SPANISH JUDICIAL DECISIONS IN PRIVATE INTERNATIONAL LAW, 1995 AND 1996

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A complete listing of all Spanish judicial decisions in Private International Law is published each year in *REDI*. This publication can be consulted for any further information required. We wish to thank the *REDI* for the use of their resources in the preparation of this text.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

1. Community Law

– STC 45/1996, 25 March 1996, *BOE*, 27.4.96
Relations between EC Regulation 1408/71 and the *LECiv*.
Note: See III. Procedure and Judicial Assistance

II. INTERNATIONAL JURISDICTION

1. Succession. Assignmeut of Inheritance Right

— STS 15 November 1996, *Ar. Rep. J.*, 1996, p. 11233.
Note: See XL. Succession

2. Torts. When There are Several Defendants. Brussels Convention

– SAP Álava, 9 March 1995, *REDI*, 1996–4–Pr.
Damages suffered by a Spanish citizen in the United Kingdom during a study trip. Possible liability of the Spanish school, the English agency that organised the trip and the family providing accommodation.

Spanish Yearbook of International Law, Volume IV 1995–1996, 433-493.
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First.– We will deal first of all with the appeal of adhesion lodged by the representative of the defendants domiciled in the United Kingdom, contesting the jurisdiction of the Spanish courts on the understanding that the judgment against which the appeal is lodged makes an improper application of the connection refered to in art. 6.1 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, hereinafter referred to as the Brussels Convention, of 27 September 1968 (*LCEur* 1972, 178 and *LCEur*1989, 1327) to which the Kingdom of Spain acceded by virtue of the Convention of 26 May 1989 ratified by an instrument of 29 October 1990 (*BOE*, 28 January 1991 [*RCL* 1991, 217 and 1151]). Indeed, the aforesaid article provides three cases of connections, the first relating to the simultaneous prosecution of several actions, for which joinder of remedies is obviously possible, involving a number of defendants, in which case they may be sued in the courts for the place where any of them is domiciled. The scope of the special connexivity rule lies in the prevailing interest of judging the actions in joinder and avoiding solutions that could be irreconcilable if the matters were settled separately (*ECJ*, 27 September 1988, Case 189/1987). In the case we are dealing with, the appellant maintains that the substantial relationship should be assessed in the light of the legislation of this type applicable to the case pursuant to Spanish conflict-of-law rules, invoking for the purpose the rule established in art.. 10.9 *CC* whereby "non-contractual obligations shall be governed by the law of the place where the event from which they derive has occurred," a rule applicable *ex officio* by the national courts (art. 12.6 *CC*). The appellant maintains that the claim exercised against the co-defendant Ikastola Nuestra Señora de Assa is ungrounded pursuant to the common law established by the English courts, submitting to this end ex art. 12.6, second paragraph, a legal report drawn up by the English firm Reynolds Porter Chamberlain (sht. 129ff.). The question is addressed correctly, and this emerges from the precepts cited, and it is therefore appropriate to examine in the light of the English law whether the suit against Ikastola is justified or whether it is a claim of convenience aimed solely at altering the points of connection established in Arts. 2 and 5.3 of the Brussels Convention.

Second.- The legal report submitted, which has not been challenged expressly by the other parties, maintains that the civil liability for negligence entails the existence of the duty to care on the part of the defendant, failure to fulfil that duty and, as the result of this failure, the claimant suffered damage and this damage was the result of a reasonably foreseeable failure to fulfil the duty, (*sic* sht. 130). The report goes on to mention the need for a relationship of proximity or vicinity (of dependence, we might say from the perspective of Spanish law) between the party bound by law to impose on one party the requirement of duty towards the other in a certain environment. Having thus justified the guiding principles of the dispute, the conclusion of the English jurists is contrary to the allowance of the claim against the school, since the events occurred outside the circle of teaching activity, as the plaintiff, by virtue of the exchange agreement, was under the care of the English family that is being sued. In

this summary, the report considers that the Spanish school was duty bound to take care of the plaintiff, but this duty was duly carried out, and it was in no way extendible to the period in which the plaintiff was living with the English family (sic sht. 132). However, the report makes an assumption of the matter insofar as it establishes that the only relevant facts are those set forth therein, whereas the defendant alleges that the Ikastola, as the prompter of the trip to England, was responsible for ensuring the safety of the children taking part in the trip, and was duty bound to provide all the necessary means for avoiding possible accidents. Therefore, certain questions are pending: from the possible joint and several liability, to the criterion for choosing the family, the proximity or vicinity of the teachers at the time the events occurred and, particularly, consequences deriving from English law and procedural requirments in point of the defective constitution of the legal-procedural relationship (matter of procedural public policy in Spanish law – art. 12 *CC*). To sum up: a) there is no doubt that the joinder is justified bearing in mind in abstract the case judged; b) the liability of the establishment cannot be ruled out *a priori*, since the events referred to in the report may not be complete, without prejudice to the applicable law; and c) because the establishment of the legal-procedural relationship is in principle a question that is subject to procedural public policy. Therefore, the court considers that the connexity deriving from art. 6.1 of the Brussels Convention has not been infringed through improper application.

3. Family Law. Filiation

— SAP Ávila, 4 May 1995, *REDI*, 1996–25–Pr.
Note: See X. Family Law

4. Succcssion

— SAP Badajoz, 11 July 1995, *REDI*, 1996–58–Pr.
Note: See XL. Succession

5. Contracts. Brnssels Convention. Agreement to Submit to Foreign Courts. Choice of Law: Clausc on Choice of Foreign Law

— SAP Alicante, 4 October 1995, *REDI*, 1996–41–Pr.
Credit claim before the Spanish courts. Clause on Submission to the Courts of Luxembourg. Agreement on choice of applicable law. Luxembourg law.

The decision in the case declared the lack of jurisdiction of the Spanish courts to

be seised of the action on the claim for an amount arising from a loan contract signed by the parties in Luxembourg on 7 November 1990. This opinion was not shared by the commercial party for different reasons concerning appeal outlined before this court, which must be judged in accordance with the following considerations: 1. The denunciation made by the latter on the non-applicability of the 27 September 1968 BC relative to court jurisdiction and the enforcement of judicial decisions in civil and commercial matters, which was ratified by Spain on 19 October 1990 and came into force on 1 February 1991, is not acceptable given that the action subject to this litigation was brought before the court on 19 February 1992, and therefore the decision contained in the Convention was applicable to it. 2. The issue of territorial jurisdiction submitted to discussion must be settled in the light of a harmonious interpretation of Articles 17 and 18 of aforesaid international agreement, since, without being unaware of the validity of any explicit agreement of submission by the parties to the judicial bodies of a particular Contracting State, as long as the requirements contained in the first of these provisions are satisfied, the rule of tacit submission outlined in the second of said articles through the procedural conduct of the defendant to enter a valid appearance before a court of a Contracting State without duly impugning its jurisdiction, cannot be forgotten either. This circumstance is what really occurred in these proceedings , since the defendant appeared in them and answered the complaint, while proposing as a dilatory plea the lack of jurisdiction by reason of the territory. This proved to be clearly ineffective following the reform carried out in the Code of Civil Procedure under Law 34/1984 of 6 August, since Article 533 thereof abolished this plea and redirected its approach along the procedural channels of the declinatory plea provided under Articles 72 ff. of the aforementioned law. In this connection, recourse must be had to the second reason for appeal given by the appellant party, and further examination made of the substance of the matter as postulated by it.

This examination must be predicated on the existence of a loan contract signed by the parties on 7 November 1990 in Luxembourg, in which the latter are explicitly referred to the legislation of said country for the purpose of interpretation of all the effects thereof. This submission agreement is perfectly valid as laid down by the *CC*, Article 10.5, wherefore it is the claimant party that must accredit the contents and validity of foreign law by means of evidence permitted under Spanish law, as pointed out in Article 12, last paragraph of aforesaid legal text -- and not through the so-called procedural steps to better provide, as postulated in this appeal by said party's lawyer, demanding that the court ascertain, through diplomatic channels, the existence of such laws. But this was not done by said party and must not be remedied through the intervention of the jurisdictional body.

Therefore, pursuant to the aforementioned articles, and relative to Article 1214 of the *CC*, it is in order to dismiss the substance of the claim stated in the suit and absolve the defendant of any liability therefor. No explicit statement is to be made on the costs incurred in both appeals pursuant to Articles 523.2 and 710 of the Code of

Civil Procedure, given that the claims of the defendant have likewise been partially rejected, on the grounds set forth above. In the same way, the ruling in the case is to be reversed, giving way to a new one that will take account of the substance of the matter (...).

III. PROCEDURE AND JUDICIAL ASSISTANCE

— STC 45/1996, 25 March 1996, *BOE*, 27.4.1996
The Spanish Constitution, Article 24.2: the right to use the evidence pertinent to ... defence. Translation of documents from abroad. EEC Council Regulation 1408/71.

1. The person claiming legal protection reported that he brought to Spain, as evidence in the action connected with this claim, documents concerning his disability issued by a German administrative body, and therefore in German. He argued that these documents were in fact ignored when judgment was pronounced, thus giving rise to a violation of the right to use evidence pertinent to his defence under the terms provided by the law (Spanish Constitution, art. 24.2) and, in this case, by EEC Council Regulation 1408 of 14 June 1971. To this is added the complaint based on the alleged lack of grounds of the contested decision and the possible violation of the right to a trial ... with full guarantees.

Art. 84.4 of aforesaid EEC Regulation 1408/71 (Social Security for Migrant Workers) provides that a Member State's judicial bodies may not reject petitions or other documents addressed to them on account of the fact that they are drawn up in the official language of another Member State. Moreover, it lays down that if necessary recourse will be had to the provisions of art. 81 b) of the regulation itself, whereby the Administrative Committee on Social Security for Migrant Workers is given authority to arrange for the translation of any document related to the implementation of the Regulation.

To the aforesaid complaint are added that of lack of grounds and, again, that of violation of the right to a trial with full guarantees. The latter, in view of their contents, are identified with the original complaint.

2. In the Social Court, the judgment handed down after it was stated that the documentation had been admitted for processing, argned (legal grounds 8) that the illness declared to have been proved was that determined by the Evaluation Committee for the Disabled (*CEI*) in accordance with the results of medical reports by German doctors, with no evidence having been produced to refute such reports. However, the claim is aimed at contesting the evaluation made by the *CEI* which, precisely, was based on these documents.

3. In upholding the judgment, the High Court of Justice directly assesses the application of Arts. 84.4 and 81 b) of EEC Regulation 1408/71. It corrects the

omission concerning the appreciation of the evidence that could have taken place in the first instance and, based on evidence that the documents concerned had not been evaluated nor taken into account in it, justifies the decision by the judge not to order their translation in view of the fact that, pursuant to our internal procedural laws (Arts. 601 of the Code of Civil Procedure and 94 of the Code of Labour Procedure, as well as to jurisprudential doctrine) according to which aforesaid rules of EU regulations must be applied, "the parties to a labour action are obliged to provide accompanying translations for documents such as those now under consideration". It adds to the foregoing the failure to act by the plaintiff, who did not request the judicial body to order the translation, either in the original writ, in the appearance at which it was agreed to suspend the trial, or when it was actually held. Therefore, in view of the lack of a previous request by the person concerned, the rejection of evidence cannot be attributed to the judicial body.

The question being asked here is whether this argument by the High Court of Justice of Galicia violates Article 24.2 of the Spanish Constitution in respect of the right to use the evidence pertinent to the defence. Since it concerns a right of legal configuration, as has so often been reiterated by this Court, the person concerned must, indeed, exercise the right that he invokes in the terms provided by the legislator, whose application corresponds to the ordinary jurisdictional bodies (art. 117.3 of the Spanish Constitution) which only needs to be revised by this Court in the event that it has been arbitrary, impaired by obvious error or – in the event that there were several possible interpretations – the most favourable to the exercise of the fundamental right (*SSTC* 69/1984, 90/1986, 164/1990 covering all of them) had not been chosen.

4. In this case, it was the understanding of the Court that the party should have supplied the translation of the documentation, pursuant to Article 601 of the Code of Civil Procedure (which specifies this), as does the jurisprudence on the issue, and that it was his responsibility to furnish the translation or urge that it be done, as the case may be, and so the failure to consider the evidence can only be attributed to his passivity and ineffectiveness. It is argued that this conclusion differs from what is literally ordered in the EU Regulation which, in accordance with its orientation and specific objective (that of protecting migrant workers for Social Security purposes) frees him from the responsibility of translating the documents, as well as from the delays, the expense, and even the difficulty of finding a translator of the language concerned. In other words, in connection with the examination of evidence, the judicial body imposed demands or obstacles not required by the regulation considered applicable – *i.e.*, Regulation EEC 1408/71 – thereby violating the right to avail oneself in a trial of the pertinent evidence. It likewise ignores the hierarchy of EU Regulations, and its argument is predicated on the the party's obligation to take on a duty of extra diligence (to meet the explicit request that he be responsible for the translation) that is not required under art. 84 of the Regulations.

The issue that gives rise to the allegation of violation of the right to evidence is thus based on the interpretation made by the Court of the provisions of two applicable

legal precepts: art. 601 of the Code of Civil Procedure, which requires that documents written in a foreign langnage be accompanied by a translation (even done privately) and Arts. 81 b) and 81.4 of EEC Regulation 1408/71, from which the plaintiff not only deduces the obligation not to reject documents drawn up in the language of another member state, but also the advisability of having an *ex officio* translation available and entrusting this to the Administrative Committee on the Social Security of Emigrant Workers.

5. It should be pointed out in the first place that national courts cannot be deprived of the power to interpret both the internal and the EU laws, since, as directly applicable between us (art. 189.2 of the Treaty Establishing the European Economic Community) it is their responsibility to select and interpret them (Art.117.3 of the Spanish Constitution), although without prejudice to the jurisdiction held for this purpose by the EU judicial bodies.

And in this case the High Court of Justice of Galicia, without being uninformed of the internal applicability of aforesaid EEC Regnlation, proceeded, in connection with the supplying for the trial of documents in German once they had been admitted, to apply the provisions contained in art. 601 of the Code of Civil Procedure [relative to art. 94 of the Code of Labour Procedure) which assign to the person concerned responsibility for their translatiou. This involves not only the choice of the applicable law but also integrating the interpretation of the provisions of the EEC Regulation with those of Spanish procedural law, which it applies on the understanding that of art. 189.2 of the EU law, the only thing that transpires is the legitimacy of the Court in deciding on the translation of the documents supplied in another language (art. 84.4) and their referral for this purpose to the Administrative Committee (art. 81 b)]. However, this does not necessarily have to take place *ex officio* and without a request from the person concerned as occurred in this case, and less so when the person concerned, having had two opportunities to request it, failed to take any action – as was argned in the contested judgment.

6. In short, an appeal is being lodged, with the possible consequence of a violation of the right to evidence, on the issue as to whether precedence in the hierarchy of legal provisions of the EEC Regulation allows aforesaid interpretation by the Social Court, or whether the latter has omitted its application in order to confine itself to the procedural rules of internal law. We must mention in this respect the doctrine laid down in the decisions of our Constitutional Court (*SSTC* 180/1993, 211/1988 and 178/1988, in which we stated that "the determination of what the laws applicable to the specific case will be is a question of legality which it is not the job of this Court to make (*STC* 211/1988) in so far that the choice of the applicable laws and their interpretation is in principle the responsibility of the ordinary judges and courts in the exercise of the judicial authority assigned exclusively to them under Art.117.3 of the Constitution (*STC* 178/1988). Therefore it lies within the authority of the judiciary to determine the law applicable to the controversial point" (legal grounds 3). And this, in short, is what was done by the Social Court, given that far from applying the EU

Regulation exclusively, which, in the sense that the plaintiff chose to attach to it, would lead to depriving him of his right to evidence, the contested judgment did none other, in the observance of the power that was exclusively conferred on it, than interpret this law together with that provided under art. 601 of the Code of Civil Procedure. The Conclusion reached was that the translation should not be decided on *ex officio*, but rather at the request of the party, as laid down in aforesaid provision of the Code of Civil Procedure. This interpretation which, relative to art. 24.2 (of the Spanish Constitution) – of the scope of which we must be aware – cannot be deemed either unreasonable or arbitrary and, therefore, it is not subject to revision by us, as stated in *STC* 180/1993 itself (legal grounds 4).

Given, moreover, that as we stated in STC 28/1991, the possible infringement of EU legislation by subsequent state or regional laws or regulations does not convert into a constitutional dispute what is only an infra-constitutional conflict of laws, to be solved within the scope of ordinary jurisdiction (legal grounds 5).

As a result, the alleged violation of art. 24.2 (of the Spanish Constitution) is not admissible and it is therefore in order to reject the appeal.

Individual dissenting vote cast by Magistrate Julio D. González Campos in the Judgment handed down in individual appeal for protection no. 2024/93

1. Given that in legal grounds 6 of the Judgment, the doctrine established in TC 180/1993 is applied, and that my disagreement in respect of this case is similar to that outlined in the individual vote linking Magistrates Miguel Rodríguez Piñero y Bravo Ferrer and Vicente Gimeno Sendra to this decision, I refer entirely to that individual vote. Here I might add that, consistent with the principle of the supremacy of EU law and the direct integration of the EU legal system into the legal systems of the Member States, the judicial bodies of the latter take on the status of ordinary judges of the first instance and in this way are responsible for ensuring the legal protection of the rights established under EU law. The present case shows us clearly the relevance of a requirement deriving from the obligations undertaken by Spain as a Member State of the European Community (in particular art. 5 of the Treaty of the European Community): that of interpreting internal law in accordance with the contents of EU regulations. This is a requirement which, after being formulated in the Judgment of the European Community Court of Justice of 10 April 1984 (Case 14/83, *Von Colson and Kamann*), was repeated in the ECCJ's judgments of 13 November 1990 (Case C-108/89, *Marleasing*) and of 16 December 1993 (Case C-334/92, *Wagner Miret*). As stated in the first of these decisions, it is the responsibility of the national jurisdictions, availing themselves of all the levers of assessment afforded by their national law, to give the internal regulation an interpretation and application in conformity with the requirements of EU law. This was not the case (as I understand it, in view of the social objectives providing the inspiration for EEC Regulation 1408/71) regarding the interpretation that they made of the judgments contested here.

2. My disagreement, in particular, extends to the quote from the passage in *STC* 28/1991, legal grounds 5, where reference was made to the possible infringement of EU regulations by "subsequent" country regulations, adding that this does not convert into a constitutional dispute "what is only a conflict of "infra-constitutional laws" that has to be settled within the sphere of ordinary jurisdiction. What is certainly difficult to admit, based on the principle of the supremacy of EU law, both ordinary and derived (Judgment of the ECCJ of 14 December 1971, in Case 43/71, *Politi)* that prevails over internal law whatever its rank (Judgment of 15 July 1964, Case 6/64, *Costa c. ENEL*) is the implication not that the internal opposing law is invalid but rather that it is not applicable to the case. It can be mentioned that even *STC* 180/1993, on quoting the passage from aforesaid *STC* 28/1991, deemed fit to qualify it, pointing out that we were facing a "conflict of non-constitutional laws".

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECISIONS

1. Family Law. Marriage

– RDGRN 30 May 1995, *REDI*, 1996–24–Pr.
Marriage held in China, a possible obstacle on account of lack of consent.

Two.- The problem of the so-called "sham" marriages – or "white" marriages in French terminology – is a very common phenomenon in countries subject to heavy immigration. It has led to different measures in comparative law and also, within the scope of its competence, to a recent General Preliminary Investigation by this Management Centre (Preliminary Investigation, 9 January 1995 [*RCL*, 1995, 210]). The purpose of these marriages is not that of a real marriage between a national and a foreigner, but rather that under the guise of this institution, and generally following payment, a foreiguer avails himself of the advantages of the appearance of marriage in order, in particular, to facilitate his entry into or stay in the national territory or more easily obtain the nationality of the apparent spouse.

Three.- Undoubtedly a marriage of this kind must be declared void under our law on account of lack of true marital consent (*cf. CC* articles 45 and 73.1). However, the question arises of how to ascertain this lack of consent. As usually occurs in all hypotheses of simulation, it is very rare that direct evidence of simulated will exists, so that discovering the true hidden will of the parties is a difficult task, in which proof of judicial presumption plays an important part. To be successful "it is indispensable that there should be a precise and direct link according to the rules of human criteria between the demonstrated fact and that which one is attempting to ascertain" (*CC*, Article 1253). It must also be borne in mind that there is a general presumption of

good faith and that the *jus nubendi* is a fundamental human right, recognised internationally and constitutionally, so that a conviction of simulation and consequent fraud has to be formed with a degree of moral certitude in the judgment of whoever must decide on the nullity of the controversial marriage.

Four.– Based on the foregoing considerations, the first problem to be addressed is whether the registrar in charge of the Consular Registry of Births, Marriages and Deaths is qualified to rate lack of marital consent in respect of a marriage that has already taken place between a Spaniard abroad in accordance with the *lex loci* (cf. article 49.II *CC*). This particular case concerns a marriage between a Spaniard and a Chinese woman performed before the Chinese authorities on 30 November 1994. An attempt was made to register it the following month in the Consular Registry in Beijing.

Five.– It can undoubtedly be seen from the pre-marriage documents that the registrar is able to appreciate the lack of marital consent, just like any other obstacle or impediment to the marrriage (*cf.* Articles 56.1 *CC*; 245 and 246 *RCC* (*RCL* 1958, 1957, 2122; *RCL* 1959, 104 and *NDL* 25895) and the Preliminary Investigation of 9 January 1995), and in these circumstances, irrespectively of the relevant appeal, he should refuse to allow it to take place (*cf.* article 247, *RRC*). In the same way, when the marriage has already taken place in the foreign manner permitted by the *lex loci,* the Registrar who is asked to register it is empowered to state the lack of marital consent. Indeed, article 65 of the Civil Code orders the Registrar in these cases to check whether the legal requirements for the marriage – without any exception whatsoever – have been met before it is registered. This verification, already referred to in article 73 of the Law on the Registry of Births, Marriages and Deaths (*RCL*, 1957, 777 and *NDL* 25893) has been developed, in view of the Reform of the Code in 1981 (*RCL* 1981, 1700 and *ApNDL* 2355), by Articles 256 and 257 of the Regulations on the Registry of Births, Marriages and Deaths, amended by Royal Decree 1917/1986, of 29 August (*RCL* 1986, 2892 and 3093). In this way, a marriage recorded by "certification issued by an authority or civil servant of the country in which it was held" (article 256.3 *RRC*) is subject to registration, "as long as there are no doubts about the reality of the fact and its legality pursuant to Spanish law". The grounds for registration are aforesaid document and the appropriate supplementary statements. Thus it transpires that the Regulations. with regard to the registration of the marriage in this case, follow the same criteria already laid down for any other type of registration, with no need for any previous dossier on the certification of entries made in foreign registries (*cf.* articles 23.11 *LRC* and 85 *RRC*).

Six.– Therefore, it is necessary that there should be no doubt about the legality of the marriage pursuant to Spanish law. If the relevant supplementary statements form part of the grounds for carrying out the registration of the marriage in the Spanish Registry of Births, Marriages and Deaths, the conclusion is that, in the same way as occurs in the preliminary dossier in the formality of the hearing, confidentially and separately, of the bride and bridegroom (*cf.* article 246 *RRC* and rule 3 of the

Preliminary Investigation of 9 January 1995), likewise when the marriage has already taken place in the local manner, the Registrar can and must check, through the above-mentioned supplementary statements, whether the marriage meets all the legal requirements specified in the Civil Code, amongs which is that of marital consent.

Seven.– In the present case, a number of proven facts emerge from the statements by the persons concerned themselves and from the other evidence produced, such as the fact that the bride and groom got to know each other by letter and only met each other a few days before the wedding; that she did not speak Spanish nor he Chinese and that they communicated with each other through one of her brothers who acted as interpreter; that both have lived in China since the wedding in different hotels, and that he himself has acknowledged that the wedding is not normal. From these proven facts it is legitimate to deduce, in accordance with the rules of human criteria (*cf.* article 1253 *CC*), that the marriage is void because it was simulated. That is the conclusion – in no way arbitrary – reacbed by the Consular Official, acting for the Public Prosecution (article 54 *RRC*), and the Registrar at the Consular Registry of Births, Marriages and Deaths who, because of their close connection with the facts, are those who could most easily judge them and form their convictions relative to them.

2. Family Law. Adoption

— RDGRN 1 September 1995, *REDI*, 1996--26--Pr.
Request for recognition of an adoption carried out in El Salvador. No termination of parent-child relationship with the previous family.

Two.– In the light of the information obtained on Salvadorean legislation, it appears that when the adoption took place the adopted son continued to form part of his blood family and preserved all his rights and obligations in it, and that the adoption was terminated, among other reasons, on account of the will of the adoptive son, expressed in a notarised document during the course of the year following the end of his incapacity, with the mutual consent of the adoptive parent and the adoptive son of legal age in a notarised document. If it is borne in mind that the ouly adoption regulated by the Spanish Civil Code involves the total integration of the adopted child into the adopted family, making him equivalent to a natural child (article 108, *CC*); that, as a rule, the adoption results in the cutting of the legal ties between the adopted child and the previous family (article 178 *CC*); and that the adoption as a rule is also irrevocable (article 180 *CC*), this Salvadorean legal institution must be described as radically different from Spanish adoption, and so cannot have the same effects as the latter, and cannot be included in the list of documents subject to registration contained in article 1 of the Act on the Registration of Births, Marriages and Deaths in case it should give rise to serious mistakes in respect of the effectiveness of such adoption.

