SPANISH LITERATURE IN THE FIELD OF PRIVATE AND PUBLIC INTERNATIONAL LAW AND RELATED MATTERS, 1990-1991

This survey, prepared by I. García Rodríguez (Lecturer in Private International Law at the University of Murcia), is designed to provide information for international lawyers and law students on matters concerning private and public international law published in Spain or by Spanish authors. International law has been widely interpreted to include related matters if the work in question deals with considerations of international law. Summaries of the contents of books have been written by the authors. We thank them for their collaboration and for the information they have provided on their publications during 1990 and 1991.

PUBLIC INTERNATIONAL LAW AND RELATED MATTERS

1. Essays, Treaties and Handbooks

CALDUCH CERVERA, R., *Relaciones Internacionales*, (*International Relations*), Ed. de Ciencias Sociales, Madrid, 1991, 412 pp.

CARRILLO SALCEDO, J.A., *Curso de Derecho Internacional Público*, (*Course in Public International Law*), Tecnos, Madrid, 1991, 340 pp.

— *El Derecho Internacional en perspectiva histórica*, (*International Law in Historical Perspective*), Tecnos, Madrid, 1991, 219 pp.

DIAZ BARRADO, C.M. (Ed.), *El uso de la fuerza en las relaciones internacionales. Textos relativos a su regulación y control*, (*The Use of Force in International Relations. Texts Regarding its Regulation and Control*), Ministerio de Defensa, Madrid, 1991, 375 pp.

This essay is an ordered and systematic summary of the various legal instruments which have been used to recognize, develop and determine the contents of the prohibition of the use of force in international relations.

These reach from the Pact of the Society of Nations to the recent resolution 678 (1990) of the U.N. Security Council on Kuwait, dated November 29.

This essay includes texts on the general prohibition of the threat or use of force, outstanding among which are the now classic General Treaty of the Renouncement of War, (Paris 1928), the content of Resolution 2625 (XXV) of the U.N. General Assembly, and the position of the International Court of Justice in the *case concerning military and paramilitary activities in and against Nicaragua*. In the same chapter there are legal texts regarding aggression, armed intervention and armed reprisal, together with exceptions to the prohibition more widely accepted by the scientific doctrine, such as legitimate defence, the use of force authorized by the U.N. Security Council, or the consent of the nation in whose territory it is exercised.

A separate chapter deals with systems of collective security at both regional and worldwide levels. Certain texts which have their source in U.N. institutions form a chapter with regard to operations in the maintenance of peace. To conclude, and worth separate mention, are the texts concerning disarmament and arm control, with a distinction between : the disarmament agreements reached between the former Soviet Union and the United States, the terms regarding both nuclear and conventional disarmament with special attention, in this area, to the Treaty on conventional armed forces in Europe (Paris, 19 November 1990), and finally, the treaties and resolutions concerning peace zones free of nuclear arms.

The essay has texts in both Spanish and English and includes, in each of its separate parts, authorial comment on the content plus a bibliography of the work with regard to the doctrines of Public International Law, on each of the issues considered. When possible, the Spanish legal position regarding the principal texts in question is always taken into account.

DIEZ DE VELASCO, M., *Instituciones de Derecho Internacional Público.* Tomo I, (*Institutions of Public International Law.* Volume I), 8th ed., reprinted, Madrid, 1990 and 9th ed., Tecnos, Madrid, 1991, 855 pp.

The first volume of *Instituciones de Derecho Internacional Público*, by Professor Díez de Velasco, is a general textbook on Public International Law, which covers all aspects of the subject except international organizations, to which the whole of Volume II of the *Instituciones* is devoted. In preparing this work, the author has been assisted by a group of Spanish international lawyers, who drafted parts of certain chapters and other chapters in their entirety; their contribution is indicated in footnotes at the appropriate parts of the book. Both Volume I and Volume II of the *Instituciones* adopt the same approach and together they constitute a manual of Public International Law which is very widely used in Spanish and Latin American universities, as attested by the editions through which each

volume has so far gone (nine of Volume I and seven of Volume II). Details of Volume II are given separately.

The book is divided into seven large sections: "The International Community and its Legal Order" (I), "The International Community and its Members" (II), "Jurisdiction: Scope and Limits" (III), "The State Organs concerned with International Relations" (IV), "International Liability and the Coercive Application of International Law" (V), "International Disputes and Means of Peaceful Settlement" (VI), and "Disarmament and the Law of Armed Conflict" (VII).

Section I (pages 55 to 211) comprises eleven chapters, in addition to the mandatory introductory discussion, in which a study is made of all the sources of Public International Law and the relationships between international law and municipal law. Section II (pages 213 to 309), comprising seven chapters, considers the subjects of international law, in the widest sense, including the problem of the status of the individual as such. Section III (pages 311 to 586), comprising fifteen chapters, making it the largest section in the work, deals with the powers of the state over territory and persons. Section IV (pages 587 to 610), comprising only two chapters, is concerned with diplomatic and consular law. Section V (pages 611 to 685), comprising five chapters, studies as thoroughly as it deserves the law of international liability and measures for the coercive application of international law. Section VI (pages 687 to 742), comprising six chapters, studies peaceful settlement of international disputes, with particular reference to judicial settlements. And Section VII (pages 743 to 814), comprising the last five chapters of the work, deals with disarmament and arms control, the international regulation of armed conflicts and neutrality. The work also provides a very comprehensive bibliography and details of sources (pages 37 to 51), and the requisite indexes of authors, materials and case law, together with an index of Latin maxims used (pages 817 to 851).

In particular, this ninth edition departs in important respects from the eighth edition (1988), this being due to the vertiginous changes which have occurred in the international community since that date. The introductory chapters on the concept, scope and characteristics of contemporary international law have been rewritten or revised in detail, as have the chapters concerned with important problems such as the relationship between municipal law and international law, the recognition of governments, the succession of states and other subjects of international law, international protection of the individual, the problems of peoples in the context of international law, and the relation of armaments, among other matters.

In addition, the remainder of the chapters have been updated so as to incorporate new information deriving from international treaty law, international case-law, the most recent published works and diplomatic

practice. In the latter area, details are given of developments in Spain, in particular its acceptance of the compulsory jurisdiction of the international Court of Justice.

— *Instituciones de Derecho Internacional Público.* Tomo II. *Organizaciones internacionales, (Institutions of Public International Law.* Volume II. *International Organizations*), 7th ed., Madrid, Ed. Tecnos, 1990, 496 pp.

The second volume of *Instituciones de Derecho Internacional Público* by Professor Díez de Velasco is entirely devoted to considering international organizations, whose proliferation and development constitute, according to Professor Díez de Velasco, one of the most outstanding features of the contemporary international scene. For some of the chapters of this work the author received assistance from a team of collaborators and their contribution is acknowledged in footnotes to the parts concerned. Otherwise this second volume follows the scheme of the first, constituting a Public International Law handbook which is widely used in Spanish and Latin American universities, as attested by the fact that it is in its seventh edition. This idea of the volume forming a whole or single unit is reflected in the numbering of the chapters of this work which runs on from the first volume.

The book is divided into three major parts; the first on "General Aspects of International Organizations", the second on "Worldwide International Organizations", and the third on "Regional International Organizations".

The first part "A. General Aspects of International Organizations" (pp. 37-70) consists of four chapters covering by way of introduction a range of aspects which are essential to the understanding of the legal phenomenon of international organizations. Thus, Chapter LIII: "International Organizations -General Points", refers to the origins and historical development of such organizations, the concept and characteristics, and their classification. In Chapter LIV: "Structure and Decision-making of International Organizations" the organizational structure of international organizations (types of bodies and their composition) is studied and their internal decision-making processes shown. Chapter LV: "The Law of International Organizations" studies the law relating to international organizations, in particular the following aspects: constitutive treaties and powers of international organizations; their acts; and resolutions of the General Assembly of the United Nations. Chapter LVI: "International Civil Servants", which concludes that part, analyses various aspects concerning the international civil service.

The bulk of the second part, "B. Worldwide International Organizations" (pp. 73-273), centres on the United Nations Organization, and examines its history and nature (Chapter LVII), its aims and principles (Chapter LVIII), its membership (Chapter LIX), its organizational structure (Chapter LX)

and its main functions: maintaining international peace and security, (Chapter XLI), promoting friendly relations between peoples, based on the principles of equality and self determination (Chapter LXII) and international cooperation in solving economic and social problems (Chapters LXIII and LXIV). Another group of topics in this part focus on worldwide organizations with specific objects, both from a general point of view (Chapter LXV) and by means of the specific study of various specialist bodies, in the field of predominantly social, cultural and humanitarian cooperation, such as the ILO, UNESCO, WIPO and the WHO (Chapter LXVI); in the field of economic and financial cooperation, such as the IBRD, the IMF, FAO, UNIDO, IFAD (Chapter LXVII); finally, in the field of communications, such as the UPU, the ITU, ICAO and IMO (Chapter LXVIII). This part ends with a look at other world organizations with specific objects, such as the IAEA, GATT and WTO (LXIX).

The third part "C: Regional International Organizations" (pp. 277-496) reviews this type of organization essentially by classifying them on geographical and functional bases. Thus the first group of topics focuses on organizations in Western Europe, looking first at cooperation organizations with general aims, such as the Council of Europe and the Nordic Council (Chapter LXX), followed by essentially military organizations, such as NATO and the WEU (Chapter LXXI) and finally predominantly economic organizations, such as BENELUX, OECD and EFTA (Chapter LXXII). This group of topics concludes with three chapters which analyze the phenomenon of the European Communities (Chapters LXXIII, LXXIV and LXXV). Eastern European organizations are considered in the following chapter, which looks at the Warsaw Pact and COMECON which, although no longer in existence, are still undoubtedly of interest (LXXVI). Two chapters deal with international organizations in the American continent (Chapters LXXVII and LXXVIII), in particular the OAS, the ALADI (Asociación Latinoamericana de Integración), the Andean Pact, the ODECA (Organización de Estados Centroamericanos), the MCCA, CARICOM, SELA (Saneamiento Económico Latinoamericano — Latin American Economic Restructuring). The third part ends with a chapter on international organizations in Africa, Asia and Oceania (Chapter LXXIX) of which the main examples are considered.

The work reviewed is an excellent handbook on international organizations which, with its up-to-date and comprehensive picture of that phenomenon of international law and exhaustive bibliography, takes its place as a fundamental work among legal writings in Spanish.

FERNANDEZ TOMAS, A., *Derecho Internacional Público. Casos y Materiales*, (*Public International Law. Cases and Materials*), 2nd ed., Tirant lo Blanch, Valencia, 1991, 667 pp.

