the part of Saddam Hussein.

Under the present circumstances, the Community and its Member States reiterate their firm support of the objectives contained in the relevant resolutions of the Security Council. They express their solidarity, in accordance with these resolutions, with those Member States and other members of the international community the forces of which are involved in the re-establishment of legality.

They express their hope that the conflict, which has just begun, will be of a short duration. To this end, they strongly urge the Iraqi leadership to withdraw immediately and fully its forces out of Kuwait, thus avoiding further victims and destruction.¹¹

The cohesion of the Twelve in those circumstances was the object of an interesting debate in the European Parliament on 21 January 1991:¹²

2. Yugoslavia

The hostilities that were to lead to the demise of the Yugoslav federation started at the end of June 1991. The Member States reacted swiftly, dispatching *inter alia* a troika mission that secured a first cease-fire. The agreement reached in Brioni paved the way for the deployment of an EC observers mission. Yet, in the face of constant violations of the cease-fire, they condemned the use of force to change internal borders in the following terms:

They welcome the readiness of all the parties concerned to start negotiations about the future of Yugoslavia and they urge all parties to conduct these negotiations in good faith. Such negotiations should be based on the principles that any change of internal and international borders by force is not acceptable and that any solution should guarantee the rights of peoples and minorities in all the Republics. In particular, they appeal to the parties concerned to do everything within their power to ensure that the negotiating process will not be marred by further violence.¹³

The same stand was repeated more forcefully in a statement of 27 August in which, for the first time, Serbians were singled out as the aggressors:

The European Community and its Member States are dismayed at the increasing violence in Croatia. They remind those responsible for the violence of their determination never to

11 Press Statement 17/91, 17 January 1991. See also the Statement of 28 February, under which they welcomed the cease-fire (Press Release 106/91).

12 OJ Annex 3-398 at 9-28.

13 Press Release 77/91, 20 August 1991.

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recognize changes of frontiers which have not been brought about by peaceful means and by agreement. It is a deeply misguided policy on the part of the Serbian irregulars to try to solve the problems they expect to encounter in a new constitutional order through military means. It is even more disconcerting that it can no longer be denied that elements of the Yugoslav People's Army are lending their active support to the Serbian side. The Community and its Member States call on the Federal Presidency to put an immediate end to this illegal use of the forces under its command.

The Community and its Member States will never accept a policy of *fait accompli*. They are determined not to recognize changes of borders by force and will encourage others not to do so either.

Territorial conquests, not recognized by the international community, will never produce the kind of legitimate protection sought by all in the new Yugoslavia. Such protection can be brought about only by negotiations based on the principle of the fullest protection of the rights of all, wherever they may live in Yugoslavia.¹⁴

The same reasons led them to condemn the attacks launched on Croatian cities, particularly those against Dubrovnik, by the Yugoslav national army:

The European Community and its Member States strongly condemn the continuous JNA attacks on Croatian cities.

JNA has issued an ultimatum whose terms imply the virtual surrender of Dubrovnik. The European Community and its Member States consider this an illegal act clearly aimed at the seizure of an indisputably Croatian city.

The European Community and its Member States reiterate that they will under no circumstances accept a policy of *fait accompli* aimed at unilateral change of borders.¹⁵

In this respect, it is also worth noting that, in a declaration adopted at the ceremonial opening of the Hague conference on Yugoslavia, representatives of the Community and its Member States and of Yugoslavia and its Republics [sic], solemnly proclaimed their determination

never to recognize changes of any border which have not been brought about by peaceful means and by agreements.¹⁶

Needless to say that these commitments proved to be short-lived.

B. Law of Warfare

1. Prisoners-of-war

On 22 January 1991, the Twelve condemned the mistreatment of prisoners-of-war by the Iraqi army:

The Community and its Member States express their deep concern at the unscrupulous use of prisoners-of-war and of the intention announced by Iraq to concentrate them near military bases and targets. They consider these actions particularly odious because contrary to elementary respect for international law and humanitarian principles. They condemn such actions unreservedly. They request the Iraqi authorities rigorously to respect all the Geneva

14 Press Release 82/91.

15 Press Statement 105/91, 27 October 1991.

16 Press Release 86/91, 7 September 1991.

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Conventions relating to the conduct of war and in particular the Convention of 12 August 1949 on the treatment of prisoners-of-war. This stipulates in particular in Article 13 that 'prisoners-of-war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity' and in Article 23, that 'no prisoner-of-war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations'.

