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Report

drawn up on behalf of the Legal Affairs Committee

on the legal aspects of the European Communities' participation in the work of
the various UNO organizations

Rapporteur: Mr R. BALLARDINI

By letter of 5 July 1968 the President of the European Parliament invited the Legal Affairs Committee, at the request of the Committee on External Trade Relations, to report on the legal aspects of participation by the European Communities in the work of the various UN bodies.

On 18 October 1968, the Legal Affairs Committee appointed Mr Dehousse rapporteur. After the latter had ceased to be a Member of the European Parliament, the Committee appointed Mr Ballardini rapporteur on 13 September 1971.

It examined the draft report at its meetings of 7 December 1972, 8 March, 13 April and 2 May 1973.

The motion for a resolution and the accompanying explanatory statement were approved at the meeting of 2 May 1973 by 11 votes in favour and 4 abstentions.

The following were present: Mr Vermeulen, acting chairman;
Mr Ballardini, rapporteur; Mr Armengaud, Mr Bangemann, Mr Brewis, Mr Broeks, Mr Brugger, Mr D'Angelosante, Mr Héger, Mrs Nielsen, Mr Outers, Mr Scelba, Mr Schmidt, Mr Schwörer, Sir Derek Walker-Smith.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the legal aspects of participation by the
European Communities in the work of the various UN bodies

The European Parliament,

- having regard to the Treaties establishing the European Communities and in particular Article 6 of the ECSC Treaty, Article 184 of the EAEC Treaty and Articles 113, 210 and 229 of the EEC Treaty,
 - having regard to the fact that the European Communities have an international legal personality,
 - having regard to the need to strengthen the presence of the Communities in the various international bodies in order to foster a united image of Europe,
 - having regard to the fact that the European Communities have sole responsibility for certain matters in the area of external relations,
 - having regard to the fact that the extension of the Communities' internal powers must be accompanied by a parallel increase in its external powers,
 - having regard to the fact that the Communities' external powers have not so far been fully recognized in the context of UN activities,
 - having regard to the report of the Legal Affairs Committee (Doc. 57/73),
1. Affirms the principle that the European Community must be recognized as a single entity in all international bodies;
 2. Stresses that the European Community alone can enter into obligations with third countries in matters which are its sole responsibility and guarantee their fulfilment;
 3. Points out that it is therefore in the interests of third countries, for their own legal security, to negotiate with the European Community on matters which are no longer within the sovereignty of the Member States;
 4. Notes that in regard to participation by the European Community in the activities of the United Nations Organization, the solutions adopted are unsatisfactory and sometimes fail to comply with the letter and spirit of the Community treaties;

5. Believes that the Charter of the United Nations and the Statutes of its specialized bodies and agencies do not in themselves preclude on practical and procedural levels, participation by the European Community as such in certain activities undertaken in the UN, as is proved by the practical solutions adopted up to now;
6. Considers for its part that the failure to make appropriate arrangements in this matter complying with the Community Treaties can be attributed to the lack of political will in the Member States rather than to obstacles of a legal nature;
7. Therefore urges the Commission and Council to adopt a clear and precise position on this matter and refer it if necessary to the United Nations Assembly;
8. Instructs its President to forward this resolution and the accompanying report to the Council and Commission of the European Communities.

EXPLANATORY STATEMENTI. Subject of the study

1. The subject of this study is both important and delicate. It concerns participation by the European Communities in the work of the various UN bodies. Behind the technicalities, it is easy to see the legal and political aspects of this problem; the implications are in fact political rather than legal and of historical significance. What is at stake is the process of consolidation of the international legal personality of the Community institutions which is not only separate from the legal personality of the Member States but sometimes replaces the latter.

It is safe to say that all convinced Europeans hope this process will come to fruition. The task of your committee is simply to examine the legal implications of the existing treaties and international statutes. But this study will be made from the angle of observers who have their sights fixed on a far more ambitious ultimate aim.