Three.– There is no provision under Spanish private international law, nor any international commitment entered into by Spain that would oblige our country to automatically convert a simple adoption carried out in the country of origin into an adoption with full rights provided in the receiving country. This transformation will either have to be agreed to, if possible, in the country of origin, or else the Spanish adoption will have to be performed before a Spanish judge (article 176.1, *CC*). It will be the responsibility of this judge to decide whether he can dispense with the proposal of the public body in this case when the adopted child has been for more than a year legally in the care of the adoptive family (cf. article 176.2.3 *CC*).

Four.– In the face of these considerations, the only argument used in the appeal in which it is alleged that the Salvadorean legislation on the matter has been overturned by the new Family Code that entered into force on 1 October 1994, lacks validity. Apart from being a new issue, it is true that the adoption concerned was carried out while the previous Salvadorean law was in force, and no credit whatsoever was given to the fact that the new law means the automatic conversion of past adoptions into the new type of adoption, which is apparently endowed with full effects.

Five.– However, if so requested by the Administration of Justice or any individual concerned, there is no reason why a foreign document recording an adoption should not be entered in the Spanish Registry of Births, Marriages and Deaths when it affects Spanish citizens. The concept covers a personal situation of adoption or fostering which, if it was carried out in Spain, can be entered under the provisions of article 154.3 of the Regulations of the Register of Births, Marriages and Deaths (*RCL* 1958, 1957, 2122; *RCL* 1959, 104 and *NDL* 25895), and if carried out abroad, it can be done so through an authenticated foreign document (*cf.* article 181 *RRC*). The entry, together with the limitation on its effects, shall be written in the margin of the entry of birth or, if applicable, of the support entry provided under article 154.1 of the Regulations themselves. Of course, it will have to be explicitly stated that this does not constitute evidence according to law of the Spanish nationality of the child born (*cf.* article 66 fine *RRC*).

3. Family Law. Divorce

– RDGRN 22 January 1996, *Actualidad Civil*, 96–3, no. marg, R258

1983 Convention between Spain and Germany. Disagreement between the Supreme Court and the Spanish Directorate General of Registers concerning the need for judicial intervention for the recognition of divorce decrees handed down in Germany.

One.– In view of articles 32 and 96 of the Constitution; 1, 11, 86 and 107 of the Civil Code; 951 ff. of the Code of Civil Procedure; 23, 28, 29 and 76 of the Law on the Register of Births, Marriages and Deaths; 83, 86, 88, 146 and 265 of the Regulations of the Register of Births, Marriages and Deaths; the Convention between

Spain and the Federal Republic of Germany on the Recognition and Enforcement of Judicial decisions and transactions and public documents with enforceability in civil and commercial matters of 14 November 1983; and the Ruling by the Supreme Court of 8 April 1992 and the Judgments of 2 July and 29 November 1990, 25 March 1991, 19 February, 12 May and 23 October 1993;

Two.– Given that the entry against which an appeal lies was made in 1992, the current action cannot be deemed an appeal against the evaluation then made (which would have been lodged after all deadlines had passed), but rather a request that the fact entered be registered. This is possible if the conditions exist for carrying out this registration, given that the registration mechanism was provided for such cases under article 146 of the Regulations of the Register of Births, Marriages and Deaths.

Three.– Therefore the basic problem that has to be decided is whether or not the divorce decree handed down by a German judge on May 8, 1992 dissolving the marriage held in La Coruña on April 3, 1988, can be registered with no need for a judicial procedure. This problem must be solved in the light of the bilateral Convention mentioned in paragraph one (published in the *BOE* of 26 February 1988), the provisions of which form part of the Spanish legal system and take precedence over the internal laws on the matter (*cf.* Articles 96 of the Constitution and 1 of the Civil Code).

Four.– As declared by the doctrine of this Executive Centre, the bilateral Convention distingnishes clearly between the recognition of judicial decisions, which is regulated in Chapter II, and their enforcement, to which Chapter III, section 1 is devoted. The rules of enforcement come into play when the validity in Spain of a German sentence is sought and the collaboration of the Spanish judicial bodies is necessary in order to achieve such validity, whereas the mere registration of the dissolution in the Register of Births, Marriages and Deaths takes place in the probativie sphere and involves publicising the sentence – *i.e.*, it enters the area of what the Convention calls "recognition" and not that of "enforcement". The special nature of the Convention, as opposed to the general system established by article 107.II of the Civil Code, lies precisely in the fact that "recognition" of a divorce decree does not require judicial or "exequatur" intervention, as long as other conditions are met.

Five.– The attached German sentence must be recognised in Spain, pursuant to the relevant provisions of the Convention. Indeed: a) as Spain has not established the special simplified procedure referred to in article 10.4, the sentence is recognised with no need for a special procedure (*cf.* article 10.I) given that the two conditions contained in Article 4 obtain, consisting of having become final and of the German Court having jurisdiction in accordance with the provisions of article 8, sections I and 2, and since both parties had their habitual residence in Germany; and b) there are no exceptional reasons for refusal as provided under article 5 (the sentence is not contrary to public policy – *l'ordre public*) and under article 6.2 (note, in connection with this last fact, that as there was no common nationality, the habitual residence of

the couple was in Germany – *cf.* art. 107.1, *CC*).

Six.– This Directorate General is not unaware that the criterion outlined has not been accepted by the ruling of the First Division of the Supreme Court of 8 April 1992, in which it was argued that, in accordance with the Convention examined, recognition of German divorce decrees also required a judicial procedure. However, it is not possible to share this opinion, which does not constitute jurisprudence for the purposes of article 1 of the Civil Code. The internal laws of the Spanish legal order which, as already stated, are subordinated to the provisions of the interuational treaty, are insufficient for such purpose. The text of the latter contains a basic rule, in article 10, section 1, according to which "decisions handed down in one of the Contracting States shall be recognised in the other with no need of a special procedure..." and from this rule it is deduced, with no doubt whatsoever, that it is not only the right, but also the obligation, of the Spanish authorities and civil Servants to confer its effects on the German final divorce decrees and, as a result, all the registrars of the Registers of Births, Marriages and Deaths must register them, while judging the fulfilment of the other requirements demanded by Chapter II of the Convention in the light of the documentation produced and, if applicable, of the taking of evidence on the definition referred to by article 28 on the Law on Registers of Births, Marriages and Deaths. It does not matter for this purpose that other sections of the same Chapter II refer to judicial recognition, without enforcement, of the German decree, because it is also clearly possible to have only recognition, without enforcement. However, this does not exclude attempts to achieve such recognition by non-judicial bodies. At the same time, the key distinction in the Convention between recognition and enforcement is clearly to be advocated in respect of a divorce decree, which can require measures with regard to children and to assets, as occurred in this case, whose effectiveness in Spain requires the adoption of new decisions that are strictly judicial.

Seven.– Finally, it must not be forgotten that international practice is turning more and more, in a spirit of collaboration and trust between states, to the enhancement of the effectiveness of foreigu sentences. The distinction in the sense mentioned between their recognition and their enforcement appears in the Hispano-Austrian Convention on the same matters as the Hispano-German Convention of 17 February 1984 and in the Brussels Convention of the European Communities of 27 September 1968, today complemented by that of Lugano of 16 September 1988, although excluded from the latter are issues of marital status, capacity and regimes. Although they have not been signed by Spain, the following conventions – in the same liberalising spirit – must be remembered: the XVIIIth Convention of 1 June 1970 of the Hague Conference on Private International Law on the recognition of divorces and separations, and Convention number 11 of the Civil State International Commission on the recognition of decisions relative to conjugal ties, done in Luxembourg on 8 September 1967.

This Directorate General has agreed, in compliance with the regulation proposal, to order that, subject to the formal rules contained in article 146 of the Regulations of the Register of Births, Marriages and Deaths, the German divorce decree handed

down on 8 May 1992, be written in the margin of the entry of marriage.

4. Family Law. Divorce

– RDGRN 22 January 1996, *Actualidad Civil*, no. 96–3,. marg. R259.
1969 Hispano-French Convention.

One.– In view of articles 955 of the Code of Civil Procedure; 56 of Organic Law 6/1985 of 1 July on the Judiciary; 27, 38 and 76 of the Law on the Register of Births, Marriages and Deaths; 83, 153 and 265 on the Regulations of the Register of Births, Marriages and Deaths; the Convention between Spain and France on the Recognition and Enforcement of Judicial and Arbitral Decisions and Authentic Documents of May 28, 1969 (*BOE* 13 March 1970), completed by the Hispano-French Exchange of Notes of April 1, 1974 (*BOE* 2 April) and the Decisions of 9 January 1989, 21 August 1991, 15 June 1993, 24 May 1994, 2nd and 11 November 1995.

Two.– The classification by the Registrar of sentences or decisions with a view to their registration is especially limited by the provisions of the Law on the Register of Births, Marriages and Deaths, article 27, paragraph 2, but nevertheless it is always able to check the jurisdiction of the judicial body that has handed down the decision that it is proposed to register.

Three.– This case concerns the registration of a French divorce decree that was handed down by a specific French court. Its lack of jurisdiction to directly cause it to be registered in the Spanish Register of Births, Marriages and Deaths is obvious and can be appreciated in the classification, because article 13.1 of aforesaid Convention with France provides textually that, "the procedure for enforcement shall be that established by the legal system of the requested State, as long as it does not oppose the provisions of this Convention", and no law thereof indicates which is the requested Court with jurisdiction. In view of the Convention's silence on this point, the jurisdiction for enforcement of French sentences belongs, in accordance to internal rules, to the Civil Division of the Supreme Court (*cf.* Articles 955, Code of Civil Procedure and 56, Organic Law on the Judiciary).

Four.– In view of this conclusion, the arguments of the appeal that attempt to distingnish in the implementation of this Convention between mere recognition of and the enforcement of French sentences cannot prevail. These arguments are based on the interpretation by this Executive Centre on the Hispano-German Convention of 14 November 1985, which has significant differences vis-á-vis the Hispano-French Convention. In the latter, although recognition and enforcement are mentioned, they do not receive different treatment; there is no law that allows for recognition with no need of a judicial procedure, and the only procedure mentioned is that established by the legal system of the requested State i.e., the exequatur required as a rule under the legislation of the Register of Births, Marriages and Deaths for registration – and not

mere entry – of foreign sentences (*cf.* articles 38 of the Law on the Register of Births, Marriages and Deaths and 83, 153 and 265 of the Regulations on the Register of Births, Marriages and Deaths).

This Directorate General has agreed, in compliance with the regulation proposal to dismiss the appeal and confirm the appealed decision.

5. Family Law. Marriage

– RDGRN 4 October 1996, *Actualidad Civil*, 97--3, marg. no. R265. Marriage held in Puerto Rico. Former marriage took place in Spain in respect of which a Spanish decree for divorce was handed down after the new wedding abroad. Divorce was declared in the Dominican Republic for which recognition was not applied for.

One.– In view of articles 9, 46, 49, 65, 73, 85, 89 and 107 of the Civil Code; 954 of the Code of Civil Procedure; 2, 23, 27, 38, 73, 76 and 80 of the Law on the Register of Births, Marriages and Deaths; 85, 145, 256, 257, 271 and 339 of the Regulations on the Register of Births, Marriages and Deaths and Judgments of 12 June 1984, 24 May, 2nd and 2 June 1994, 11 November 1995, and 22 January, 2nd, 12 and 19 February, 3 June, 5 July and 2 September 1996, 3rd.

Two.– A Spaniard is entitled to contract marriage abroad according to the manner laid down by the law of the place where it takes place (*cf.* art. 49 *CC*). However, registration of this marriage, even though it may have been recorded by means of the corresponding certification issued by an authority or civil servant of the country where it took place (*cf.* art. 256.3 *RRC*), is subject to verification that all the legal requirements for it to take place have been met (*cf.* art. 65 *CC*). Therefore, the classification by the Registrar, taking into account this certification and the document that proves the dissolution of previous marriages (*cf.* art. 241 *RRC*), must also furnish proof of the fact that no impediments exist, since the conviction must be reached that the marriage is valid and legal in the eyes of Spanish law (cf. arts. 23 and 27 *LRC* and 85 and 256 *RRC*).

Three.– In this case the marriage took place in Puerto Rico in 1976, but the Spanish Register of Births, Marriages and Deaths states, based on the evidence available to it, that the Spanish bridegroom had been married before in Spain in 1973, whereafter there was a conjugal separation for an undefined length of time by virtue of a decision handed down by an ecclesiastical court in 1975, although the marriage was not dissolved until the Spanish divorce decree was handed down in 1983. Therefore, in 1976 the Spaniard was still bound by marriage and his subsequent marriage, contracted on the latter date was not subject to registration given that there was an existing impediment.

Four.– Given that at some time previous to this second marriage the person concerned had obtained a divorce from his first wife in the Dominican Republic, it is obvious that what he should have done in order for this foreign divorce decree to have

its natural effects within the Spanish law system, was to promote his *exequatur* pursuant to the Code of Civil Procedure (*cf.* art. 107.2 *CC*), whereby, if this method had succeeded, the dissolution of his first marriage in Spain would have been recognised and the registration of the second marriage would have been possible. This course was not followed, and the divorce was obtained in Spain as a new occurrence, entirely independent from what had already taken place abroad. In this anomalous situation, and given that the foreign divorce decree cannot be effective within the Spanish legal system through the exequatur since it was handed down in the absence of one of the spouses (*cf.* art. 954.2 *LEC*), the only remedy left to the persons concerned in order to obtain the desired result is to get married again in accordance with one of the procedures provided under the Civil Code.

Five.– All this must be understood notwithstanding the fact that the marriage concerned, which does not meet the requirements of the Civil Code to obtain validity, can be entered (*cf.* Arts. 80 *LRC* and 271 *RRC*) at the request of the Public Prosecutor or any person concerned. The entry would merely be for purposes of information and in no case could it constitute the proof provided by registration; this must be stated plainly in the entry and the certifications that are issued (*cf.* Arts. 38 *LRC* and 145 *RRC*).

This Directorate General has agreed, in accordance with the regulation proposal, to reject the appeal and confirm the agreement that was subject to appeal.

V. INTERNATIONAL COMMERCIAL ARBITRATION

1. Submission to International Arbitration Clauses. Scope

– SAP Asturias, 11 April 1995, *REDI*, 1996–32–Pr.

Effectiveness of a submission-to-arbitration clause over those who did not sign it.

One.– The decision handed down in the first instance dismissed the dilatory plea for submission of the litigious issue to arbitration on the understanding that the arbitration convention could not cover those persons who had not signed it and because the plaintiff insurance company had not been a party to the charter contract. The other plea submitted by the latter, maintaining that the defendants had formulated pleas different from that of lack of jurisdiction submitted to the Spanish courts, had previously been dismissed. On first of all analysing the last question, it must be pointed out that the arguments put forward by the plaintiff are shared by some decisions of the Supreme Court (decision of 18 February 1993, also citing others) but they seem unacceptable since, as indicated by the doctrine, it would be contrary to the right of effective judicial protection and the right to defence laid down in article 24 of the Constitution if the defendant were not allowed to use all the means that he

considered pertinent to his defence, and it is sufficient that he argue about the jurisdiction and present the other pleas subsidiarily in order to understand that no submission exists. The decision of 18 June 1990, on a clause of international arbitration. appears to have been delivered in this sense, as does the decision of 28 May 1992 concerning a case of lack of territorial jurisdiction, and this is the criterion adhered to in the Brussels Convention, article 18, of 27 September 1968.

Two.- With regard to the validity and scope of international arbitration when the issue must be settled abroad, the position of our jurisprudence has not been uniform, and the doctrine embodied in the decisions examined by this Court can be summarised in accordance with the following outline: a) the position against accepting it because it is contrary "to the imperatives that link jurisdiction to national sovereiguty" (decisions of 30 April 1990 and 18 June 1990); b) the qualification of the foregoing opinion in the sense of admitting strictly exceptional arbitration (decisions of 10 July 1990, 14 May 1992 and 28 March 1994); c) decisions that reject the operational character of the clause for reasons other than its inadmissibility, whereby they appear to implicitly admit its validity (decisions of 30 December 1992 and 18 February 1993); and d) opinions favourable to the admission without reservations of the submisssion clause (sentences of 11 November 1991, 13 October 1993 and 10 November 1993). The position of the doctrine is practically unanimous in considering that this commitnent clause is fully valid, and harshly criticises the opposing position adopted by the aforesaid sentences, since it is of the opinion that the fact that article 22.2 of the Law on the Judiciary lays down in general the possibility that submission to Spanish courts does not imply that foreign courts are excluded, but rather that the provision regulates the extension and bounds of jurisdiction of the principle of independent will and that national sovereignty should not be invoked when ouly private interests are at stake. Pursuant to this opinion favourable to the validity of this clause, the decision of 30 December 1992 must be mentioned, since in the judgment of this court it is relevant to jurisdiction and is not in the sphere of territorial competence, as are those of 30 April 1990, 18 June 1990 and 18 February 1993. The aforementioned decision of 30 December 1992 appears to indicate that the effects of the convention affect the insurance company that, by virtue of payment, subrogates its client in respect of his rights – a criterion that is clearly established in the decision of 18 February 1993. This was mentioned by the plaintiff in the statement on the hearing of the appeal. The latter focused the subject properly, accordmg to this Court, on highlighting the difference between the subrogation to a credit and the right of repetition (which had already been pointed out in the decision of 11 November 1991), indicating that in the first case the credit is transferred to the person wlio subrogates, who therefore has to respect the entire contents of the contract from which his rights derive and, to conclude, the submission clause as well. The Court deems these rulings to be more correct than those of the decision of 30 April 1990 whicli supports the criterion adopted by the court *a quo*. In any event, and as pointed out by the decisions of 10 July 1990 and 30 December 1992, it is necessary

for all the litigants to have signed the submission-to-arbitration clause since it cannot cover those who have not done so. Such was the case of the defendant, B.M., S.A.. It is difficult to understand why, when the shipping agent was given identical responsibilities to those of the shipowner, the clause should cover him, as they are different people and the effects of the signature cannot be extended by the latter to the former. This is irrespective of the conditions that will subsequently be set forth on the scope of this responsibility. Therefore, the primary reason for acceptance of the appeal submitted by B.M., S.A. must be rejected because, for the reasons previously stated, it is the Spanish courts that must be seised of the dispute.

Three.- The plea on lack of active legitimation must also be dismissed. This was made again by the defendant shipping agent through accession to the appeal. It was shown that an insurance contract was concluded between the plaintiff and the charterer, T.C., S.A., and that the insurance company paid for damages. Therefore, by virtue of the provisions of article 780 of the Commercial Code, he subrogated the insured person in respect of his rights.

2. Submission to International Arbitration

– SAP Barcelona, 31 January 1996, *RECA*, 1996, p. 156.
Request for Declaration of Nullity of Industrial Property Rights.

Two.– We have declared that, based on the precedent of Law VII, Title X of the Third Section – "One can make many claims against his contender, demonstrating them and arguing them all in one, as long as one does not contradict another. Because if this were so, it could not be done" – and although not exempt from criticism, given the obscurity with which, for the sake of procedural economy it at times surrounds the issues to be discussed, article 156 of the Code of Civil Procedure empowers the claimant to proceed in his claim to the joinder of as many actions as he may be entitled against the defendant, althougb they may originate from different sources, thereby giving rise to the so-called multiple purpose suits on account of the initial joinder of actions, as long as some of the cases provided under the law are included.

As correctly declared by the contested decision in this dispute, the claimant, who is empowered under the law to initially specify the purpose of the action, resorts to two different remedies: one, the aforesaid intended declaration of nullity of utility model no. 279,012, registered under the name of the defendant who is subject to three different claims (declaration of nullity, communication to the Spanish Office of Patents and Trademarks, and publication of the decision); the other, the sentencing of the defendant to reimburse certain taxes.

Three.– The opposing plea having been admitted exclusively in respect of the attempt to secure the return of the amounts paid in implementation of the contract, it is necessary, for the purpose of our decision, to bear the following in mind:

a) that Provision no. 1 of the 24 September 1923 Geneva Convention on arbitration clauses imposes recognition of the validity of the agreements on submission to arbitrators of trade matters or any other matter liable to settlement by arbitration, but there must be no confusion between commerce in industrial property rights and their recognition by the state;

b) that article 2.1 of the 10 June 1958 New York Convention on the recognition and enforcement of foreign arbitral sentences refers to the recognition of the agreements concluded on submission to arbitration by those whose objective is the differences that have emerged or which could emerge with regard to a particular legal relationship concerning a matter that might be settled by arbitration; and, under article 5.2.a, permits denial of enforcement of the arbitral decision when, under the internal law, the purpose of the dispute is not susceptible to settlement by arbitration;

c) that, contrary to what the party states, under the last paragraph of section 2 of article VI of the European Convention on international trade arbitration of 21 April 1961, the Court before which the matter had been brought could deny recognition of the arbitral agreement or commitment if, pursuant to the *lex fori*, the dispute were not, by reason of its purpose or its subject matter, liable to settlement through arbitration;

d) that article 1 of the Arbitration Law only accepts submission to arbitral decisions of litigious issues that have emerged or might emerge in matters of free decision by the parties;

e) that the markedly "public policy" (*ordre public*) content of the patent law is crystalised in article 123 of Law 11/1986 of 20 March, which provides that it is the ordinary courts which are seised of all the disputes arising from actions derived from the application of the provisions of the Law, thereby excluding submission to arbitration;

f) that in the same way as the effects of the granting of the utility model, those of the declaration of its nullity exceed the subjective orbit of the litigants (article 114.3 of the Law in relation to article 15.4 thereof);

g) that article 22.1 of the Organic Law on the Judiciary of 1 July 1985 assigns exclusive jurisdiction to the Spanish courts in matters of registration or validity of patent and other rights submitted for deposit or registration when the the deposit or registration has been requested or carried out in Spain, which thereby vetoes the submission of the decision of such disputes to both foreign arbitrators and courts; and

h) that the defendant and appellant lacks empowerment to expel from the action the aim of nullity of the utility model instituted by the claimant and to limit it to the consequences of the contract to whose implementation he contributed certain features.

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

1. Proof of Foreign Law

– STS 4 May 1995, *REDI*, 1996–6–Pr.
Claim for foreign tax debt. Law applicable to the Statute of Limitations

One.– A claim was made, in a small claims suit, by the Town Council of Dissen am Teutoburger Wald (Germany) for an amount of 53,059 German marks in payment for industrial tax for the years 1981 and 1982 -- an amount which, allegedly, has not expired under the statute of limitations "according to German law". The plaintiff deems this law to be applicable in this matter in its claim against the defendant, Francisco F.C., alleging that this defendant did not satisfy that sum for aforesaid tax during the time that he worked in that country. In both instances the claim was rejected, mainly because it was considered that it did not consist in practice of a civil action, within the rules of civil law, but rather was based on administrative and tax laws, of which Spanish ordinary civil jurisdiction cannot be seised. And pursuant to article 51 of the Organic Law on the Judiciary (*RCL* 1985, 1578, 2635 and *ApNDL* 8375), as the matter under discussion is not a "civil business", and irrespectively of whether the plaintiff takes the action in accordance with the procedures to which he is entitled, the defendant is hereby acquitted. An appeal for cassation was lodged by the plaintiff.

Two.– Before examining the motives adduced and as a question of procedure, although since it has not been debated it cannot influence the settling of the present appeal, it is to be seen that from the proceedings so far, the body that has submitted the claim (*i.e.*, the Dissen Town Council) does not appear to have unequivocal legitimisation. Rather, it is the Tax Office (*Finanzamt*) of Bielefeld-Ausenstadt and, within that district, the town of Versmold. The tax office of Dissen does not appear as principal and neither does its municipal treasury, although it appears in supplementary documents. Nor can the counection be seen between this treasury and the centre mentioned that was seised of and liquidated the tax debt claimed. At the same time, even disregarding this procedural impediment, the appeal must be considered admitted, in that, having been lodged prior to the promulgation and entry into force of Law 10/1992 of April 30 (*RCL* 1992, 1027) on urgent measures of procedural reform, it complies with interim provision 2 of the same law in respect both of the grounds and of the amount of the deposit made by the appellant with a view to lodging the appeal. Therefore, notwithstanding the procedural defect that was not detected in the appeal, and the objections of the Office of the Public Prosecutor to the lodging of the appeal, it can form part of the solution of the grounds adduced.