In conformity with Article 125 of this same Convention, the special position of the International Committee of the Red Cross in this field should be recognized and respected. The Community and its Member States pay tribute to the work of the Red Cross and support all steps aimed at strengthening its role.

The Community and its Member States hold the Iraqi authorities responsible, in accordance with international law – including in their individual capacities – for all illegal acts endangering the physical integrity and the life of prisoners-of-war – which clearly constitutes a war crime.¹⁷

2. War crimes

(a) Iraq

In the wake of the extraordinary meeting of the European Council called in Luxembourg on 8 April 1991 to debate the situation of Kurdish refugees,¹⁸ the Council of Ministers suggested bringing Iraqi leaders before an international court. The President-in-office of the Council, Luxembourg Prime Minister Jacques Santer, discussed this proposal before the European Parliament on 18 April 1991.

At its meeting in Luxembourg on Monday, the General Affairs Council mandated the Presidency to make contact in Strasbourg with the Secretary-General to discuss with him ways and means of bringing the Iraqi authorities and Saddam Hussein in particular before an international court of justice.

There is certainly no lack of grounds for charges. First there are the crimes committed by the Iraqi army as the occupying power in Kuwait. Then there is the scandalous treatment meted out to prisoners of war, notably allied pilots. Finally, the main count, to which I have just been alluding, is the genocide committed against an integral section of the Iraqi population. The UN Secretary-General received this proposition with interest when it was put to him yesterday by my colleague Mr Poos.¹⁹

Commenting later on this proposal, a spokesman for the Twelve explicitly referred to violations of the Fourth Geneva Convention as well as the Genocide Convention.²⁰

17 Press Statement 19/91.

18 See below, point c.

19 OJ Annex 3-404 at 126.

20 Statement at the first ordinary session of the ECOSOC concerning questions related to human rights, 20 May 1991.

(b) Yugoslavia

A similar threat was used in reaction to the violence of fights in Yugoslavia. On 6 October the Foreign Ministers declared themselves

alarmed in particular at reports that the JNA, having resorted to a disproportionate and indiscriminate use of force, has shown itself to be no longer a neutral and disciplined institution.

Ministers are determined that those responsible for the unprecedented violence in Yugoslavia, with its ever increasing loss of life should be held accountable under international law for their actions.²¹

Likewise, reacting to the fierce attacks on Dubrovnik, they

remind[ed] the leadership of JNA and all those exercising control over it of their personal responsibility under international law for their actions, including those in contravention of relevant norms of international humanitarian law.²²

3. Humanitarian law

EC Member States took an active role in shaping the international response to the ordeal of Kurdish refugees after the failure of the Kurdish rebellion in March. France and Belgium put a draft before the Security Council that was to become Resolution 688, and the idea of 'safe havens' for the Kurds and the Shiites of Iraq was first launched by Prime Minister John Major at an extraordinary meeting of the European Council on 8 April. The views of the Twelve were summarised by Prime Minister Jacques Santer before the European Parliament:

Mr President, ladies and gentlemen, the meeting of our twelve heads of state or government in Luxembourg on 8 April was arranged in order to hold a discussion, in the light of the lessons of the recent war in the Gulf, on the direction of future European Community action in that region and the Near East generally.

(...)

We ... talked about the three interrelated themes that are of key importance to all the regions' problems: peace; security; and economic cooperation and humanitarian aid. As indicated earlier, it was therefore from the standpoint of the cease-fire terms intended to lead eventually to peace with Iraq that the European Council examined all aspects of the brutal repression that the Kurdish and Shia populations are suffering at the hands of Saddam Hussein's troops. Firmly condemning this appalling repression, it issued an urgent appeal to the Iraqi authorities to put an immediate end to it, complying with UN Security Council Resolution 688. This persecution is without a shadow of doubt a further flagrant violation of the fundamental rights of the Kurdish section of the Iraqi population. The perpetrators bear direct personal responsibility for this. The Baghdad regime may be talking about an amnesty. But should it come as any surprise that the Kurds no longer attach any credence to Saddam Hussein's promises?

(...)

The immediate priority for the European Council was to set up a large-scale operation to help the thousands of Kurds who had fled to the borders with neighbouring Turkey and Iran. It therefore took the decision in Luxembourg to organize additional humanitarian aid amounting

²¹ Press Statement 98/91.

²² Press Statement 105/91, 27 October 1991.

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in total to ECU 150 million. The task now is to make sure that this aid reaches its destination as swiftly as possible. However, emergency aid cannot provide a definitive answer. Clearly, a way is going to have to be found to resettle these refugees inside Iraq. The Kurdish Iraqis have the right to live on their own soil, which is their ancestral home, and so of course have the Shiites from the south.