GONZALEZ CAMPOS, J.D.; SANCHEZ RODRIGUEZ, L.I., and ANDRES SAENZ DE SANTA MARIA, M.P., *Curso de Derecho Internacional Público, (Course in Public International Law)*, Vol. 1, Serv. Publicaciones de la Facultad de Derecho de la Universidad Complutense, Madrid, 1990, 787 pp.

ISAAC, G., *Manual de Derecho Comunitario General, (Handbook of General Community Law)*, trans. by G.L. Ramos Ruano, Ariel, 2nd ed., Barcelona, 1991, 334 pp.

MARIÑO MENÉNDEZ, F.M., *Nociones de Derecho Internacional Público, (Basic principles of Public International Law)*, 3rd ed., Serv. Public. Univ. Zaragoza, Zaragoza, 1990, 396 pp.

This handbook deals with what could be called the "general part" of Public International Law covered in the studies for a law degree; accordingly, the author has divided his exposition into 28 separate lessons.

The introduction is devoted to "The international community and the regulating of its legal affairs". It sets out certain basic concepts of international society as a social basis of international law, therein including a historical presentation of its constitution and, equally, the significant stages in the formation of international law.

The continuing body of the work is devoted to the "Basic organization and structure of the international legal code". A brief first section, essential for the following methodology, states basic elements of the aforesaid organization, particularly insisting on the essential "constitutional" nature of the fundamental principles of international legal code and the contemporary gradation of international norms, thanks to the appearance of *ius cogens*. The author states that the way the international society is present in the organization of international legislation is based on *three organizing or explanatory principles*: the efficiency of the state act, consent (basis of norm formation) and self-wardship (final guarantee of fulfillment).

The second section examines the subjects of international law. Special attention is paid to the Sovereign State, the rules governing its immunities, specific situations and conditions of the different states, together with the international law procedure of their transformations and those of their governments. Two successive lessons are devoted to international organizations and other institutions, (the individual, peoples, hostile armed groups and others), as subjects of international law.

Section three deals with "the constitution of International Law", its basic mode of production, the customary process, and other forms and procedures in the formalization of norms and obligations such as the international treaties (in five extensive treatments), the unilateral conduct of

states, the resolutions of international organizations, the general principles of Law as well as the equity and the "auxiliary means" that determine Law. A special treatment is dedicated to the issue of the relations between international norms and to what are called the "gaps" of international law.

Section four studies "the implementation of International Law" in its widest sense : control techniques, international liability and coercive action (retortion, countermeasures and international sanctions), always with special attention to the work of the U.N. Commission of International Law.

Finally, section five examines the relation between international legal code and the internal legislation of the states, with special attention to the solutions in Spanish Law.

The author has placed special emphasis on the international jurisprudence relevant to each issue and, equally, to the principal Spanish practice. More generally, the author supplies an introduction to those interested in the study of international legal norms and techniques, together with information about the reality of state interests and values, confronted or jointly shared, which will be defended. It is thus to be noted that a certain justice is not missing from the international order, albeit amidst enormous confrontations and contradictions.

As the prologue shows, it becomes increasingly clear that the tasks to be carried out and the aims to be reached depend upon cooperation to definitely erradicate hunger, sickness and ignorance still prevailing in wide areas of this planet, always with the fundamental aim of preserving the environment.

RODRIGUEZ CARRION, A., *Lecciones de Derecho Internacional Público*, (*Lessons of Public International Law*), 2nd ed., Tecnos, Madrid, 1990, 570 pp.

RUIZ NAVARRO PINAR, J., *Derecho Comunitario Básico. Legislación y Jurisprudencia*, (*Basic European Community Law. Legislation and Jurisprudence*), Madrid, 1991, 1409 pp.

STEINER, J., *Manual Básico de Legislación de la CEE*, (*Basic Handbook of EEC. Legislation.* Trans. of Editorial Deusto, Bilbao, 1991, 434 pp.

TORRES UGENA, N. (Ed.), *Textos normativos de Derecho Internacional Público*, (*Normative Texts of Public International Law*), 2nd ed., Civitas, Madrid, 1990, 1154 pp.

This is a recompilation of the norms of Public International Law and the norms of Spanish domestic Law, having an obvious connection with the international legal code.

The volume is divided into fifteen headings. The first is devoted to the Law of Treaties. It includes not only the Vienna Convention on the Law of Treaties, the basic international norm in these matters, but also the constitutional, legal and statutory norms that cover the conclusions of these treaties in the Spanish law legislation.

The second heading, concerning territorial authority, deals with the agreements on the definition of Spanish frontiers within the peninsula territory and with the agreement between Spain and the United States of America related to co-operation in defence.

Headings three and four include the Spanish municipal legislation and treaties concerning air and marine space. Succeeding headings deal with outer space, the Antarctic, ecology and the protection of human rights, on both a universal scale and a regional Europe scale.

Headings nine and ten deal respectively with alien status and the right of asylum, including the Spanish municipal legislation that covers the issue.

Other headings reproduce international texts on criminal and international procedural law, diplomatic and consular relations, and humanitarian law applicable to armed conflicts.

There is a final compilation of the constitutive treaties of the most important international organizations, both universal and regional. The volume ends with a chronological table of dispositions and an analytical index that, together with foregoing footnotes, detail the dates they will come into effect, the states participant to the treaty, and the reservations and declarations stated by Spain. Also included are multiple references to the new municipal and international dispositions not fully covered in the text, thus completing and clarifying the contents of the volume and increasing its usefulness.

2. Books in Honour of

3. Monographs and collective works

ACOSTA ESTEVEZ, J.; ESPALIAT LARSON, A., *Interpretación en el Derecho Internacional Público y Derecho Comunitario*, (*Interpretation in Public International Law and European Community Law*), Civitas, Madrid, 1990, 223 pp.

CAMPO, S. de, *La opinión pública española y la política exterior*, (*Spanish Public Opinion and Foreign Policy*), Informe Incipe 1991, Madrid, 1991.

CASADO RAIGON, R., *Notas sobre el "ius cogens" internacional, (Notes on International "Ius Cogens")*, Tipografía Católica, Córdoba, (Spain), 1991, 43 pp.

The present work, written in 1988, is a collection of various considerations and reflections on a central theme in international law. Acknowledging the existence in contemporary international law of legal norms which have preference over the intentions of the states to cover the interests of the international community as a whole, reference is made, to begin with, to article 53 of the 1969 and 1986 Vienna Conventions. Other main issues which follow are the relations between the *ius cogens* and the *ius naturale*, the non application of the rule *ius posterior derogat iuri priori*, the effects of the nullity of an act performed with law effect when it conflicts with an imperative rule, the *ius cogens superveniens* (article 64 of the aforementioned Conventions) and the retroactive nature of its effects. Other issues included are the problem of the indivisibility of the dispositions of a null treaty in application of article 53, the concept and features of *ius cogens*, the existence of a regional *ius cogens*, the application control of *ius cogens*, the *dictum* of the judgement of the ICJ in the Barcelona Traction case (5 February 1970): *erga omnes* obligations and *actio popularis*, the "international public policy" concept...

With this book, nevertheless, the study of *ius cogens* is not over, as it does not deal, for example, with its unquestionable transcendence in the law of international responsibility and, specially, with the project on state responsibility that is being carried out by the International Law Commission. As mentioned in the introduction to this work, the *ius cogens* will be present not only in article 19 of the first part of the project, but also in other dispositions of that first part and in the second and third parts of the project.

CASADO RAIGON, R., (Coord.), *Recursos ante el Tribunal de Justicia de las Comunidades Europeas, (Actions before the Court of Justice of the European Communities)*, Published by *Arco de Europa*, Córdoba, 1991, 182 pp.

With a fundamentally descriptive purpose, the present study, confined to the litigating jurisdiction of the European Community Court of Justice, deals with six important appeals anticipated in the Paris and Rome Conventions: actions for the infringement of a treaty obligation, action of annulment, plea of illegality, action for failure to act, — all dealt with by Casado Raigón — , reference for a preliminary ruling on a question of interpretation of validity — written by C.Camacho González and J.M.Pelaez Marón — , and the action for damages or indemnity, — dealt with by M.Hinojo Rojas — . As the First Instance Court of the European

Community has been constituted, the appeal to the Court of Justice is also featured in this essay, dealt with and drafted by J.M. Muriel Palomino.

The book has a prologue by Pelaez Marón and an introduction by its coordinator. It concludes with bibliographic and documental appendices.

CASSESE, A., *Los derechos humanos en el mundo contemporáneo, (Human Rights in the Contemporary World)*, Trans. by A. Pentimalli and B. Ribera, Ariel, Barcelona, 1991, 319 pp.

CHUECA SANCHO, A. G., *Acuerdos de sede con Organizaciones Internacionales celebrados por España, (Site Agreements between Spain and International Organizations)*, Tecnos, Madrid, 1991, 308 pp.

This monograph covers a theme which has not been examined by Spanish doctrine; the perspective is widely methodological, taking into account above all the site agreements in which the U.N. and its specialized institutions are a party.

After reviewing the capacity of international organizations to formalize treaties, and the general Conventions on privileges and immunities, an analysis is carried out on the site agreements concluded with Spain. At present there are thirteen site agreements, six of them concerning principal sites, seven concerning subsidiary sites or offices. The Spanish practice also analyses the successions of international organizations in the matter of site agreements.

In the site agreements studied here certain issues are regulated, such as the cooperation between Spain and the corresponding international organizations, the international responsibility of these organizations, their internal legal entity and the settlement of international conflicts.

The main issues of the site agreements are divided into four groups: the juridical regime of the sites, the facilities, privileges and immunities of the international organizations as such, the *status* of their functionaries and of the representatives of state or other organizations.

Outstanding in the first group of issues is the territorial inviolability of the premises of the sites, an inviolability that does not imply a right of asylum. The duty of the resident state to protect the sede must also be emphasised.

Also offered to the international organization *qua talis* are facilities regarding communications and publications, the exchange of money, etc. They also have the benefit of the inviolability of their correspondence, files and documents, and tax exemptions. This legal immunity is losing its absolute nature. It remains in force for natural or institutional acts of international organizations, but disappears for any other.

There are two levels of *status* for international functionaries, the lower corresponding to those of Spanish nationality. The *status* of experts (the D.Mazilu case) would be of current importance in this matter. This monograph, which covers a highly important present issue, ends with a study on the privileges and immunities of the representatives sent by the states or international organizations before other organizations.

DIAZ BARRADO, C.M., *Reservas a la Convención sobre Tratados entre Estados*, (*Reservations to the Convention Concerning Treaties Between States*), Tecnos, Madrid, 1991, 205 pp.

This is an investigation into the declarations, reservations and the objections to the reservations made to the Vienna Convention on the Law of Treaties, 1969. It examines the different issues which arise due to the reservations made to the treaties of codification and progressive development of international law, together with the general outlines which define the reservations in the present Law of Treaties that, obviously, differentiate them from other "declarations" of a political or interpretative nature. It also examines the contents of the reservations to this Convention which are based on the incompatibility with certain issues of the municipal law of the state which declares them. The reservations , and the objections to them, made to Part V of the Convention, which deals with the proceedings for the solution of law suits, are worth a special mention as an indication of eventual changes in the matter.