2. The precise problem with which we are concerned here was first broached in written question No. 298 of 26 January 1968, by Mr Berkhouwer to the Council. His question was put on the eve of the United Nations Conference on Trade and Development due to be held from 1 February to 25 March 1968 in New Delhi; Mr Berkhouwer asked whether the Council felt 'that for matters relating to the Community sector, the positions adopted by the Community as such would alone be valid while in other areas the attitudes of Member States should as far as possible be harmonized'. He went to ask whether the Council considered that 'by analogy with the procedure adopted during the multilateral conference in GATT, the Commission should speak for the Community on all matters relating to the Community sector'.

The Council, which had already had many occasions to consider this problem, replied to Mr Berkhouwer on 8 April 1968¹ two weeks after the close of the New Delhi conference; but the reply lost none of its topicality because it dealt with matters of general and continuing interest. The Council stated that it endorsed the views put in the parliamentary question and added that these views had always been taken into consideration in the past and that in the case of extra-community problems, harmonization of the positions of Member States had been guaranteed by preliminary consultation between representatives of the Member States and Commission; this consultation had also been extended to representatives of the Associated States. The Council document went on to point out, perhaps going beyond the subject of the

¹OJ C 36, 22 April 1968, p. 7

question, that the spokesman for the Community had been either the President of the Council or the representative of the Commission 'depending on practical agreements reached jointly during such conferences'; this did not apply 'in the case of tariff negotiations in the strict sense of the term' since here 'only the Commission could act as spokesman for the Community'.

3. The reference by the Council in its reply to previous instances in which the Community as such had acted on behalf of its Member States, related in particular to the Convention of 18 May 1967 signed in Geneva between the EEC and 11 other countries, on the basis of which the Community undertook to supply a certain quantity of cereals to the developing countries as food aid. In a report which he drafted on this matter on behalf of the Committee on Agriculture¹, Mr Vredeling stressed that this Convention had for the first time offered the Community as such the opportunity of granting food aid on a strictly Community basis. He stressed the twofold importance of this occurrence: the Community nature of this international commitment had been maintained in the implementing procedures and it had given an opportunity to make the population of the developing countries aware of the Community as an entity.

4. It was, however, the Committee on External Trade Relations which, in its opinion of 16 May 1968 on the first general report on the activities of the Commission², referring to the results of the New Delhi conference, expressed its belief that the European Parliament should make a detailed study of the problems raised by EEC participation in the work of the various UN bodies. On 25 June, Mr Kriedemann, then chairman of the Committee on External Trade Relations, notified the President of the European Parliament of the wish expressed by his committee and the President entrusted the Legal Affairs Committee, pursuant to the Rules of Procedure, with the task of examining this important matter.

5. A further document issued a few days later, helped to clarify the various aspects of this matter. This was the report by the Committee on External Trade Relations on the outcome of the second Session of UNCTAD³. It noted 'with satisfaction the unity of views evinced at the conference by the Member States, while regretting that once again the Six were unable to act as a single entity and that the Commission of the Communities had not been entrusted with the task of acting as a joint spokesman for the Member States at least in those sectors which are already the sole responsibility of the

¹Doc. 31/68; resolution adopted by the European Parliament on 15 May 1968, OJ C 55, 5 June 1968

²Opinion of Mr Bersani - PE 10.849/rev.

³Report by Mr Pedini - Doc. 86/68; resolution adopted by the European Parliament on 4 July 1968 - OJ C 72, 19 July 1968

Community'.

This report outlined the reasons for satisfaction with the unity of views shown by the national delegations of the Six at 28 coordinating meetings and other meetings for consultation and exchange of information with delegations from the Associated States.

However, it regretted the fact that the six delegations had intervened individually in the debates and that the role of joint spokesman for sectors which were already the sole responsibility of the Community (tariff policy, agricultural policy, association conventions, common commercial agreements) had not been entrusted - contrary to the European Parliament's request - to the Commission of the Communities: 'The President in Office of the Council spoke officially on behalf of the Community in the general debate. The Commission representative was not empowered to intervene on behalf of the Community'.

