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**COMMUNITY PARTICIPATION IN
UNITED NATIONS
ORGANS AND CONFERENCES**

(Commission Staff Working Paper)

INTRODUCTION

1. There have been recent developments in Community participation in United Nations organs and conferences: at the end of 1991 the Community was for the first time admitted as a full member to a UN specialized agency - the FAO - and in 1992 it was given full-participant status (without voting rights) at the Rio Conference on Environment and Development.

2. The Member States have consequently begun considering in more general terms the ways in which the Community should participate in UN organs and conferences. In the Political Cooperation context the Presidency has undertaken to prepare a paper on the political aspects of Community participation; the Permanent Representatives Committee has also asked the Commission to reflect on Community participation in the UN system in matters that are within the Community's powers.

3. This staff paper seeks to establish a brief survey of the various forms of Community participation in UN organs and conferences. Its underlying criterion is the Community's status in the different UN forums; it does not proceed from a structural analysis of the UN family since there is no routine link between the nature of a UN body and the status enjoyed by the Community in it.

4. In this paper, Community participation in a UN organ or conference refers either to the Community's legal status (full member, observer, invited by the Secretariat, etc.) or to its *de facto* role in the exercise of voting or speaking rights (or, more generally, the complex of its rights and obligations) which are often, though by no means always, linked to its legal status.

5. *The structure of the UN*

This paper will not give a systematic analysis of the structure of the UN family. But it is worth recalling the terms used by the UN itself (there is a summary list of UN family members at Annex I):

- principal organs - the General Assembly and the five principal organs attached to it;
- subsidiary organs, which depend on either the General Assembly or one of the five principal organs attached to it;
- specialized agencies and other autonomous bodies, which all depend on the Economic and Social Council (ECOSOC), except the International Atomic Energy Agency (attached to the General Assembly).

The UN system also includes conferences convened by the organs and specialized agencies¹ and, lastly, the UN family's "adopted child" - GATT (General Agreement on Tariffs and Trade), which is on the point of setting up its own organization, the Multilateral Trade Organization.

6. *The evolution of Community participation*

In historical and institutional terms, the starting point is Article 229 of the EEC Treaty, which reads:

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

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

Acting under that Article the Commission has concluded cooperation agreements on behalf of the Community with a wide range of bodies in the UN family (WIPO, ICAO, WHO, to name but a few). These agreements often determine the manner in which the Commission participates in the organization's business.

But cooperation agreements do not regulate the participation of the Community as such in UN organs. The current situation is that the general pattern is governed externally by the General Assembly resolution of 1974 (reproduced at Annex II) giving the Community observer status in the General Assembly and in its subsidiary organs. Internally, Coreper's 14 September 1975 "decision" established how the Community would be represented at the General Assembly and in organs depending on it. The Community is represented by the Commission and the Presidency (the bicephalous formula), and as a general rule the Commission acts as spokesman for the Community on matters within the common policies.

These decisions illustrate the distinction between the external aspects of Community participation in the General Assembly (observer status) and the internal aspects (representation by the Commission or by the Presidency, as the subject-matter dictates).

7. To obtain a clearer picture of the Community's role in the UN family, it is necessary to consider the difference between Community representation in UN organs (observer status with bicephalous representation) and Community participation in negotiating conferences for multilateral agreements sponsored by the UN (commodities agreements and the Rio Conference are examples).

¹ International conventions may be negotiated at these conferences.

In the former case, the point is to ensure that the Community is represented and can make its views known in the debates. In the latter case, it is to enable the Community to negotiate in accordance with its powers and then conclude the convention as a contracting party alongside the Member States (the mixed-type agreement) or alone in areas where it has sole powers (for instance, International Olive Oil and Sugar Agreements).

8. Participation entails rights and obligations, and particularly the rights to speak and vote and budgetary obligations. The details will vary from one case to another. The Community has been admitted as a full member (though without voting rights) in the Intergovernmental Group of Experts on Restrictive Business Practices and the UN Conference on Trade and Development (UNCTAD). Its observer status in the World Health Organization (WHO) is not accompanied by voting rights, budgetary obligations or even the right to speak at the World Health Assembly.

On the other hand, the Community is a signatory to the Convention on the Law of the Sea (not yet in force) and will have member status, with all rights and obligations pertaining to it, in bodies set up under that Convention as it has already in the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. By way of contrast, the Community has only observer status in the Office of the High Commissioner for Refugees and the World Food Programme, even though it is among their leading contributors.

THE FORMS OF COMMUNITY REPRESENTATION

9. The external aspects of Community participation (as member, observer or whatever) both in UN organs and in conferences organized by the UN are considered in Part I, *infra*. Internally, the Treaty is silent on the point. The Community is represented *de facto* according to circumstances and the arrangements made with the relevant organization.