DUROSELLE, J.B., *Europa de 1815 a nuestros días. Vida política y relaciones internacionales*, (*Europe from 1815 to the Present Day. Political Life and International Relations*), Barcelona, 1991.

FERNANDEZ DE CASADEVANTE, C., *La cooperación transfronteriza en el Pirineo: su gestión por las Comunidades Autónomas*, (*Trans-frontier Cooperation in the Pyrenees: its Management by the Autonomous Communities*), Instituto Vasco de Administración Pública, 1990, 251 pp.

Divided in two parts, this book analyses the new relationship which arises in the Spanish-French border as a result of the existence, on either side of it, of de-centralized administrations with powers in different domains.

The First Part deals with general aspects of the trans-frontier cooperation in Europe in its different levels: *central or governmental* (for instance, the Cabinet of the Scandinavian countries, the Town and Country Planning Commission of the Benelux and the European Development Pole), *regional* (three aspects are dealt with in this level: the Standing Commission of Local and Regional Authorities of the European Council,

the European agreement on trans-frontier cooperation of 21 May 1980 as well as three examples of regional transfrontier cooperation (ARGE-ALP, ALPE-ADRIA and the Leman Council), and *local* or *municipal* (EUREGIO).

In second place, the trans-frontier cooperation in the European Communities (Chapter II).

Finally, the trans-frontier cooperation in the Pyrenees from the perspective of its legal basis at local and regional levels as well as the organization which was constituted at this level in 1980: the Labour Community of the Pyrenees (Chapter III).

The Second Part deals with the way the regional Administrations manage the trans-frontier relationships which take place in this border (especially the Spanish Autonomous Communities). After a brief introduction (Chapter IV), the author analyses in Chapter V the impact of the border in the Spanish Autonomous Communities from the perspective of the powers held by the departments concerned, some of which are exerted in the border areas. In other words, they have an effect over foreign domain, but they do not become "international" or "exterior". On the other hand, there are many Spanish-French bilateral treaties previous to the constitutional block currently in force, formed by the Constitution and the Statutes of Autonomy, which are concerned with issues of autonomic domain. This also occurs with different organizations or commissions of trans-frontier cooperation formed before 1978.

The effect the constitutional block has on these treaties and organizations is the following: the Spanish Autonomous Communities which are in the border have to adapt their powers to the previously existing treaties concerning issues which are now in their domain. In second place, the Autonomous Communities have the right to take part in the organizations of trans-frontier cooperation which deal with matters now in their domain. This makes it necessary to adapt these treaties and organizations to the current situation. In third place, the Autonomous Communities have the right to take part in the initial phase of the process of formation of international treaties that deal with issues in their domain. Finally, the Autonomous Communities must carry out the Spanish-French bilateral treaties concerning issues that the constitutional block locates in their domain.

FERNANDEZ DE CASADEVANTE, C, y QUEL LOPEZ, J., *La lucha contra la tortura (Aspectos de Derecho Internacional y de Derecho Interno español, (The Battle Against Torture (Aspects of International Law and Spanish Domestic Law)*, IVAP, Oñate 1991, 172 pp.

This work wants to offer a vision on the whole of the international rules covering this specific issue of the protection of Human Rights, linking it to the latest Spanish juridical practice.

Consequently, this work is hinged together by two essential ideas. First (Chapter I), we deal with international ruling as a whole, studying both the non-specific conventional provisions on torture which, however, include references to illegal activities, and the international treaties whose main aim is the prevention and repression of torture (U.N. Convention of 10 December 1984 and the European Council Convention of 26 November 1987). Additionally, reference is made in this part to state commitments for repression in domestic ruling and to the need of police and judicial cooperation as a basic premise for the effectiveness of this multilateral conventional system. Finally, we have not forgotten to refer to the future perspectives in the international regulation that go beyond the boundaries of mere conventional relations, specially considering the projects for the international Criminal Code or the Code for crimes against peace and safety of mankind.

As we have already mentioned, the second part deals with the Spanish practice from the jurisprudential point of view. This perspective takes into account both the jurisprudence and practice of the European control organizations (Commission and T.E.D.H.) when resolving legal proceedings against Spain, as well as references to torture in the jurisprudence of the Constitutional Court.

FUNDACION ENCUENTRO, *Interdependencia e identidad andaluza ante la integración europea*, (*Andalusian Interdependence and Identity Faced with European Integration*), Colección Europa, Centro de Estudios Ramón Areces, Madrid, 1991.

A study on regional identity, Andalusian in this case, could not ignore the concept of European identity coined in this last decade.

Though the issue of European identity, linked always with the idea of a United Europe, began to interest the European Community in the sixties, it was the European Council of Fontainebleau, June 1984, that established an *ad hoc* committee to study the necessary measures that should be applied to strengthen the identity of the European peoples and the image they present to the world.

This committee, presided by Mr. Adonnino, and formed with the representatives of heads of states and governments and the president of the Commission, made two reports concerning the Europe of citizens, both approved later on by the European Council of Milan. The reports, which were put forward by the committee in March and June of 1985, emphasised the need for Europe to protect the free movement of its citizens and the right of private or professional residence in any community country.

The findings of the Workshop of Andalusian Studies of the Fundación Encuentro prove that the accession of Spain to the European Community will cause fundamental changes because, as it was foreseen in article 93 of our Constitution, it allows the state, by means of organic law, to transfer sovereign power to an international or supranational organization. Such a transfer of power has a special effect in a nation of autonomies like Spain where, within the Constitution, there are exclusive powers for the Central State and exclusive powers for the Autonomous Communities, which have been affected by these transferences due to the accession of Spain to the European Community.

We cannot overlook how important this issue is for the balance between the two constitutional principles of unity and autonomy. Without departing from the Constitution, it is possible for the autonomies to enforce their interests within those of the state, when only the state can deal with international relationships according to constitutional law.

J.M. Faramiñan Gilabert wrote the part regarding the institutional adaptations of the Autonomous Community, and also coordinated this workshop. M. Delgado Cabeza, from Seville University, studied the dynamic economy of Andalusia. J. Cazorla Pérez, from Granada University, drafted the commentaries on Andalusian values and culture, using a public opinion poll sponsored by the Cultural Office of the Andalusian Assembly. The field work was carried out by the opinion firm OYCOS. M.D. Figares Romero de la Cruz, journalist, gave a perspective on the phenomenon of the media and social communication.

HARVEY, E.R., *Relaciones Culturales Internacionales en Iberoamérica y el Mundo, (International Cultural Relations in Latin America and the World)*, Tecnos, Madrid, 1991, 314 pp.

HERRERO DE LA FUENTE, A. (Coord.), *Comunidades Autónomas y Comunidad Europea. Relaciones jurídico-institucionales, (Autonomous Communities and the European Community. Legal-Institutional Relations)*, Valladolid, 1991.

HUESA VINAXA, R., *El nuevo alcance de la "opinio iuris" en el Derecho internacional contemporáneo, (The New Reach of "Opinio Iuris" in Contemporary International Law)*, Tirant lo Blanch, Valencia, 1991, 212 pp.

JIMENEZ PIERNAS, C. (Ed.), *La responsabilidad internacional. Aspectos de Derecho Internacional Público y Derecho Internacional Privado, (International Responsibility. Issues of*

Public International Law and Private International Law), XIII Jornadas de la Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales, Alicante, 1990, 660 pp.

This book compiles the reports and papers presented in the XIII conference of the Spanish Association of Professors of International Law and International Relations which took place in the Faculty of Law of Alicante University on the 28-30th September 1989. The convention examined the rules governing the responsibility from the perspectives of Public and Private International Law, while the panel of International Relations studied some of the problems arising from cooperative relations in the Mediterranean area. Professors C. Jiménez Piernas (Public International Law), L. Garau Juaneda (Private International Law), and F. Aldecoa Luzarraga (International Relations) were named coordinators of each panel, with the responsibility of both selecting the specific themes to be developed and directing the work within each area. It is to be understood that the final results of the XIII conference, as reported in this book, are in no way the responsibility of the coordinators. Their sole aim was to arrange and promote a free intellectual initiative of its associates, only controlling what has been required by the authors of the papers. It should also be remembered that the purpose of this Conference is to hear, and later read, the opinions of young professors and scholars.

The scientific activity of the XIII Conference is focused on the study of the *ruling of international responsibility* (area or panel of Public International Law), and *the ruling of extracontractual responsibility*, (area or panel of Private International Law). The most outstanding characteristics of the contributions made by the panel of Public International Law are as follows: The analysis of the crisis engendered by the long process of codifying this material, a crisis, from the lecturer's point of view, due to the well known contradiction or tension between the relational, institutional and community structures of the international legal code; the radical normative indefinition suffered by the legal duty to refrain from resorting to the use of force in international order; the difficult relationship between extraconventional protection of human rights and the common legal code of international responsibility; the possible use of procedure provided in article 169 of the EC Treaty covering cases of conduct incompatible with the Treaty, not caused by member states but by other subjects under their jurisdiction; and above all, a combination of specific problems in the regime governing international responsibility for environmental damage, dealt with in the numerous reports on its many issues (the problems of who has the responsibility, the insufficiency of duty of care, the responsibility for changes in the ecosystem, the purpose of the duties established by Part XII of the Montego Bay Convention, plus the many others that lower the coordinator's hopes of a final balanced work

between the themes proposed to study and debate. This is all evidenced in the Index.

The panel of Private International Law dealt with issues of both Spanish and Comparative Law. Noteworthy are the general report that fixes the theme and the analysis of existing problems concerning both the protection of a consumer or user *a posteriori* and the assessment of liability and compensation for accidents and unlawful acts. This makes obvious the number of problems and institutions that can take cover under what is known as extracontractual liability, and increases the difficulty for its uniform regulation. Other current themes treated (enrichment without cause, precontractual responsibility, movements of money) have not yet been paid the necessary attention from Spanish doctrine and jurisprudence, though they are now being studied with the urgency they demand. This has provoked interesting interventions in the consequent debates after the lectures. Regrettably, these debates have not been collected or published for lack of financial means.

The panel of International Relations received fewer reports. Only two are published in the book, one on the role played by substate institutions in relations of Mediterranean cooperation, the other defending the thesis that the Mediterranean area is today an example of source of information, if the traditional "international relationship complex" is interpreted as a communication system.