The Committee on External Trade Relations had good reason to express its regret since at the end of 1968 in a resolution on preparations for the second Session of UNCTAD¹, it had put forward the following suggestions:

'1. The Committee considers it essential for the Europe of Six to act as a single entity at the second Session of the United Nations Conference on Trade and Development; 2. urges that, for the sectors in respect of which the Community already has sole responsibility (tariff policy, agricultural policy, association conventions or common commercial agreements), the role of joint spokesman for the six Member States at the world conference be entrusted to the Commission of the Communities; 3. recommends that for all other sectors of joint interest the Member States define a common position to be put by a single spokesman'.

On the third point, the parliamentary committee was able to indicate its satisfaction after the event. But it could not do so on the second point even though, as we know from the reply given to Mr Berkhouwer, the Commission was in agreement. Why then did things work out differently? Did the Council have a different view? Were the provisions of the UN Charter or Community Treaties an obstacle?

6. The legal difficulties deriving from the UN Charter have recently been indicated by the Commission of the Community.

¹ Report by Mr Pedini - Doc. 177/67; resolution adopted by the European Parliament on 24 January 1968 - OJ C 10, 14 February 1968

On 12 January 1971, Mr Vredeling put a question to the Commission with a view to ascertaining its opinion on the 'desirability and possibility for the Community to belong as a body to the United Nations Food and Agriculture Organization'. The Commission replied on 23 February¹ in very cautious terms, indicating its favour for 'adequate' participation by the Community in the FAO's activities but pointing to the 'various institutional difficulties connected with the statute of the United Nations'.

7. The institutional difficulties referred to by the Commission stem specifically from contradictions between the United Nations Charter which recognizes only individual States and Article 228 of the Treaty establishing the EEC².

In fact, according to the Commission's reply, participation by the European Communities in the work of the various UN organizations was a practical aim because the conferences of these organizations dealt with international problems in specific sectors of the economy, trade, agriculture, food supplies, etc. More often than not these conferences took the form of negotiations leading up to agreements which laid down obligations for the signatories. As this was the nature of their work, it followed that the Commission must participate since Article 228 of the Treaty of Rome requires agreements between the Community and one or more States to be 'negotiated by the Commission'. Whenever UN bodies hold conferences to deal with matters which fall within the terms of reference of the Community, the Commission must participate together with each Member State. And the procedure and delegation of powers indicated in Article 228 must apply to the conclusion of these

¹OJ C 22, 9 March 1971, p. 9

²Article 228

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organization, such agreements shall be negotiated by the Commission. Subject to the powers vested in the Commission in this field, such agreements shall be concluded by the Council, after consulting the Assembly where required by this Treaty.

The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.

2. Agreements concluded under these conditions shall be binding on the institutions of the Community and on Member States.

negotiations. Article 229¹ in turn recognizes the Commission's right to maintain 'appropriate relations' with the United Nations bodies. The United Nations is defined in its Charter as an organization of States and reservations have frequently been entered against the full participation in its bodies and conferences of various groupings between States which belong to the organization.

8. The conflict between the Treaty of Rome which confers on the Commission, within certain precise limits, the right to represent the six Member States, and the United Nations Charter, therefore illustrates the legal difficulties which have had to be faced.

9. The embarrassment to the Community resulting from the legal difficulty in acting as a single body in UN agencies has become even more acute since the end of the transitional period. From that time onwards, by virtue of Article 113 of the EEC Treaty², all aspects of trade between Member States and third countries have come under the responsibility of the Community. The definition of commercial policy in Article 113 is so wide that the occasions on which the Community must act in place of the Member States are bound to become more numerous.

¹Article 229

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations, of its specialized agencies and of the General Agreement on Tariffs and Trade.

The Commission shall also maintain such relations as are appropriate with all international organizations.

²Article 113

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

In the transitional period the areas for which the Community itself was responsible were limited (tariff agreements, agricultural policy); but since the end of that period the range of the common commercial policy has widened enormously. In fact commercial policy embraces all measures aimed at regulating economic relations with third countries¹.