Three.– The first and second of them, contained in no. 1 of article 1692 of the Code of Civil Procedure, on the understanding that there had been abuse, excess or

defect in the exercise of jurisdiction, on the mistaken understanding by the *ad hoc* Court that it was not a civil matter but rather an administrative remedy or an appeal to the court of first instance against an act of the government, and that therefore the decision now being appealed should be settled on the question of law now at issue, given that the appellant deems that it is a civil matter. He claims that there has been an infringement of article 9, section 6 of the Organic Law on the Judiciary. But such a position is erroneous on account of the following reasons: a) It is not enough to state that a specific amount has been claimed without asking what it consists of, given that if it is unknown, the courts of the first instance and this court of cassation are unable to hand down a judgment on the action brought. b) It is not enough in this connection that documents are produced from which it can be ascertained that there is a tax debt pending against the defendant. Rather, since it was incurred abroad, the current laws would have to be applied, and not only a legal ruling by two lawyers practising in Stuttgart – a ruling that was incorporated into the proceedings at the request of the plaintiff and in which they do not set forth the legal provisions applied in order to determine the debt, but merely their own criteria. The deductions are made in this way concerning the argument of foreign law when, as in this case, the argument put forth is not sufficient, given that, pursuant to the Decision of 23 October 1992 (*RJ* 1992, 8280) et al – a report drawn up at the request of the appellants explicitly referring to the dispute at issue, which does not quote the text of the provisions to which it refers, nor demonstrates, as is necessary, the validity of the applicable foreign law, is not enough. c) Although the objection referred to were not legitimate, at the same time it could not be ignored that a tax debt is being claimed in the action based on tax rules, and that these rules are not the only civil rules to which number 5 (now 4) of article 1692 of the Code of Civil Procedure refers. Therefore, as the Appeals Court has already declared, the resulting business is not "civil" business, but rather of a different jurisdictional category (tax or an appeal against a government act), which is not included within the civil competence of the Spanish courts, according to article 22 of aforesaid Organic Law on the Judiciary, and nor is it mentioned in the extensive wording of that legal provision; in short, if – pursuant to article 9, section 6 – it had to be indicated in the legal grounds which court has jurisdiction to settle the issue at stake, it could be said that it is to be found in German jurisdiction as a matter of "public policy" (*ordre public*) in that country because it refers to tax laws and because there is no specific international treaty with the Spanish state that settles the issue under discussion. The existing treaty on the enforcement of sentences handed down in civil and commercial matters, concluded between Spain and Germany on 14 November 1983 (*RCL* 1988, 337) is not applicable in that the necessary premises for its application are not present in the case now under consideration. Therefore, the first two grounds for the appeal must be dismissed.

Four.– The third ground is provided under article 1692, no. 3 of the Code of Civil Procedure, on account of the breaking of the essential rules of the trial because of the infringement of the provisions regulating the sentence or of those that govern the

procedural acts and guarantees, as long as, in the latter case, the party has been defenceless. The appellant bases the grounds on the fact that the court of first instance did not attempt to settle the substance of the matter and did not provide further explanations, nor did it state which specific rules had been infringed; wherefore this Court cannot begin to investigate to which ones the grounds can refer, and it will therefore have to be dismissed. The same applies to the fourth – based on no. 5 of aforesaid article 1692, which is supported by the same arguments as grounds one and two, reiterating the four decisions on which ground two is based, which did not concern matters similar to that now under discussion and which, consequently do uot constitute applicable jurisprudence. And finally, in ground 5 with the same procedural grounds as the foregoing, the appellant, without remaining in the sphere of article 1692, number 5, of the Code of Civil Procedure under which the ground is provided, proceeds to the analysis of certain evidence (such as the documentary evidence, which purportedly comes from the Town Hall of Dissen, and the reply to interrogatories by the defeudant). All that fails to take into account the fact that here is a special appeal, in which a legal ground cannot serve to analyse the evidence and deduce from a partial analysis thereof that a tax debt incurred abroad does indeed exist. And the ground is also used in order to affirm that the expiry of the debt has not been established. This is undoubtedly based on German legislation, according to the aforementioned legal decision that forms part of the proceedings. It likewise fails to recall that the statute of limitations – or peremptory plea that it is – has from this point of view which is now of interest, the nature of a procedural rule. Pursuant to article 8, paragraph 2 of the Civil Code, the Spanish law, and not the German, should now be applied. In this context – *i.e.*, of articles 1966, no. 3, and 1973 of the Spanish Civil Code, it is deduced that the action instituted would now have expired. This is because cases of interruption of the statutue of limitations, pursuant to the sentences, among others, of 18 April 1989 (*RJ* 1989, 3064), cannot be interpreted in a broad sense, and, therefore, according to the l*ex fori*, the letter of 13 March 1987, sent by third parties (not the debtor himself) to the Vice-Consul of the Federal Republic of Germany in Seville, in which they talk about the debt but do not recognise it, cannot be counted, according to the *lex fori*, as an act that interrupts it. Moreover, the applicable rule talks about "recognition" verified "by the debtor" and not by third parties. In short, these last grounds can also be dismissed, and with them the appeal as a whole.

2. Classification

– STS June 10, 1995, *REDI*, 1996–28–Pr.

Delivery of an amount of money to purchase real property in Spain. Request for revocation.

One.– Hereby decided by a ruling of the Court of First Instance number 1 of

Marbella, of 26 December 1988, is the claim submitted by German citizen Tjark B. against the defendant Denise S.M. in which action was brought for the purpose of having the donation made to her by him revoked and the corresponding entry in the register cancelled. This claim, following the reply by the defendant – which opposed it – was decided by the above ruling for this purpose, declaring the revocation of the donation made by the plaintiff, "consisting of the price of purchase of the two-storey house in plot no. 173 of the "Rocio de Magüelles" housing estate in this municipal district, recorded in a notarial instrument drawn up on November 20, 1984, with the other consequences deriving therefrom. This ruling was subject to a remedy of appeal by the defendant, which was thereafter decided by Section 3 of the Local Criminal Court of Granada on Febrnary 12, 1992, dismissing the appeal and integrally confirming the first ruling. All this was in conformity with the following decision-making process: Ground 1. is based on the jurisdiction of the Spanish courts to decide this suit, under the provisions of article 22.2 of the LOPJ (Organic Law on the Judiciary) (*RCL* 1985, 1578, 2635 and *ApNDL* 8375), although in the wording of paragraph 2 thereof the following appears "...so when the 'plaintiff' (*sic*) has his domicile in Spain" – an erroneons insertion that undoubtedly refers to the defendant. Likewise, given that the plaintiff is undoubtedly of German nationality, article 10.7 of the *CC* (Civil Code) must be applied in so far that it lays down that donations shall be governed in all instances by the National Donor's Law. Therefore, bearing in mind Articles 516 and 530 of the German *CC*, the first of which in so far as it considers as a donation the giving of property free of charge, and especially the provisions of article 530 which authorises revocation of the donation if the donee is guilty of deep ingratitude, or of a serious offence against the donor or a near relative. (These laws are valid and have not been countermanded (ff. 13 and 16); they have also been admitted by the defendant, as observed during the course of the trial). All this is in relation to the provisions of the *CC*, article 12.6, paragraph 2, and bears in mind (this is added literally) ..."that the investigative initiative launched by the judicial body, if indeed it ever had doubts about the sufficient establishing of his credentials by the plaintiff, which this Court does not have today" in respect of the existence of the understanding of said foreigu right. In ground 2, recorded as facts of the suit are the following statements: "...it is undoubtedly true that between the parties there was a formal promise of marriage, as borne out by the fact that in July 1985 they started to carry out the initial formalities of the preparatory documentation by requesting the North Hamburg Register of Births, Marriages and Deaths to publish the banns; and it has been more than reasonably established that in accordance with that promise the house located on plot no. 172 of the "Rocío Magüelles" housing estate, in Marbella, was purchased. It was entered in the Property Register of said community under the name of the defendant (page 59). But it was, moreover, also satisfactorily established (see the very important testimony by Mr. S., mediator in the sales contract before the Court of the First Instance and Investigation of Munich on 8 December 1988, which is attached to pages 41 to 46 of the roll of this appeal) that said house was a present

from Mr. B. to Mrs. M. in accordance with his intention to marry her soon. This was made clear by the fact that aforesaid M. B. delivered a cheque to the salesman in an amount of 700,000 German marks for payment of the house. Therefore it it does not matter that said document should appear to have been made out under the commercial letterhead of the *Th . Bergmann Gmbh Co.*, which apparently belongs to Mr. B.. However that may be, what is true is that this was an effective means of payment, regarding which there was never any dispute...". In ground 3 it is stated that the marriage never took place because the defendant had conceived a child by another man (in July 1985) as she herself acknowledged in her reply to the claim. What is also undeniable is the application of the revocatory case provided under article 530 of the German Civil Code, the contents of which are complemented by the provisions of article 1229 thereof, which rules that if a fiancé(ée) should cause the other to break off the marriage on account of a fault that constitutes a major reason therefor, he/she is obliged to pay damages, pursuant to article 1298, paragraphs I and 2 (which in turn decide on the financial effects of reparation when the engaged couple fail to do so). Ground 4 argues the denial of the procedural pleas put forward by the defendant – an issue that becomes final in view of the contents of this appeal. Ground 5 sums up, after concluding that the revocatory action was in order, that it must be decided whether the donation consisted of the money with which the house was paid for and registered under the name of the defendant, or the house itself. That is, said the Court, it is of interest to clarify the purpose of the donation and, given the characteristics of the claim, whereby the plaintiff attempts to secure the revocation of the donation as if it concerned the house – an opinion that this Court accepted from the beginning given that, already in a court decision of 25 January 1988 rejecting the appeal for reversal lodged by the defendant, it was reasoned that the evidence had revealed that what the fiancé wished to give his betrothed was not a certain amount of money for her to buy with it whatever she considered best, but precisely a house. This indicated that he should appear before a notary public for the purpose of executing the deed, wherefore it is obvious that the decision which has been appealed must be confirmed regarding this point, given that it is also requested that legal ownership of the house be changed in such a way that in future it appear registered in the Property Register under the name of the plaintiff. This is the final meaning of the terms of the judge's decision that was handed down in the First Instance. It was confirmed in that decision and is now subject to the appeal for cassation lodged by the defendant, based on the grounds to be examined by the Court.

Two.– In the first grounds, an infringement was denounced under the former article 1692.5 *LECiv* for violation of article 12.1 *CC* relative to articles 618, 624, 634 and 636 CC, and reference is made to the premise on which the judgment subject to appeal was based. In other words, given the undoubted German nationality of the defendant (sic – here they must mean the plaintiff), application of article 10.7 *CC* appears unavoidable. According to this, donations shall in all cases he governed by the nationality of the donor. article 12.1 *CC* enshrines the principle of *lex civilis fori* in the

following terms: the classification to determine the rule applicable to the dispute shall always be in accordance with Spanish law, and in this respect by reason of the characteristics of this Spanish legislation, we must bear in mind statements such as that which, according to the judgment subject to appeal in its ground 2, the house was purchased in October 1984, and was registered under the name of the defendant; that that house was a present from the plaintiff to the defendant, and in ground 3 it is stated that that the evidence has revealed that what the fiancé wished to give his betrothed was not a certain amount of money, but precisely a house. "In short, the appealed judgment, insofar as it confirms the appealed judgment (how does one distinguish between them without giving their definitions?), admits these facts, ratifying the fifth whereas clause pronounced by the Court. In other words, the plaintiff, through the procedure indicated, on 22 October 1984, sent 700,000 German marks to the account of Mr. V. at the *Banco de Andalucía*. The latter was subsequently the seller of the house concerned. These proven facts must be classified pursuant to Spanish law, or – what is the same thing – the classification of donation assigned to it by the judgment must be adjusted to the Spanish Civil Code irrespectively of the fact that the regulation between the parties and the effects take place under German law." In conformity with articles 618, 624 and 634 *CC*, it must be stated that the revocation of the donation involves the restitution of the object to the donor – an unthinkable effect if prior to being donated it belonged to property other than that of the donor. In view of all that has been stated, if the judgment declares it proved that the house in Marbella was the property of the salesman from whom the defendant purchased it by public deed of sale for the price of 580,000 German marks, which served as an effective means of payment, it is clear that the plaintiff, Mr. B., although he provided that sum, was unable through a donation pursuant to Spanish law, to take any decisions regarding a thing over which he had no rights at the time when it was purchased by Mrs. S. Thus, the grounds are based, in accordance with the provisions of article 12.1 *CC* concerning the rules of conflict, on the fact that it is the Spanish legislation that will be applicable. On account of the legal system that is quoted, it is obvious that the consequence of the revocation of the donation is the recovery by the donor of the object donated, and the intention here is the recovery by the donor of the house which was the object donated. It appears clear that, as recorded in the public deed of sale in favour of the defendant, such house was bought from the seller, Mr. V., and therefore he was the owner of the house concerned, wherefore in no way could it be the property of the plaintiff, and in short, a restitution "in natura" of the donated object would not be able to take place. The inaccuracies on which the grounds are based are obvious. Apart from the fact that we do not share the theory about the supposed rules of conflict to which article 12.1 *CC* refers, especially when an attempt is made in section 4 of the grounds to maintain that this will force all the problems over the donation to be adjusted to Spanish civil legislation even though the effects between the parties are those governed by German law, a proper reply merely requires

the quoting of article 10.7 *CC*, which is forceful and specific. To this, moreover, are added the provisions of article 12, par. 2 *CC*. The sanction of this article 12.2, to he applied *ex officio* according to number 6 thereof, is obvious: the applicable rule in case of conflict, which must be settled by the Spanish courts, in this case is dependent on the classification of the business (donation). Its inclusion shall be determined by Spanish law, and this is clear in its article 10, no. 7 which refers to the National Donor's Law (the German), while in its article 12, no. 7, the sanction is regulated by its material or substantive law, or in other words the BGB. At the same time, the arguments regarding non-ownership of the object donated by the plaintiff are not acceptable, given that in accordance with the elementary rules of real replacement, the undeniable fact that the sending by the plaintiff of a cheque for 700,000 German marks on 17 October 1984 was not successfully questioned in the litigation, is admitted, as it should be. (The precise implementation thereof appears in folio 31 ff.). Of these 700,000 German marks, the appellant used 580,000 for the purchase of aforesaid house. It must be deduced that, by a simple application of this subrogation, for all legal purposes the money sent as a gift to acquire said property must completely substitute the object of such sales transaction. It is not possihle to eliminate the revocatory effects of the donation on account of this obstacle because, when the money – which was the legitimate possession of the plaintiff – was replaced by the house, the plaintiff was justified in seeking restitution following the revocation of the disputed donation given that, as has been argued, just reasons existed for so doing. Therefore, the ground adduced by the defendant must be rejected. In the second ground the infringement of article 12.1 is denounced in connection with articles 42 and 43 of the same body of law. It is argued that, pursuant to article 10.5 *CC*, contractual obligations are governed in accordance with the law of the place where the contract was concluded. Also, as specified under aforesaid Spanish law, article 12.1, the statement contained in the decision, article F.2, to the effect that there was undoubtedly a formal commitment of marriage between the parties, was not acceptable, given that in order for an engagement to exist under Spanish law, articles 42 and 43 of the *CC* must be applicable. The latter define engagement, describing it as a promise for the future. However, the decision now subject to appeal, on considering the commitment to be formal or certain given that legal marriage formalities were started in July 1985, violates the qualifying principle established under Spanish law on what has already taken place. Nor is the ground valid, since insistence is placed on the fact that through the application of the rules of conflict under article 12.1, the Spanish legislation for assessing the statement contained in F.2. regarding the existence of a formal commitment of marriage between the parties musut be paramount. As against this, the fact must be ratified that if such a theory on the rules of conflict is not pertinent, action must be taken in accordance with the provisions of articles 10.7 and 12.2. *CC*, which resort to German law. In this case, the consequences deriving from the formal marriage commitment that is recognised under F.2 of the decision subject to appeal are acceptable, wherefore the applicability of aforesaid

articles 42 and 43 to which the ground refers is not pertinent. In the third ground, the improper application of article 530 of the German *CC* is denounced. After the wording is questioned, when reference is made to the revocation because of ingratitude deriving from the serious offence against the donor or any person who may be his close relative, it is stated that the German law is insufficient when it comes to interpreting what is understood by serious offence, which certainly does not deserve to be called ingratitude in the light of the Spanish article 648 CC. Under the latter, neither the decision nor the records state what the serious offence of a criminal nature is - in other words the offence committed by the defendant. At the same time, they make other allusious to the circumstances of the pregnancy of the donee, without discussing whether it was induced by anyone other than the plaintiff. Therefore, they add, as no serious offence was appreciated, the case could not conclude in the revocation of the donation, which in any case would not be the house. They stated that the objective of the present ground was to place an injunction on the revocation of the donation, whether it was the house or the money, "since there was no case of ingratitude". Nor is the ground acceptable given that it continues to insist on the application of Spanish law, in the sense that article 648.1 *CC*, on speaking about the revocation of the donation for reasons of ingratitude, considers that one of the reasons for this is that criminal conduct was involved. In other words, that the donee committed an offence against the donor. (This reason, incidentally, was qualified by broad understanding in the recent court ruling of February 27, 1995 (*RJ* 1995, 2775), as follows: "It must not be forgotten that the court doctrine, on considering the infringement of article 648.1 *CC*, although it considers socially reproachable conduct sufficient reason for revocation and does not confine itself to cases of clear imputation of an offence to the donor that must have been previously condemned in criminal proceedings – *STS* of October 1983 (*RJ* 1983, 5383) – specifies in this ruling, as in the subsequent ruling of November 19, 1987 (*RJ* 1987, 8408), that "although they advocate a broad interpretation of this legal provision, reference is made to socially reproachable conducts based on actions that could be declared criminal in nature although they are not formally declared to be such"). In the case of these proceedings, this reference to legal provisions is not relevant given that as German law continues to be applicable, it is obvious that the legal grounds of the appealed decision are correct because the case of ingratitude referred to in article 530 of the BGB as coustituting a serious offence against the donor is indisputable and must be understood as such, given that the conduct of the donee must be judged in that light. Proof thereof lies in the following chronological facts: at the beginning of July 1985 proceedings were instituted in the corresponding North Hamburg Civil Registry (pp. 17 and ff.) with a view to the marriage of both persons. On 20 November 1984 (p. 105), the purchase of the property subject to dispute took place, for an amount of DM580,000. This had been sent by the plaintiff a few days

previously (22 October 1984) in the form of a cheque, dated 17 October 1984, for DM700,000 ... a man other than the donor (as acknowledged in the reply by the plaintiff herself. In F.3 the Court states that this conduct must constitute the serious offence covered under article 530, in the clarification contained in article 1299 itself of the German *CC*, to which F.3. of the ruling refers. That is, on deciding that if a fiancé/ée is the cause of a decision taken by the other party on account of an offence that constitutes an important reason for such decision (and undoubtedly the conduct described is indicative of such an offence), he/she shall be obliged to pay compensation for damages, in accordance with law 1298 which, in turn specifies the financial effects (damages, costs, obligations and their repercussions) in the terms set forth in F.3. All this goes to confirm that the legal reasoning for the ruling subject to appeal was correct, and the ground concerned is rejected. In the fourth ground, the infringement of article 1299, together with articles 1298 and 1301 of the German *CC* is denounced. It is stated that in this appeal, following the elucidation of the issues relative to the legal circumstances caused by the donation, it is necessary to address the effects of the engagement and, in this regard it is clear that although the application of articles 1298 and 1299, and even 1301, of the German *CC* may be acknowledged, it is obvious that these legal provisions cannot give rise to the ruling handed down because the expressions that they use of "expectation of marriage", "fiancé", and "symbol of engagement" do not support the reasoning behind the ground. This is because the ruling subject to appeal was handed down at the same time as the application of the provisions relative to engagement and dowry. In short, all the references to these provisions, of which the only certain evidence is the start of marriage formalities in June 1985, must be evaluated in accordance with Spanish law.

Nor can this ground be accepted since, on account of the repetition of previous allegations, the same arguments must be used as for the previous grounds. In the fifth ground, an error of fact is denounced which refers to article 1692.4 of the Code of Civil Procedure. This error was made by the ruling on assessing the foreign law in the light of the content and validity of the texts reproduced, of which mention has been made. The ground is likewise unacceptable given that its arguments are unable to prevail over the explicit arguments made by the court in F.1., in which it is stated that the lapse of article 12.6 relative to the existence and valididty of said foreign law is respected. Therefore, on rejecting the ground, it is also in order to reject the appeal with all the effects deriving therefrom.

3. Proof of Foreign Law. Renvoi

– STS 15 November 1996, *Ar. Rep. J.*, 1996, p. 1123.
Foreign law as a fact. Renvoi to Spanish Law: no
Note: See Succession.

4. Peremptory Law. Paternity

– SAP Ávila, 4 May 1995, *REDI*, 1996–25–Pr.
Note: See X. Family Law.

5. Renvoi

– SAP Badajoz, 11 July 1995, *REDI*, 1996–58–Pr.
Renvoi to Spanish Law: yes
Note: See XL. Succession

6. Equivalence of Legal Institutions

– RDGRN 1 September 1995, *REDI*, 1996–26–Pr.
Note: See IV. Recognition and enforcement of foreign judgments and decisions.

8. Ordre public. Divorce

– SAP Baleares, 19 June 1996, *Actualidad Civil*, 96–4, n. marg. 1588.
Note: See X. Family Law.

VII. NATIONALITY

1. Civil Condition

– RDGRN 13 May 1996, *Actualidad Civil*, 97–1, no. marg. R46.
Statement of wish to keep Navarre civil condition.

One.– In view of articles 14, 1216 and 1713 of the Civil Code; 438 of the Organic Law on the Judiciary; 3 and 4 of the Code of Civil Procedure; 27, 28, 64, 65 and 68 of the Law on the Register of Births, Marriages and Deaths; 7, 16, 225 to 231 and 348 of the Regulations of the Register of Births, Marriages and Deaths, and the Ruling of November 21, 1992;

Two.– These proceedings on the preservation of Navarre civil condition raise a number of formal and substantive issues, which must be examined separately.

Three.– With regard to the aforesaid formal problems, it transpires that the persons concerned – a married couple who are a party on their own behalf and on that

of their three minor children – appeared before the Register of Births, Marriages and Deaths of Barcelona through a court solicitor who submitted a notarial power-of-attorney whereby this couple confers on the solicitor, apart from the general powers of any power-of-attorney for lawsuits "in a special form", the power "to conduct a case for preservation of the Navarre statutory civil condition and to ratify the request therefor in as many cases as personal ratification are requested for the entire processing of this proceeding". Whether this document is sufficient for carrying out the intended registrations is the first formal question that has to be addressed.

Four.– Undoubtedly the aforementioned clause on the special power-of-attorney does not correspond to the registration mechanics established for the entry of voluntary statements regarding civil condition. Indeed, these statements eligible for registration (having been admitted under the Civil Code, article 14) do not give rise to any registration proceeding, but rather, in the same way as with statements on the choice and recovery of Spanish nationality, if they satisfy the substantive requirements or other complementary formal requirements (*cf., e.g.*, the presence of the legal representative, under article 14.3, paragraph four), they can be directly entered in the corresponding Register following appropriate classification by the Registrar. This is the outcome of articles 23, 27, 28 and 64 of the Law on the Register of Births, Marriages and Deaths. In all these cases there is an essential element that can be registered consisting of a statement of will, so that once it has been made, the solicitor's task -- as opposed to what occurs in a trial or proceedings – is reduced to that of merely delivering the instrument, without being empowered (notwithstanding the wording of the special power-of-attorney) to complete, amend or qualify the statement already made in any way. For this reason his duties here are reduced to those of a mere *nuntius* who, as opposed to the real representative, does not have a margin of freedom to act within the limits of the power-of-attorney.

Five.– At the same time, there is no doubt that the wish of the persons concerned to keep Navarre civil condition for themselves and their children is clearly expressed in the notarial instrument submitted, wherefore the issue is not that of the solicitor to ratify this wish – which would be useless and superfluous – but rather that of determining whether such expressions of will, contained in a notarial instrument, were made with the proper documents in order to be eligible for entry in the Register of Births, Marriages and Deaths. Therefore it is a matter of functional competence that, since it concerns public policy (*ordre public*), can and must be assessed *ex officio* [*cf.* arts. 23 and 27 of the Law on the Register of Births, Marriages and Deaths. (*LRC*)].

Six.– The question noted has been resolved in a negative sense by the ruling of 21 November 1992. In this, it is indicated that "although the notary is, in principle the civil servant authorised to attest contracts amd other extra-judicial documents pursuant to the law, this declaration, promulgated in 1862, has been subject to many exceptions and qalifications over the course of the years. Limiting ourselves to the sphere of the Register of Births, Marriages and Deaths, cases of responsibility shared

between notaries and registrars of registers of births, marriages and deaths appear already in the original draft of the Civil Code (as happens in the cases of emancipation and recognition of filiation, which still subsist) and cases in which the power to authorise the document or procedure subject to registration is assigned exclusively to registrars. This used to happen (and the criterion persists) in the authorisation of civil marriage, in choices to take out Spanish nationality (to which would have to be added the recovery thereof), and in statements relative to residence". In this matter related to nationality and residence, article 64 of the valid Law on the Register of Births, Marriages and Deaths lays down in its two first paragraphs that, "In the absence of a special provision, the civil servant responsible for taking the statements on keeping or modifying nationality or residence shall be the same as the one determined by the rules on choice of nationality. When said civil servant is not the Registrar of the same Register where the entry of birth was recorded, he shall draw up a record with the facts required for the registration and send it to the competent Register for the appropriate marginal entry to be made." Both from the literal wording of this second paragraph and from the reference to the laws of the Civil Code then in force (*cf.* art. 18 *CC* drafted under the Law of 15 July 1954), it can be deduced, with no room for doubt, that documents relative to nationality or residence must be processed by Registrars of Registers of Births, Marriages and Deaths with no other exception (in the absence of a special provision) than that when the statement is made in foreign countries in which there is no Spanish diplomatic or consular agent (cf. current art. 230 of the Regulations of the Register of Births, Marriages and Deaths).

Seven.– The statements on the wish to keep Navarre civil condition were thus made before a body that is not competent and therefore they are not eligible for registration on account of this formal impediment, that cannot be remedied by a fresh statement by the solicitor that would take place *ex novo* and to the detriment of the personal nature of those statements. However, it would be advisable to indicate that there are also substantive reasons that prevent the intended marginal entries. Given the difficulty of the subject matter related to civil condition and the doubts raised by the regulation contained in the Civil Code, article 14, drafted under Law 11/1990, of 15 October, it would be appropriate for this Administrative Centre to attempt to shed some light on these points.