This book, which could be considered as the best compensation for the efforts made by the Organizing Commission of the XIII Conference, was possible thanks to the aid of the Ministry of Education and Science (for the organization of the scientific meetings, congresses and seminaries subsidized by the Sectorial Programme of General Promotion of Knowledge-Announcement 1988), the Council of Culture, Education and Science of the Valencian parliament (for identical activities, Announcement 1989), and this Spanish Association of Professors of International Law and International Relations. The bibliography of this *Yearbook* details the collaborations published in the book.

JIMENEZ PIERNAS, C., *La revisión del estatuto territorial del Estado por el nuevo Derecho del Mar (El caso de los Estados archipelágicos), (The Revision of the State Territorial Statute by the New Law of the Sea. (The Case of Archipelagic States))*, Servicio de Publicaciones de la Univ. de Alicante,1990, 257 pp.

This is not yet another book on the Law of the Sea. It contains no reference to the overwhelming international treatment of the matter, studied for years now and contributed to by the same author (*vid. The process of formation of the International Law of Archipelagoes*, 2 tomes, Publication Service of the Complutense University of Madrid, 1982).

The aims of this monograph are stated more extensively than usual in the Introduction and Recapitulation (pp. 23-42 and 215-231), with the purpose of avoiding interpretative errors. The author begins with the international juridical concept of archipelagic state, and intends to revise the premises and content of a basic legal political notion, key to the Theory of State: the concept of territory, which is usually borrowed by international law. That is why he investigates using an inter- and trans-disciplinary channel. This pluridisciplinary technique, which he believes to be the most interesting contribution of his book, demonstrates the specific content of the idea of territory and makes a simple proposal for the revision of the concept.

It is well known that the archipelagic state, a new institution of international law contained in Part IV of the Convention of the Law of the Sea (articles 46 and 54), is based on the unity of land, sea and air space corresponding to one or more archipelagoes, enclosed by a system of straight baselines that follows its contours, and over which the said state exercises its sovereignty, subject to certain specific restrictions. The immediate question is what will accurately be the true territorial statute of an archipelagic state, given that, so far, air and sca space have never been considered on an equal footing with land space as components of the physical base of the state.

The traditional concepts of territory and boundary now in force imply above all the assessment of the sea as a marginal boundary space of second order, affected only by *issues of delimitation*, not of *attribution of sovereignty*. This has meant a disregard a priori of most parts of the sea and air space between the islands of an archipelago, leaving land space as the only territory under full state sovereignty. The new institution of archipelagic state proposes exactly the opposite. Thus a flagrant contradiction is raised between the change made in one area of international regulation and the concept and traditional rules of another area, even of a further discipline, the Theory of state. This investigation tries to solve the contradiction.

It specifically proposes replacing the traditional concept of *state territory* with the concept of *state space*, based on the cultural realities of the archipelagoes and the juridical reality of the new archipelagic states. *State space*, archipelagic or not, must be considered strictly as the *physical area, including its sea content, where in a stable and ordinary manner state authority is observed in accordance with the cultural conditions of this area.* Then a new relationship would arise between Law and Political Science from the legal concept of archipelagic state, set up by the new Law of the Sea: the idea of territory, a fundamental concept of the Theory of state so far borrowed by part of international law, would be reexamined from the international legal perspective of the archipelagic state. This contribution concludes with facts drawn not only from legal science but also from

various social sciences, using a research that aims to be both inter- and transdisciplinary. One should not forget that, from an interdisciplinary perspective, there has been an updating of factual law on the attainment and practice of state sovereignty, because the well known relativity of the ostentation of state authority has been transferred from a typical geocentric (earth-centered) scope to a talasocentric (sea-centered) scope.

The new concept of state space contributes substantially to the strengthening of the universality of the international legal system because it integrates within the legal code cultural, political and judicial situations historically considered marginal. This will emphasize within contemporary international law the desire for a true community order free from exclusive hegemonic and biased relations and based instead on the pluralistic coexistence of cultural systems with a principle of equality, acknowledging the differences among those systems. The archipelagic institution has its origins in a self-interested approximation to international law, one which consists of the normative individualization of a group of states with communal conditions that requires rules of exclusive application for them.

But it is worth noting that the final result is a strengthening of the universality of international law through the suppression of various hegemonic and biased relationships held to be universal but which are in fact exclusive. This exclusiveness of the archipelagic states had been provoked undoubtedly by a similar previous situation, no matter how heavily disguised. The dilution of ancient intercultural dominations has partially overcome these tensions and contradictions, and has integrated them in a universal model and category. The new institution of archipelagic state contributes to the informative function proper to any legal system, including the international.

On a methodical level, the model and categories proposed in the book prove the convenience of an interdisciplinary method that evokes the diversity of cultural perspectives (in this case the plural representation of space) but retains respect for discordancies and does not disregard the multiple complex human forms with the intellectual imperialism of a science conceived in a unilateral and ethnocentric manner.

LLEONART AMSELEM, A.J., *España y la O.N.U. Tomo IV (1950). La "Cuestión española". Estudios introductorios y corpus documental*, (*Spain and the U.N. Tome IV (1950). The "Spanish Issue". Introductory Studies and Documental Corpus*), Madrid, 1991.

LÓPEZ GARRIDO, D. *El Derecho de asilo*, (*The Right of Asylum*), Trotta, Madrid, 1991, 334 pp.

MANCINI, G.F. *La circulación de los trabajadores por cuenta ajena en la jurisprudencia comunitaria, (The Movement of Employees in the Community Jurisprudence)*, Estudios Jurídicos Internacionales y Europeos. Universidad de Granada, Granada, 1990, Seminario Permanente n. 2, 37 pp.

MANGAS MARTIN, A. *Conflictos armados internos y Derecho Internacional Humanitario, (Internal Armed Conflicts and International Humanitarian Law)*, Servicio de Publicaciones de la Universidad de Salamanca, 1990, 192 pp.

MARCHAN, J., *Derecho internacional del espacio: teoría y política, (International Law of Space: Theory and Politics)*, Civitas, Madrid, 1990, 627 pp.

MARIÑO MENENDEZ, F., *La acción de la Comunidad Europea y de los Estados miembros en la "Crisis del Golfo", (The Action of the European Community and Member States in the "Gulf Crisis")*, Colección Estudios Jurídicos Internacionales y Europeos, Seminario Permanente, n. 5, Serv. de Public. de la Univ. de Granada, Granada, 1991, 64 pp.

The author analyses the different measures taken by the European Community and its member states, individually and jointly, during the "Gulf Crisis" previous to the armed conflict that ensued, January-February 1991, between the allied powers and Irak. The efficiency of these measures is determined by certain features such as their disciplined and permanent alignment within relevant resolutions of the Security Council; the subordination to the U.S. of the peace proposal of the Twelve; the real effectiveness of urgent measures of humanitarian aid and the imposing measures of commercial embargo; the delay in the financial aid to the countries most affected by the crisis; the weak coordination between the Nine members of the WEU for methods of blockade; and the complete absence of coordination between the Twelve for the use of force against Irak. The author suggests that the Community should learn from its behavior and take legal and political steps that will allow in the future a more "European action" in international affairs of this importance.

MERLE, M., *Sociología de las relaciones internacionales, (Sociology of International Relations)*, Trans. R.Mesa, ed. 2, Alianza, Madrid, 1991, 587 pp.

MILLAN MORO, L., *La "Opinio Iuris" en el Derecho Internacional Contemporáneo, (The "Opinio Iuris" in Contemporary*

International Law), Centro de Estudios Ramón Areces, Madrid, 1990, 202 pp.

MINISTERIO DE ASUNTOS EXTERIORES. SECRETARIA GENERAL TECNICA. *La celebración de Tratados internacionales por España:problemas actuales (Actas del Seminario organizado por el Ministerio de Asuntos Exteriores, el Ministerio de Relaciones con las Cortes y de la Secretaría del Gobierno y el Instituto Nacional de Administración Pública, 1989*, (*The Formalization of International Treaties by Spain: Current Problems* (*Papers of the Seminary Organized by the Ministry of Foreign Affairs, the Ministry of Relations with Parliament, the Secretary of Government and the National Institute of Public Administration, 1989*), Escuela Diplomática, Madrid, 1990, 382 pp.

MOITINHO DE ALMEIDA, J.C., *Evolución jurisprudencial en materia de acceso de los particulares a la jurisdicción comunitaria*, (*Jurisprudential Evolution in the Matter of Access of Individuals to Community Jurisdiction*), Estudios Jurídicos Internacionales y Europeos, Universidad de Granada, Granada, 1990, Seminario Permanente n. 4, 96 pp.

OCHOA BRUN, M.A., *Historia de la diplomacia española*, (*History of Spanish Diplomacy*), 2 vols., Madrid, 1991.

PICO DE COAÑA Y DE VALICOURT, Y., *Reflexión Centroamericana*, (*Central American Thinking*), Colección de Estudios Jurídicos Internacionales y Europeos, Seminario Permanente, n. 3, Servicio de Publicaciones de la Universidad de Granada, Granada, 1990, 68 pp.

PIÑOL RULL, J.; PI LLORENS, M., and CIENFUEGOS MATEO, M., *El principi de subsidiarietat i la seva aplicació a les entitats subestatals: consequéncies en el desenvolupament de les Comunitats Europees*, (*Subsidiary Principle and its Application to Sub-State Organizations: Consequences in the Development of European Communities*), Generalitat de Catalunya, Institut d'Estudis Autonomics. Quaderns de Treball, n. 33, Barcelona, 1991, 118 pp.

A provisional concept of the subsidiary principle could be the distribution of authority and liability among the different possible action

levels to guarantee the highest efficiency in the performance of certain actions. The distribution is carried out in the rule and/or executive field by means of objective approaches with limits and responsibilities for all the power levels in order to avoid an improper use of this principle.

Most authors, in the field of Community Law, consider that the subsidiary principle is not included in the original Treaties. It also seems that this principle is not considered by the community lines, since these have an increasingly particular and statutory nature. At the same time they limit the discretion the states need to determine the ways and means of incorporating specific objectives concerning the subsidiary principle in their respective juridical orderings. This is specifically mentioned in the reports and resolutions of certain community institutions (European Parliament and the Commission) which uphold the Community action in such a way that the assigned tasks can be carried out better by the Community than by the member states by way of individual matter.

As a result of the application of this principle, a change in the assignment of powers will take place. Correlative with the spreading of these powers in the European union, a weakening of member states' particular powers will occur. This supra-national process does not alter the internal distribution of powers, which will continue being managed by the respective constitutions. It is thus clear that those sub-state organizations which lose arrangement authority due to the transfer of subjects to the Union can still participate in both the state planning of Community themes and in the Community institutional system.