It comprises trade with third countries without any limitation as to the goods involved; non-tariff barriers to international trade; industrial, health and safety standards as well as packaging and labelling rules which also influence external trade; agreements relating to the provision of services; association agreements and food aid. On all these matters, the Commission is empowered to participate in preparatory work and in the actual negotiations; for this purpose it replaces the delegations of Member States.

In this connection, the root of the problem did not lie in the choice of the body which would have full powers to represent the Community in the various phases of preparatory work, negotiations and conclusions of agreements. On this particular aspect the Treaty is sufficiently explicit. The problem lay in the need to recognize that on certain matters (and as we have seen these matters are many and varied) the Community alone, and not the Member States individually, could now enter into valid commitments with third countries. If Member States have an interest in acquiring certain rights and guarantees in this area they must agree to contract appropriate provisions with the Community; this implies admission of the Community among the contracting parties.

10. The principle outlined above has been solemnly confirmed by a ruling of the Court of Justice of the European Communities, i.e. Ruling No. 22/70² on an action by the Commission against a decision of the Council. This ruling is extremely important, both because it reaffirmed the principle of the sole power of the Community to conclude international agreements in certain areas and because it provided a wide and in a certain sense new criterion for determination of the areas to which this power should apply.

The sole power of the Community to contract international agreements in areas specifically indicated in the Treaty (tariff agreements, common agricultural policy, commercial policy in the wide sense referred to above) was implicitly recognized. In practice, however, these wide powers have not been exercised solely by the Community either for internal political reasons or for political and legal reasons external to the Communities themselves.

¹Pescatore, Recueil des cours à l'Académie de droit international de La Haye, 1961-II, p. 85

²Raccolta della giurisprudenza della Corte, Volume XVII-1971/3 p. 263

But opinions differed on the question as to whether this sole power of the Community could be extended to cases other than those expressly referred to in the Treaty. The ruling quoted above fully vindicated the theory that in this area the Community not only had powers specifically vested in it by the Treaty, but also 'implicit powers'. The ruling reads as follows on this point:

'In order to ascertain, in a specific instance, whether the Community is empowered to conclude international agreements, it is necessary to consider the Treaty as a whole and also its individual provisions. This power need not in every case be expressly provided for in the Treaty - as is the case, e.g. in Article 113 and 114 for tariff and commercial agreements and in Article 238 for Association Agreements - but may be derived from other provisions in the Treaty and acts adopted by the Community institutions by virtue of such provisions. In particular, whenever (with a view to implementing a common policy stipulated in the Treaty) the Community has adopted provisions containing, in any form whatever, common norms, the Member States no longer have the power - either individually or collectively - to contract commitments with third countries which encroach on these norms. As more norms of this kind are adopted, the Community's power to enter into and implement - in the internal area on which Community legislation is binding - commitments with third countries will increase. In consequence, when considering the Treaty provisions it is not possible to isolate arrangements internal to the Community from provisions governing external relations.'

This extract shows that the ruling endorsed the theory that the Community's exercise of internal powers gives rise to corresponding external powers, thus accepting the notion of 'implicit powers' which remain institutionally separate and different from the 'new powers' which may be assigned to the institutions by virtue of Article 235 of the Treaty¹.

The assertion of this parallel link between the internal powers and external powers of the Community vastly extends the practical importance of the problem which therefore merits a full study by the Legal Affairs Committee and a clear statement by the European Parliament in accordance with the letter and spirit of the Community treaties.

¹ Article 235

If action by the Community should prove necessary to attain, in the course of the operation of the Common Market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.

II. Legal personality and negotiating capacity of the European Communities in the international context

11. In order to answer our basic question, it is first necessary to determine whether the European Communities have a legal personality of their own and to define the extent of their negotiating capacity at international level.