Eight.– The married couple concerned, having both been born in Barcelona from parents born in Catalonia, stated their wish in an appearance in April 1933 at the Register of Births, Marriages and Deaths at Pamplona, to obtain Navarre civil condition and, following the drawing up of the appropriate documents, the corresponding marginal entries were made in the respective entries of birth. This being so, the statement on the wish to keep this civil condition is unnecessary and, therefore, not liable to registration. As pointed out by the third paragraph of article 65 of the Law on the Register of Births, Marriages and Deaths, "Nor is it necessary for someone who has declared his wish to obtain residence to make a statement about keeping it." This lack of need to reiterate the statement is explicitly confirmed by

article 14.5 of the Civil Code, both in its current wording and in the previous one, so that, by ministry of the Law, this Navarre civil condition that was acquired is kept "whatever may be the time that has elapsed or the changes of residence" (*cf.* art. 65.2 *LRC*), unless of course, as a result of continued residence in another territory over a two-year period, the couple were to obtain the civil condition of such territory having expressed their wish to do so.

Nine.– With regard to the couple's daughter, born in Barcelona in 1995, she is entitled by filiation to the same Navarre civil condition as her parents (*cf.* art. 14.2 CC) and it is also unnecessary to record, independently of any precautionary measure in this respect in article 14 of the Civil Code, that the parents wish her to keep the civil condition, given that this will be kept by legal imperative unless another residence were acquired in accordance with the possibilities offered by the same article.

Ten.– Finally, as for the couple's children born in 1987 and 1990, as they were born in Barcelona from parents born in Barcelona, they have the Catalonian civil condition as a result of legal presumption (*cf.* art. 14–6 current *Cc*; art. 14.5 of the previous wording of the Civil Code; and art. 68.2 LRC). This residence was not affected by the change of residence of the parents (*cf.* art. 14.3 *CC*), so that they are unable to claim that their children should keep Navarre civil condition that in any case does not belong to them, nor are they empowered to confer it on children of less than fourteen years old. To the contrary, only children over this age, aided their legal representatives, shall be those entitled to choose the Navarre civil condition of their parents (*cf.* art. 14.3 fine *CC*).

This Directorate General has agreed, pursuant to the regulation proposal, to dismiss the appeal.

VIII. ALIENS, REFUGEES AND EUROPEAN COMMUNITY CITIZENS

IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

X. FAMILY LAW

1. Economic Regime of Marriage

– SAP Barcelona, 25 January 1995, *Actualidad Civil*, n. Marg. 1289.

Note: See XXIV. Interlocal Conflict of laws

2. Adoption

– SAP Granada, 25 April 1995, *REDI*, 1995–53–Pr.
Application for adoption in Spain of a Moroccan child.

Of the two ways in which adoption proceedings can be started under art. 176 *Cc.*, the applicants have followed that of section 2 of the same article because the child had not been entrusted into the care of any Spanish public body.

However, this application is covered by the provisions of section 2, no. 3. of art5. 176 – "having spent more than one year legally in the care of the prospective adoptive parents", bearing in mind that the adoption that was carried out legally in the State of Morocco by the prospective adoptive parents in respect of the child María, three years ago, does not have in our legal system, as was stated, the legal effects of an adoption but does create legal relations the same as those of being entrusted into their care. This was stated by the DGRN in the aforementioned court order of 14 May 1992 on establishing that adoption in the Moroccan State, under the name of "Kafala" covers a personal situation of adoption and placement that is eligible for registration in the Register of Births, Marriages and Deaths pursuant to arts. 81 and 154.3 of the Regulations of aforesaid Register.

Therefore receiving into one's care under our legal system is totally comparable to the Kafala of the Moroccan legal system, whose specific legal effects are listed in the Document on Legitimisation-Adoption executed before the Court of the Judge of Rabat.

The previous problem raised by this adoption procedure – that of Spanish prospective adoptive parents adopting a foreign child – consisted of knowing whether the Spanish judge had jurisdiction to set up a relationship of filiation by adoption, and on this point art. 22.3 of the Organic Law on the Judiciary (*LOPJ*), which confers jurisdiction on our judges when the prospective adoptive parents or the adopted child is Spanish or habitually resides in Spain, is clear and conclusive. This is complemented by article 63.16 of the Code of Civil Procedure (*LEC*). That is, the guidelines of the 1965 European Convention on Adoption are followed, even though it was not ratified by the Spanish State.

The second question of the Private International Law that leads to this procedure is that of the application of the national law of the adoptive parents in order to comply with the provisions of art. 9.5.1 *Cc.*

At the same time, it must be borne in mind that the special structure of the voluntary jurisdiction procedure makes necessary the distinction between two aspects: the procedural aspects (the constituent nature or not of judicial intervention, procedures, etc.) that our *Cc* calls requirements and which are governed by Spanish law, in article 9.5.*Cc*, and the fundamental aspects (consent, capacity, authorisation) to which the national law of the adopted child shall be applied if he/she should have his/her residence outside Spain or, even if he/she did live in Spain, he/she did not

acquire Spanish nationality. Bearing in mind that the child María Rizqui does not usually live outside Spain, and that, moreover, in the event that adoption were granted she would obtain Spanish nationality, it is our understanding that the applicable law is that of Spain.

The child María Rizqui lives in Spain and left Moroccan territory with the authorisation of the competent authorities of that country (Ministry of Justice-Court of the First Instance of Rabat); in that authorisation it was specified that the child must live habitually with Mr. and Mr. Campillo Camacho at their domicile in Granada, Calle Arabial, 32.

All the circumstances obtain, we repeat, for the application of Spanish law as provided under art. 9.5 (1 and 2) *Cc* instead of the national law of the adopted child.

At all times during the processing of this procedure the legal provisions applicable to this case have been observed, and the national and foreign documents produced by the prospective adoptive parents have been examined in detail in order to avoid a possible case of traffic in children.

This Court is of the understanding that, in conformity with the provisions of art. 12.1 *Cc*, the classification to determine the applicable rule of conflict shall be carried out pursuant to Spanish law – in this case, art. 9.5 (1 and 2) *Cc* which refers us to the laws of the same Code in matters of adoption,wherefore, together with the favourable report of the Department of Public Prosecution at the hearing, and taking into account the greater interest of the child who was permanently deprived of a family environment (she is the daughter of unknown parents) as stated in art. 20 of the Convention on the Rights of the Child at the United Nations General Assembly on 20 November 1989 in New York, and to which Spain was a party...

3. Filiation

– SAP Avila, 4 May 1995, REDI, 1996–25–Pr.

Application by a French citizen to the effect that the paternity of a Spaniard be declared.

Two.– The Organic Law on the Judiciary (*LOPJ*) assigns to the Spanish judicial bodies jurisdiction over suits between Spaniards, between foreigners, and between Spaniards and foreigners (art. 21) when in general the defendant has his domicile in Spain (art. 22.2), and subsidiarily and on matters of filiation when the child has his habitual residence in Spain at the time of the claim, or the claimant is Spanish or habitually resides in Spain (art. 22.3). At the same time, both the Brussels Convention of 27 September 1968, and the "parallel" Convention of Lugano of 16 September 1988 on Judicial Jurisdiction and the Enforcement of Sentences in Civil and Commercial Matters exclude from their scope of application the status and capacity of individuals.

Three.– The aforementioned having been established, the second grounds for dissatisfaction of the appellant refer to the existing conflict of laws, given that since the claimant and her youngest daughter, whose paternal filiation is to be determined, are of French nationality and the defendant is of Spanish nationality, there are two legal systems (the Spanish and the French) that could be applicable, each of which which treats the matter to be decided differently.

Pursuant to the provisions of art. 9.4 *CC*, the nature and content of filiation, including adoptive filiation and paternal-filial relations, shall be governed by the personal law of the child, while the first sub-section thereof explains that the personal law on natural persons is that determined by their nationality. Said law governs capacity and marital status, the rights and duties of the family, and succession in the event of death.

Since the child whose paternal filiation is under discussion is of French nationality, an initial approach to the problem leads us to think that, following the classification to determine the applicable rule of conflict pursuant to Spanish law, in accordance with the provisions of art. 12.1 *CC*, and specifying the lex causae: the law of the nationality of the child is that applicable to the controversial case, and therefore French material law (that to which ex-article 12.2 understands the referral to have been made) is the appropriate one.

This is considered so by the appellant, based on the rule of conflict in the French civil law on the matter (art. 311.14: filiation is governed by the personal law of the mother on the date of birth of the child), and as a result he refers to the contents of arts. 344.8, 340, 340.4, and those in agreement therewith of the French *CC*, in the draft prior to the reform introduced by Law 8 of January, 1993, in force at the time that the claim was instituted. This law deems it applicable in order to argue that if the first of the provisions (art. 344.8) establishes "natural filiation, it is legally established by voluntary recognition. Natural filiation can also be legally established by the possession of legal status or as the result of a trial". The second provision (art. 340) fixes the alleged reasons for declaration of filiation (in summary, abduction, rape, seduction, the existence of documents of recognition, concubinage at the same time as conception, and participation in the maintenance, education or care of the child in the capacity of father), none of which does he consider applicable to him and, moreover article 340 fixes a two-year deadline (on pain of lapse, in order that a remedy may be resorted to – to be calculated as of the date of birth or the termination, as the case may be, of the concubinage or of the acts of participation in the support and education of the child). The deadline dating from the birth of the child is long past and he concludes that in no case can a remedy be resorted to by the claimant because it is not in order to open proceedings and, moreover, because the case has lapsed.

Four.– But the Court is of the understanding that the material law applicable is the Spanish law, for the reasons that will now be set forth. There are specific circumstances under which the court excludes the possibility of applying the foreign material law as the rule of conflict, and instead applies its own: these are what are

called rules of immediate or necessary application by scientific doctrine. It is a wide-ranging concept that refers as much to rules of private law as to public, which are intended to fulfil a purpose: to avoid application of the rule of conflict in order to find a direct and immediate solution to a problem, and dispensing with the alien status of the case. These rules, which are intended to serve collective interests, have a broad field of action, and among their commitments are the protection of persons (right to a name, protection of children, etc.). The jurisprudence of many countries has accepted the notion of mandatory rules through the application of the material law of the court (*cf.* Decisions of the Paris *Cour d'appel* of 21 June 1962 and 20 February 1964, which applied lex fori to protect foreign children who were in France, based on the concept of public policy.

Article 8 of the *CC* states, "the criminal laws – those of the police and those of public security – are binding on all those who are in Spanish territory". The question lies in distinguishing, in these laws of immediate application, between those of "police and security" and those of "public policy": the latter determine, as a compulsory measure to defend the moral, social and legal order of the court, the exceptional exclusion of the foreign material law claimed by the competent conflict of laws, to which art. 12.3 of the Code refers when it warns that under no circumstances will the foreign law be applicable when it is contrary to public policy. This law was drafted in a broad sense, in that it does not qualify the incompatibility of the foreign material law with the material law of the court as do the Hague Conventions (for example, that of 1 June 1970, in art. 10).

The Supreme Court Decision of 23 October 1992 states, "...it is the task of the Spanish courts to point out and decide in each case what constitutes the public policy of the court – that which must be safeguarded against the possible application of conflicting and incompatible foreign law". In line with the most authorised scientific doctrine, the internal public policy can be established as the group of Spanish mandatory rules whose observance cannot be waived by the parties. The exception of public policy is based on the fundamental principles of the legal system itself, as contained in the State Constitution, and – with regard to Spain, the principles, rights and freedoms recognised under the 1978 Constitution which, in cases such as that of the action, prevent the placing of obstacles in the way of the protection to be afforded children, whatsoever may be their filiation.

Understanding this differently would constitute a constitutional infringement, since the rights of the child as recognised under art. 39.1 would be left without judicial protection, and no constitutional mandate is known that would allow for the investigation of paternity. In short, a public interest, i.e., the interest of marital status, would be harmed. It cannot be understood to be a strictly personal matter of concern only to the individuals who are affected, as pointed out by the Supreme Court decision (*STS*) of 21 April 1988, since filiation is one of the most important expressions of people's marital status (as a permanent quality that determines the fundamental legal position of the person within the family group and, through it, in the community).

Five.– In the present case, there is another circumstance that the *a quo* Judge rightly emphasized in his decision: the attribute of *jure sanguinis* of Spanish nationality is determined by the filiation or, rather, by the circumstance of having been born from a Spanish father or mother, and if such attribution of nationality operates by indicating which is the right law to resolve the problem of determination of paternal filiation that has arisen, it brings us to a vicious circle – i.e., in order to know whether the child is a national or foreigner by blood (*jure sanguinis*), it is first of all necessary to know whether such person is "officially" the daughter of a progenitor, but in order to do that we are unable to apply Spanish law because, since the maternal filiation is already determined it is necessary to abide by foreign law in order to reach a conclusion regarding the paternal filiation, and such foreign legislation is an obstacle in the way of such determination.

Therefore, some sector of the scientific doctrine advocates resorting to the Spanish material law as a putative law as to what and how article 9.5, no. 2 *CC* does in respect of adoption in the reform introduced by the law of 15 October 1990. That avoids applying, in the home court of the remedy resorted to, the foreign law on matters such as legitimisation or expiry deadlines and it solves all the problems of procedural law that may arise, since it must not be forgotten that, pursuant to art. 8.1 *CC*, "the Spanish procedural laws are the only ones applicable to actions conducted on Spanish territory", and so it will be the criteria and requirements of effectiveness of our laws that must prevail in matters riddled with public policy demands. The relationship of filiation will in this way be fully recognised on the basis of Spanish law, whatever may be the requirements and the effects that they may have on the foreign law.

The same result is achieved by another method, advocated by the doctrine and followed by the *DGRN*: it suffices for the Spanish court that filiation should exist as a fact – not as a status or a legal relationship; it suffices that the physical fact of generation be understood to be proven by one of the means listed under article 113 *CC* in order to decide on the nationality of the child that is born.

Six.– But that is not an end to the grounds that enable the suit to be settled in accordance with the civil law of the court.

After the reform of the preliminary title of the Civil Code by Decree 1836/1974 of 31 May, article 12.6 enables foreign law to be applied by the courts. "The courts and authorities shall apply the rules of conflict of Spanish law *ex officio*". "Any person who invokes foreign law must accredit its content and validity by the means of proof admissible under Spanish law. However, with a view to its application, the Judge may also avail himself of as many instruments of verification as he considers necessary, having issued the appropriate writs to this effect".

From this it transpires that a Spanish judge must apply the Spanish law of conflict, which also involves the *ex officio* application of the foreign material law claimed, not as a duty to check this but as a discretional power, as stated in the jurisprudence (*STS* of 6 June 1969).

But in those cases in which the foreign material law has not been invoked in the trial by the party interested in its application, and the judge does not avail himself of his discretionary power to use as many instruments of verification as he may consider necessary, or even if the foreign law has been invoked by the parties and the judge has issued the appropriate writs and it has not been possible to determine the content of foreign law, it is in order to apply the material law of the country, as indicated in *STS* of 7 September 1990 ("...it is repeated practice which determines that when it is not possible for the Spanish courts to base the application of foreign law on absolutely sure grounds, they must judge the case and issue a ruling pursuant to the law of the country...").

In general, the jurisprudence has followed the traditional line that the parties must invoke and prove the content of the foreign law. This is expressed in the *STSs* of 4 October 1982, and 12 January and 11 May 1989 (in the latter the Supreme Court stated that even with full knowledge of the substance of the foreign law, absolutely sure grounds for its application did not exist on account of an alleged unconstitutionality of said law). Moreover, the Sentence of 7 September 1990 states in one of its legal grounds that, "...the application of foreign law is a matter of fact, and as such must he argued and proved by the party which invokes it. It is also necessary to establish the exact significance of the law in force as well as its scope and authorised interpretation, so that its application does not cause the Spanish courts to entertain the least reasonable doubt, and all this by means of the relevant reliable documentation...". The Sentence of 5 February 1975 contains the already-established principles that the foreign laws must be invoked as a means of evidence before the Spanish courts; that isolated quotes of foreign codes are not sufficient; that the existence and sense of the law invoked in accordance with the duly-authenticated opinion of two legal consultants from said nation must be accredited; that what the jurisprudence of that country has established must be substantiated, given that the exegesis thereof is not the responsibility of the Spanish courts; and that the foreigu law must be proven by means of legalised certification by the consulate. From this it can be understood that the judge's knowledge of the foreign law also presupposes his knowledge of the foreign jurisprudence, since otherwise there would be uncertainty as to its content, especially in cases in which the foreigu law is complex and obscure. This will apply even more in cases in which there is a temporary conflict as to which law is applicable (as in the present case) – a problem of intertemporal validity that arises within the foreign legal order and which must be solved pursuant to the rules of foreigu interim law.

In the event of a civil suit, although efforts were made both in the first and the second instance to incorporate into the proceedings the legislative material proposed by the defendant (consisting of folios 132 to 136 of the case file, repealed legislation (translated up to folio 146 and then from folios 188 to 194), valid legislation (the former provided by the Consulate General of France and the latter by the French Ministry of Justice); and in the roll of appeal, folios 51 ff. translated from folio 104

and with doctrinal and jurisprudential comments attached), it can only be stated that this implies a superficial knowledge of French law in so far as it regulates filiation in two successive laws. The necessary material for its authorised interpretation was not produced, not even to enable it to be applied, given that complex legal issues arise in it, such as those already mentioned of intertemporal law and the application of the statute of limitations, some of which, perhaps, could be settled correctly by applying the law of the country, given that since much of our private law has its roots in the Napoleonic Code, the Spanish civil law institutions have much in common with the French ones, although that is obviously not sufficient.

All the reasons set forth clearly show that both the substantive and the procedural law applicable is the *lex patriae*.

4. Legal Kidnapping

– SAP Cádiz, 17 May 1995, *REDI*, 1996–48–Pr.
The Hague Convention of 25 October 1980. Request for the return of two illegally displaced children. Interests of the child.

Two.– The return of children: cases of illegal retention and exceptions to the legal right of return.

Article 3.a) of the Convention lays down that the removal or retention of a child shall be considered illegal when it has taken place with infringement of a right of custody conferred separately or jointly on a person, institution or any other body pursuant to the law in force in the state in which the child had his habitual residence immediately before his removal or retention. If the illegal removal or retention has already taken place, article 1.a) orders the judicial or administrative authorities of the Contracting States to proceed to the immediate return of the children who have been removed or retained illegally. This action must be implemented within the context of an urgent procedure, as provided under article 11 of the Convention.

However, article 13 of the Convention allows that although a factual circumstance may exist that can be classified under the concept of illegal removal or retention, defined under article 3 thereof, the judicial or administrative authority of the requested state may refuse to carry out the requested return if the person, institution or other body opposed to the return shows that:

a) the person, institution or body that has taken over responsibility for the child did not exercise the right of custody effectively at the time that he/she was removed or retained or had consented or subsequently agreed to removal or retention; or

b) there is a serious risk that the return of the child might expose him/her to physical or mental harm or in any other way place the child in an intolerable situation; or

c) it is ascertained that the child him/herself opposes the return, as long as the

child has attained an age and a degree of maturity at which it is appropriate to take his/her opinions into account.

An interpretation of the grounds that give rise to the fundamental legal effect provided under the Convention (immediate return of the child retained illegally) shows that the need to protect the interests of the child is at all times uppermost, and that these interests can be harmed when the request for return is not protected by the effective exercise of the legal duties inherent in all cases of custody by the person who claims the return (a); or the presence is perceived of a situation of risk for the health of the child or the proper development of his/her personality (b) or the opposition of the child to the return becomes apparent, once he/she has reached an age and degree of maturity that allows for his/her opinions to be well thought-out.

Three.- Influence of the opinions expressed by the child on the taking of decisions that affect his/her interests.

Examining the case submitted to the jurisdictional opinion of this Court, there is full agreement regarding the concurrence of the following facts:

a) The *Tribunal de Grande Instance* of Dijon, in a judgment dated 14 April 1986, decreed a divorce in the marriage held between Catherine A. and Francisco B.-C., awarding custody of the two minor children to the mother and recognising visiting rights for the father.

b) The two minor children, Francisco, who was born on 15 April 1981, and David, who was born on 29 June 1983, went to the paternal home in Algeciras on 5 July 1994, in order to stay with their father until 31 August of the same year, in accordance with the visiting rights recognised in the divorce decree.

On 31 August Francisco and David did not return to the maternal home in France, but remained in Algeciras.

In principle there would be no problem in attributing an assumption of illegal retention to these circumstances, as provided under article 3.a) of the Convention (infringement of a right to custody awarded to the mother by a divorce decree handed down in the French state, the place of residence of both children before their move to Spain in order to allow for exercise of visiting rights by the father), which would involve the legal effect contained in article 1.a) (the immediate return of the children to their place of residence in France).

However, both children made an appearance in the proceedings instituted in the Court of the First Instance No.4 of Algeciras, when 13-year-old Francisco stated that "they had not returned because they wanted to stay with their father and their two brothers here. Life here is much better and they are loved more. At their home in France they are beaten, ill-treated and discriminated against vis-à-vis the other two brothers. Their mother's companion slaps them on the face when they don't sweep the floor properly or clean the table well or when their beds are badly made", and David, eleven years old, explained that "they didn't want to return to France because they beat you and don't let you do anything. We have to wash up every day. We always have to change the brothers, and when we don't do it well they slap us in the face. The person

who slaps them is their mother's friend, and although their mother sees it she keeps quiet. Basically the reason they don't want to return is because they are afraid of their mother's friend, who beats them frequently".

Having ascertained the opposition of both children to returning to the maternal home, it is in order to clarify whether the legal condition provided under article 13 of the Hague Convention obtains: that the child has reached an age and a degree of maturity at which it is appropriate to take his opinions into account.

As for the age, the provisions contained in our legal system on the influence of the personal opinions of children must be taken into account within the range of decisions to to be made among the legal duties inherent in the possession of parental authority. Thus, article 154 of the Civil Code points out, on determining the legal content of parental authority, that if the children have sufficient judgment they must always be heard before any decisions are taken that affect them; while article 92 of the same legal code, on specifying the effects of the judgments handed down in matrimonial proceedings, determines that legal measures on the care and education of children must always be taken for their benefit, after hearing them if they have sufficient judgment and as long as they are over twelve years old. Furthermore, article 12 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1990 (*BOE* 31.12.90), states in its first ordinal that the States Party shall guarantee a child who is able to form his own judgment the right to express his opinion freely on all matters that may affect him/her, duly bearing in mind the opinions of the child, according to his/her age and maturity.

As it was attested in the proceedings that Francisco is 13 years old and David 11, it is obvious that both are of an age that our legal system considers suitable for giving personal opinions in proceedings which will culminate in a ruling that will affect their interests.

With regard to the degree of maturity, the Judge of the First Instanee, the only member of the judiciary who had personally heard the testimony of both children, stated in the court order that has been appealed that "the two children expressed themselves reasonably and with common sense at the hearing that was held *ad hoc* today, showing, in my judgment, that their wish to stay in Spain with their father is not a whim or the result of lack of thought, but rather the expression of the planned and meditated will to find greater affection and understanding in the family of their father than in that of their mother". In view of such clarity in outlining the reasons, which confirm the maturity of the children in taking the decision to stay with their father, and which were presented by the only judge who has had personal contacts with the children, any amendment of this criterion by a second-degree jurisdictional body that has lacked any immediate involvement, would contain arbitrary elements, which it is essential to exclude from any decision by a judicial body (arts. 9.3 and 24.1 of the Constitution).

5. Marriage

– SAP Baleares, 19 June 1996, *Actualidad Civil*, 96–4, no. 1588. Marriage held in Germany between a German divorcee and a Spanish national before the entry into force of the 1978 Constitution. Request for nullity on account of non-recognition in Spain of a divorce ruling pursuant to German law. Public policy.

Three.– In the version of the Civil Code in force in 1978, it was provided that a church or civil marriage would not have civil effects when either of the spouses had already been legitimately married (art. 51); divorce was not recognised as a cause for dissolution of the bond; and the nullity of a marriage entered into by anyone already bound in marriage was established (art. 101 in relation to 83.5). Moreover, by virtue of what had been laid down in art. 9 *CC*, the personal law on individuals is that determined by their capacity, and that law will regulate capacity and marital status, family rights and duties and succession on account of decease, from which it follows that, in 1978, before marrying Santiago M., Angélica S. was not bound by any marriage ties given that her previous marriage had been dissolved pursuant to German law. If she had wished to enter into this marriage in 1978, however, she would have been denied that right, since at that time Supreme Court jurisprudence and the rulings of the Directorate-General of Registers and the Notarial Profession were of the opinion that internal public policy prevailed over foreign personal law and determined the impossibility of performing such marriages or, in the event that they had taken place, decreed nullity on account of this impediment to the marriage bond. This position began to be undermined following the STS (Supreme Court decision) of 22 November 1977, which declared that the restrictive use that should be made of the exception of public policy meant that, when a marriage had taken place abroad, it was understood that the impediment of *ligamen* had disappeared as a result of the divorce decreed in accordance with the corresponding personal law, and therefore that the new marriage would be considered valid. As a result of the promulgation of the 1978 Constitution (which did not establish the indissolubility of marriage in arts. 16 and 32), the criterion that a marriage that had taken place with a divorced foreigner pursuant to his/her personal law was not prohibited by public policy (rulings by the Directorate General of Registers and the Notarial Profession of 6 April 1979 and 28 January 1981), and this criterion was imposed definitively following the entry into force of the amendment of the Civil Code under Law 30/1981 of 7 July which, among other things, introduced divorce into our legal system as a cause for the dissolution of marriage (thus, rulings by the Directorate-General of Registers and the Notarial Profession of 23 December 1981 and 20 January 1982).