What the Treaty does specify is the Commission's role as negotiator. The basic provision in this respect is the first subparagraph of Article 228(1) of the EEC Treaty, which reads:

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 European Parliament where required by this Treaty.

10. The sound operation of Article 228(1) has sometimes been impeded by the inadequacy of the status accorded to the Community in UN organs and even in negotiating conferences. The Presidency or the Member States have then spoken on behalf of the Community on matters within Community powers, in place of the Commission. But these situations are now the exception rather than the rule at negotiating conferences, and the Commission is generally able to exercise the powers conferred on it by Article 228.

11. Member status entails full participation on a temporary basis (in conferences) or on a permanent basis (organs and hybrid conferences). Full participation in a convention entails contracting party status. In those rare cases where the Community is a *de jure* or *de facto* member, as in FAO or GATT, the Commission acts on behalf of the Community; it speaks, negotiates and votes (in FAO) on matters within Community powers. Another specific formula was adopted for the negotiation of commodity agreements, where a single Community delegation is composed of representatives of the Commission and of the Member States, the Commission generally acting as spokesman.

The bicephalous system is commonly used for negotiations in areas of concurrent powers; the Commission and the Presidency state positions agreed at coordination meetings. For FAO purposes it was found necessary to establish a detailed inventory of areas of activity to assess whether powers were enjoyed by the Community or the Member States and thus to determine whether it would be for the Commission or the Presidency to speak to this or that item on the agenda (see point 16a, *infra*).

12. Wherever the Community has observer status, it is represented either by the Presidency, speaking both for the Community and for its Member States, or by the Commission, speaking for the Community only.

Non-member countries are sometimes perplexed by this dual form of Community representation, and other UN members often fail to make the distinction between the Presidency acting simply as a Member State or acting on behalf of the Community with observer status. To the outside world, this complexity in the distribution of powers within the Community is difficult to understand.

By and large the Member States speak with a single voice and vote accordingly (except in the Security Council). The prior coordination of Member States' views often means that the opinion reached by the Community and its Member States serves as a point of reference and thus makes a valuable contribution to the formulation of a consensus in the UN.

I. THE STATUS OF THE COMMUNITY IN UN ORGANS

13. In the UN system the general principle is that only sovereign States may exercise the rights attaching to membership. The consequence is that non-State bodies such as the Community enjoy a lower status than States. This reflects the thinking current when the UN Charter was born after the second world war in the context of the classical concept of States as subjects of international law. Greater openness to Community participation in UN organs grew progressively out of a series of factors (recognition of the Community by Eastern Europe at the end of the cold war; legal capacity to conclude agreements as a party and introduction of the concept of the regional economic integration organization in several international agreements; support from the Group of 77 for Community participation in commodity agreements; etc.). The radical changes in Eastern Europe also facilitated the Community's admission as a full member of FAO.

14. While it is possible to group the various forms of Community status in four main categories, it should be borne in mind that there is a full continuum from full-member status, with everything that entails, to occasional contacts between officials.

15. In the principal or subsidiary organs where, by the UN Charter, only sovereign States can be members, the European Community has observer status (GA resolution 3208 (XXIX), 11 October 1974, at Annex II) in the same way as other (intergovernmental) organizations such as the OAU, the Arab League and the Red Cross (see Annex III). This status is enjoyed at plenary sessions, working groups and technical committees both of the principal organs such as the General Assembly and ECOSOC and of other bodies such as the ECE, UNCTAD and UNHCR.

The Community has no specific status in the Security Council and procedural committees, where Member States participate individually.

The Community also has observer status in most of the specialized agencies such as UNESCO, UNIDO, ILO and the like, accompanied by exchanges of letters or cooperation agreements.

The Community recently acceded to membership of FAO to reflect the extent of its exclusive powers in the matters within that organization's purview. This is so far the sole exception to the general principle that the Community cannot enjoy the status normally reserved for a sovereign State.

GATT is a special case in the broad UN set-up, since the Community has acquired *de facto* membership which is generally recognized and flows from its exclusive powers (see point 17a, *infra*).

A. MEMBER STATUS

16. *De jure* membership

A distinction must be made between status and the exercise of powers: the Community can be admitted to *de jure* membership with the same rights and obligations as Member States, but it exercises its own powers and the Member States exercise theirs.