(a) Legal personality

12. There can be no doubt that the Community has an international legal personality. Article 6 of the Treaty establishing the ECSC states: 'The Community shall have legal personality. In international relations, the Community shall enjoy the legal capacity it requires to perform its functions and attain its objectives The Community shall be represented by its institutions, each within the limits of its powers.'

Article 184 of the EAEC Treaty also expressly states that the Community shall have a legal personality.

A similar affirmation is made in Article 210 of the EEC Treaty.

Recognition of this personality by third countries is not an essential requirement because the Treaty provisions have an independent effect. There is, therefore, no need to examine this problem further.

13. It should, however, be pointed out that the existence of the Community's international legal personality was affirmed by the European Parliament in a resolution which it approved on 19 November 1960¹ on the basis of a supplementary report by Mr Van der Goes van Naters on behalf of the then Committee for Political Affairs and Institutional Problems, on matters arising in connection with relations between the Community and third countries, with special reference to the law on legations and flags.

In this resolution, the European Parliament maintained that the European Communities enjoy, through their international legal personality, the right to send and receive legations.

This right, and accordingly the legal personality of the Communities, has been recognized by many third countries which have accredited diplomatic missions to the Communities and declared their willingness to receive permanent missions from it.

If on the other hand the Council of Ministers has failed to implement its decision of 1 February 1960, providing for the delegation of joint missions from the Communities to the governments of third countries, the

¹OJ 79, 16 December 1960, p. 1496

underlying reason has been one of internal politics.

(b) Negotiating capacity

14. After thus settling the question of the European Communities' legal personality, we must now define the extent of its authority to act.

The literature on which the concept of the indivisibility of sovereignty is based does not accept that, in the present stage of development of international organizations, there can be subjects of international law other than individual States; it is held that unions of States do not have an international 'capacity' but only a 'competence' which such unions can exercise only as a collective body of the Member States.

The question as to the precedence of the concepts of 'capacity' or 'competence' may, however, be disregarded, since, in defining the area in which international organizations may conclude international treaties, it is irrelevant whether this activity is considered to reflect a 'capacity' or a simple 'competence'¹.

15. It is desirable to point out at this stage that the capacity of international organizations to conclude international treaties has been admitted in practice through recognition of their international personality².

The extent of this capacity is determined solely by interpretation of the statute of the international organization concerned.

In principle, therefore, the possibility of recognizing for an international organization external powers - not expressly laid down - in areas in respect of which its internal constitution provides no specific normative powers, can be ruled out.

On the other hand, this possibility may be admitted when the external powers are directly linked with the internal normative powers.

16. In regard to the external powers of the Community in particular, the Treaties establishing the Communities stipulated two separate solutions. The first in the ECSC and EAEC Treaties is based on a general attribution of powers linked with the purposes of the Treaties or the authority of each of these Communities; the second, i.e. in the case of the EEC Treaty, is based on the attribution of external powers in specific areas (Articles 111 and 113 for commercial policy and customs tariffs, Article 238 for the association with third countries, Articles 229, 230 and 231 for relations with international organizations).

¹ GORI, Sulla competenza negoziale esterna delle organizzazioni intergovernative con particolare riguardo alle Comunità europee, in Rivista di diritto europeo, No. 2/1972 p. 156

² SCHNEIDER, Treaty-making power of international organizations, 1959, p. 129

The difference between these provisions is explained by the fact that a general attribution of negotiating powers to communities such as the ECSC and EAEC with restricted powers does not entail the risk of serious conflicts of authority with Member States. If, on the other hand, similar general powers had been conferred on the EEC, a situation which would have been unacceptable to the Member States would have arisen, in view of the extent of the internal powers of this Community¹.

However, the progressive widening of the EEC's internal powers as a result of the development of common policies in various sectors which has not been accompanied by a parallel development of external powers, has created a situation of uncertainty regarding the division of powers between the Community and the Member States.

It is therefore possible that because of this uncertainty, third countries and international organizations may have hesitations in concluding international agreements with the Community, without the guarantee of Member States².

Experience has, however, shown that the main obstacle to the development of the Community's external relations stems from its own Member States which are reluctant to assign a substantial part of their powers to the Community.