De lege data, a way of participation of the sub-state organizations is a participation of organic nature. This means the inclusion of representatives of the decentralized territorial institutions in either a national or a Community institutional head office. It is usually articulated by means of organs of consultative nature which work on a dual state-community scope. In the national head office, and with internal effect, the Spanish Constitution allows three main forms of participation: the right to information of the autonomous entities, which actually does not have extensive power; the participation in the Senate, which is not a chamber with real representative power; and, finally, the possibility to ask for the formalization of an international treaty. In the national head office, and with repercussions on the community process, there are two kinds of organic participation: the national delegations assigned to negotiate with the community entities and their consultative committees. In the European Communities, with the exception of Belgium and West Germany, the representation of the sub-state institutions exists more *de facto* than *de iure*. In the community institutional head office it has recently been agreed to form three committees where these institutions are directly represented. One of the committees, the Consultative Council of the regional and local

institutions, is the first official recognition of the representative nature of sub-state institutions, though it has limited possibilities.

The institutionalized relations are another, distinct, way of participation. These are the actions with which the sub-state institutions operate without being a part of the institutional and organic framework. The unofficial delegations of bilateral scope and the regional associations of multilateral scope are present. Both try to carry out informative functions together with commercial promotion functions and/or investment collection.

De lege ferenda and in national head office, there is an attempt to get a common consent participation of state and autonomous powers by means of coordination and cooperation mechanisms which could embody an organization able to guarantee the egalitarian participation of all the autonomous communities. In national head office, but with repercussions on the community process, the state could adopt different actions consisting of: increasing the autonomous representation in Spanish delegations, and allowing the autonomous communities to participate in community negotiations and in regional planning elaboration, being always respectful of state powers. In the community head office, we can put forward the initiatives of the Parliament and the Commission concerning the formation of an organ of regional and local representation.

The discussion about the subsidy principle also includes the jurisdiction control of its application. This control must be respectful of the freedom of appreciation that the principle involves, always within the legality control margins. Despite the possibility of *a priori* control, the trend is the setting up of *a posteriori* control which can keep the essential balance established by the constituent. It would be helpful if sub-state institutions were conferred the legitimacy to have access to the aforementioned control in the jurisdiction of the Court of Justice, either directly as privileged juridical subjects or indirectly through the community organ that represents their regional interests, in the event this one exists.

QUEL LOPEZ, J., *Las reservas a los tratados internacionales. (Un examen de la práctica española). (Reservations to International Treaties (An Examination of the Spanish Practice)*, Bilbao, 1991, 456 pp.

QUEL LOPEZ, J., and FERNANDEZ DE CASADEVANTE, C., *La lucha contra la tortura (Aspectos de Derecho Internacional y Derecho interno español), (The Battle Against Torture (Issues of International Law and Spanish Municipal Law)*, Oñati, 1991, 172 pp.

RIQUELME CORTADO, R., *España ante la Convención sobre el Derecho del Mar. Las declaraciones formuladas, (Spain and the Convention on the Law of the Sea. Spain's Declarations)*, Servicio de Publicaciones de la Universidad de Murcia, Murcia, 1990, 207 pp.

The U.N. Convention on the Law of the Sea (1982) does not admit the statement of *reservations* (art. 309) but allows declarations (art. 310), which many states have made use of, including Spain (Chapter I).

In fact, with the signing of the Convention (4 December 1984) Spain stated nine declarations whose contents and reach are the primary object of this work. The first of these can be considered *a political declaration*, as it concerns the Spanish territorial claim to the English colony of Gibraltar. The remaining eight aim at an *interpretation* of certain dispositions of the Convention. Two of the declarations are focused on the interpretation of certain issues of the rules established in the Convention governing the exploitation of the sources of the EEZ. This can be done from the perspective of the "rights" possessed by the "states whose subjects have usually fished in the zone" (art. 62) to have access to the fish surplus of the fishing grounds concerned, as contrasted with the right of the "developed states without littoral or in a geographic situation of disadvantage" (arts. 69 and 70) (5th Declaration). It can also be based on the Spanish government's interpretation of the term "discretionary" (used in art. 279.3,a)), concerning the power of the coastal state to determine the circumstances referred to in articles 61 and 62 of the Convention (8th Declaration). Regarding the rules, agreed at the Convention, governing the exploitation of mineral resources in the marine depths, Spain has made clear its position, as a "semi-industrialized state", in the future exploitation of "reserved areas" and the activities carried out by the private sector on behalf of the Government (art. 9.2 of Annex III) (9th Declaration), (Chapter II).

For number and quality, the remaining five declarations are the most important for Spain. They try to solve, in a manner satisfactory to Spanish interests, any future problems in the Straits of Gibraltar caused by the right of transit, foreseen and regulated in Part III of the Convention, exercised by international traffic to navigate and over-fly the straits (Chapters III and IV).

With this aim, 2nd and 3rd Declarations have had an effect, in my opinion, upon the most outstanding issue of these new rules, the recognized right of overflying international straits for third states aircrafts in transit . On the one hand, it is interpreted that Spain can issue and apply its own rules in the air space of the straits, as long as they do not actually deny, hamper or diminish the right of transit of the aircraft. On the other hand, Spain has attempted to limit the extensive freedom granted to the "aircrafts of state" when overflying the straits, interpreting the word "normally" of art. 39.3,a) to mean "except in cases of force majeure or serious difficulty".

The 4th, 5th and 6th Declarations regard the rules, incorporated in the Convention, governing the *navigation* through the Straits of Gibraltar and, more specifically, some issues that may affect state powers in the prevention and control of the *pollution* of its waters and coasts. To begin with, it is interpreted that art. 42.1,b) of the Convention does not prevent the Spanish Government from taking into effect, by means of municipal laws and rules, the international procedures, practices and regulations "generally accepted" governing the prevention, reduction and control of the pollution caused by the "unloading" in the straits of hydrocarburates and other noxious substances. Spain has stressed, secondly, their position on the legitimate action they can take to prevent and/or mitigate any actual or potential damage caused by pollution of the straits as a result of a maritime accident: Spain interprets art. 221 as not depriving her of the powers acknowledged by international law covering intervention in cases of maritime accident. Lastly, Spain has emphasized the present relation between "guarantees" in regard to international straits (art. 233) with what is provided in article 34, making plain that Spain, exercising her right to sovereignty over the Straits of Gibraltar, can adopt measures established in sections 5 and 7 of Part XII of the Convention to prevent and fight the pollution of this maritime space, as long as such measures do not affect the rules governing the transit through the straits.

One must hope, however, that the points of view put forward in the Spanish declarations will be accepted by the signatory and contracting states of the 1982 Convention, as the possibility of conflict of the interpretative declarations depends on the acceptance by these states.

RUDA, J.M., *Presente y futuro del Tribunal Internacional de Justicia, (Present and Future of the International Court of Justice)*, Colección Estudios Jurídicos Internacionales y Europeos, Seminario Permanente, n. 1, Serv. Public. Univ. de Granada, Granada, 1990, 39 pp.

SAGARRA I TRIAS, E., *Derechos fundamentales y las libertades públicas de los extranjeros en España. Protección jurisdiccional y garantías, (Fundamental Rights and Public Liberties of Foreigners in Spain. Jurisdictional Protection and Guarantees)*, Barcelona 1991, 328 pp.

SANCHEZ RODRIGUEZ, L.I., *Las inmunidades de los Estados extranjeros ante los tribunales españoles, (The Immunities of Foreign states in Spanish Courts)*. Cuadernos Civitas, Madrid 1990, 169 pp.

SOCIEDAD DE ESTUDIOS INTERNACIONALES (SEI)., *Estudios internacionales-1990*, (*International Studies-1990*), Ed. SEI, Madrid, 1991, 374 pp.

TAMAMES, R., *Un nuevo órden mundial*, (*A New World Order*), Ed. Espasa-Calpe, Madrid, 1991.

VARELA PARACHE, M. (Coord.), *Organización económica internacional*, (*International economic organization*), Pirámide, Madrid, 1991, 462 pp.

4. Theses and minor theses

BLANC ALTEMIR, A., *La violación de los derechos humanos fundamentales como crimen internacional*, (*The Violation of Fundamental Human Rights as an International Crime*), Bosch, Barcelona, 1990, XXIV-444 pp.

This monograph is focused from the point of view that determines the appearance of rules governing international responsibility for acts committed against the fundamental interests of the international community. From these interests we single out the one concerning the safeguard of the individual, that is rooted in the respect for his/her most fundamental rights.

Three different parts emerge from an application of the system chosen:

The first part is devoted to an analysis of the concept of international crime, its genesis and evolution, its codification and progressive development, its legal nature and foreseen elements and hypothetical cases. Special attention is paid to those in which violations of human rights on a large scale amount to an international crime.

The second part focuses on the analysis of international crime clearly stated in article 19.3,c) of the Project of articles on the international responsibility of states, currently being elaborated by the Commission of International Rights. Slavery, genocide and apartheid are studied from a primary conceptual approach. It is followed by an examination of international juridical measures adopted against them, concluding with an assessment of the elements that make them international crimes.

The third part specifically studies the cases that fulfil the requirements to be considered international crimes though they are not yet expressly mentioned in the Project. Torture, the involuntary or forced disappearance of persons, and summary and arbitrary or extrajudicial executions are serious violations of the essential obligations for the safeguard of the individual. Torture has already been conventionally typified, while the other cases are still in the process.

Conclusions are articulated at the end of each three parts, with a conclusion of general scope at the end of the third, plus a bibliography and an index of authors and other material.

LOPEZ ESCUDERO, M., *Los obstáculos técnicos al comercio en la Comunidad Económica Europea, (Technical Obstacles to Trade in the European Economic Community)*,Colección Estudios Jurídicos Internacionales y Europeos, Serv. de Public. de la Univ. de Granada, Granada, 1991, 489 pp.

The instruments of commercial protectionism used by the states in the international economic relations have undergone a very important transformation in the last two decades. Currently, traditional protectionism has given way to a neoprotectionism characterized by the use of non tariff barriers. These include the technical obstacles, that is to say, restrictions on the free movement of merchandise due to divergences between the states' administrative, statutory and legal rules designed to regulate the production and commercialization of merchandise.

The author analyses, from a legal perspective, the concept of technical obstacles and the problems which arise due to their elimination. Nevertheless, other methods of analysis developed by the economic theory are used to offer a more general and complete view of this phenomenon.

Chapter 1 qualifies the problem of the technical obstacles as a matter of vertical definition of powers, because they only appear in a complex legal system in which there are different governmental levels with concurrent powers for the regulation of the production and commercialization of merchandise within a single economic area.

The research which has been carried out uses a comparative method. This allows the author to tackle the problem of the elimination of technical obstacles in the GATT international framework (Chapter 2), in the federal system of the United states and Canada (Chapter 3) and in the European Community (Chapter 4). The comparison between the above-mentioned systems constitutes Chapter 5, which studies the different methods used for the elimination of technical obstacles, ranging from the prohibition or prevention of protectionist commercial rules to the harmonization of different commercial rules.