The very next day after this meeting in my country's capital, President Jacques Delors and I travelled to United Nations Headquarters with a crystal-clear brief. You will agree with me that this was something without precedent or parallel in the history of the Community. It involved making plans, on the basis of Resolutions 687 and 688 adopted by the UN Security Council, for creating one or more safe havens to enable the Kurdish and other Iraqi refugees to return to their country and protecting them from attack by Saddam Hussein's army. Jacques Delors and I explained to Mr Perez de Cuellar that if the Iraqi Government persisted in its policy and its disdainful attitude, the European Community and its Member States would vote in favour of maintaining economic sanctions against Iraq. I must mention in this context that the European Council had paid tribute to the consistent and indeed irreplaceable role played by the United Nations throughout the Gulf crisis. It also welcomed the Security Council's adoption of Resolution 688 which, in endorsing the principle of a duty to step in on humanitarian grounds, opens up unprecedented prospects for action by the United Nations and it was that unexpected diplomatic breakthrough that enabled us to open our talks on the basis of the proposals made by the British Prime Minister, John Major, for the establishment of safe havens on Iraqi territory.

This idea, which we also discussed the following day with President Bush, faces legal obstacles that might prove insurmountable. Jacques Delors and I put the case to both the UN Secretary-General and President Bush for the establishment of one or more safe havens from which the Iraqi army would keep out. This approach, which favours a *de facto* solution corroborated by the American commitment to prevent any Iraqi military intervention beyond the 36th parallel, now seems to be taking firmer shape. The Community also gave its support to the Secretary-General's decision to send a mission headed by the Belgian diplomat Mr Sael to the region, in our view, this mission must be sufficiently substantial and continuous to create and maintain a United Nations presence on Iraqi territory.²³

C. Conflict Resolution

The Community's early attempts at forging a compromise solution to the Yugoslav crisis were mentioned above. The Community's manifold strategy was outlined in a statement of 6 August, which mentioned for the first time the possibility of convening an international conference on the matter, as well as the possibility of sanctions. However, the very same document clearly indicated that military intervention was not part of the measures which could be envisaged by the Twelve *qua* Member States of the Community:

The Community and its Member States reconfirm their commitment to seek, with all parties concerned, a peaceful and negotiated solution to the present crisis. They will actively pursue their efforts to this end in accordance with the Joint Declaration of Brioni of July 7, 1991.

²³ See *supra* note 19.

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They urge the collegiate Presidency to convene forthwith negotiations on the future of Yugoslavia. They express their readiness to convene such a conference themselves if necessary.

Such negotiations should be based on the principles that any change of internal and international borders by force is not acceptable and that any solution should guarantee the rights of minorities in all the republics.

They invite the Commission to inform the Twelve about what economic and financial measures could be taken against those parties which refuse a cease-fire and do not abide by the above mentioned principles and how to improve economic and financial relations with those who do cooperate in this respect.

Bearing in mind the mandate received from the CSCE Meeting of High Officials, they welcome the convening of the follow-up CSCE Meeting later this week in Prague. They call on their CSCE partners to support the latest initiatives of the Twelve to bring about a cease-fire in Yugoslavia and to help promote peaceful dialogue which is necessary to create a situation in Yugoslavia that satisfies the aspirations of all its peoples.

They also welcome the intention of France and the UK as permanent members of the Security Council, and Belgium as non-permanent member, to keep the Security Council informed of EC actions regarding the situation in Yugoslavia with a view to the Security Council taking such measures as may be deemed appropriate.

The Community and its Member States took note that the Member States of the Western European Union have decided to instruct their representatives to take stock of the present situation in Yugoslavia and to examine whether there is any contribution which the Western European Union could make to the maintenance of an agreed cease-fire.²⁴

The idea of an international conference was further developed one week later:

The Community and its Member States cannot stand idly by as the bloodshed in Croatia increases day by day. An agreement on the monitoring of the cease-fire and its maintenance should allow the Community and its Member States to convene a peace conference and establish an arbitration procedure.

This peace conference will bring together:

- on the part of Yugoslavia, the Federal Presidency, the Federal Government and the Presidents of the Republics.
- the President of the Council, representatives of the Member States and the Commission.