Because of this situation, recourse has sometimes been had e.g. in the association conventions, to a 'mixed' procedure - for which no provision is made in the Treaty - on the basis of which Member States have signed, jointly with the Community, the corresponding international agreements establishing legal relations between the Community as such and third countries, although under Article 238 of the EEC Treaty, the Community should have been the sole contracting party.

In justification of this procedure it was argued that the association agreements involved financial obligations which had a direct bearing on the budgets of individual Member States of the Community. In addition, these agreements provide for the creation of institutions with decision-making powers which go beyond the external powers of the Community in the area of trade³.

¹ MEGRET, Le pouvoir de la CEE de conclure des accords internationaux, in Revue du Marché commun, 1964, p. 530.

² ZORGBIBE, L'Europe de l'Est face au Marché commun, Paris 1970, p. 12, 26 et seq.

³ RAUX, Les relations extérieures de la Communauté économique européenne, Paris 1966, pp. 452, 453.

This argument might have been valid in the case of financial obligations while the Community's budget was funded by national contributions. The situation will, however, change altogether when the Community's budget consists solely of own resources, i.e. after 1975. On the other hand the argument which has been invoked concerning the creation of institutions endowed with decision-making powers is less convincing. But we shall not examine that specific problem in this report.

17. In order to better define the negotiating powers of the Community at international level, it is now necessary to distinguish between three categories of responsibility, i.e. for the implementation of a common policy in a specific area (agricultural policy, commercial policy, transport policy); for matters which are also governed by national regulations (competition policy), and for action necessary to pursue the aims of the Treaty, e.g. in the social sector, even though such action has no direct link with a common policy or an independent area governed by specific legal relations¹.

The powers covered by the first category which the Community derives directly from the Treaty are basically instrumental rather than material in form, in the sense that the Treaty refers to the procedures by which the Communities may make independent arrangements for specific areas within the framework of the common policy; here the treaty does not lay down precise provisions but confines itself to the statement of general aims.

However, once a Community norm has been adopted it replaces the corresponding national norms². There is therefore an equivalent reduction in the power of the national legislator. Consequently in the sphere of common external relations, the Member States can no longer enter into commitments whose implementation they could not guarantee.

In the second category, distribution of powers is easier since the clear distinction made by the Treaty between relations governed by Community law and relations subject to national law, does not generally grant an extension of the Community's external powers to the detriment of those pertaining to the individual Member States.

However, external negotiating powers may be granted to the Community to the extent that they are necessary for the exercise of its internal powers provided that there is no interference between the two spheres, i.e. community and national.

¹ GORI, *ibid*, p. 183

² WOHLFARTH, *Fondements juridiques des relations entre les Communautés européennes et les Etats-Unis*, Institut d'Etudes européennes de l'Université libre de Bruxelles, 1964, p. 19

In regard to the third category of powers which concerns the coordination rather than replacement of national norms, the prevailing legal theory is that the Community has no negotiating powers in the strict sense of the term since internal discipline remains exclusively a matter for national authorities.

18. In conclusion therefore we may state, in accordance with Ruling No. 22/70 of the Court of Justice referred to above, that it is not sufficient for there to be an internal 'competence' for the Community to automatically have a parallel external 'competence'. On the other hand in sectors which are, or will be, governed by a common policy (agriculture, customs tariffs, commerce and transport), the States will no longer have unilateral decision-making powers either internally or externally.

III. Relations between the Community and the UN

19. This being the situation regarding the division of external negotiating powers between the Community as such and the Member States, what practical consequences may be drawn in connection more specifically with relations between the Community and the UN?

20. As we have seen, the Community Treaties contain provisions granting exclusive powers to the Community in the area of external relations, e.g. Article 111 of the EEC Treaty (tariff negotiations) and Article 238 of the same Treaty (association agreements).

With the end of the transitional period these exclusive powers have been considerably increased. Commercial policy (Article 113) has been added to the cases listed above. But what is the extent of this policy?