Finally, the author states that technical obstacles are not only an instrument of commercial protectionism typical of neoprotectionism but also a mechanism for the protection of social interests. The principle of non discrimination is essential in the elimination of these obstacles in all legal systems. Equally important is the principle of free trade, whose abuse in the elimination of these obstacles results in an extensive liberalization of the economy. Regarding the European Community, the author concludes that the best way to eliminate the various technical obstacles in the EEC

would be to harmonize the diverging technical regulations, but not to formalize a trade clause in the EEC Treaty.

PEREZ-PRAT DURBAN, L., *Cooperación política y Comunidades Europeas en la aplicación de sanciones económicas internacionales, (Political Cooperation and the European Communities in the Application of International Economic Sanctions)*, Servicio de Publicaciones de la Univ. Autónoma de Madrid, Madrid, 1991, 374 pp.

PIGRAU I SOLÉ, A., *Subdesarrollo y adopción de decisiones en la economía mundial (El principio de igualdad de participación de los países en desarrollo en las relaciones económicas internacionales), (Underdevelopment and the Adoption of Decisions in the World Economy (The Equality Principle of the Participation of Developing Countries in International Economic Relations))*, Tecnos, Madrid, 1990, 297 pp.

ROLDAN BARBERO, J., *La Comunidad Económica Europea y los Convenios de Lomé : El STABEX, (The European Economic Community and the Lomé Conventions: the STABEX)*, Colección Estudios Jurídicos Internacionales y Europeos, Monografías, Serv. Public. Univ. de Granada, Granada, 1990, 432 pp.

The cooperation and development relations structured in the successive Lomé Conventions, within which STABEX has been created and applied, deserve special attention in the scope of foreign relations of the European Community. STABEX is inspired by the principle of stabilization of export revenues. Indeed, the problem of export revenue fluctuations concerning primary products is one of the main causes of economic vulnerability of developing countries. Some stabilization mechanisms (which guarantee a minimum level of income) have been set up to mitigate the problem.

STABEX is a complex mechanism formed by the Lomé Conventions between the European Community and an important number of African, Caribbean and Pacific states, formerly the dependencies of member states of the Community.

Chapter 1 specifies the historical and legal-international context of STABEX. In the historical context, reference is made to what could be considered the precedents of this mechanism. The specification of the international context is achieved by noting the operative mechanisms of compensatory financing of losses in export revenues and their debate in international order.

Once the subject has been identified, Chapter 2 is devoted to a detailed study of the STABEX. Different issues are analyzed: the contracting parties, the time of validity of the Lomé Conventions and the timing of the STABEX application together with the agricultural primary products from ACP countries covered by the STABEX. Also studied are the economic thresholds of activation and the financial resources.

Chapters 3 and 4 deal with the decisional procedure for the transfers and the system of ex-post control and reimbursement.

The purpose of this work is to specify the legal problems behind the STABEX. The conclusions prove that the study of a subject with a complexity of historical, political and economic considerations makes it difficult to achieve an exclusively technical-legal analysis. Among other things, it could be stressed that the material scope of STABEX (cooperation for development) is a badly defined issue of Community policy. Cooperation for development was not a policy specifically included in the EECT. However, the absence of a legal basis had to be compensated with an ever increasing Community activity on this matter. Finally, the author denounces the lack of centralized, uniform and systematic instruments of international economic cooperation, of which STABEX is just an example.

VALLE GALVEZ, J.A., *La articulación jurídica de la Política Regional Comunitaria: el caso de los Programas Integrados Mediterráneos, (The Legal Structure of the Community Regional Policy: the Case of the Mediterranean Integrated Programs)*, Monografías, n. 1, Serv. Public. Univ. de Granada, Granada, 1990, 329 pp.

5. Articles and Notes

ALMEIDA NASCIMENTO, M.A. de, "Problemas de responsabilidad internacional derivados de los cambios provocados en el ecosistema de la Amazonía", ("Problems of International Responsibility Arising from the Changes Produced in the Ecosystem of the Amazon"), C. Jiménez Piernas, (Ed.), *op.cit.*, 153-178.

ARENAL MOYUA, C. del, "La adhesión de España a la Comunidad Europea y su impacto en las relaciones entre América Latina y la Comunidad Europea", ("The Accession of Spain to the European Communities and the Impulse to the Relations Between the European Community and Latin America"), *RIE*, vol. 17 (1990) n. 2, 329-368.

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The book deals with legal relations that go beyond the framework of a given positive law, since they are connected with other regulations. That is why it intends to study, instead of the legal relations of internal traffic, those of international traffic, whose main feature is the existence of a foreign element (person, thing or action). For this purpose, Private International Law has used a series of material norms, internal and international, that give a direct solution to a case, as well as a method rooted in legal history, the method of litigation, that points out which is the legal regulation that must solve a problem of foreign private traffic.

Spanish positive law has dealt with the solutions to these problems by means of a number of rules of conflict included in the original drafting of the Code of civil law, later modified and extended with the reform of 31 May 1974. This modification did not spring from nothing. The previous norms of the 1889 Code of civil law had already been interpreted by jurisprudence, especially by the Supreme Court, which gave a more complete ruling than in the original text. It was not applied very often, owing to the fact that during the period of autarchic economy in postwar Spain (1942-1959) the country was isolated and, as a consequence, legal relations with foreign elements were scarce. This diminished the importance of jurisprudence, and reduced Spanish doctrine to a study of the different legal theories on the matter. The end of the former regime in Spain gave

way to the proclamation of the Constitution of 1978 and with this, the need to adapt norms to the new demands of the fundamental text, a reform which affected the conflict among jurisdictions or the application of the general theory on civil issues more than the general section about conflicts of law. Years later there was a new requirement: as Spain had joined the Community on 12 June 1985, Spanish law had to be in accordance to European Community law.

The book deals with conflict of law in private legal relations, leaving aside others that spring from transnational issues. The conflict of law is based on the legal and jurisdictional treatment contained in the Spanish Private International Law, excluding extensive comparative analysis and historical or doctrinal expositions. Attention is paid firstly to a general introduction concerning the concept, content and nature of the material, then to the conflicts of jurisdictions (competence, position of the foreigner before the courts, recognition and enforcement of foreign judgements and international private arbitration), and conflicts of law, both in the problems of interpretation (delimitation, interlocutory procedure, preliminary proceedings) and of application, (reference to the foreign material law, exceptions to public order and legal fraud).

MARIN LÓPEZ, A., *et al. Derecho internacional privado español*, (*Spanish Private International Law*), Special section, vol. II, 7th ed. Granada, 1991, 467 pp.

This work, jointly edited by Professors A. Marín López, M. Moya Escudero, M.L. Trinidad García and J. Carrascosa González, deals exclusively with International Civil Law. Dr. M. Moya Escudero, full professor on this subject, has written chapter VI on the relations between spouses with the cooperation of the fellowship holder, lawyer R. Rueda Valdivia; section 3 of chapter VIII on adoption, and section 2 of chapter XII on labour contracts. Dr. M.L. Trinidad García, Lecturer on this discipline, has written chapter VII on marriage annulment, separation and dissolution, and also sections 1 and 4 of chapter XII on international sale and representation, together with the first paragraph of section, chapter XIII on business negotiations. Dr. J. Carrascosa González, provisional Lecturer, has written chapter X, regarding things. Chapter XI on contractual obligations, is the work of the authors of this text, except for paragraph d) of section 4, on contracts concluded by consumers and the labour contract in the Convention of Rome, which has been prepared by F.L. Carrillo Pozo, fellowship research holder of the Department. The rest of the book is written by Dr. A. Marín López, Professor of Private International Law in Granada University.

The institutions of International Civil Law are regulated in articles 9, 10 and 11 of the Code of Civil law, drafted by the Spanish legislator in 1888-1889 under the influence of the French and Italian Codes of civil law.

The personal status dominates these codes with an extensive content. As a consequence, certain institutions, such as family law, were closely related to the moral and religious conceptions prevailing at the time.

Today the situation has changed partially. The new preliminary heading of the Code of civil law, reformed in 1974, has given a new wording to articles 9,10 and 11, mostly improving the former regulations, although this had already been partially done by jurisprudence with the interpretation and application of the former norms of dispute. External legal traffic, daily more and more complex and intense, cannot escape the influence of the social and economic conditions of its own community as well as the national and international codifications whose models are found in the work of the Conference of La Hague on Private International Law, the Council of Europe or the European Communities.

The basic issue is, however, the permanent transformation of Private International Law, the crisis of the personal status, of the protection of minors, of family law or of extracontractual obligations.

Private International law, the object of study in this volume, has followed a classical pattern in the Code of civil law, but close attention reveals that article 9 contains an extensive reference to what has been called extrapatrimonial rights, whereas article 10 includes patrimonial rights and article 11 still deals with the rights concerning forms, both in patrimonial and extrapatrimonial relations. Nevertheless, this terminology has had little acceptance and, thus, article 9 consists of a combination of relations concerning the individual, article 10 of relations concerning things and obligations, and article 11 what concerns the form. But the authors of the text have preferred not to follow this statutory order of real and formal personal relations, and have anticipated the law applicable to the form, as it will have an immediate effect on the conclusion of a marriage, in the relation between spouses, in adoption, descendence and contracts. Regarding the individual, the authors study the capacity, incapacities and the artificial person; regarding the form, the rule "locus regit actum" and the "auctor regit actum"; later on, marriage, its relations and its dissolution, filiation and descendence. They then analyze the rules governing things as well as the contractual and extracontractual obligations.

The book has followed the multiple changes which have taken place in autonomous law due to the ratification of international conventions and to the existence of a new constitution. This has brought the modification of family law by the law 30/1981; of issue, paternal authority and the economic rules governing the family by the law 21/1987, of October 24th; of adoption by the law 21/1987, of November 11th, and the ban on discrimination for reasons of sex by the law 11/1990, of October 15th.

MINISTERIO DE JUSTICIA, *Convenios y recomendaciones de la Comisión Internacional para el Estado Civil, (Agreements and*

Recommendations of the Internacional Commission for Family Status), Madrid, 1991, 128 pp.

MOYA ESCUDERO, M., *Textos y materiales prácticos de Derecho Internacional Privado español*, (*Texts and Materials on Spanish Private International Law*), Impredisur, Granada, 1991, 270 pp.

This book is an essentially practical instrument for anyone approaching a study on Private International Law for the first time. It makes it easier to understand by means of the analysis of positive texts and jurisprudential decisions. Its purpose is to achieve a practical knowledge of Spanish Private International Law through direct analysis and interrelated learning, bearing in mind the need for an overall knowledge of the discipline by way of the interrelation of the different sections it includes.