Four.- The matter under discussion in these proceedings therefore does not depend on whether we should opt for the retroactive application to the marriage being contested of the laws promulgated in 1981, but rather whether, at the present time,

internal public policy (art. 12.3 *CC*) should be interpreted in accordance with the concept held of it in 1978, in order to veto the application of the personal law of Mrs. S. The reply must be negative, in line with the criterion that has prevailed as of 1981, because art. 3 *CC* includes, among the hermeneutical criteria of the laws, the social reality of the times in which they are to be applied, and that would be violated if an outdated notion of public policy were now to be applied, allowing obsolete social and legal principles to prevail. In other words, when Angelica S married Santiago M. on 2 March 1978, she was not bound in marriage to another person, pursuant to her personal law, and the current concept of Spanish internal public policy in no way prevents the application of the German legal system in this matter. Therefore, the appeal lodged by the plaintiff must be rejected.

XI. SUCCESSION

1. The Applicable Law

– STS 15 November 1996, *Ar. Rep. J.*, 1996, p. 11233.

The estate of a United States citizen deceased in London; request for nullity of a will bequeathing real estate located in Spain. The applicable law: refusal to admit the return of the case to the jurisdiction of the law of the State of Maryland. Proof of foreign law.

One.– In the first grounds, the Court summarises the facts attested by the evidence, which it decides should be reproduced in order that the appeal may be studied properly.

A) The family vicissitudes of Mr. L.: 1. Jean Arthur L. was in his lifetime a citizen of the State of Maryland, United States of America, and lived in Málaga on a country estate owned by him, called "El Coronel"; he was married to Dorothy N., from whom he got divorced on 5 July 1959. 2. It appears that he lived with a Spanish woman, Pilar S. de los H., with whom he had two children, Jean Arthur Jr., born on 4 July 1956, and Loretta, born on 10 July 1959. 3. On 21 August of the latter year, Jean Arthur L. married aforesaid Pilar S., the mother of his children in a civil marriage, once he had obtained a divorce. 4. Some time later, Mr. L. brought an action for nullity of his marriage to Pilar, which was definitively decided under the *STS* of 5 July 1975 confirming the declaration of nullity of the marriage, although preserving all the rights of the wife and children. 5. Mr. L. entered into a new marriage with a Swedish subject called Anne Margaretha W.L., who already had a child from a previous marriage; she died without providing him with any further descendants, and on 19 June 1977, Mr. L. himself died in London.

B) Wills made by Mr. L.: 1. On 5 August 1970, Mr. L. made a will in the presence

of the Notary of Málaga, Mr. A.P., in which he appointed Anne Margaretha as his universal heiress and expressly revoked all previous wills. 2. On 20 October 1975, he executed another will before the same Notary, of which there is no copy in these proceedings, but only a reference from the Central Register of Last Wills and Testaments; moreover, according to the defendant, in said will Mr. L. appointed the son of his deceased wife as heir to his property in Spain, and his brother Albert G.L. as heir to everything else. 3. On 4 December 1975 he made another will in Baltimore (Maryland) in which he explicitly excluded his children Jean Arthur and Loretta from his inheritance, maintaining the son of his last wife as heir to his property in Spain. He appointed the aforesaid brother as heir to all the rest. 4. On 3 March 1976, Mr. L. executed his last will in the presence of the Notary of Malaga, Mr. P.R. de A., in which he states that he has two children, but does not explicitly exclude them from the inheritance. He appointed his brother Albert heir to all his property and, in the event that the latter should die before himself, aforesaid brother's children, and expressly revoked all previous wills.

C) Procedural action following the decease of Mr. L. 1. On the death of Mr. L., his former wife, Pilar S. de los H. went to a Court in Baltimore, requesting that her rights to the inheritance as the surviving spouse be recognised, and the Appellate Court of the State of Maryland handed down a definitive ruling denying Mrs. S. the rights invoked, on deeming that the marriage had been declared null and void and that the wife had appeared voluntarily at the suit for nullity. 2. Pilar and her two children instituted further litigation in Baltimore in order to have the nullity declared of the will executed in Spain in 1976, which revoked the previous will, but the American testamentary court ruled that both wills were valid and complementary. 3. On the death of Albert L., his children, who are currently the defendants, declared their inheritance before Madrid Notary. Aristónico G., and after recording the "El Coronel" estate under their name in the Property, institute proceedings under art. 41 *LH* against their cousins Jean Arthur and Loretta, who are occupying the property; the latter then bring a criminal action against them and against other persons, accusing them of an alleged offence of procedural fraud. This leads to formalities before the Court of Preliminary Investigation No. 9 of Málaga, which are dismissed by a court order by the *Audiencia Provincial* (local criminal court) on 23 October 1985. 4. On 27 October 1986, Jean Arthur and Loretta L. bring the action that originates these proceedings, in which they request that the nullity of the will executed by their father in Malaga in 1976 be declared. In it, he appointed his brother as heir and his descendants thereafter, based on the fact that, in accordance with the law of the State of Maryland, the disinheriting of descendants must be explicit and nominal.

Two.– In order to declare the nullity of the appointment of his heir as contained in the will executed by Jean Arthur L. on 3 March 1976 "in so far as said appointment affects real estate belonging to the testator located in Spain and harms the rights of plaintiffs Jean Arthur and Loretta L.S., the Court reasons, in summarised form, as follows: the decedent was a citizen of Maryland whose last domicile was in England,

where he died, and part of his testated property is in Spain, where his descendants live. The succession, prima facie, must be regulated by the national law (art. 9.2 *CC*) of the decedent (personal statute), but according to the law of Maryland relative to real property, the succession must be regulated by the *lex rei sitae*. The referral to foreigu law, pursuant to art. 12 CC, "sliall be understood to be to its material law, without taking into account the fact that its rules of conflict can refer another law that is not Spanish. The Court deduces from this law that, following the reform of the 1974 preliminary title, the Code admits first-degree referral and therefore the succession of property located in Spain must be regulated pursuant to Spanish law. In order to become acquainted with Maryland material law and its rules of conflict, the Court resorted to information from the United States Embassy, availing itself of the provisions of art. 12, last paragraph.

The foregoing having been established, and the demise of the decedent having taken place in 1977, the Court decided about his succession based on the wording of the Civil Code which, in respect of succession is that established by L 24 of April 1958.

The Court continued the analysis, interpretation and evaluation of the wills, the mention of the children without leaving them anything, after having invoked his freedom to testate as he saw fit on account of being an American citizen, and reached the conclusion that the children were disinherited without a cause having been given, which, pursuant to art. 851 *CC*, renders the appointing of an heir null in so far as it harms the plaintiffs, although it does not induce nullity of the will itself. And so it declared, after arguing that what it had conceded was not inconsistent, given that it was less than what had been requested.

Three.– The plaintiffs, against whom an appeal has now been lodged, are authorised to claim what is rightfully theirs, in accordance with the law of succession, given that their status is that of children of the marriage of the decedent and that the nullity of the marriage of their parents, declared by decree of this Court in which it explicitly recognised their civil rights inherent in their filiation, through application of art. 69 of the Civil Code now in force, does not affect them.

The Spanish Courts have jurisdiction, as established under art. 21 *LOPJ* (Organic Law on the Judiciary) when it states: 1. "The Spanish Courts and Tribunals shall be seised of the trials that take place in Spanish territory between Spaniards, between foreigners, and between Spaniards and foreiguers pursuant to the provisions of this law and in the international treaties and conventions to which Spain is a party. 2. Excepted are cases of immunity from jurisdiction and enforcement laid down by the rules of Public International Law", and art. 22 on establishing that in the civil order, the Spanish courts and tribunals shall be competent "...in matters of succession, when the decedent had his last domicile in Spanish territory or (as happened in this case), possessed real property in Spain."

Four.– The primary grounds, pursuant to art. 1692, no. 3, state that the judgment that has been appealed breaks the rules that regulate procedural acts and guarantees,

and specifically art. 340, on having ordered the taking of action to make up for the lack of action by the defendants and having thereby produced a state of defencelessness for the plaintiffs.

It states that the infringement that was reported, committed in the second instance, could not be declared, wherefore it was impossible to correct it. Then it argues that when the nullity of the will was requested, backed by the law of the State of Maryland and in art. 9.8 *CC*, in accordance with which it was understood that disinheritance of the children had to be specified in the will, the defendants, limited their defence to demonstrating the freedom to testate that exists in the laws of the State of Maryland. However, the Court requested a report on inheritance law in that country, and based on it settled the dispute by changing the cause of the request.

The grounds cannot be considered; they confound two issues – the inconsistency of the judgment and the infringement under art. 340. The first issue has nothing to do with the infringement under art. 340, and has especially been an object in other grounds, in which it will be dealt with.

The infringement specified under article 340 did not take place because, as affirmed repeatedly in the jurisprudence, the power given to the Court under said article in order to be better able to furnish evidence, such as preliminary investigation proceedings carried out by the jurisdictional body itself in order to achieve conviction on the matter of the trial, has nothing to do with the expediting of a court action *ex parte* and the principle of the provision (see Supreme Court decisions of 19 October 1992 and 20 July 1993). They must indeed, as stated by the appellant, be used with moderation and never in order to make up for deficiencies of the parties, but in the case under consideration, in which litigation has been instituted on the succession of a citizen of the United States of America, in which both allege the existence of contradictory legal provisions which, like all foreign law, are issues of fact (see Sentence of 23 October 1992) on which a criterion must be reached in order to comply with the irrevocable obligation to pass judgment (art. 1.7 *CC*), it is not contrary to the principles that govern art. 340 to make use of the powers that it confers, especially since art. 12.6 itself states that, "the Judge may moreover avail himself of as many instruments of verification as he may deem necessary, issuing the appropriate orders to this effect).

The order in which, based on the aforesaid article, the Judge asked the United States Embassy and the Technical General Secretariat of the Spanish Ministry of Justice for a report on the rules of international private law or the rules of conflict applicable in the State of Maryland to succession issues, was indeed opportune.

Five.– The second grounds, provided under art. 1692.3, charge that the essential forms of the suit regulating the judgment, and contained in art. 359 *LEC*, were disrupted on account of inconsistency.

They argued the existence of inconsistency by saying that the claim called for nullity of the will because (the decedent) disinherited his children without stating his wish to disinherit them in the will. Nor did he make this known previously. On the

contrary, far from disinheriting them in the will itself, he recognised them once again.

In view of these facts, the defendants' defence was limited to showing that such alleged provision did not exist, but the Court made its decision based on the fact that that the guiding law in respect of succesion by will was the Spanish and not the law of Maryland, by application of the rule of *lex loci rei sitae*.

The grounds were not admitted because although the suit indeed concerned the nullity of the will because it failed to contain the causes of disinheritance required by the law in force in Maryland, and the correct law for the case is the national law of the decedent (art. 9 *CC*), what is really at stake is who is entitled to inherit the real property located in Spain. To this end, the foreign law and its content must be known, and although the parties which maintain that it exists and is valid must cite it and prove it, it is true that in the case concerned, after so many procedural vicissitudes in the two countries, it is possible to reach the conclusion that the burden of proof lies on both of them, given their conflicting positions and statements about provisions and counter-provisions that prevented recognition of the respective inheritance rights. In any event, use of the use of the *iura novit curia* once the existence of the law had been established, did not give rise to lack of defence, nor can it be understood that it is incongrnent to limit what has been conceded to the nullity of the establishment of an heir (instead of the nullity of the will), given that conceding less than what has been requested is not prohibited by the principle of congruence.

For these same reasons, the third grounds are rejected in which the same issue is brought up (incongruence, lack of defence, failure to comply with art. 340 of the *LEC*), but now with the support of the Constitution, art. 24 of which invokes protection as provided under art. 5.4 *LPOJ*. Indeed, this last provision authorises the basing of appeals on the infringement of a constitutional provision, but it is not infringed by a Court which decides in respect of the constitutionally correct procedural rules which, as has been stated, have not given rise to lack of defence on being applied. If that had hapened, it would have led to consideration of the previous grounds, without any need to use the name of the Constitution in vain.

Six.– The fourth grounds, based on art. 1692.4, charge that the rules of the applicable legal order and of jurisprudence have been infringed in order to hand down a ruling on the suit – specifically art. 12.6. last paragraph, of the Civil Code and the jurisprudence contained in the Decisions of 30 June 1962, 28 October 1968, 4 October 1982 and 7 September 1990.

In accordance with these decisions, they argue, the foreigu law must be proved – "not only its exact significance, but also according to the sense and the scope attributed to it by the courts of his country" (Decision of 30 June 1962). The decision of 28 October 1968 is of the understanding that there was evidence in the suit that it settled by means of authenticated certificates from the Consulate of Cuba and clarifications by Cuban lawyers. The decision of 7 September 1990 also recalls that the foreign law is an issue of fact that must be set forth and proved in such a way that its application does not give rise to doubts. This criterion is reiterated in the decision

of 15 March 1984.

It then asserts that it is not an issue of fact, but rather of the interpretation of a legal provision, such as is art. 12 of the Civil Code (*CC*) which lays down the requirements for invoking foreign law, and that in the proceedings, none of the documents used by the Court to decide constitutes proof of the existence and validity of the American law applied.

The grounds lose force because the foreign law is indeed considered to be factual. The affirmation by the Court concerning its content and validity is a conviction reached in accordance with the rules of healthy criticism, availing itself of its duty to evaluate the evidence. Therefore its criterion must prevail unless it is illogical or absurd. However, the statement made by the Court of the First Instance to the effect that a rule of conflicts exists in Maryland whereby succession to property by its citizens is governed by the *rei sitae*, does not have such defects. All the foregoing is irrespective of whether or not said provision was correctly applied to this case, which is not a matter to be decided in these grounds.

The aforementioned decisions, all of whose doctrine is absolutely respected, decided in their respective cases about the existence and validity of the applicable law, but that is no reason why, in this case, the foreign law has been determined by the simple documentary evidence of the court proceedings, held to be sufficient by the Court.

Seven.– The fifth grounds, provided under article 1692.4, maintain that the Court infringed the doctrine of estoppel, contained, among others, in the decisions of 1967 (*sic*), 28 February 1974, 27 December 1976, 5 October 1984 and 16 October 1987.

The chief argument in the grounds maintains that if the plaintiffs have always acknowledged the validity of the will, which they have defended even before the Maryland courts, calling it perfect, valid and effective, to maintain the contrary now would not be allowed by the aforementioned decisions.

The doctrine of estoppel contained in the aforementioned decisions and in the more recent decisions of 18 January and 27 July 1990, 14 May 1991, 12 April and 26 May 1993 and 10 June and 9 October 1994, etc., declares that the assertions concerned are those in which those who make them create, change or cancel some right, and that the act itself reveals the express wish of the person who made it or the tacit wish that can be deduced from the unequivocal assertions made; and that the appellants whose only unequivocal wish is to obtain what they understand to be their rights in respect of succession, do not contradict themselves when they ask for them once again, even though now it may be through applying Spanish succession law to the will. This is exactly what they tried to achieve in Maryland, although there it was through understanding that the previous will had been revoked – the one that they now impugn because in it they are disinherited without any reason having been given.

For these reasons the grounds cease to exist.

Eight.– art. 12.2 *CC* states textually as follows: referral to foreign law shall be understood to be to its material law, without taking into account the renvoi that its

rules of conflict may make to another law that is not Spanish.

This provision leaves perfectly clear that when art. 9.8 *CC* declares, "sucession on account of death shall be governed by the national law of the deceased at the time of his death, whatever may be the nature of the property and the country in which it may be located", the law applicable to the succession concerned in these proceedings is that of the State of Maryland. However, when the rules of conflict of that state refer the case to another state that is not Spain, that renvoi shall not be taken into account (and the law of Maryland shall continue to be applied), but if the renvoi, as in this case, is to Spanish law, given that the laws of succession of Maryland lay down that, in respect of real estate, succession is governed by the law of the place where it is located, this renvoi must indeed "be taken into account", since this is required under the provisions of art. 12.2.

The phrase "taken into account" is not equivalent to saying that our laws of succession must inexorably be applied, given that in Spanish (Dictionary of the Royal Academy) "taking into account" means "bearing in mind or considering", and that is what this Court must do: consider whether *renvoi* (which has sometimes been admitted by our courts of the first instance) should be accepted in this case, by virtue of the provisions in the rules of conflict of the State of Maryland, which uses as a counection the place of location of the real estate in order to determine by which material law the succession of its citizens must be governed.

The denial of renvoi can be based on the fact that the clash between the statute of succession established in art. 9.8.*CC*, and that which mentions and allows the return of *renvoi*, as does art. 12.2, does not exist, being more apparent than real. art. 12.2 contains a general rule, belonging to those called "rules of application or operation" – which cannot be interpreted in isolation but only in conjunction with the specific rule that regulates matters of succession, which under Spanish law is art. 9.8. The latter inclines towards the connection of nationality in choosing the guiding rule of succession, whatever may be the nature of the property and the place where it may be located.

Spanish law understands the national law of *de cuius* to be predominant; at the same tinne, the Spanish law of succession is universalist – in other words, it maintains the criterion of unity of the system of succession.

To that can be added that the defence of legitimate rights, undertaken by the plaintiffs and backed by Spanish law, does not necessarily have any real content, and therefore does not lend weight to the theory of renvoi in the inheritance of real property located in Spain.

Finally, renvoi must be understood as an instrument of harmonisation of the legal systems of states – an instrument that respects the principles from which it draws its inspiration. If American law is based on testamentary freedom, and does not recognise the legitimate rights of children, in no way would it harmonise the co-existence of the respective rights or the application of Spanish law by this Court to the succession, that gave rise to this litigation, of the deceased, who kept neither his

residence nor his domicile in Spain. The result of the foregoing is that it is the last of the grounds that should be accepted. In them, through art. 1692, no. 4, the infringement of arts. 9.1 and 8 and 12.2 *CC* is denounced, based on which it was understood that the naming of an heir was deemed null "in so far as it harms the legitimate rights of the children" of the deceased, who are protected by the Court under art. 851 *CC*. To conclude, the "legítima" (share of an estate which passes by law to the family and dependents) does not belong to matters protected by domestic public policy.

2. Applicable Law. Interlocal Conflict of Laws

– SAP Barcelona, 25 January 1995, *Actualidad Civil*, n. marg. 1289.
Note: See XXIV. Interlocal Conflict of Laws

3. Applicable Law. *Cautio Iudicatum Solvi*

– SAP Badajoz, 11 July 1995, *REDI*, 196–58–Pr.
Succession of an English national who died in Spain; appeal filed in Spanish court regarding property holdings in Spain and personal property in Spain and France. Applicable law: Renvoi.

First.– The antecedents related to the legal question at hand which constitutes the *thema decidendi* of this resolution are based on the following facts:

A) Mr. John Anthony D. of English nationality died leaving a nuncupative will formalised in Almendralejo on 23 November 1987 in the presence of the Notary Public of this town and through which he named his wife, Mercedes R.S. as the singular universal heir of his possessions, rights and actions without detriment to the legitimate rights that, in accordance with his National Law, could be claimed by his three children: Sarah, Teresa and Timothy from a former marriage to Diana R. which ended in divorce in 1950.

B) The descendants referred to above, citizens of England and the United States, filed suit requesting: First, that Spanish substantive law prevail with regard to the succession of John Anthony D.; Second, the children of the deceased are legitimate heirs together with the surviving spouse; Third, as a consequence their right to their legal legitimate part should be recognised; Fourth, the act of partition undertaken between the testamentary executor Mr. M. V.-Z. and R. S., as well as the adjudication, also to the surviving spouse, formalised as a public document on 22 October 1990 by the Notary Public Tomás Agustín M. F. be considered null and void; and Fifth, the land registration naming Celia Mercedes R. S. as the owner of the property, officially recorded in the Jerez de los Caballeros land registry is null and void.

Second.– It should be pointed out that in their suit, the complainants drew up a complete list of the possessions that they feel form part of the inheritance and enumerate those that they consider form part of the estate. In their view, the estate is comprised of property and personal effects: the property measures six hectares, six ares and forty square metres located within the municipal jurisdiction of Salvatierra de los Barros. A castle known as Salvatierra de los Barros is located on this property which is registered in the Jerez de Caballeros land registry under the number 3178. Among the personal effects there is a list of paintings, furniture and other works of art found in the castle and an important collection of paintings and sculptures which are housed in the Modern Art Museum in the city of Tolosa in France.

Third.– It should also be pointed out that, with respect to the paintings, furniture and other works of art found in the castle, there is an affidavit signed by the decedent John Anthony D. in the presence of the Notary Public Gabriel A.V. on 21 May 1987 through which he declares "that he is married to the English subject Celia Mercedes R. S. and that all the furniture, paintings, furnishings and other effects that are now found in the Castle of Salvatierra de los Barros, currently Home to both him and his wife Celia Mercedes R. S., are the exclusive property of his wife given that they were acquired thanks to her private peculium." It is also important to indicate that prior to the filing of the law suit, on 16 September 1993, the widow, Celia D., in accordance with the wishes of her deceased husband, in the presence of several people including a Notary Public, donated all of the paintings, sculptures and other works of art housed in the Tolosa Modern Art Museum to this city which was represented by the Mayor on that occasion. The complainants took legal action against the defendant as well as the Tolosa Town Hall with regard to the paintings on deposit there. These actions were, however, rejected by the French courts.

Fourth.– It should also be made clear that the defence for the accused pointed out that it is not right for foreign subjects to abusively come before Spanish courts requesting that Spanish laws be applied; that it is important to distinguish between rules that regulate international jurisdiction and the substantive laws which are sometimes called upon to decide the legal procedure to be applied to foreigners that come before Spanish courts; substantive laws which will sometimes be Spanish and at other times the foreign ones or national laws of the litigant's Home country. With regard to the rules regulating international jurisdiction to be applied, there is no uniformity in comparative law. In some countries, the national law of the parties prevails as the definitive criteria with regard to international judicial authority. In Spain it is well understood that procedural rules are determined by the *lex fori* because it is a question of public order (Art. 51 *LECiv.*). The issue of the international jurisdiction rule, however, is not so clear due to the wording of the Civil Procedure Law's Art. 70. The regulation governing the jurisdiction of Spanish courts does not concur with other regulations when dealing with foreign subjects filing suit in Spanish courts. "When the situation so requires, Spanish jurisdiction should be recognised in accordance with Spanish law or with treaties signed with other nations."

Today it must be considered that the precepts of the 17 November 1982 Royal Decree (*NDL* 12544) dealing with issues regarding foreigners have been replaced by articles 9.1, 9.2 and 22 of the *LOPJ* (*RCL* 1985, 1578, 2635 and *ApNDL* 8375) thus making Spanish jurisdictional authority unquestionable in this case despite the fact that both parties in the suit are foreign and despite the doctrine established by the important 22 February 1960 Supreme Court sentence (*RJ* 1960, 2774), that ruled that disputes between foreign subjects were not within the jurisdiction of Spanish courts. Spanish jurisdiction prevails here either because, in accordance with Art. 22.2 of the *LOPJ*, the parties tacitly requested the intervention of the Spanish courts; because the legal residence of the accused, Celia Mercedes R.S. in Spain was never questioned (Art. 22.3 of the *LOPJ*); or because it was concluded that this issue should be settled by the "*lex loci*" by virtue of treaties to which Spain is party. Notwithstanding, it must be pointed out that during the course of the hearing it was argned that the accused's legal domicile is not in Spain. This affirmation was made based upon the French sentence recorded on page 316 that indicates that the law suit was filed against the accused at her home on Rue des Saints Péres in Paris. It must be stressed, however, that this issue was not brought up when the suit was originally filed and has therefore remained outside of the discussion.

Fifth.– Two other issues should also be clarified at this point. One is with respect to the real estate security bond proposed by the accused and entered as a peremptory plea in accordance with Art. 534 of the Civil Procedure Law (*LECiv.*). This "*exceptio iudicatum solvi*" is based on the principle of reciprocity. The party for the accused argued extensively that it should be applied in this case. This argument was rejected, however, but this issue was used to challenge the sentence either because the arguments formulated by the first instance judge were favourable to the petitioner or because when an attempt was made to show that this was a foreigner's right (30 June 1972 sentence) it was discovered that the English judges are not necessarily obliged to this property security bond in the case of foreigners but rather this issue was left up to the judge's criteria (point 8, p. 340). It therefore stands to reason from the perspective of reciprocity that Spanish judges should have the same faculty as their English counterparts. It should be observed that this jurisprudence is based on a restricted interpretation of the plea and of the imperative criteria of the 1 March 1954 Hague Convention (*BOE* 13 December 1961 [*RCL* 1961, 1775 and *NDL* 24699]) which clearly establishes in Art. 17 the firm will to not require the "*cautio iudicatum solvi*" of any individual by virtue of his condition as a foreign subject either to file legal charges against him or as bond to assure the payment of costs. This precept was replaced by the 25 October 1980 International Convention (*RCL* 1988, 684 and *RCL* 1989, 784) ratified by Spain and which tends to facilitate international access to justice. The accused party reacted in a different manner with respect to whether the deceased, John Anthony D. of English nationality, had actually established legal domicile in Spain. Throughout the first instance hearing the petitioner did not deny that the deceased had established legal domicile in Spain but later argned extensively

that John Anthony D. had never lost his English domicile and therefore had not acquired a new one. The problem raises a number of doubts because the English system, unlike the Spanish one, (Art. 40 Civil Code) is very adamant when it comes to the loss or acquisition of legal domicile. It is always presumed that English nationals do not wish to lose their English domicile under any conditions, maintaining at least the "*animus*". The English system may even require that certain formalities be carried out in order to acquire new legal domicile in the country of residence. This is an important issue because the applicable law is to be determined by the legal domicile. This issue was not raised in the first instance hearing and is therefore a new issue because, as has already been mentioned, the deceased's legal domicile in Spain had already been accepted by the accused. Regardless of these facts, legal domicile as an objective concept must take precedence over considerations of will or intention as has been indicated by this Supreme Court sentence as well as by the 3 December 1955 sentence (RJ 1956, 213).