Article 113(1) defines its scope as follows: commercial policy comprises in particular changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade.

21. It now happens that when the UN or its specialized agencies convene international conferences on measures of development aid, trade, tariffs, etc. and Member States as well as the Community as such are invited to attend, a conflict arises between the provisions outlined above and the Charter of the United Nations. Under these provisions the Community institutions, namely the Commission and the Council, are competent to negotiate and conclude international agreements in the appropriate areas and to accept the corresponding obligations. On the other hand the United Nations Charter only admits Member States of the Community to active participation in such conferences, since the United Nations is an association of States.

22. This conflict has of course arisen many times; up to now it has been resolved by special accommodations. However, the solutions adopted have all been based on compromises and do not satisfy the provisions of our Treaties. In some cases the Community has been granted a status equivalent to rather more than that of a simple observer but less than that of a full State. This means that the Commission has been entitled to speak on behalf of Member States' delegations while the latter have had the final voting right. In other instances the Community has been admitted only as an observer or by special invitation. The particular Community body entitled to attend or speak in the various organizations has also differed from case to case. Of course the differences in the arrangements and above all between the bodies admitted (Commission, Council or Secretariat) depends on the subject matter dealt with on the various occasions and on the extent to which it falls within the Community's terms of reference.

23. To illustrate the problem in practical terms it may be useful to recall what happened during the United Nations Sugar Conference in 1968. This example has not been chosen by chance. It represents in fact the most mature and satisfactory solution so far adopted; even so it does not fully meet the requirements laid down in the Community Treaties.

Because this conference was convened under the auspices of the United Nations, the USSR delegation stressed at the opening of its proceedings, that the UN was an organization of States so that the EEC, as an inter-governmental body, could not participate in the conference proceedings with voting rights. The Secretary-General of the conference, acting on an opinion of the UN legal adviser observed that 'the special case of the EEC presented new and for the time being unique constitutional aspects which a conference on a primary commodity could usefully recognize in order to facilitate the achievement of its aims'. He added that 'the EEC representative might be given a rather different status from that of a simple observer although less important than that of a full State, in order to enable him to participate in the negotiations'. The conference did not object to these observations and the participation of the Community was agreed on this basis.

But the problem arose again when the agreement was finalized. The President of the Conference suggested inclusion in the text of the agreement of a clause to enable all notifications to Member States under the terms of the agreement to be made also to the EEC. Without a formal vote, the participation of the EEC in the agreement was thus regulated by an eminently practical formula which, without infringing the principles laid down in the United Nations Charter, complied with the institutional provisions of the Community even though representatives of the Member States acted side by side with the Community delegation.

However when it came to signature of the agreement, the USSR entered the following reservation: 'If the EEC adheres to this agreement, participation by the USSR in the agreement must not be deemed to imply that the USSR recognizes the EEC; such participation implies no obligation on the part of the USSR vis-à-vis the Community'.

For reasons unrelated to the above facts, the Community did not in the end subscribe to the sugar agreement which nevertheless remains the best example of recognition of the Community as such at a conference organized under UN auspices.

24. As can be seen from the above example, the problem is not merely abstract and legal in nature but also political; the political implications will become increasingly important as the Community grows and develops, with all the consequences that process will entail.

It is therefore essential to find suitable means of persuading third countries to recognize without restriction the negotiating capacity of the Community at international level in those areas which are reserved exclusively for it. But before this can be done the Member States of the Community must begin to respect the Community Treaties. That has not been the case hitherto. It is to be hoped that the Court of Justice of the European Communities will in future be called upon more often to ensure full compliance with the Treaties. It is, however, also true that this aim will be achieved all the more easily if the UN and third countries accept this principle.

25. These countries have a direct interest in doing so, above all for their own legal security. If for example a third country concludes an individual agreement with a Member State of the Community on customs duties it will have dealt with a party which is not entitled to negotiate; this country cannot have any legal certainty that the agreement will be respected by the other contracting party since the Community is the sole competent legal party in the matter. It is therefore in the interest of third countries to deal directly with the Community in cases where it has sole competence.