The arbitration procedure in the framework of this peace conference will be established as follows. The relevant authorities will submit their differences to an Arbitration Commission of five members chosen from the Presidents of Constitutional Courts existing in the Community countries. The composition of the Arbitration Commission will be:

- two members appointed unanimously by the Federal Presidency
- three members appointed by the Community and its Member States. In the absence of agreement on the members to be appointed by the Federal Presidency, they will be designated by the three members appointed by the Community.

This Arbitration Commission will give its decision within two months.

In the absence, by 1 September 1991, of an agreement on the monitoring of the cease-fire and its maintenance and on the peace conference, the Community and its Member States will

24 Press Release 73/91.

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consider additional measures, including international action. To this effect they will convene a meeting to which they will invite the Presidents and the representatives on the Federal Presidency of the Republics which support these two steps. The Prime Minister and the Foreign Minister of the Federal Government will also be invited to this meeting.

The Presidency has sent a special envoy to Yugoslavia to clarify the Twelve's position in this regard. The Member States which are members of the Security Council will bring this declaration to the attention of that body.²⁵

On 3 September, the Community and its Member States, noting that all Yugoslav parties had accepted the proposal outlined in their declaration of 27 August, announced the convening of the conference in the Hague on 7 September. Further details concerning the works of the conference and the arbitration procedure were given on that occasion:

The Conference will bring together the Federal Presidency of Yugoslavia, the Federal Government and the Presidents of the Republics. The Community and its Member States will ensure the Chairmanship of the Conference, the proceedings of which will be conducted on their behalf by a Chairman on the basis of a mandate from them. They are pleased to state that Lord Carrington has accepted to chair the Conference.

The Conference will adopt arrangements to ensure peaceful accommodation of the conflicting aspirations of the Yugoslav peoples, on the basis of the following principles: no unilateral change of borders by force, protection for the rights of all in Yugoslavia and full account to be taken of all legitimate concerns and legitimate aspirations.

In the framework of the Conference, the Chairman will transmit to the Arbitration Commission the issues submitted for arbitration, and the results of the Commission's deliberations will be put back to the Conference through the Chairman. The rules of procedure for the arbitration will be established by the Arbitrators, after taking into account existing organizations in that field.²⁶

Through the CSCE Chairmanship and Secretariat, the European Community and its Member States will keep the other CSCE Participating States fully informed of the proceedings of the Conference on Yugoslavia.²⁷

D. Occupied Territories

In response to the establishment of new settlements in the Occupied Territories, the Twelve reaffirmed their long-standing position that Jewish settlements in territories occupied by Israel after 1967, including East Jerusalem, are illegal.²⁸

IV. International Security

A. CSCE

An interesting account of the changing role of the CSCE, which is now more concerned with cooperation than with confrontation between East and West, was given by the President-in-office

25 Press Release 82/91, 27 August 1991.

26 See on this point the Interlocutory Decision adopted by the Arbitration Commission on 18 May 1992, *supra* at 84.

27 Press Release 84/91.

28 Press Release 41/91, 3 May 1991. See also the Declaration adopted by the European Council on 28 June 1991, *EC Bulletin* 6-91 at 15-16.

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of the Council, Dutch Foreign Minister Van den Broek, in speeches before the United Nations General Assembly²⁹ and before the European Parliament³⁰.

The importance of strict compliance with CSCE norms in order to avoid an explosion of ethnic conflicts in Eastern Europe and in the Soviet Union was stressed in a joint declaration with the United States.³¹

It can also be noted that the Community and its Member States condemned the attempt at overthrowing Soviet President Gorbachev as 'a clearly unconstitutional act and a flagrant violation of the Soviet Union's obligation under the Helsinki Final Act and the Paris Charter.'³²

B. Arms Control

The Gulf war has shown the danger involved in the stockpiling of conventional weapons in certain regions of the globe. Declaring itself alarmed by such a situation, the European Council announced on 28 June the tabling of a resolution at the 41st session of the UN General Assembly in order to propose the establishment of a UN register on conventional arms transfer.³³ Support for this initiative was voiced in a joint declaration with the United States.³⁴

V. United Nations

The Twelve have maintained their line of support for the mediation efforts of the United Nations in regional conflicts. See e.g. statements concerning Afghanistan,³⁵ Guatemala,³⁶ El Salvador³⁷ and Western Sahara³⁸, as well as the position adopted by the Twelve in the Gulf crisis.³⁹

They also advocated the improvement of emergency assistance, in which the Community is already fairly active through the creation of a high-level coordinator for emergency and humanitarian relief within the United Nations framework.⁴⁰

29 24 September 1991.

30 9 July 1991, OJ Annex 3-407 at 104-105.