Sixth.– The key issue in this case is to determine what legislation should be applied to the succession of John Anthony D. At the outset it would seem that, given that the deceased was a citizen of England and had left an open will signed in Salvatierra de los Barros in Spain where he died, the applicable law, in accordance with Arts. 9.1 and 9.8 of the deceased's Nationality Law, is the English law since John D. was an English subject and in his last will and testament expressed his firm decision to pass on his possessions according to the laws of his country leaving everything to Mrs. D. and nothing to his children. Under English law, one is free to draw up a will as one pleases and makes no provisions for forced or mandatory succession. There are however, especially since 1925 and 1938 (Administration of Estates Act 1925 and the Family Provision Inheritance Act 1938), certain specific obligations with respect to certain destitute family members or a widowed spouse but which provide little more than a guarantee of funds for food. This is very different from Spain's "legitimate heir" system.

Seventh.– With regard to the right to draw up a will as one pleases, the parties are in complete agreement. The disagreement stems from the complainant's argument that references made in Arts. 9.1, 9.8 and 12.2 of the Civil Code to National and material law refer to English law in its entirety including its conflict resolution rules. In the view of the complainant, these rules remit to the "*Lex rei sitae*" with regard to real estate holdings (the castle and the surrounding lot) and with regard to other assets, regardless of where they may be found (thus including those in France), remittance to the domicile law. In summary, in both of the above described cases (real estate holdings and other assets) Spanish legislation would apply and the deceased's children would therefore be able to lay claim to what the complainant quantified as two-thirds: one third bare legal title, respecting for the time being the usufruct of the widowed spouse and another ... third corresponding to the property inheritance. The accused, however, rejects the notion of renvoi and denies that the complainant has formally proven renvoi to Spanish law and therefore the Spanish judges should apply

the National Decedent Law, respecting the right of the deceased to draw up his own will in accordance with English law. In the view of the accused, it is not fair that foreigners use the Spanish courts to their own advantage especially considering that none of those involved in this suit have Spanish nationality and that their claim is contrary to the will of the deceased which, under National Law, is not restricted in any way. The first instance judge accepted the view of the complainant on this point and his objection constitutes the motive expressed by the accused in the hearing.

Eighth.– There is certainly no easy answer with regard to these issues. The Private International Law system in Spain has been and still is very deficient after the 1974 reform. The authors discussed the possibility of renvoi and the sparse jurisprudence that does exist was contradictory. The discussion carries on because the wording of the current Art. 12.2 is very deficient and even contradictory. It has generally been criticised by all the authors although some, like Carrillo Salcedo, say that it is the very lack of precision with regard to the precept that allows for a certain degree of freedom when ruling on these issues. Others point out that renvoi is not applied as a general rule in all cases or that it is the judge's decision to apply it when he sees fit in accordance with the circumstances of each case. The majority of the authors: Simó Santonja, Borrás Rodríguez, Albaladejo, Carrillo Salcedo, Vallet de Goytisolo agree that to a greater or lesser extent and more or less successfully, first degree renvoi has been legally laid down in Spanish law. In our view, the problem is even more thorny from the English perspective. English law does not have a written set of conflict resolution rules (except for Lord Kindow's Act). Conflict resolution rules in Great Britain are established through jurisprudence and are rooted almost exclusively in case law. Furthermore, English material law dealing with inheritance issues does not correspond at all to Spanish law (unity principle) when it comes to division or fragmentation (in Britain, different laws may be applied to different inherited assets). In this area of law, the principle of reciprocity is very important for the English judge, a principle that Spanish Private International Law does not adhere to; the former putting himself in the place of the judge of the other country to apply the law that the latter would have applied. With respect to renvoi, the parties had a drawn out discussion over whether renvoi exists under English law, whether it is indeed applicable to the case at hand and whether it has been sufficiently established as a matter in deed with the accompanying affidavit and sentences. The truth is that this issue has no easy answer. In the Annesley case (21 May 1926) English jurisprudence applied the principle of double renvoi which is not readily comprehensible (Ross case; Duke of Wellington case Adams, file page 356 by the accused).

The principle of double renvoi presupposes that in those cases in which the English conflict resolution rule remits to the legislation of another country, it must be determined whether that other country accepts or rejects the renvoi. In the event that the other country rejects it, English law applies. If, however, the other country admits it, the English judge would apply the material law of the foreign country. When a case is heard involving a country that accepts renvoi like France, for example, the English

judge would apply French material law (Annesley case) and if the foreign country does not accept renvoi, the English judge would apply English law (Ross case). This curious rule explains why in the Duke of Wellington case as well as the Adams case (page 356) the English judge applied English succession because remittance does not exist under Spanish law. If this decision was questionable in the Duke of Wellington case, it is even more surprising to find it affirmed after the 1974 reform. Following the logic of this rule, if by some chance an English judge heard this case at hand, he would probably apply the English legislation to the succession question of John D. (freedom to draft one's own will) arguing that Spanish law does not contemplate renvoi.

Ninth.– The issues arising from the petitioner's enquiries had to be explicitly dealt with in the above analysis and the Spanish judge should apply the Spanish conflict resolution rules as is called for by English legislation, the deceased's national law. If the English law's conflict resolution rules remit to the law of the place and domicile (which are Spanish in both cases) and if it is assumed, despite existing doubts and the lack of Supreme Court jurisprudence on this particular issue, that this law of place and domicile is Spanish law which should take precedence over Arts. 9.1 and 9.8, then the decision taken by the first instance judge is correct. This decision could later become subject to international treaties like the Convention on the law applicable to succession issues coming into force "*erga omnes*" through which unity criteria with regard to inheritances were adopted over fragmentation. This treaty is yet to be endorsed by the parties to this suit but the complexity and difficulty of Private International Law issues which involve both competence and jurisdiction, indicate that at some later date rational criteria will be developed and will incorporate the constitutional and process principles necessary to assure that all individuals that may be affected by the decision taken in succession cases, whether they be legitimate heirs or by virtue of a will and testament, be called to participate in the process.

XII. CONTRACTS

– SAP Alicante, 4 October 1995, *REDI*, 1996–4–Pr.
Note: See II. International Jurisdiction

XIII. TORTS

– SAP Álava, 9 March 1995, *REDI*, 1996-4-Pr.
Note: See II. International Jurisdiction

XIV. PROPERTY

XV. COMPETITION LAW

XVI. INVESTMENTS AND FOREIGN EXCHANGE

XVII. FOREIGN TRADE LAW

XVIII.BUSINESS ASSOCIATION/CORPORATION

1. Nationality of Legal Entities. Corporate Groups

– SAP Barcelona, 15 June 1995, *RECA*, 1996 p. 153.
Responsibility claim filed against a Spanish company. Legal relationship with a German insurance company.

Second.– A study of the case clearly indicates the inappropriateness of once again calling into question the validity of the summons issued to the completely identifiable co-defendant: from the outset, the complainant filed legal charges against O.S.E., C. of S., S.A., which remains to date a subsidiary of the German insurance company O.S. Kg Zweignederlassung Stuttgart. For that reason, the alleged lack of relationship between the accused and the transport operation giving rise to this suit – summons issued to the accused's legal representative, Mr. Llobregat, and the company's headquarters in Laval, district of Gandía (Valencia) – and with the German company was clarified rightfully from the very beginning by the Court *a quo* in its 22 April 1992 ruling upholding the validity of the summons. The decision was specially based on documentary certification (indispensable in order to resolve this unforeseeable situation) through which the co-defendant declares that the German company is a collaborating subsidiary company; thus resolving the appeal for reversal by virtue of the resolutory act of I December 1992 which became final since it was not appealed. Furthermore, in the minor claim suit this issue was never questioned and for that reason the summons issue cannot be resolved through this appeal because it formed part of the petition and the resolutory act was never the subject of appeal despite the fact that the appellant was informed of that right.

Third.– The controversy surrounding the passive legitimation of the co-defendant is closely linked with this case. The facts clearly indicate that both enterprises are economically and functionally one and the same. Due to their physical location in

different countries, however, they opted to constitute a subsidiary company in Spain, the same company facing charges in this suit, without ever having applied, prior to or during the court procedure, the "disregard of legal entity" doctrine. This was unnecessary not only because it is always reserved as a last recourse in the identification of a legal entity and of its responsibility in legal proceedings, but also because here there is no controversy with regard to this identification, nor is there a need to discern among alleged smokescreens and unclear, hidden social or individual realities. The Court therefore aligned with the *a quo* Court in ruling that the claim is for an offence committed in Spanish territory against the interests of the German parent company; ruling supported by the above mentioned documentary evidence, testimony from the management of the Spanish company and from the body of documentation presented in these proceedings. No other parts of the appealable judgment were challenged and proved the legitimacy of the co-defendant that has been sentenced, the appeal was dismissed in its entirety and the former sentence was confirmed.

XIX. BANKRUPTCY

XX. TRANSPORT LAW

XXI. LABOUR LAW AND SOCIAL SECURITY

– STC 45/1996, 25 March 1996, *BOE,* 27.4.96
EC Regulation 1408/71
Note: See III. Procedure and Judicial Assistance

XXII. CRIMINAL LAW

XXIII. TAX LAW

– STS 4 May 1995, *REDI,* 1996–6–Pr.
Note: See VI. Choice of Law: Some General Problems

XXIV. INTERLOCAL CONFLICT OF LAWS

1. Succession

– SAP Barcelona, 25 January 1995, *Actualidad Civil*, no. Marg. 1289
Residence. Law applicable to succession and marriage settlement.

First.– The first appellant (Mrs P) raises the possibility that the residence of the causer was not Catalonian but common, given his place of birth and therefore the applicability of arts. 965 and 864 *CC* as worded at the date of the decease, which would exclude the widow from the order of succession. The second claim relates to the alleged error on the part of the Judge *a quo* in assessing the evidence, since he considered that the *de facto* separation had been accredited before the demise of Mr R. P., and that the wife likewise therefore lacked right of succession pursuant to Catalonian legislation, which would be "compatible" with remaining in the same domicile (art. 87 *CC* "to the contrary"). In third place, she challenges the assessment of the statutory share of the estate to which the heirs are entitled made by the court of first instance, in that she considers that the debts deriving from the flat are not accredited, two loans guaranteed by a life insurance policy are not assessed correctly and half of the balance of a certain bank account is not considered, the value of the trousseau is doubled and, she maintains, there is an error in the valuation of the flat, since the expert had already discounted the registry charges. All in all she assesses the value of the estate as 8,332,789 pesetas before discounting the burial expenses (336,143 pesetas) considering that the share of the estate should be established on the basis of the remainder. She ends up asking that court costs not be charged, since the judgement partially allows her opposition to the claim. The second appellant (Mr R.) ratifies these arguments, adding that, having failed to appear at the court of first instance, he has the capacity to denounce now, and does so, the error regarding the residence attributed to the deceased, asking to this effect that the decree establishing the rights of intestate succession be declared null and void.

Second.– The appellee claims first that at the court of first instance nobody questioned residence or the applicability of Catalonian law (stating "res nova", which should not be allowed) and, referring to the merits of the case, denies that there was *de facto* separation "with breakdown of the family unit" as required by law. The appellee says that the spouses had been sleeping apart for 10 days but had lunch and dinner together every day, at the home of his client's parents-in- law and at her own parents' home alternately and, in order to support his claim, analyses the evidence entered into the record. With respect to the estate, he considers it has been valued correctly by the Judge "a quo", considering that the two loans are "offset" by the value of the car, defending the effective payment of the credits despite the insurance policy and the correct valuation of the trousseau and the flat (which had been clarified at the date of the decease of the causer). He urges that the decision regarding the legal costs be confirmed since the main claim had been allowed to a substantial degree.

Third.– The court can no doubt analyse of its own motion the first question raised

(which had also come to its knowledge by virtue of the appeal lodged by the defaulter, since it is necessary to establish the law applicable to the succession according to the personal status of the deceased and inasmuch as art. 15.1 *CC* provides that, in the event of a conflict of law arising from the coexistence of different civil legislation in Spanish territory, the rules of Private International Law shall be applied from chapter IV of the preliminary title and it is clear that the establishment of the applicable law, since it is a matter of *ordre public*, must be carried out even in the absence of denouncement *ex parte*. In order, then, to establish the applicable legislation, it should be borne in mind that the law governing succession is the personal law of the causer "at the time of his demise" (art. 9.8 *CC)* and it should therefore depend on the residence of Mr José Antonio R. P. (RIP) on 29 May 1989. Born in Cabra (Cordoba) on 17 September 1958, he was married in that city in which he was domiciled (sheet 11) on 6 July 1984 at the age of 25. The evidence of the time that the deceased lived in Catalonia before dying is scanty but not null and it should be considered: a) that the time spent in a certain region before reaching legal age cannot be taken into consideration with respect to the attainment of residence, since the residence conferred by *patria potestas* takes precedence (arts. 14.2 and 3CC, 225.2 of the Civil Registry Rules (RRC) and Judgment of the *Tribunal Supremo*, 23 March 1992); b) that, nonetheless, from the date of reaching legal age (18 September 1976) to his demise (29 May 1989) well over ten years had elapsed, the requirement for gaining residence; c) that there is no evidence to suggest that the deceased abandoned this region after getting married, although it is true that he worked for the *Banco de Santander* and engaged in his activity (performance and development of banking operations) in that city (sheet. 103b); d) That residence is acquired "ipso iure" without the need for any declaration or presumption of a tacit declaration, and it should therefore be concluded that at the date of decease the law of succession applicable was the Catalonian law, specifically *Llei* 8/1987, of 25 May (*DOGC,* 10 June 1987 and *BOE*, 25 June 1987), in consideration of Temporary Provision 10 of the *Codi de Succesions* passed by Law 40/1991 of 30 December. The court judgement should thus be ratified on this point since it applies Catalonian legislation correctly.

Fourth.– The valuation of the estate is a different matter, since the doubt remains as to the economic settlement applicable to the married couple. As opposed to a doctrinal trend that advocates the presumption that a person's local residence is that of the domicile (Judgments of the *Audiencia Territorial de Barcelona*, 5 February 1973 – *RJC* 1973, p. 235 – 2 March 1972 – *RJC* 1972, p. 352) backed partially in the Judgment of the *Tribunal Supremo* of 8 March 1968 – *RJC* 1969, p. 345 – other decisions (Judgment of the *Audiencia Territorial*, 15 February 1972 and Decision of the *DGRN* 3 July 1967 – *RA* 4361) maintain that this presumption cannot be maintained, and this position does not lack support in view of arts. 68.2 and 96 of the Civil Registry Rule, which envisages the possibility of a governative file to presume residence – *cf.* art. 209 of the Notarial Rules, and that in the event of doubt it should be taken to be that of the place of birth. In view of this dilemma, and having proved

the material fact that the deceased was domiciled in Barcelona at the date of marriage, it is not appropriate to establish with sufficient accuracy the consequence that the deceased had acquired residence at the date of marriage, which means that the marriage should be subject to the common legal settlement of community property, since the place of birth should be considered and the conclusion that at the date of marriage the spouse had not yet acquired residence (he had only been in Catalonia as a person of legal age for approximately eight years) and pursuant to art. 14.4 *CC* as worded previously, Decreto 1836/1974 of 31 May) in force at the date of marriage (since the current reform is under Law 11/1990 of 15 October) the wife was attributed the same residence as the husband. Therefore, the estate should include the property not belonging to the marital society and the share deriving from the proper settlement of the marital society.

SPANISH LITERATURE IN THE FIELD OF PRIVATE AND PUBLIC INTERNATIONAL LAW AND RELATED MATTERS, 1995 AND1996

This survey, prepared and compiled by E. Crespo Navarro (Assistant Lecturer in Public International Law) and M. Sarriá González (Research Assistant in Private International Law) under the direction of Dr. I. García Rodríguez (Lecturer in Private International Law at the University of Alcalá, Madrid), is designed to provide information for international lawyers and law students on matters concerning Public International Law, International Relations[1], Private International Law and Community Law published in Spain or by Spanish authors[2].

PUBLIC INTERNATIONAL LAW

1. Essays, Treatises and Handbooks

ABELLÁN HONRUBIA, V., (Dir.), *Nocions bàsiques de Dret Internacional Públic per a les diplomatures de Ciències Empresarials i de Gestió i Administració Pública,* (Basic Notions of Public International Law for Courses in the Business Sciences, Management and Public Administration), Univ. of Barcelona, Barcelona 1996, 317p.

CEBALLOS LÓPEZ, L., *Diccionario de Organizaciones Económicas Internacionales,* (Dictionary of International Economic Organisations), 2nd ed., Instituto Español de Comercio Exterior, Madrid 1995, 876 p.

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1. We would like to thank Mónica Salomón from the Autonomous University of Barcelona for providing us with some data and synopses for the section on International Relations.

2. The enormous volume of works published on EC law has made it necessary to select only those which deal with general Community Law. We have been careful to include the works of authors who lecture in the fields of Public International Law, International Relations and Private International Law.

Spanish Yearbook of International Law, Volume IV 1995–1996, 495-551.
© 2001 *Kluwer Law International. Printed in the Netherlands.*

DÍEZ DE VELASCO, M., *Las Organizaciones Internacionales*, (International Organisations), 9th ed., Tecnos, Madrid 1995, 704 p.

This work, designed as a handbook on international organisations, is divided into three sections. The first, entitled, "General Questions on International Organisations" covers chapters I to VII and is devoted to the general theory of international organisations. It basically covers the origin and historical development of the phenomenon of international organisations, their concept, characteristics, classification, participation, and structure. The section also covers the development process of their intention, and the material resources and legal remedies of this type of body, subject to international law.

The second part of the manual, "Universal International Organisations" (chapters VIII to XXI) provides a detailed study of the UN and its specialised bodies, and of the WTO as the new institutional framework for multilateral international trade. The analysis of this organisation, recently set up following the Marrakech Agreement of 15 April 1994, is one of the new features of this ninth edition, which was not included in the previous one that same year. In this second section there is also a new chapter (Chap. XIV) wholly devoted to the subject of the protection of human rights at a universal level, in which we are given an overview of the UN Human Rights Programme.

The third and last part, "International Organisations of regional scope" (Chapters XXII to XXXIII) analyses the different international organisations dealing with the regions, grouped by geographical areas. Chapters XXII to XXIX refer to the European sphere, and here there are two questions which should be highlighted: firstly, the introduction of the protection of human rights as an issue addressed by the Council of Europe and, secondly, the particular attention devoted to the study of the European Communities and the European Union in the light of the Treaty of Maastricht. Chapters XXX to XXXII focus on the American continent. Here the protection of human rights within the Organisation of American States, not included in earlier editions, is given special attention. Finally, chapter XXXIII covers international organisations in Africa, Asia and Australasia.

Each one of the chapters is accompanied by a bibliographical section in which there are references both to the works quoted and to others of a supplementary nature. The manual ends with an index of quoted court rulings, one of authors, and also a subject index.

Lastly, it should be noted that this ninth edition, like previous ones, is the result of a team project in which the author has collaborated with a number of different lecturers and professors from Spanish universities.

FERNÁNDEZ DE CASADEVANTE ROMANÍ, C., (Coord.), *Lecciones de derechos humanos. Aspectos de Derecho Internacional y de Derecho español*, (Lectures on Human Rights. Aspects of International and Spanish Law), Librería Carmelo,

Donostia (San Sebastian) 1995, 304 p.

GUTIÉRREZ ESPADA, C., *Derecho Internacional Público*, (Public International Law), Trotta, Madrid 1995, 699 p.

This work is divided into four parts. By way of an introduction in one single chapter, the first section tackles the study of international society and its legal system. The second part is devoted to those who are subject to the international legal system, it consists of three chapters, and studies, firstly, the international subjectivity of the states, secondly, international intergovernmental organisations, and lastly, other subjects of International Law (peoples and individuals).

The third part of this work deals with the sources or bases of the international legal system. International treaties are covered in Chapters V to XX. Chapter V is an introduction to the sources of International Law, analysing the concept and different types of international. Chapter VI tackles the study of the process of formalising international treaties, and Chapter VII deals with reservations to international treaties as well as their deposit, publication and registration. Chapter VIII analyses Spanish law in the process of signing international treaties. Lastly, chapters IX and X concern the effects of international treaties (between the parties; with regard to third parties; and the secession of States as regards treaties and their interpretation), and the crises concerning treaties (amendment and modification, nullity, termination, suspension and procedures for settling disputes).

Chapter XI in the third section tackles the analysis of international customs, followed by Chapters XII and XIII which study the general principles; "additional resources" (doctrine and case-law); resolutions of international organisations; and unilateral acts. A final heading is devoted to the hierarchy in international regulations.

This work concludes with the fourth section which includes Chapter XIV devoted to relationships between international regulations and internal law, with particular reference to Spanish law. This chapter analyses the problems relating to receipt, hierarchy and internal application of international regulations, whether they be treaties, customary regulation or resolutions made by international organisations, and the author deals with Spanish law in some detail.

This work therefore follows the classic structure of the general section of a manual on Public International Law (introduction, subjects, sources and relations between international law and internal law). However, it should be pointed out that all the chapters are accompanied by a major section of notes and an extensive bibliography. It should also be said that the book includes no less than five specific indexes (of authors, court and arbitration rulings, subjects, resolutions of the General Assembly and the UN Security Council, and international treaties) as well as the corresponding general index, all of which are extremely useful for consultation.

MAPELLI LÓPEZ, E., (Ed.), *Código de leyes internacionales de aviación civil*, (Code of International Civil Aviation Laws), Centro de Publicaciones del Ministerio de Obras Públicas, Transportes y Medio Ambiente, Madrid 1995, 302 p.

MARIÑO MENÉNDEZ, F. M., *Derecho Internacional Público (Parte General)*, (Public International Law – General Part), 2nd ed., Trotta, Madrid 1995, 602 p.

MINISTERIO DE ASUNTOS EXTERIORES, *Administración del Estado en el exterior. Textos normativos básicos*, (Central Government Abroad. Basic legal texts), Secretaría General Técnica del Ministerio de Asuntos Exteriores, Madrid 1996, 1187p.

PASTOR RIDRUEJO, J. A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, (Course on Public International Law and International Organisations), 6th ed., Tecnos, Madrid 1996, 861 p.

ROLDÁN BARBERO, J., *Ensayo sobre el Derecho Internacional Público*, (Essay on Public International Law), Univ. of Almería, Almería 1996, 158 p.

TRUYOL Y SERRA, A., *Histoire du droit international public*, (A History of Public International Law), Economica, Paris 1995, 188 p.

"Histoire du Droit International Public" is based on the second part of another previous work by the same author. The work is entitled "Bases of Public International Law" and refers specifically to the historical bases, in contrast to the first part which is devoted to the doctrinal bases. Nevertheless, given the enormous influence which doctrine has had on the development of Public International Law, a major space is also reserved here for this subject.

In this historical account the author adopts a universal perspective, since he does not limit himself to the analysis of so-called "classic" International Law, which came into being in the 16th and 17th centuries, as he considers that this law is no more than one of the several different historical forms of international law, albeit perhaps the most important one.

The work, consisting of thirteen chapters, preceded by a preface and an introduction, and followed by an epilogue, is thus a broad historical account which begins with an analysis of the institutions and practices of the great civilisations of the Ancient East (Chapter I, "International Law in the major civilisations of the Ancient East") and concludes with the study of contemporary international law which regulates international society today (epilogue: "From history to the present day"), mentioning international law in the ancient Greek and Roman period (Chapter II); in the medieval Christian West (Chapter III); in Byzantium (Chapter IV); in medieval Islam (Chapter V); the legal system of peoples which arose after the genesis of the modern European inter-state world (Chapter VI); international

law between the Peace of Westphalia and the Congress of Vienna (Chapter VIII); between the Vienna Conference and the First World War (Chapter X), and the period between the wars (Chapter XII).

As we have already mentioned, Professor Truyol also pays special attention to doctrine, fully devoting several chapters to the subject: specifically, Chapter VII: "The founders of the Science of International Law"; Chapter IX: "Doctrine after Grotius"; Chapter XI: "19th century doctrine", and Chapter XIII: "Doctrine in the twenties and thirties", apart from other references throughout the text.

2. Books in Honour of

3. Monographs and Collective Works

ACOSTA ESTÉVEZ, J. B., *El proceso ante el Tribunal Internacional de Justicia,* (Court Cases in the International Court of Justice), Bosch, Barcelona 1995, 283 p.

BEDJAOUI, M., *Nuevo orden mundial y control de legalidad de los actos del Consejo de Seguridad,* (The New World Order and the Control of the Legality of Security Council Action), translated by Fernández de Casadevante Romaní and Quel López, Instituto Vasco de Administración Pública (IVAP), Bilbao 1995, 403 p.

BONET PÉREZ, J., *Las reservas a los Tratados Internacionales*, (Reservations in International Treaties), Bosch, Barcelona 1996, 207 p.

BUSTOS GISBERT, R., *Relaciones Internacionales y Comunidades Autónomas (International Relations and Autonomous Communities)*, Marcial Pons, Madrid 1996, 516p.