Having said this, the only legally satisfactory solution would consist in recognition of the Community's capacity as a contracting party in its own right.

26. In the specific case with which we are concerned here, i.e. dealings with the UN, it is necessary to ascertain whether the United Nations Charter really does allow a solution of this kind. If it does, there will not be any insurmountable problems. If it does not, it will be necessary to try to have the United Nations Charter amended.

But can the appropriate adjustments be made to the UN Charter ? This possibility certainly exists since the Community countries, supported by many Associated States and friendly countries or others entertaining special relations with the Community, could easily obtain the necessary majority in the UN Assembly¹.

27. The practical criteria laid down hitherto in the UN or its bodies show that even this measure would not be absolutely essential. However, there is reason to believe that the Member States of the Community have so far lacked the political will to clarify the matter once and for all. Consequently the European Parliament should urge the governments of Member States to deal with this problem jointly and adopt a clear and precise position.

IV. Discussion within the Legal Affairs Committee

28. In view of the delicate nature of the subject matter, the examination of the present report was not without its difficulties.

29. In particular, a number of the members of your committee would have preferred to see paragraph 6 of the motion for a resolution deleted, deeming it inappropriate to accuse the Council of the European Communities of lacking political sensibility; they also felt that the emphasis should be laid mainly, if not entirely, on the problems of a legal nature. However, the request that paragraph 6 be deleted was rejected, with only five votes in favour, eight against and four abstentions. In its majority your committee thus took the view that, although there are indeed problems of a legal nature that originate outside the Community, it is impossible to gloss over the fact that the solution of those problems has been delayed mainly by the lack of political resolve shown so far by Member States.

A proposal for a compromise whereby equal weight would be given to the legal problems and the Member States' lack of political resolve was also rejected by five votes in favour, five against and six abstentions.

30. It was also proposed that the last sentence in paragraph 7 of the motion for a resolution, concerning the referral, if necessary, of the question to the United Nations Assembly, be deleted in view of the difficulties that would arise in that eventuality. This request was likewise rejected, one vote only being cast in favour and nine against; there were five abstentions.

¹ LE TALLEC, Rapports entre la CEE et les organisations internationales. Lecture to the Institut du Droit de la paix et du développement of Nice University on 5 May 1972

31. When the vote was taken on the motion for a resolution as a whole, the Danish member of your committee explained his abstention by referring to the possible effects Community action in this field could have on Denmark's relations with the other countries of the Nordic Union.

V. Conclusions

32. To sum up, your committee notes that a number of problems have arisen and will certainly arise in future in regard to participation by the Community in the work of the UN on matters which come under the sole responsibility of the Community.

It feels that on these particular matters the Member States no longer have the right to contract unilateral obligations, which they could not in any case respect, and that the time has now come to move beyond compromise solutions.

It also considers that it is in the interest of third countries, for their own legal security, to deal in these specific instances with the Community as such. Finally, it believes that the UN Charter does not categorically preclude participation by the Community in the work of the UN and its bodies.

33. But, in the opinion of your committee, if an arrangement satisfactory to the Community has not yet been reached, this is due primarily to the lack of political will in the Member States. The latter must therefore take energetic steps if third countries raise objections to participation by the Community in the work of the UN. One possible course of action would be to set in motion the procedure for amending the United Nations Charter if this should become necessary.

An amendment of this kind would probably arouse less hostility than in the past, because of the changes which have taken place in the world political situation. The People's Republic of China, which only recently became a member of the United Nations Organization but nevertheless carries considerable weight, has several times expressed, for weighty reasons of general policy, real interest in the European Community. The Soviet Union, which in the past was the most intransigent supporter of the national personality of UN members, has recently shown significant signs of an inclination to treat the European Community as a single entity.

Without creating the dangerous illusion that a solution is easy to reach, it seems reasonable to take into account these facts which may help - provided the Member States themselves show full support for the Community - to bring this problem nearer to its solution.