The structure of these practical materials fits into a specific conception of the discipline and, more particularly, the sections or materials that shape its contents. Firstly it excludes nationality and conditions of aliens as autonomous sections of Private International Law, though that is not an obstacle to the treatment of problems that are rooted in them. Thus, those regarding the proof of foreign nationality, the positive solution of the so called conflicts of nationality or their resolution in a specific case, must be taken into account wherever they are still typified as a factor of connection. Foreign status, the importance of administrative authorizations of underlying private contracts, the relevant issues in the accession to real estate, and the restriction upon the practice of certain professional and mercantile activities, will also have to be studied from a practical point of view in the detailed analysis of the regulation of private international situations and relations.

These texts and materials are therefore centered on the competence of international jurisdiction, the applicable law and the recognition and enforcement of foreign judgements, considering them as the fundamental hinges of Private International Law. The study of these institutions will not be isolated, but together with practical cases that will not only determine the applicable law but also allow a global study of each one of these institutions. This work includes material of autonomous state origin, but also of a conventional nature. In fact, the system of Spanish Private International Law is not solely the work of the state legislator, who, in creating its norms, gave form in an individual manner to his own interests. The need of cooperation with other states gave rise to the inclusion of multilateral or bilateral international treaties in its legal system. So the reception of the conventional Private International Law system into the Spanish autonomous state system and the perdurability of the latter become a juridically honoured fact.

The analysis of the material and spacial limits of the Convention, its coexistence with the internal regulations, the interrelation between

successive treaties that have the same object, or the existence of reservations that include a specific solution of top priority, raise a lot of problems of necessary recognition from a practical point of view. This demonstrates the complexity of Private International Law and makes us realize that its contents do not come down to the few rules of the conflict of laws in the Code of civil law and some others scattered among several legal texts.

The texts and materials gathered in this book come together with a series of guiding questions and a brief, accurate, easily accessible bibliography whose purpose is that of this book: to reveal the current state of Spanish Private International Law.

PEREZ VERA, E., *et al.*, *Derecho internacional privado*, (*Private International Law*), vols. 1 and 2, 2nd ed., UNED, Madrid, 1990, 361 pp. and 307 pp.

— *Derecho Internacional Privado*, (*Private International Law*), vols. 1 and 2, 3rd ed., UNED, Madrid, 1991, 375 pp. and 340 pp.

TOMAS ORTIZ DE LA TORRE, J.A., *Derecho internacional privado. Parte General*, (*Private International Law. General Section*), Vol. II, *Técnica aplicativa de la regla de conflicto*, (*Applicable Technique of the Conflict-of-Laws Rule*), Servicio de Publicaciones de la Facultad de Derecho, Universidad Complutense, Madrid, 1990, 628 pp.

2. Books in Honour of

3. Monographs and collective works

ALCOVER GARAU, G., *La transmisión del riesgo en la compraventa mercantil. Derecho español y Derecho internacional*, (*The Transfer of Risk in the Sale of Goods. Spanish Law and International Law*), Madrid, 1991, 320 pp.

BERMEJO GARCIA, R., *Comercio internacional y sistema monetario. Aspectos jurídicos*, (*International Trade and Monetary System. Legal Issues*), Madrid, 1990, 260 pp.

BORRAS RODRIGUEZ, A., (Ed.) *Los trabajadores extranjeros y la regularización de 1991*, (*Foreign Workers and the 1991*

Regularization), Fundación Paulino Torras Domenech, Barcelona, 1991.

BOUZA VIDAL, Nuria, *Las garantías mobiliarias en el comercio internacional, (Security Interest in Movable Property in International Trade)*, M. Pons Legal Ed. S.A., Madrid, 1991, 275 pp.

This work examines the validity, recognition and enforcement of foreign non-possessory security interest in Spanish Private International Law.

The generic term "security interest" is used to refer to the various types of security interest in movable property which have been developed in practice: those inspired by the classical concept of pledge (chattel mortgage and pledge without delivery of possession) and those which use property for warranty purposes: reservation of title, leasing and fiduciary transfer of title.

The book is divided into three parts. Each consists of three chapters. The First part underlines the diversity of rules governing the security interest in movable property of Comparative Law. It also details proposals made within various international organizations (International Institute for Unification of Private Law (UNIDROIT), United Nations Commission on International Trade Law (UNCITRAL), European Economic Community (EEC) and Council of Europe) in order to eliminate the diversity of regulations in the different states with the formalization of uniform rules applicable to all or to some of the most frequent types of international security interest. At present most of these proposed solutions are still mere projects.

The Second and Third Parts refer to the difficulties faced by the classic method of conflict of laws to make the security interests linked to more than one country extraterritorially efficient. A number of proposals are made in order to improve their efficiency beyond the borders of the country which has constituted them. This study comes together with an analysis of the numerous Spanish and foreign legal decisions which give clear proof of the legal obstacles confronted by the holder of the security interest when he tries to make use, outside the country which has constituted it, of his rights when dealing with a good faith buyer, the debtor's creditor seizing the movables or the debtor's trustee in bankruptcy.

Due to the absence in most countries of specific conflict of law rules on the matter, (an exception is article 9.103 of the Uniform Commercial Code of the U.S.A.), delicate questions of delimitation and characterization arise. A series of laws (*lex contractus, lex rei sitae, lex loci, lex concursus*) may converge in the regulation of security interests, so it is necessary to specify which issues of the security interests are subject to these laws. Based on the data supplied by positive law, doctrine and jurisprudence, Chapters V to IX state the criteria to be followed in this delimitation action. Flexibility and

functionality are the main features of these criteria. This option is the basic criterion in favour of the enforcement of the law of location of the chattel when the security interest has been formalized, in order to regulate its validity, contents and inter partes effects. It comes together with a number of corrections in the assumption of chattels in transit, chattels for exportation and chattels to be exploited in several states. When movables subject to a security interest are moved from one state to another, the new *lex situs* regulates the amount of publicity measures needed so that the guarantee will be opposable *erga omnes*. It also regulates the actions that the holder of the guarantee can carry out to defend his right, and the priority position of the holder as opposed to other creditors of the debtor. Not to make the public registration required by the new *lex rei sitae* difficult to fulfil by the security interests formalized abroad (e.g. article 4.5 of the Spanish law of sale on installments, after its reform by the Law 6/1990, July 2nd), it would be recommendable to adopt both criteria for the control and registration based on the actual whereabouts of the chattels, and the substantive rules that can help foreign security interests to fulfil the formal requirements demanded by the new lex situs. This would maintain their efficiency for the length of time needed to fulfil these requirements, as is foreseen in some states (e.g. article 102.2 of the Swiss Federal Law of 1987 on Private International Law).

DESANTES REAL, M., *El Ecu y la contratación internacional*, (*The Ecu and the International Contract*), Madrid, 1991, 143 pp.

DIAZ GARCIA, N., *La reforma de la nacionalidad (Comentario a la Ley 18/1990, de 17 de diciembre*, (*The Reform of Nationality (Commentary on the Law 18/1990, of December 17th)*), Madrid, 1991, 160 pp.

DURAN RIVACOBA, O., *Vecindad civil en la reforma del Código por la Ley 15-10-90*, (*Civil Vicinity in the Reform of the Code by the Law 15-10-90*), Madrid, 1990, 70 pp.

ESCUIN PALOP, V., *Régimen jurídico de la entrada y permanencia de extranjeros en España*, (*Spanish Regulations Governing the Rights of Entry and Abide of Foreign Nationals*), Madrid, 1991, 108 pp.

FERNANDEZ DE LA GANDARA, L. and CALVO CARAVACA, A., *Las ayudas de Estado en la Comunidad Económica Europea:*

Análisis y perspectivas, (*Aids in the European Community: Analysis and Perspectives*), Murcia, 1991, 184 pp.

GASCON ORIVE, A., *Manual de Comercio Exterior*, (*Handbook of Foreign Trade*), Madrid, 1991, 244 pp.

MARIS GONZALEZ, *La Protección de la infancia en el marco del Derecho Internacional*, (*The Protection of Infancy in the Framework of International Law*), Madrid, 1991, 140 pp.

MARTINEZ LAFUENTE, A., *et.al.*, *Estudios sobre el Convenio entre España y Estados Unidos para evitar la doble imposición*, (*Studies on the Convention between the Kingdom of Spain and the United states of America to Avoid Double Taxation*), Madrid, 1991, 498 pp.

MINISTERIO DE JUSTICIA, *Comentario del Código Civil*, (*Commentary on the Code of Civil Law*), Obra dirigida por Paz-Ares, P. Díez-Picazo, L.; Bercovitz, R. and Salvador, P., 2 tomes, Secretaría General Técnica del Ministerio de Justicia, Centro de Publicaciones, Madrid, 1991, t. 1, CXLIII+2536 pp., and t.II, CXIV+2371 pp.

ONTIVEROS, E., *et al.*, *Mercados financieros internacionales*, *International Financial Markets*), Madrid, 1991, 687 pp.

PAZ AGÜERAS, J.M., *La adopción consular*, (*Consular Adoption*), Ministerio de Asuntos Exteriores, Madrid, 1990, 98 pp.

SENES MOTILLA, C., *Las obligaciones en moneda extranjera. Su tratamiento procesal*, (*Bonds in Foreign Currency. Their Procedural Treatment*), La Ley, Madrid, 1990, 296 pp.

SERANTES, P., *Alternativas financieras del comercio exterior*, (*Financial Alternatives of Foreign Trade*), Madrid, 1991, 248 pp.

— *Financión del comercio exterior*, (*Financing of Foreign Trade*), Madrid, 1990, 125 pp.

SIMO SANTOJA, J. *Regímenes matrimoniales. Legislación comparada*, (*Rules Governing Marriage. Comparative Legislation*), Madrid, 1991, 378 pp.

4. Theses and minor theses

ALVAREZ RODRIGUEZ, A., *Nacionalidad y emigración*, (*Nationality and Emigration*), La Ley, Madrid, 1990, 303 pp.

ARROYO MONTERO, R., *El matrimonio consular*, (*Consular Marriage*), Ed. Civitas, Madrid, 1991, 226 pp.

BRIOSO DIAZ, P., *La constitución de la adopción en Derecho Internacional Privado*, (*The Formalization of Adoption in Private International Law*), Ministerio de Asuntos Sociales, Madrid, 1990, 161 pp.

DIEZ SANCHEZ, J.J., *El Derecho Penal Internacional (Ambito espacial de la ley penal)*, (*International Criminal Law (Territorial Jurisdiction of the Criminal Law)*), Colex, Alicante, 1990, 228 pp.

GARAU SOBRINO, F., *Régimen legal de las inversiones comunitarias en España y de las españolas en países comunitarios*, (*Rules Governing Community Investments in Spain and Spanish Investments in Community Countries*), Tecnos, Madrid, 1990, 281 pp.

GARCIA RODRIGUEZ, I., *Aspectos internacionales de la seguridad social*, (*International Aspects of Social Security*), Colección Tesis Doctorales, Ministerio de Trabajo y Seguridad Social, Madrid, 1991, 526 pp.