CARRERA HERNÁNDEZ, F. J., *Política pesquera y responsabilidad internacional de la Comunidad Europea,* (Fisheries Policy and the International Responsibility of the European Community), Univ. of Salamanca, Salamanca 1995, 336 p.

CARRILLO SALCEDO, J. A., *Soberanía de los Estados y Derechos Humanos en Derecho Internacional contemporáneo*, (State Sovereignty and Human Rights in Contemporary International Law), Tecnos, Madrid 1995, 174 p.

CORRAL, C., and DÍAZ DE CERIO, F., *El Conflicto sobre las Islas Carolinas entre España y Alemania (1885). La Mediación internacional de León XIII*, (The Conflict between Spain and Germany over the Caroline Islands (1885).

International Mediation by Leo XIII), Complutense, Madrid 1995, 254 p.

CORTES GENERALES, *Los nuevos retos y la reforma institucional de las Naciones Unidas*, (The New Challenges and Institutional Reform of the United Nations), Servicio de Publicaciones del Congreso de los Diputados, Madrid 1995, 91 p.

ENSEÑAT Y BEREA, A., *Estudio del Tratado sobre Fuerzas Armadas Convencionales en Europa,* (A Study of the Treaty on Conventional Armed Forces in Europe), Secretaría General Técnica del Ministerio de Defensa, Madrid 1995, 230 p.

FERNÁNDEZ DE CASADEVANTE ROMANÍ, C., *La interpretación de las Normas Internacionales*, (The Interpretation of International Regulations), Aranzadi, Pamplona 1996, 351 p.

As Professor Sánchez Rodríguez stresses in the preface to this work, unlike domestic rules, where "the task of interpretation, with its methods and techniques, has well-defined and simpler characteristics... owing to the powerful influence of the centralised institutionalisation of powers, particularly the legislature and the judiciary", in International Law, the interpretation of regulations "entails special problems and added technical complexities, apart from those arising from the fact that the same regulatory text is expressed in several languages".

Aware of these differences, Professor Fernández de Casadevante Romaní approaches the problem by examining state influence, not only during the making of International Law, but also when it comes to applying and construing it in specific cases. He describes the existing relationship between sovereignty and interpretation as one of "dependence"; this is evidenced by the fact that each state's unilateral interpretation of these rules has the same value. This does not mean to say that there is absolute freedom in construing international regulations. On the contrary, there are principles, rules and interpretative criteria. What happens it that as states are not duty bound to have recourse to an international court or arbitration body to settle disputes, these will persist despite the existence of such rules and principles inasmuch as it is the state itself that is first to construe the regulation. We are thus faced with unilateral constructions – which may furthermore be authentic since they are made by those responsible for creating the regulation – that are valid but different, and these differences will persist unless it is agreed to submit the dispute to a third party.

Contrary to what may be thought, the existence of principles such as good faith and rules on interpretation such as those laid down in the 1969 and 1986 Vienna Conventions on the Law of Treaties do not enable the problem of construction to be resolved. On the one hand, because good faith can only be invalidated by means of bad faith – something that is indeed difficult. On the other, because the parameters for interpretation established in the 1969 and 1986

Vienna Conventions can lead to different interpretations in specific cases, which will remain unresolved until a third party intervenes. It should not be forgotten that the construction of international regulations is not unrelated to the political interests of the state that construes them. And nor is language decisive when drawing up such regulations – indeed, states prefer a wording that allows them a greater degree of freedom.

International Law has established a series of codified parameters in the 1969 and 1986 Vienna Conventions on the Law of Treaties to deal with the process of interpretation. However, the problems and the need for interpretation do not arise solely with respect to treaties, but also in relation to any other international regulations (institutional or of customary law) and from other forms of creating international obligations (unilateral declarations or administrative documents). In short, it is an issue that affects the international legal system as a whole and is manifested in different ways depending on the type of law. Professor Fernández de Casadevante Romaní takes this reality into consideration and addresses it from this perspective in Chapters II ("The text, authentic expression of the will of the parties, constitutes the object of differences: conventional rules"), III ("The institutionalisation of the International Community brings a new dimension to lawmaking: institutional rules"), IV ("Behaviour, expression of the will of the state, constitutes the reason for difference: customary rules") and IV ("Do declarations express the will of the state or is it the interpreter who construes them? Unilateral declarations").

The second part sets out to examine the interpretative parameters used both by the International Court of Justice and by courts of arbitration. It emerges that, unlike arbitration case law, the International Court of Justice does not use the parameters laid down in the Vienna Conventions of 1969 as they were conceived by the International Law Commission, that is, as a joint operation rather than in isolation.

The third part of the book analyses the rules and criteria used in interpreting certain types of international regulations or instruments. Hence, Chapters VIII ("Conventional or statutory instruments: interpreting treaties *stricto sensu*", the Charter of the United Nations, the system of Mandates and the legal force of the obligations inherent in it despite the disappearance of the League of Nations, peoples' right of self-determination and the question of the form of international agreements in relation to joint communiqués), IX ("Customary rules": the general theory of customs, reservations to treaties, the concept of "terra nullius", the principle of equidistance in delimiting continental shelves between two or more states, and the principle of "uti pessidetis juris"), X ("Institutional rules of the United Nations": the Resolutions of the General Assembly and the Security Council) and XI ("Unilateral declarations": unilateral declarations in their own right and declarations accepting the jurisdiction of the ICJ).

The book ends with a chapter – number XII – on procedural instruments,

alleged facts and the exercise of the jurisdiction conferred on the ICJ.

In short, we once again agree with Professor Sánchez Rodríguez, the author of the preface, that this work by Professor Fernández de Casadevante Romaní "is a perfect combination of pure and abstract theory of public international law and the harsh interests of those who give rise to it". It is also an important monograph on a central aspect of the general theory of our legal system, which clearly indicates that Spanish judges are generally unaware of the fact that International Law contains specific interpretative parameters of which they should avail themselves in order to settle the problems of construing international regulations.

FERNÁNDEZ GARCÍA, A. and RODRÍGUEZ JIMÉNEZ, J. L., *El juicio de Nuremberg, cincuenta años después*, (The Nuremberg Trial, fifty years later), Arco/Libros, Madrid 1996, 86 p.

FORCADA BARONA, I., *El condicionamiento político y económico de la Ayuda Oficial al Desarrollo*, (Political and Economic Conditioning in Official Development Assistance), Tirant lo Blanch, Valencia 1996, 317 p.

FUNDACIÓN DE COOPERACIÓN PARA EL DESARROLLO, *La Cooperación al Desarrollo. Informe 1995*, (Development Cooperation, 1995 Report), Fundación de Cooperación para el Desarrollo, Madrid 1996, 367 p.

GÓMEZ GIL, C., *El comercio de la ayuda al desarrollo. Historia y evaluación de los créditos FAD*, (Trade in Development Assistance. History and Assessment of Spain's Development Aid Fund Loans), Consejo Local para la Cooperación y la solidaridad de Getafe/IUDCI/Los Libros de la Catarata, Madrid 1996, 329 p.

GUILLAUME, C., *Las grandes crisis internacionales y el derecho*, (Law and Major International Crises), Ariel, Barcelona 1995, 316 p.

GUTIÉRREZ ESPADA, C., *Apuntes sobre las funciones del Derecho Internacional Contemporáneo*, (Aspects on the Functions of Contemporary International Law), DM, Murcia 1995, 181 p.

This work is divided into two sections. The first is devoted to the legal system concerning physical areas. Chapter I studies geographical territories (legal status, acquisition and loss, and demarcation), while Chapters II, III and IV tackle the analysis of Maritime Law. To do this the author stops to consider the process of codification, the different legal institutions regulated by the 1982 Agreement (internal waters, territorial waters, adjoining areas, international straits, exclusive economic zones, continental platforms, islands, archipelagos and oceans), and lastly, by way of synthesis, he offers some considerations regarding what is termed "rampant national jurisdiction" over marine areas.

The second section is devoted to the maintenance of peace and international security, and in it there are two chapters. The first, Chapter V, studies the collective security system laid down by the UN charter of 1945, and its later practical application up to the eighties. Chapter VI covers the Security Council's most recent action, beginning with the Gulf War (1990–1991).

It should also be said that all the chapters that make up this work are accompanied by a major section of notes and an extensive bibliography. As its author states on the last page, this work forms part of a future project through which it is proposed to complete a manual on the functions of the international legal system, which would form the key part of Public International Law as an academic subject. To this end, in future editions it is planned to include chapters on airspace and outer space, the solving of disputes, and international cooperation (diplomatic and consular, development cooperation...) amongst other areas.

HERRERO DE LA FUENTE, A., (Coord.), *Reflexiones tras un año de crisis,* (Considerations after a Year of Crisis), Univ. of Valladolid, Valladolid 1996, 210 p.

III JORNADAS DE DERECHO INTERNACIONAL HUMANITARIO, *El Derecho de injerencia por razones humanitarias*, (The Right to Interfere on Humanitarian Grounds), Univ. de Sevilla, Seville 1995, 102 p.

INSTITUTO IBEROAMERICANO DE DERECHO AERONÁUTICO Y DEL ESPACIO Y DE LA AVIACIÓN COMERCIAL (Ed.), XXIV *Jornadas Iberoamericanas de Derecho Aeronáutico y del Espacio y de la Aviación Comercial, (Univ. de Salamanca 19, 20 y 21 Octobre, 1994*), (24th Spanish and Latin-American Conference on Aeronautical Law, Airspace and Commercial Aviation, Univ. of Salamanca, 19th, 20th and 21th October, 1994), Madrid 1995, 473p.

JIMÉNEZ PIERNAS, C., *El método del Derecho Internacional Público: Una aproximación sistémica y transdisciplinar,* (The Method of Public International Law: A Systemic, Cross-disciplinary Approach), Instituto de Estudios Internacionales y Europeos "Francisco de Vitoria", Madrid 1995, 65 p.

This work, structured in four parts, starts with an introduction in which the author underlines the importance of method in any scientific work.

In the second part, entitled "Theoretical Model and Epistemological Principles" Professor Jiménez Piernas starts off from the usefulness of opting – scientifically – for a specific pattern, paradigm or theoretical model. He proposes a systemic model of a materialistic nature, understood as a theoretical postulate which would enable the study of International Law to be addressed within an international, global or universal system that develops into a specific ecological medium that conditions it but to which, in turn, it contributes to shaping. However,

he warns that this model must be understood in a scientific and relative sense, *i.e.* as a cognitive model of the present international situation and of its processes of change, as a mere working hypothesis, the components of which must be revised on the basis of the current situation. Later, in this second section, the author undertakes a simple application of the model in order to demonstrate that unusual events related to the disappearance of the ideology-based East-West contradiction, and which have taken place over the last few years, do not any allow justification of the appearance of a "New International Order", as an analysis of the current international scene proves that we do not have the necessary coincidence of a set of variables or factors of different types which could provoke systemic change and, therefore overcome contemporary international law as a way of regulating the international system (in contrast to the events between 1945–1970 which did, indeed, give rise to the systemic change needed to allow the shift from a classic international to a contemporary international legal system). Nevertheless, in spite of the importance of the study of the material dimension, the author bears in mind the regulatory nature of the science of Public International Law which gives priority to the study of the formal reality. For this reason the author upholds the need to perfect concepts as an instrument of research, but also gives these a scientific and relative sense.

The third part, "Methodological Techniques", consistent with the model proposed, propounds a pluralistic and dynamic conception of these, insofar as it is a question of determining the content of the regulations of the international legal system in relation to its environment or material surroundings. Thus, once a specific theoretical model has been opted for, this must be subjected to general epistemological principles of scientific knowledge. This implies combining the empirical and inductive method which favours identification of regulations by observing that they are recognised as such by those who are subject to that legal system, using the logical-deductive method. (This is precisely why it is so important to analyse international practice and its testing methods.) A study of the world's present situation (or "global reality" – both formal and material) would make it advisable to adopt an interdisciplinary method, since the complexity of the international system may demand that other sciences be involved, such as international relations or political science, in order to complete the logical and formal analysis.

The work ends with a fourth section, "A theoretical model and sources of knowledge of Public International Law", which contains a number of reflections which confirm the interaction between the different sources of knowledge of the international legal system and a specific material environment which conditions them which, in the words of the author himself, ratifies the value of the theoretical model proposed as a paradigm of research.

LÓPEZ ESCUDERO, M., *El comercio internacional de servicios después de la*

Ronda Uruguay, (International Trade in Services after the Uruguay Round), Tecnos, Madrid 1996, 193 p.

MARIÑO MENÉNDEZ, F. M., (Ed.), *Balance y perspectivas de Naciones Unidas en el cincuentenario de su creación*, (Current Assessment and Prospects of the United Nations on its 50th Anniversary), Seminario Internacional, Univ. Carlos III/BOE, Madrid 1996, 231 p.

MARIÑO MENÉNDEZ, F. M., (Ed.), *Los Estados y las Organizaciones Internacionales ante el nuevo contexto de la seguridad en Europa*, (States and International Organisations vis-à-vis the new European Security Context), Seminario Internacional, Univ. Carlos III /BOE, Madrid 1995, 342 p.

MARTÍNEZ GONZÁLEZ-TABLAS, A., (Coord.), *Visión global de la cooperación para el desarrollo. La experiencia internacional y el caso español*, (Overview of Development Cooperation. The International Experience and the Spanish Case), Icaria, Barcelona 1995, 560 p.

ORTEGA CARCELÉN, M. C., *Hacia un Gobierno Mundial. Las nuevas funciones del Consejo de Seguridad de Naciones Unidas*, (Towards a World Government. The New Functions of the UN Security Council), Hespérides, Salamanca 1995, 285 p.

PONS RAFOLS, X., *Codificación y desarrollo progresivo del Derecho relativo a las Organizaciones Internacionales*, (Codification and Progressive Development relating to International Organisations), J. M. Bosch, Barcelona 1995, 151 p.

RAMÓN CHORNET, C., *¿Violencia necesaria? La intervención humanitaria en Derecho Internacional*, (Necessary Violence? Humanitarian Intervention in International Law), Trotta, Madrid 1995, 117 p.

REMIRO BROTONS, A., *Civilizados, bárbaros y salvajes en el nuevo orden internacional*, (The Civilised, Barbarians and Savages in the new International Order), McGraw-Hill, Madrid 1996, 222 p.

SCOVAZZI, T., *Elementos de Derecho Internacional del Mar*, (Elements of International Maritime Law), Spanish edition published by Bou Franch, V., Tecnos, Madrid 1995, 220 p.

SORIA JIMÉNEZ, A., *La excepción por actividades comerciales a las inmunidades estatales*, (Exception to state immunities due to Trading Activities), Centro de Publicaciones del Ministerio de Justicia e Interior, Madrid 1995, 310 p.

VALDIVIESO DEL REAL, R., *La Carrera Diplomática en España* (1939–1990), (Diplomatic Careers in Spain [1939–1990]), Marcial Pons, Madrid 1996, 228p.

VARIOUS AUTHORS, *Andorra en el ámbito jurídico europeo, (XVI Jornadas de la Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales. Principado de Andorra, 21–23 de septiembre, 1995)*, (Andorra in the European Legal Sphere – 16th Conference of the Spanish Association of Lecturers in International Law and International Relations. Andorra, 21–23 September 1995), Marcial Pons/Andorra State Department. Copríncipe episcopal, Madrid 1996, 436p.

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INTERNATIONAL RELATIONS

1. Essays, Treaties and Handbooks

BARBÉ, E., *Relaciones Internacionales*, (International Relations), Tecnos, Madrid 1995, 307 p.

This textbook on international relations provides the student with theoretical approaches, working concepts, basic data and instruments for analysis. The text is divided into two sections: the first tackles basic theories and concepts, in order to introduce the student to the discipline in Spain, while the section part of the book is centred around the analysis of international society. To do this an instrument of analysis is developed – the international system – and this is applied to the study of international society from the end of the Second World War, dwelling upon the practical theoretical questions which have arisen as a result of the end of the Cold War. The central part of the work is complemented by reading material, tables and diagrams, in order to summarise information and make study easier.

LOZANO BARTOLOZZI, P., *Relaciones Internacionales. Volumen II: "El directorio mundial, de la distensión al tiempo post-soviético* (1976–1994), (International Relations. Vol. II: The World Directory, from the Thaw to Post-Soviet Times), Eunsa, Pamplona 1995, 452 p.

This is the second part of a textbook on international relations directed at students of the Communication Sciences. (The first part is entitled, *Relaciones Internacionales [1] El Gran Consulado* [International Relations (1).The Great Consulate], Eunsa, Pamplona 1994). The work is divided into two sections, preceded by a theoretical introduction. This part, entitled "The Thaw", examines in chronological order key world events from 1976 to the beginning of the 80s. The second part, "The Crisis", deals separately with the subjects of "The collapse of the Eastern Block" (Chapter I) and "Multi-polar Re-design" (Chapter II), also adopting a chronological criterion to analyse the international system of the eighties, up to the mid-nineties.

PEREIRA CASTAÑARES, J. C., and MARTÍNEZ LILLO, P. A., *Documentos básicos sobre historia de las Relaciones Internacionales* 1815–1991, (Basic Documents on the History of International Relations 1815-1991), Complutense, Madrid 1995, 731 p.

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AGUIRRE, M. (Ed.), *Ruptura de hegemonías. La fragmentación del poder en el mundo. Anuario CIP 1994–1995*, (Rupture of Hegemonies. The Fragmentation of Power in the World), Icaria, Barcelona 1995, 397 p.

ALONSO ZALDIVAR, C., *Variaciones sobre un mundo en cambio*, (Variations on a Changing World), Alianza, Madrid 1996, 572 p.

This book reflects in depth on the changes in international society at the threshold of the 21st century. While it does not take the traditional approach of analysing the discipline of International Relations, it is nonetheless an essay that addresses the major issues faced by today's international society, such as the globalisation of the economy and information, the loss of models in Europe in the wake of the Cold War and the conflict of civilisations that has been such a topical issue in recent years. The book combines the author's analytic approach and consideration of the future with his practical experience as a Spanish diplomat. These characteristics lead him to take a view of the world that is both global (with particular emphasis on Asia's role in the world) and local (a practical dimension for Spain's integration into the world).

BALLESTEROS, A., *Diplomacia y Relaciones Internacionales*, (Diplomacy and International Relations), 3rd ed., Ministerio de Asuntos Exteriores, Madrid 1995, 277 p.

BALLETBÓ, A., (Ed.), *Naciones Unidas y la seguridad global. IV Forum de la Fundación Internacional Olof Palme*, (The United Nations and Global Security. IV Forum of the Olof Palme International Foundation), Cedecs, Barcelona 1996, 159 p.

BARBE, E., *La seguridad en la nueva Europa. Una aproximación institucional: Unión Europea, OTAN y UEO*, (Security in the New Europe. An Institutional Approach: European Union, NATO and WEU), Los Libros de la Catarata, Madrid 1995, 251 p.

This work combines the world of ideas, conceptual analysis, with the specific problems of Europe in the wake of the Cold War. Rethinking security in the framework of the new Europe is one of the aims of this work. Post-Cold War problems, such as the wars in Yugoslavia, are the central issue of a work that focuses its analysis on the capacity of the institutions to cope with these problems. The transformation of the European Union, NATO and the WEU as a reaction to

the new challenges are analysed in detail. The work deals with the different issues from a future perspective (Eastward enlargement), but without forgetting lessons learned from past experience. The work thus insists on recalling the lessons of bipolarism (The United States' role in Europe) and Europe of the Vienna Congress (*balance of power* between the European powers).

CHOMSKY, N., *El nuevo orden mundial (y el viejo)*, (The New World Order [and the Old]), trans. by Castells, C., Crítica, Barcelona 1996, 386 p.

DÍAZ-SALAZAR, R., *Redes de solidaridad internacional.* Para derribar el muro Norte-Sur, (International Solidarity Networks. To pull down the North-South Wall), Hoac, Madrid 1996, 411 p.

GARCÍA SEGURA, C., *L'activitat exterior de les regions: una dècada de projecció exterior de Catalunya*, (Foreign Activity of the Regions: Catalonia's Image Abroad over the past Decade), Fundació Bofill, Barcelona 1995, 130 p.

The book addresses the phenomenon of projecting a sub-state image abroad from the perspective of political science, within the framework of International Relations. The first part analyses the cause and context of Catalonia's image-projection. The second part gives a brief review of the constitutional and statutory framework of Catalonia's foreign image, as well as the case law of the constitutional court in foreign activity of the autonomous regions. The third part describes in detail the first decade of foreign action of the government of the Generalitat of Catalonia. The book concludes that Catalonia's foreign action is a manifestation of a world-wide phenomenon. It is a general statement on the dynamics of sub-state action that has enabled a relative normalisation and has progressively eliminated the central government's misgivings about this type of action.

GARRIDO, V., MARQUINA, A. and MULLER, H., *The implications of the NPT Conference of 1996*, UNISCI, Madrid 1996, 119 p.

GILLESPIE, R., RODRIGO, F. and STORY, J., (Eds.), *Las relaciones exteriores de la España democrática*, (The External Relations of Democratic Spain), Alianza Univ., Madrid 1995, 278 p.

This work by co-authors is the product of a joint Spanish-British research project. The book, which has also been published in English (*Democratic Spain: Reshaping External Relations in a Changing World*, Routledge, 1995), addresses different facets of Spanish foreign policy. The framework for the analysis, designed by J. Story, is supplemented by two historic studies conducted by Story himself (1975–1989) and by Ch. Powell (1898–1975). After the chapters on history theory, the book has a series of chapters on Spain's diplomatic agenda and

changes in the international system. Several Spanish lecturers in International Relations have contributed to the work. Fernando Rodrigo, of the UAM, has written a chapter on Spain's role in western security. Esther Barbé, of the UAB, has contributed a chapter on appreciation of Spanish foreign policy through its participation in European foreign policy. There is also a chapter by Caterina García, of the UPF, on the role of the autonomous regions in foreign state action.

GONZÁLEZ, A. F., (Coor.), *Cooperación Pública Vasca. Ayudas al Tercer Mundo. Segundas Jornadas Municipales sobre la cooperación Norte-Sur: la dimensión global de la solidaridad*, (Basque Public Cooperation. Aid to the Third World. Second Municipal Conference on North-South Cooperation: the Global Dimension of Solidarity), Servicio Central de Publicaciones del Gobierno Vasco, Vitoria-Gasteiz 1995, 317 p.

LARRAMENDI, M. H. DE and ÑUNEZ, J. A., *La política exterior y de cooperación de España en el Magreb (1982–1995)*, (Spanish Foreign Policy and Cooperation in the Maghreb 1982-1995), Los libros de la Catarata/Instituto Universitario de Desarrollo y de Cooperación, Madrid 1996, 190p.

This work analyses Spanish foreign policy and cooperation with respect to the Maghreb during 1982–1995, a well-defined period in national policy that marked the development of a new stage in Spain's relations with its southern neighbours. The work starts with a review of the general characteristics of the Maghreb countries (Chapter II) and the different interests that explain the nature of historical relations between the two sides of the Mediterranean (Chapter III). It goes on to study the different agents and instruments of development cooperation, the decision-making process whereby policies are adopted and the content of these policies (Chapter IV). The historical analysis of Spain's foreign policy in the area places particular emphasis on political and security aspects (Chapter V). Chapter VI, which analyses Spanish development cooperation, stresses that there is still a long way to go to make the Mediterranean an area of peace and stability. The last two chapters are devoted to the outlook for relations between Spain and the Maghreb over the coming years (Chapter VII) and future proposals (Chapter VIII).

MARTÍNEZ CARRERAS, J. V., *Los orígenes del problema de Palestina*, (The Origins of the Palestinian Problem), Arco/Libros, Madrid 1996, 60 p.

MARQUINA, A., (Ed.), *Confidence Building and Partnership in the Western Mediterranean. Issues and Policies for the 1995 Conference*, UNISEI, Madrid 1995, 140 p.

España y la II Guerra Mundial, (Spain and the Second World War), UNED, Madrid 1995, 409 p.

MATALA KABANGU, T., *El poder por el poder en África. Bases de una nueva cooperación para el desarrollo*, (Power for Power in Africa. Bases of a new Development Cooperation), Servicio Central de Publicaciones del Gobierno Vasco, Vitoria-Gasteiz 1996, 232 p.

The work analyses the political performance of the states of Sub-Saharan Africa in order to demonstrate their negative role in the development of the continent. At the same time, it seeks a new power formula in Africa, where power has a more human side that can be reconciled to an equally human development. Chapter I deals with the concept of political power; chapter II covers the reality of power in Africa; chapter III the experiences of democratisation; chapter IV development cooperation and chapter V the role of NGOs.

MESA, R. *La reinvención de la política exterior española,* (Reinventing Spanish Foreign Policy), Centro de Estudios Constitucionales, Madrid 1996, 32 p.

The work gives an overview of Spanish foreign policy from the beginning of the transition to democracy to the present day. The author upholds the thesis that the restoration of democracy in 1978 was the cornerstone of the "reinventing" of Spanish foreign policy, in that it enabled Spain to design a foreign action of its own with a view to securing a leading role.

RUÍZ MIGUEL, C., *El Sahara Occidental y España: Historia política y derecho. Análisis crítico de la política exterior española*, (The Western Sahara and Spain: Political History and Law. A Critical Analysis of Spanish Foreign Policy), Dykinson, Madrid 1995, 231 p.

VILANOVA, P., *El estado y el sistema internacional. Una aproximación al estudio de la política exterior*, (The State and the International System. An Approach to studying Foreign Policy), EUB, Barcelona 1995, 126 p.