31 9 November 1991, Press Release 111/91.

32 Press Release 76/91, 20 August 1991. See also their Declaration of 22 August, Press Release 78/91.

33 *EC Bulletin* 6-91 at 19.

34 Press Release 112/91, 9 November 1991. See also the Statement by Mr. Wolfarth in the European Parliament on 17 April 1991, OJ Annex 3-404 at 134.

35 Press Release 55/91, 10 June 1991.

36 Press Release 103/91, 22 October 1991.

37 Press Release 93/91, 1 October 1991.

38 Conclusions of the European Council Meeting of 28-29 June 1991, *EC Bulletin* 6-91 at 13-14.

39 *Supra*, point II.1.a.

40 Declaration by the European Council, 28-29 June 1991, *EC Bulletin* 6-91 at 18-19.

VI. Human Rights

Some considerations on the strengthening of implementation mechanisms established by the UN Human Rights Conventions were presented in a speech delivered by the Luxembourg Presidency before the Economic and Social Committee.⁴¹

VII. Self-determination

As the enthusiasm for the concept of self-determination has developed, so have problems. The tension between the right of self-determination and the right of states to territorial integrity has recently been the focus of much attention. It seems fair to say that when the two have been in direct conflict, the Community and its Member States have tended to lean towards the preservation of territorial integrity of states.

A. Ethiopia

As evidence of this cautious line, one can refer to their attitude *vis-à-vis* the Baltic states, which has already been described above,⁴² or to the response given to the insurgents' victory in the Eritrea conflict:

They ... call on both parties to demonstrate their sincerity, facing up to the heavy responsibilities which lie upon them, by addressing substantive issues in a constructive spirit. In this context, the Community and its Member States recall their conviction that a just solution can only be achieved through a negotiated settlement, based on the respect for the territorial integrity and unity of Ethiopia and the need to take into account the distinct identity and aspirations of Eritrea.⁴³

B. Yugoslavia

The same caution was displayed in the early stages of the Yugoslav crisis. Confronted in March 1991 by the increasing tension among the various ethnic groups and the stalemate within federal institutions, they stressed their conviction that

the process of moving Yugoslav society in the direction of democratic reforms satisfactory to all Yugoslavia should be based on the results of a political dialogue between all parties concerned. Such a process will enable the full development of the cooperation which already exists between the Community and the Federal authorities. *In the view of the Twelve, a united and democratic Yugoslavia stands the best chance to integrate itself in the new Europe.*⁴⁴

Reacting to the outbreak of hostilities, they laid the legal framework in which, according to them, the problems were to be solved:

41 See *supra* note 20.

42 See point I.

43 Press Release 23/91, 15 February 1991.

44 Informal Ministerial Meeting on Yugoslavia, 26 March 1991, Press Release 35/91 (emphasis added).

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The Community and its Member States call for a dialogue without preconditions between all parties on the future of Yugoslavia, which should be based on the principles enshrined in the Helsinki Final Act and the Paris Charter for a new Europe, in particular respect for human rights, including rights of minorities and the right of peoples to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States (Charter of Paris). The Community and its Member States take note of the fact that in Yugoslavia all parties concerned accept the reality that a new situation has arisen. The Community and its Member States for their part will do their utmost to help them find a solution.⁴⁵

Shortly afterwards, in a speech before the European Parliament, Mr Van den Broek made it clear that, in the view of the Twelve, unilateral secession was not acceptable:

[t]here is no question that it is primarily for the Yugoslavs themselves to determine the future of their country... It can take many forms, ranging from new forms of cooperation, such as confederation, to more extreme forms of autonomy or even independence. But this can only be the outcome of mutual agreements, not unilateral secession forced on Yugoslavia by whomsoever despite the implications, for that would be a recipe for war, violence and further bloodshed.⁴⁶

Yet, given the violence of the fighting, it was to become rapidly clear that there remained little hope of a return to the *status quo ante*. While the Hague conference on Yugoslavia made some progress towards a recognition of the independence of those Republics wishing it, the Foreign Ministers of the Twelve indicated that

[t]he right to self-determination of all the peoples of Yugoslavia cannot be exercised in isolation from the interests and rights of ethnic minorities within the individual republics. These can only be assured through peaceful negotiations for which the Conference on Yugoslavia including its Arbitration Commission has been convened. Ministers reiterate their determination never to recognise any changes of borders brought about by force.⁴⁷