This thesis is based on the research, directed by Professor J.D. González Campos, for the obtention of the degree of doctor which was defended by the author on June 17th 1988 at the Faculty of Law of the Complutense University of Madrid. It was titled *Social Security Conflicts of Law. A Study of National Private International Law, Conventional and European Law in force in Spain*, which was unanimously qualified as "Apto *cum laude*".

The thesis was entered for the Ph. D. prizes sponsored by the Ministry of Labour and Social Security where it obtained one of the "Labour and Social Security Awards 1988". Given the length of the thesis, the author was urged to modify and adapt it to the requirements of the Publication Service of the Ministry, updating and revising it.

This work confronts the combination of international problems concerning social security from a triple perspective: Spanish or

autonomous internal law, international conventional law, and community or institutional law.

Divided into two parts, the thesis studies, from the point of view of the international law of social security, the problems and conflicts which arise in the initiation of the legal relation of social security (subjective scope, cover and/or affiliation and the duty to contribute) and in the intermediate and final phases of it (material scope, risks and contingencies, requirements for protection, recognition and granting of loans, economic or in kind), when the individual finds himself in an heterogeneous situation due to a change of nationality, his migration to another country for purposes of work or family regrouping.

As well as the contributions of permanent value for both Private International Law and the Law of social security, the book is notable for its timely reference to the current situation of Spanish social security, as it provides extensive legal and jurisprudential information, that suggests a rationalized policy for the improvement of the prevailing institutions therein described and detailed.

The lack of autonomous rules of conflict governing the relations of external traffic in the social security caused the increase of international Conventions on this matter, in order to solve the problem of migration. On the other hand, Community Law felt the need to elaborate regulations so that these problems would not stop or hold up the free circulation of people and property.

The problems analyzed concern the study of the competent law or laws, as the economic interests make it necessary to apply as many laws as states intervene in the migratory process, in such a way that at times the same contribution is regulated by different national laws. This is not a case of "depeçage", in which the different issues of the same legal relation are regulated by different laws. In Spain it is the same relation which is regulated by different national laws.

There is an attempt to identify the better connection for this legal relation, concluding that, among all those applicable, given the numerous cases possible, the ideal is the law of affiliation; moreover, there is no possibility for the party autonomy to decide normally which competent legislation to use as it is believed that social norms have a protective nature.

Taken as a whole, this is an extensive work on the possibility of studying the Law of social security within the field of Private International Law and the importance of the former in issues of territoriality and personality of laws as well as of alien status, conflict of laws and the application of foreign law in the courts of justice.

SANCHEZ JIMÉNEZ, M.A., *La doble imposición internacional en materia de sucesiones y donaciones, (The International Double*

Taxation Concerning Successions and Donations), Comares, Granada, 1991, X+210 pp.

In the present time, dominated by internationalism, the phenomenon of double taxation has a fundamental importance, as it becomes and obstacle to the development of international relation because it is mostly matters of a fiscal nature that influence the decision on the place where an investment will be made or a contract will be formalized. That's why the regulation of this phenomenon, integrated in international tax law, has the attention of Private International Law.

It was in this context where the author located this minor thesis, which was originally the memoranda for the obtention of her Law degree, which has been suitably reviewed to be published, as Professor Alegría Borrás Rodríguez explains in her prologue. Its main issue is the succession tax, in which the suppression of the double taxation is due to reasons of justice and equity as well as the need to guarantee and clarify the fiscal situation of the individual who, free of charge, acquires chattels in different countries. In this sense, its aim has been to state the guidelines needed to know, at the present time, what the situation is in regard to tax demands of states concerning international double taxation in successions and donations. The author analyses the problem in four chapters, revealing the reasons for her approach, and examines the solutions adopted by states and international organizations.

Chapter one establishes a point of departure with an approach to the succession tax prevailing in Spain since the new regulation established by Law 29/1987, emphasizing the closeness to compared legislation and the growing concern of the legislator with international problems, as opposed to the former situation of the Revised Text of 1967, whose main feature was the absence of an international perspective.

Chapter two examines the cause of this problem of double taxation in successions, that is, the juxtaposition of the criteria of connection established unilaterally by states with those that bind the passive subject tributarily through acquiring property without purchasing it. The author also specifies the cases in which this cause is produced, both from a theoretical point of view, locating the cases hypothetically, and from a practical point of view, using an analysis of the criteria of connection used in compared as well as Spanish legislation of the matter of succession tax.

After revealing the cause, the solutions are examined, separating those at international level from those existing at state level, specifically those solutions supplied by Spanish domestic law. Consequently, the third chapter deals with a study of the struggle against the double taxation in succession matters to be found in the international field, underlining, by means of an evolutionary analysis, the work carried out in international organizations of a governmental nature, beginning with the Society of

Nations and followed by the OCDE, whose Convention models are closely examined.

Finally, in the fourth and last chapter, the author confronts the struggle against the problem of double taxation on succession from a Spanish state perspective. She analyses the bilateral conventions on the matter signed by Spain, together with unilateral measures foreseen in the internal Spanish regulations for cases in which this issue arises place and finds itself beyond the reach of the conventions in which Spain is a party.

5. Articles and Notes

ACOSTA ESTEVEZ, B. " Algunas cuestiones en torno a la ejecución de laudos arbitrales extranjeros en España", ("Some Issues Concerning the Execution of Foreign Settlements by Arbitration in Spain"), *RDP*, (1990) 373-392.

ADAN MUÑOZ, M.D., "Abanderamiento, matriculación y registro marítimo de buques", ("Ship Registering, Licencing and Maritime Register") *Secomex*, (1991) n. 93, 1-3.

— "Liberalización de las inversiones españolas en el exterior", ("Liberalization of Spanish Investments Abroad"), *Secomex*, (1991) n. 116, 1-5.

— "El internamiento preventivo del extranjero durante la tramitación del expediente de expulsión", ("Foreign Preventive Internment for the Proceeding of the Deportation Expedient"), *Rev.Jur.La Ley*, (1991) n. 2816, 1-5.

AGUILAR BENITEZ DE LUGO, M., "La ley aplicable al divorcio en el Derecho internacional privado español", ("The Applicable Law to Divorce in Spanish Private International Law"), *BIMJ* (1990) n. 1566, 2627-2641.

— "Comentarios al artículo 12.3º y 4º del Título Preliminar del Código Civil", ("Commentaries on Article 12.3rd and 4th of the Preliminary Title of the Spanish Civil Code"), *Comentario del Código Civil, op.cit.* 142-144.

ALVAREZ GONZALEZ, S. "La ley aplicable a la responsabilidad precontractual en Derecho Internacional Privado español", ("The Applicable Law to the Precontractual Liability in Spanish Private International Law"), *REDI*, vol. XLII (1990) n. 1, 126-152, and on C. Jiménez Piernas, (Ed.), *op.cit.*, 583-604.

— "Acción pauliana y competencia judicial internacional en el ámbito comunitario", "Action for Revocation and International Judicial Competence Within the Community Limits"), *La Ley. Com. Eur.*, (1990) n. 55, 1-3.

ALVAREZ RODRIGUEZ, A., "Régimen Jurídico de algunos iberoamericanos en el ordenamiento español", ("Rules Governing some South Americans in the Spanish Law"), *La Ley.Com.Eur.* (1990) n. 60, 4-8.

AMORES CONRADI, M., "Comentario a los artículos 9.1º a 9.3º; 10.7º; 10.9º y 107 del Código Civil", ("Commentary on Articles 9.1st to 9.3rd; 10.7th; 10.9th and 107 of the Code of Civil Law"), *Comentario del Código Civil, op.cit.*, 76-84; 124-125; 127-130 and 424-427.

BLANCO-MORALES LIMONES, P., "El aseguramiento de la responsabilidad civil", ("The Safeguarding of Civil Liability"), C. Jiménez Piernas (Ed.), *op.cit.*, 605-613.

BORRAS RODRIGUEZ, A., "El control de los flujos migratorios: las políticas europeas, problemáticas diversas", ("The Monitoring of Migratory Movements: European Policies, Diverse Problems"), *Symposium internacional "Els moviments humans en el Mediterrani Occidental*, Institut Catalá d'Estudis Mediterranis, Barcelona, 1990, 343-365.

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— "No discrimination á cause de sexe: modification du droit international privé espagnol", (" No Sexual Discrimination: Modification of the Spanish Private International Law"), *RCDIP*, (1991) n. 3, 624-634.

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— "Spain", Hayton, D. (Ed.), *European Succession Laws*, Chancery Law Publishing, London, 1991, 5.1-5.77.

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BOUZA VIDAL, N., "Comentario al artículo 10.1º y 2º del Título Preliminar del Código Civil", ("Commentary on Article 10.1st and 2nd of the Preliminary Title of the Code of Civil Law"), *Comentario del Código Civil*, *op.cit.*, 105-110.

CALVO CARAVACA, A.L., "Comentarios a los artículos 9.11º y 10.8º del Título Preliminar del Código Civil", ("Commentaries on Articles 9.11th and 10.8th of the Preliminary Title of the Code of Civil Law"), *Comentario del Código Civil*, *op.cit.*, 103-105; 125-127.

CARRASCOSA GONZALEZ, J., "Notificación irregular de la demanda y reconocimiento de decisiones en la Comunidad Europea (comentario a la sentencia TSJC de 3 de julio de 1990)", ("Enforcement and Recognition of Foreign Judgements - Bruxelles Convention 1968, article 27.2 — Service Abroad of Judicial Documents — The Hague Convention 1965"), *La Ley.Com.Eur.*, 31 July 1991, 3-7.

— "Perspectiva general de la europeización del Derecho de patentes", ("Patent Licensing Agreement - Community Patent - European Patent - European Patent Conventions"), *Secomex*, (1991) n. 96, 1-3.

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DESANTES REAL, M., "La dimensión oficial del ECU: presente y futuro de un instituto clave en el proceso de unión económica y monetaria", ("The Official Situation of the ECU: Present and Future of an Institution Key in the Process of Economic and Monetary Union"), *RIE*, vol. 18 (1991) n. 2, 517-549.

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ESPLUGUES MOTA, C.A., "Adhesión de España a la Convención de Viena de 1980 sobre compraventa internacional de mercaderías", ("Accession of Spain to the Viena Convention on International Sale of Goods, 1980"), *Secomex*, (1990), n. 91.

FERNANDEZ ARROYO, D.P., "La armonización de los medios de pago en la CEE", ("The Harmonization of Means of Payment in the EEC"), *Secomex*, (1990), n. 60 and 70.

FERNANDEZ ROZAS, J.C. "Derecho Internacional Privado y Derecho Comunitario", ("Private International Law and EEC Law") *RIE*, vol.17 (1990), n.3, 785-826.

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