The work addresses the issue of foreign policy from different angles which, according to the author, are based on an analysis of public policies. The book is thus divided into four chapters. The first deals with foreign policy as *decision-making*. The second concerns the issue of international players and international order, particularly the concept of international regime. The third outlines the theoretic framework of foreign policy from the perspective of perception and prevision. The fourth and last chapter, foreign policy as crisis management, deals with crises in the international system, focussing on humanitarian assistance and the role of non- governmental organisations. The author ends with the central role of the state in generating order in the international system.

4. Theses and Minor Theses

UGALDE ZUBIRI, A., *La acción exterior del nacionalismo vasco (1890–1939): Historia, Pensamiento, Relaciones Internacionales*, (The Foreign Action of Basque Nationalism [1890–1939]: History, Thought, International Relations), Instituto Vasco de Administración Pública, Bilbao 1996.

This work is a systematic study of the foreign relations of Basque nationalism. It covers both the theoretical side of thought and position taking and the practical aspect of relations, contacts and presence in international bodies. It places particular emphasis on the major change and greater importance of international action in Basque nationalism as a result of the establishment of the first Basque government as compared to the former actions of Basque nationalism as a political movement.

5. Articles and Notes

AGUIRRE ZABALA, I., "La teoría normativa de las relaciones internacionales, hoy", (Normative Theory of International Relations today), *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz 1995*, 1996, 45–96.

ARENAL, C. DEL, "Balance y perspectivas de cuatro cumbres iberoamericanas", (Assessment and Prospects of four Ibero-American Summits), *Revista de Estudios Políticos*, n. 89 (1995), 35–59.

ALDECOA LUZARRAGA, F., "El acuerdo entre la Unión Europea y el Mercosur en el marco de la intensificación de relaciones entre Europa y America Latina", (The Agreement between the European Union and Mercosur in the Framework of strengthening Relations between Europe and Latin America), *RIE*, 1995, 761–792.

ARTEAGA, F., "La seguridad europea entre el músculo y la retórica", (European Security – half Muscle half Rhetoric), *Meridiano CERI*, n. 11 (1996), 23–26.

BARBÉ, E., "Spanien", (Spain), WEIDENFELD, W. and WESSELS, W., (Hrsg.), *Jahrbuch der Europaischen Integration 1994/95*, Institüt für Europaische Politik, Europa Union Verlag, 1995, 351–358.

"Política Exterior y de Defensa: Análisis de las grandes fracturas en el proceso de la construcción europea", (Foreign and Defence Policy: an Analysis of the Major Fractures in the Process of Building Europe), *Revista International de Filosofia Política*, n. 5 (1995), 53–68.

"Reinventar el *Mare Nostrum:* el Mediterráneo como espacio de cooperación

y seguridad", (Reinventing the *Mare Nostrum*: the Mediterranean as an area of Cooperation and Security), *Papers*, n. 46, 1995, 9–23.

"The 'Barcelona Spirit' or the Mediterranean Region as a Challenge for the CFSP", *CFSP Forum (Institut für Europaische Politik)*, n. 4 (1995), 4–5.

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"Spain and the Falklands War", STAVRIDIS, S., (Ed.), *The Domestic Sources of Foreign Policy: A Study of the West European Reactions to the Falklands Conflict*, Berg Publishers Inc., Oxford/New York 1996, 51–71.

"Spain: the uses of foreign policy cooperation", HILL, CH., (Ed.), *The Actors in Europe's Foreign Policy*, Routledge, Londres 1996, 108–129.

"En busca de la cooperación y la seguridad en el Mediterráneo o el 'Espíritu de Barcelona'", (In Search of Cooperation and Security in the Mediterranean, or the 'Barcelona Spirit'), *Anuario International CIDOB 1995*, 1996, 485–494.

"The Barcelona Conference: Launching pad of a process", *Mediterranean Politics*, vol. 1, n. 1 (1996), 25–42.

"Spanien", WEIDENFELD, W. and WESSELS, W., (Hrsg.), *Jahrbuch der Europaischen Integration 1995/96*, Institüt für Europaische Politik, Europa Union Verlag, 1996, 357–364.

"De la ingenuidad al pragmatismo: Diez años de participación española en la maquinaria diplomática europea", (From Ingenuousness to Pragmatism: Ten years of Spanish Participation in European Diplomatic Machinery), *Revista CIDOB d'Afers Internationals*, n. 34–35, (1996), 9–30.

BARBÉ, E. and VASCONCELOS, A. de, "Portugal and Spain in EPC/CFSP: Committed Partners", ALGIERI, F. and REGELSBERGER, E., (Eds.), *Synergy at Work. Spain and Portugal in European Foreign Policy, Bonn: European Union Verlag*, 1996, 91–109.

CLOSA, C., "La ampliacón de la Unión Europea y sus efectos sobre el proceso de integración", (The Enlargement of the European Union and its effects on the Integration Process), *Revista de Estudios Políticos*, n. 90 (1995), 147–171.

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FELIU, L., "La apropiación de la temática de los derechos humanos por los regímenes marroquí y tunecino: retórica y realidad", (Appropriation of Human Rights subject matter by the Moroccan and Tunisian regimes: Rhetoric and Reality), *Papers*, n. 46, 1995, 77–94.

GARCÍA SEGURA, C., "Canadá y el Tratado de Libre Comercio Norteamericano: entre la globalización y la integración regional", (Canada and the North American Free Trade Treaty: between Globalisation and Regional Integration), *Revista CIDOB d'Afers Internationals*, n. 29–30 (1995), 97–116.

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GRASA, R., "Las Naciones Unidas y África", (The United Nations and Africa), IRIBARREN, C. and VARGAS, C., (Comps.), Las Naciones Unidas en la Nueva Sociedad International, Fundación Friedrich Ebert, Madrid 1995, 119–126.

"El Mediterráneo desde una perspectiva globalizadora de la seguridad. Una mirada a la dimensión cooperativa de la conflictividad", (The Mediterranean from a Globalising Security Perspective. A look at the Cooperative Dimension of Conflict), *Papers*, n.46, 1995, 25–42.

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IBAÑEZ, J., "La política exterior española ante la inmigración magrebí", (Spanish Foreign Policy with respect to Immigration from the Maghreb), *Papers*, n. 46,

1995, 95–105.

IZQUIERDO BRICHS, F., "El agua en la cuenca del río Jordán: la lucha por un recurso escaso", (The Water in the Basin of the River Jordan: the Fight for a Scanty Resource), *Papers*, n. 46, 1995, 131–138.

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MESA, R., "La Nueva Sociedad International", (The New International Society), VV.AA., *Las Naciones Unidas y la Nueva Sociedad Internacional*, Fundación F. Ebert, Barcelona 1995, 29–33.

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"La Europa de los españoles", (The Europe of the Spanish), VV.AA., Las otras Europas, Fundación El Monte, Sevilla 1995, 11–21.

PALOMARES LERMA, G. "Presente y futuro de la Política Exterior y de Seguridad Común de la Unión Europea", (Present and Future of the European Union's Common Foreign and Security Policy), *Revista de Estudios Políticos*, n. 90 (1995), 243–263.

PETSCHEN VERDAGUER, S., "La cuestión de las minorías nacionales en la Organización para la Seguridad y Cooperación en Europa", (The Issue of National Minorities in the Organisation for Security and Cooperation in Europe), *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz 1995*, 1996, 169–194.

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SAINZ GSELL, N., "La dimensión mediterránea de la Conferencia sobre la Seguridad y la Cooperación en Europa (CSCE): de región limítrofe a campo de

aplicación", (The Mediterranean Dimension of the Conference on Security and Cooperation in Europe (CSCE): from border region to field of application), *Papers*, n. 46, 1995, 139–153.

SODUPE, K., "Los Acuerdos de Asociación con Europa Central: un análisis de su vertiente agraria", (The Partnership Agreements with Central Europe: an Analysis of the Agricultural Aspect), *Información Comercial Española*, Feb. 1995, 53–64.

"La revisión de las tesis sobre la inevitabilidad de la guerra en la antigua Unión Soviética", (Review of Theses on the Inevitability of War in the former Soviet Union), *Estudios Internacionales*, vol. XXVIII, n. 111 (1995), 263–283.

"Las políticas de ayuda de la Unión Europea hacia los nuevos Estados independientes", (European Aid policies with respect to the new Independent States), *Foro International*, vol. XXXVI, n. 4 (1996), 667–701.

"El Estado como actor de las Relaciones Internacionales", (The State as a Player in International Relations) *Inguruak, Revista Vasca de Ciencia Política y Sociología*, n. 16 (1996), 167–186.

PRIVATE INTERNATIONAL LAW AND RELATED MATTERS

1. Essays, Treaties and Handbooks

AGUILAR BENÍTEZ DE LUGO, M., (Dir.), *Lecciones de Derecho civil internacional*, (Lectures in International Civil Law), Tecnos, Madrid 1996, 356 p.

ALBALADEJO GARCÍA, M. and DIAZ ALBART, S., *Comentarios al Código Civil y Compilaciones forales (artículos 8 a 16 del Código Civil)*, (Commentary on the Civil Code and Compilations of the Autonomous Communities [articles 8 to 16 of the Civil Code]), t. 1, vol. 2, 2nd ed., Edersa, Madrid 1995, 1315 p.

BORRÁS RODRÍGUEZ, A., BOUZA VIDAL, N., GONZÁLEZ CAMPOS, J. D. and VIRGÓS SORIANO, M., *Legislación básica de Derecho internacional privado*, (Basic Legislation of Private International Law), Tecnos, Madrid, 5th ed. 1995, 816 p., 6th ed. 1996, 814 p.

Every year since 1991, new editions of this work have appeared, the aim of which, as stated in the preface, is to provide information that is both essential and complete enough to satisfy the needs of students, professors and practitioners of law in tackling problems of private international law.

The fifth and sixth edition consolidate the structure and general content of this basic legislation handbook. The work begins with a section on "Basic regulations": the Spanish Constitution, the Treaty on European Union and the

Treaty establishing the European Community and ends with an analytical index. It is structured according to the major legal disciplines ("Procedural Law and international cooperation of authorities", "International civil, commercial and labour law", "Inter-regional law" and "Arbitration"). These sections address the origin of the regulations, dealing with the law of the autonomous communities and institutional law and conventional law in separate groups, except for matters of inter-regional law covering all regional law of a general scope, whether regional or pertaining to the autonomous communities.

The sixth edition includes the latest legislative reforms that affect Spanish private international law, such as Organic Law 1/1996 of 15 January on the legal protection of minors, the 10 January 1996 law regulating free legal assistance and Law 30/1995 of 1 November on private insurance. The information contained in the footnotes is completed and checked with cross references that indicate to the reader how domestic law is affected by institutional law and, above all, conventional law, which usually displaces the former. Similarly, the inclusion of the state of ratifications and accessions to convention rules and the reservations or declarations made by Spain provides and facilitates an accurate knowledge of the scope of these rules within the Spanish private international law system, which is characterised by considerable dispersion.

BORRÁS, A. and BAS SHORT, C., *Guía práctica de los Convenios de la Haya en los que España es parte*, (A Practical Guide to the Hague Conventions to which Spain is Party), Ministerio de Justicia, Madrid 1996, 596 p.

BORRÁS RODRÍGUEZ, A. and GONZÁLEZ CAMPOS, J. D., (Coords.), *Recopilación de los Convenios de la Conferencia de La Haya de Derecho Internacional Privado (1951–1993)*, (A Collection of the Conventions of the Hague Conference on Private International Law [1951-1993]), Marcial Pons, Madrid 1996, 394 p.

This work contains a Spanish translation of the Statute of the Hague Conference on private international law and the related conventions concluded between 1951 and 1993. The aim of this work is twofold: on the one hand, to foster the ratification or accession of the Spanish-speaking states to the Conventions of the Hague Conference (Introduction, pp. 7 and 8); and, on the other, to provide a unified translation of the text of the Conventions in order to facilitate their interpretation and application.

The first section of the preliminary study ("Unification of private international law", pp. 8 to 24) gives a detailed account of the historical development of the idea of unifying private international law, from the early manifestations of this aspiration to the universal codification in the second half of the 20th century, including the founding of the Hague Conference, to the renewal of its sessions following the Second World War and the incorporation of new member states

belonging to a variety of legal systems (Anglo-Saxon states, non-European states such as Israel, China and Morocco and the Latin American states). The authors include an assessment of the results of the Conference, which they consider to be positive for the following reasons: it has encompassed a broad variety of subjects (not only conflicts of laws, but also jurisdiction and recognition and enforcement of decisions); it has incorporated cooperation elements (through the establishment of Central Authorities in each state party); and it has contributed to modernising the system by incorporating the plurality of regulation techniques. Owing to the sector of jurists to whom the work is geared, the authors do not omit to refer to the world of the specialised Inter-American Conferences on Private International Law (CIDIP) and the need to co-ordinate the action of the latter and that of the Hague Conference.

The book's structure is its best credential, since it includes a chart on the participation of the Latin American countries in the Hague Conventions and a general bibliography on the Conference and the Conventions concluded within its framework. It is particularly useful because the Conventions it deals with come with a bibliography preceded by an explanatory reference by the Reporter paying special attention to the works written in Spanish and Portuguese. The basic text used for the translation and its author and/or publication, as well as other existing translations, are listed in a footnote that occasionally points out differences between the English- and French-language versions, and words used as synonyms of others ("Convenio" – "Convención", "visada" – "refrendada" or "validada", and "inspección" – "examen"). The state of ratifications and accessions and the reservations of the signatory states might perhaps have been included, although this would make it necessary to revise and update the book within a short time.

DÍEZ VERGARA, M., *Manual práctico de comercio internacional,* (A Practical Handbook on International Trade), Deusto, Bilbao 1996, 377 p.

ESPLUGUES MOTA, C. *et al., Legislación básica del comercio internacional,* (Basic Legislation on International Trade), Tirant lo Blanch, Valencia 1996, 678 p.

FERNÁNDEZ DE LA GÁNDARA, L. and CALVO CARAVACA, A., *Derecho mercantil internacional,* (International Commercial Law), 2nd ed., Tecnos, Madrid 1995, 788 p.

FERNÁNDEZ ROZAS, J. C., (Ed.), *Derecho del comercio internacional,* (International Commercial Law), Eurolex, Madrid 1996, 596 p.

FERNÁNDEZ ROZAS, J. C. and ÁLVAREZ RODRÍGUEZ, A., (Eds.), *Legislación básica sobre extranjeros en España,* (Basic Legislation on the status of Aliens in Spain), 4th ed., Tecnos, Madrid 1996, 898 p.

FERNÁNDEZ ROZAS J. C. and SÁNCHEZ LORENZO, S., *Curso de Derecho internacional privado*, (A Course in Private International Law), 3rd ed., Civitas, Madrid 1996, 716 p.

GARBIZU ISASA, E., *Prontuario de Derecho Internacional Privado-Nazioarteko Zuzenbide Pribatuko Eskuliburuxka*, (Handbook of Private International Law), Librería Carmelo, Donostia- San Sebastián 1996, 43, 41 p.

GONZÁLEZ CAMPOS, J. D., FERNÁNDEZ ROZAS, J. C., CALVO CARAVACA, A. L., VIRGÓS SORIANO, M., AMORES CONRADI, M. A. and DOMÍNGUEZ LOZANO, P., *Derecho internacional privado. Parte especial,* (Private International Law. Special Part), 6th ed., Eurolex, Madrid 1995, 460 p.

As Professor Julio González Campos himself states in the preface, the aim of this work is to provide a useful handbook on what is known as the "special part" of Spanish private international law, specifically international civil law. The special part reflects better and more specifically the realities and prospects of the private international law system since it necessarily displays the trend towards specialisation of the regulated cases in non-contractual obligations (pp. 209–240); flexibility in establishing the law applicable to contractual obligations, the principle of proximity and the rule of closer links (pp. 157–167) and the relationship between the principles of continuity and adaptation to the law of the new country in the event of a change of state of affairs (pp. 262–264); and the incorporation of securities into the rules regulating foreign transactions, in the field of Family Law (pp. 289–293).

The book is structured into three sections which, in turn, are made up of several chapters. Section I "Person" includes a chapter devoted to the law of persons and another on the capacity and protection of incapacitated persons written by Jose Carlos Fernández Rozas and Alfonso L. Calvo Caravaca (the latter is the author of the text on legal persons in Chapter I and the relevant text on "national interest" in Chapter II). In Section II "Law of obligations and things", the subsections on contractual, non-contractual and real status were written by Miguel Virgós Soriano (Chapters III and V) and Miguel Amores Conradi (Chapter IV). The third and last section deals with "Family and succession" and includes contributions by Julio D. González Campos, in Chapters VI and VII on marriage, filiation and food (except for the text under the heading "food", which was written by Pilar Domínguez Lozano); Miguel Amores Conradi, in Chapter VIII, writes on the consequences of marriage; and Alfonso L. Calvo Caravaca discusses "Hereditary Succession" in Chapter IX. Each chapter is preceded by a table of contents and ends with a bibliography listed by subjects in which references to national and foreign doctrine are included. The work is completed with three indices -- analytical, rules cited and decisions cited – which is extremely useful and accurate since it refers to paragraphs rather than to pages.

MARTÍNEZ ATIENZA, G., *Ley y Reglamento de extranjería (Diposiciones normativas, jurisprudencia y comentarios doctrinales)*, (Law and Regulations on the status of Aliens [Regulatory provisions, Case Law and Doctrinal Commentaries]), Colex, Madrid 1996, 566 p.

MENÉNDEZ ARIAS, M. J., (Ed.), *Legislación sobre transacciones exteriores*, (Legislation on Foreign Transactions) 2nd ed., Civitas, Madrid 1996, 848 p.

MERINO MERCHAN, J. F. and CHILLÓN MEDINA, J. M., *Legislación de arbitraje interno e internacional*, (Legislation of Domestic and International Arbitration), Tecnos, Madrid 1995, 448 p.

MILANS DEL BOSCH PORTOLÉS, I., *Legislación básica sobre denominaciones de origen*, (Basic Legislation on Denominations of Origin), Tecnos, Madrid 1995, 720 p.

PÉREZ VERA, E., (Dir.), *Derecho internacional privado*, (Private International Law), vol. II, UNED, Madrid, 6th ed. 1995, 323p., 7th ed. 1996, 332 p.

SALVADOR GUTIÉRREZ, S., *Manual práctico sobre nacionalidad*, (A Practical Handbook on Nationality), Aranzadi, Madrid 1996, 371 p.

SECRETARÍA GENERAL TÉCNICA DEL MINISTERIO DEL INTERIOR, *Normativa básica de extranjería*, (Basic Regulations on the status of Aliens), Ministerio del Interior, Madrid 1996, 412 p.

TOMÁS ORTÍZ DE LA TORRE, J. A., *Legislaciones nacionales de Derecho internacional privado*, (National Legislation of Private International Law), Revista de Derecho Privado, Madrid 1995, XIII + 974 p.

VIRGÓS SORIANO, M. and GARCIMARTÍN ALFÉREZ, F. J., (Eds.), *Derecho procesal civil europeo (Convenios internacionales y otras normas procesales de origen comunitario europeo en materia civil y mercantil, anotados. Informes oficiales de los convenios)*, (European Civil Procedural Law [International Conventions and Other Procedural Rules of the European Community in Civil and Commercial matters, annotated. Official Reports of the Conventions]), McGraw Hill, Madrid 1996, 700 p.

2. Books in Honour of

3. Monographs and Collective Works

ADAM MUÑÓZ, M. D., *El Proceso Civil con Elemento Extranjero y la Cooperación Judicial Internacional*, (Civil Actions with a Foreign Element and International Judicial Cooperation), Aranzadi, Pamplona 1995, 235 p.

ADROHER BIOSCA, S. and CHARRO BAENA, P., *La inmigración. Derecho español e internacional*, (Immigration. Spanish and International Law), Bosch, Barcelona 1995, 1054 p.

ALONSO PÉREZ, F., *Régimen jurídico del extranjero en España*, (The Legal System governing Aliens in Spain), Ministerio de Justicia e Interior, Madrid 1995, 457 p.

ÁLVAREZ GONZÁLEZ, S., *Crisis matrimoniales internacionales y prestaciones alimenticias entre cónyuges*, (International Marriage Crises and Maintenance Obligations), Civitas, Madrid 1996, 336 p.

ÁLVAREZ PASTOR, D. and EGUIDAZU, F., *Inversiones extranjeras*, (Foreign Investments), Aranzadi, Madrid 1996, 896 p.

ÁLVAREZ RODRÍGUEZ, A., *Guía de la nacionalidad española*, (A Guide to Spanish Nationality), 2nd ed., Ministerio de Trabajo y Asuntos Sociales, Madrid 1996, 237 p.

ÁLVAREZ RUBIO, J. J., *Las normas de Derecho interregional de la Ley 3/1992, de 1 de julio, de Derecho civil foral del País Vasco*, (Regulations of Interregional Law in Law 3/1992, on the Civil Law of the Basque Country), Instituto Vasco de Administración Pública, Bilbao 1995, 81 p.

ARENAS GARCÍA, R., *El control de oficio de la competencia judicial internacional*, (Ex officio Control of International Jurisdiction), Eurolex, Madrid 1996, 368 p.

BALLESTER PASTOR, M. A., *El trabajo de los extranjeros no comunitarios en España*, (The Work done by Non-Community Aliens in Spain), Tirant lo Blanch, Valencia 1996, 112 p.

BORRÁS RODRÍGUEZ, A., (Dir.), *Diez años de la ley de extranjería: balance y perspectivas*, (Ten Years of the Law governing Aliens: Assessment and Prospects), Fundación Paulino Torras Domènech, Barcelona 1995, 250 p.

CORDÓN MORENO, F., *El arbitraje en Derecho español: interno e internacional,* (Arbitration in Spanish Law: Internal and International), Aranzadi, Pamplona 1995, 275 p.

CUARTAS JORNADAS DE DERECHO INTERNACIONAL PRIVADO, *Principios, objetivos y métodos del Derecho internacional privado. Balance y perspectivas de una década,* (Fourth Conference on Private International Law, Principles, Objectives and Methods of Private International Law. Assessment and Prospects of a Decade), C.E.S.S.J. "Ramón Carande", Madrid (Vicálvaro) 1995, 148 p.

DE MIGUEL ASENSIO, P. A., *Contratos internacionales sobre propiedad industrial,* (International Contracts on Industrial Property), Civitas, Madrid 1995, 403 p.

DURAN RIVACOBA, R., *Derecho interregional,* (Interregional Law), Dykinson, Madrid 1996, 415 p.

ESLAVA RODRÍGUEZ, M., *La protección civil del derecho a la vida privada en el tráfico privado internacional: Derecho aplicable,* (Civil Protection of the Right to Privacy in International Private Transactions: Applicable Law), Univ. Extremadura, Cáceres 1996, 164p.

ESPINAR VICENTE, J. M., *El matrimonio y las familias en el sistema español de Derecho internacional privado,* (Marriage and Families in the Spanish System of Private International Law), Civitas, Madrid 1996, 382 p.

In seven chapters, this monograph by Espinar Vicente studies the main questions raised by family law in international transactions. The first of these, presented as a preliminary chapter, describes the general framework for analysing these problems and is followed by chapters on the marriage commitment (Chapter II, pp. 61–89), the celebration of marriage (Chapter III, pp. 91–148), the recognition, validity and registration of marriages that take place abroad and annulment (Chapter IV, pp. 149–189), marriage crises (Chapter V, pp. 191–249), the effects of marriage (Chapter VI, pp. 251–319) and protection of minors in the different family models (Chapter VII, pp. 321–382). In all these sections the author conducts an integrating analysis of each sector of problems from the points of view of international jurisdiction and competent authorities, applicable law, and recognition and enforcement of decisions.

In Espinar Vicente's view, the rules of private international law, since they deal with legally heterogeneous situations, are rules of the Spanish legal system that are integrated into this system and should therefore be adapted to the requirements of the Constitution like any others. Consequently, the very first chapter describes the constitutional model of the family and its basic characters in Spanish law. For this purpose it distinguishes between two types of relationships: those existing

between private international law and the Constitution (structural principles) and those existing between private international law and the substantial regulation of the institute in question (general principles). On the basis of this distinction, the author points out the general scheme for regulating the institution from which the problems of international transactions are dealt with, so that the solutions are always coherent with the system and its basic foundations. Regarding the former, Espinar Vicente stresses that the Spanish family model is not based around marriage, but rather around the children. This means that marriage constitutes one of the family models provided for by Spanish law, but not the only one. Only with this in mind can realities as topical as cohabiting or homosexual couples be integrated into the system.

The problem raised by cohabiting couples particularly concerns the author and is dealt with in different chapters of the monograph. Thus, on writing about the marriage commitment, he includes cohabiting couples living together for a trial period to decide whether or not to get married (terming this "trial marriage"). This view endows articles 42 and 43 of the Civil Code with an unusual modernity. In the same way, on dealing with the effects of marriage, he includes a classification of cohabiting couples in order to determine to what extent the motives behind this relationship are the same as for marriage and, also, to what extent legal provisions made within a matrimonial context (particularly those relating to external effects) can be applied to them.

The author also pays particular attention to minors, to whom the last chapter is devoted entirely. The recent legislative changes in this matter, although they should be regarded as positive, have led to a lack of adjustment between the legal model and social conceptions. On occasions, individuals use private international law as an escape route when national legislation does not satisfy their interests. This reality gives rise to situations of abandonment, particularly in the field of international adoption – an issue that is also studied in the book.

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