The *coup d'état* by four members of the Yugoslav Federal Presidency in early October, which was condemned by the Twelve,⁴⁸ and the increasing involvement of the Yugoslav national army in the fighting greatly contributed to the threat of a greater Serbia. This, together with the limited success of the Hague conference, left little choice to the Community but to recognize the independence of secessionist Republics. However, the statement adopted by the Twelve on 8 November, and in which they announced a series of sanctions, clearly suggests that they viewed this step as a kind of *ultima ratio* imposed by the failure of their earlier approach:

They were deeply concerned at the fact that the fighting and indiscriminate bloodshed continued in spite of repeated cease-fire commitments. In this respect, they drew attention to the unacceptable threats and use of force against the population of Dubrovnik. Moreover, commitments for deblocking of barracks and withdrawal of JNA forces, to which parties subscribed on 18 October in The Hague and which were reaffirmed on 5 November, have not been complied with. They reiterate that the use of force and a policy of *fait accompli* to achieve

45 Extraordinary EPC Meeting on Yugoslavia, 5 July 1991, Press Release 61/91.

46 9 July 1991, OJ Annex 3-404 at 126. See also the Statement adopted at the Extraordinary EPC Meeting of 19 September 1991, Press Release 90/91.

47 Press Release 98/91, 6 October 1991.

48 Informal Meeting of the Foreign Ministers, 5 October 1991, Press Release 97/91.

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changes of borders are illusory and will never be recognized by the Community and its Member States.

The Community and its Member States also noted with great concern that the basic elements of the proposals on behalf of the Twelve put forward by Lord Carrington, aimed at a comprehensive political solution, have not been supported by all the parties. As a consequence, the negotiating process has been put in jeopardy.

In the light of the seriousness of the situation, the Community and its Member States have decided to take the following measures:

- immediate suspension of the application of the trade and cooperation agreement with Yugoslavia and a decision to terminate the same agreement;
- restoration of the quantitative limits for textiles;
- removal of Yugoslavia from the list of beneficiaries of the General System of Preferences;
- formal suspension of benefits under the PHARE programme. Yugoslavia has not been invited to take part in the next ministerial meeting of G-24 on 11 November 1991.

Furthermore the Community and its Member States asked those Member States which are also members of the Security Council of the United [Nations] to invite the Security Council to reach agreement on additional measures to enhance the effectiveness of the arms embargo.

They have also decided to invite, in the same way, the UN Security Council to take the necessary steps towards imposing an oil embargo.

Additional economic and political measures are being considered for implementation when and wherever necessary.

The Community and its Member States decided that positive compensatory measures will be applied *vis-à-vis* parties which do cooperate in a peaceful way towards a comprehensive political solution on the basis of the EC proposals.

The Community and its Member States remain firmly committed to such a comprehensive political arrangement. They stress that the only way out of the crisis is through negotiations in good faith without the use of force.

In this respect they recall that the prospect of recognition of the independence of those republics wishing it, can only be envisaged in the framework of an overall settlement, that includes adequate guarantees for the protection of human rights and rights of national or ethnic groups. They urge parties concerned to prepare forthwith legal provisions to this end.⁴⁹

From then on, the only questions which remained open were when, and under what conditions the new states would be recognized.⁵⁰

C. Ukraine

The declaration adopted by the Twelve following the referendum on independence held in Ukraine also illustrates their concern not to see self-determination threaten international stability:

The European Community and its Member States have taken note of the referendum in Ukraine in which a clear majority expressed itself in favour of independence. They welcome

49 Press Release 109/91.

50 See *supra*, point I.

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the democratic manner in which the Ukrainian people declared their wish for their republic to attain full sovereignty.

As the transformation of the Soviet Union enters this crucial phase it is incumbent upon the representatives of Ukraine, of the Union and of the other republics to take matters forward in a peaceful, democratic and orderly way. The European Community and its Member States call upon Ukraine to pursue with the Union and the other republics an open and constructive dialogue intended to ensure that all the Soviet Union's existing international obligations and commitments are carried out.

They expect Ukraine to honour all commitments of the Soviet Union under the Helsinki Final Act, the Charter of Paris and other relevant CSCE documents, especially those concerning the protection of persons belonging to national minorities.

The European Community and its Member States in particular expect Ukraine to honour and as appropriate to implement all international obligations of the Soviet Union in respect of arms control and nuclear non-proliferation, and to do nothing which might call into question control of nuclear weapons on Ukrainian territory. They expect Ukraine to join the other republics in accepting joint and several liability for the Soviet Union's foreign debts.⁵¹

51 Press Release 124/91, 2 December 1991.