16a A case in point is FAO, where the Community acceded to membership (with all rights and obligations pertaining) on 26 November 1991 by an amendment made to the Organization's Constitution, as a regional

economic integration organization. At FAO meetings, wherever an item on the agenda concerns a matter within the Community's exclusive powers, the Commission speaks and votes for the Community. The Member States speak and vote on items falling exclusively within national powers. Where an item is covered by concurrent powers, a common position is presented by:

- (a) the Presidency where the matter is substantially outside the Community's exclusive powers; the Member States vote in accordance with the common position;
- (b) the Commission where the matter is substantially within the Community's exclusive powers; the Commission votes in accordance with the common position; if no common position can be adopted, the Member States speak and vote, but the Commission may also speak.

The first year's experience has highlighted the cumbersome nature of the procedure, which it would not be a good idea to repeat elsewhere.

- 16b The same applies to most commodity agreements and organizations, e.g. the International Natural Rubber Organization (INRO), established by an agreement concluded under UNCTAD auspices; the Community is represented by the Commission, but the Member States also participate. The Community, incidentally, is now regarded as the leading rubber consumer and often plays a corresponding role in INRO business.

Where an organization covers a commodity to which the common agricultural policy applies, as is the case of the International Olive Oil and Sugar Councils, the Community, represented by the Commission, is a full member and has the sole right to vote on matters within its exclusive powers.

Along with the Member States the Community is also a member of the Common Fund for Commodities with its own financial commitments.

16c As a final example of *de jure* membership, let us cite the Office of the UN Disaster Relief Coordinator (UNDRO), where the Community has delegation status like UN members even though it is listed as an intergovernmental organization.

17. *De facto membership*

17a Of the UN family members GATT is the one in which the Community plays the most important role even though its membership of the Agreement - which is not strictly speaking an organization at all - has been acquired solely by custom; the link between GATT and the UN was established by an exchange of letters dated 1952 between the UN Secretary-General and the GATT Executive Secretary (now called the Director-General).

The Community has succeeded to virtually all the rights and obligations of the Member States and become a *de facto* GATT member, whereby it can exercise its exclusive powers in commercial policy matters through the Commission, in the presence of the Member States. The Community negotiated and accepted in its own name the GATT accession protocols, tariff concessions, multifibre arrangements and agreements (two of which were accepted both by the Community and by the Member States) at the 1979 Tokyo Round.

It is also the Commission, on behalf of the Community, that has since 1986 been negotiating the Uruguay Round, though certain questions of the division of powers between the Community and its Member States on matters such as intellectual property and services will not be settled definitively until the agreement is actually concluded.

17b Lastly, the Commission speaks for the Community in the Committee on Customs Valuation, responsible for applying the GATT Customs Valuation Code, in conjunction with the Customs Cooperation Council (CCC), as it does in all committees set up by GATT agreements (Technical Barriers to Trade, Government Procurement and so forth).

B. OBSERVER STATUS

18. Observer status confers the right to attend meetings but not the right to vote and does not impose financial obligations; the right to speak is given at the Chairman's discretion. This is the Community's usual status in UN forums, and specifically in the General Assembly; in practice there are variants on it ranging from the highly active role akin to membership, as in UNCITRAL, the WFP and UNCTAD, to a lesser role as in WHO and the ITU and to the even more limited presence as part of the Presidency delegation.

18a It must be remembered that the General Assembly sometimes contributes to the elaboration of principles or rules of law, in three ways:

- in exceptional cases the General Assembly itself adopts a convention and opens it for signature by Member States without a prior diplomatic conference;
- there are cases where it adopts declarations for the avowed purpose of codifying or developing the custom-based international law;
- it may identify matters to be covered by international regulation.

Where the General Assembly acts in a legislative capacity and the Community has powers in the matter in issue, observer status is adequate only if there is sound coordination via the Community's usual institutional procedures.

18b The Community's observer status in ECOSOC (involving the bicephalous Commission/Presidency structure) would allow it to exercise its role without major difficulty if it were treated in the same way as the bulk of UN members having observer status (only 54 UN members are also ECOSOC members at any one time; membership rotates). This raises the specific problem of informal meetings, where States with observer status are normally admitted but international organizations may be excluded. The same status applies at the Economic Commission for Europe (ECE), which is an ECOSOC subsidiary organ that manages a number of regional conventions and agreements in environmental, customs and transport matters to which the Community is a contracting party (see Part II, *infra*) so that it can exercise rights akin to

those conferred on States in the organs that administer them. The Community in its bicephalous form takes part in the ECE annual session. Common positions are presented as a matter of course on all questions of substance by either the Commission or the Presidency, depending whether they are within the Community's exclusive powers or concurrent powers. Likewise the Community, represented by the Commission, has observer status at the annual medium and long-term outlook meeting of the ECE Senior Economic Advisers. Commission experts go to meetings of the ECE's Energy, Coal and Steel Committees. The Community's observer status at the Working Party on the Construction of Vehicles makes it difficult to coordinate Member States' adherence to common positions, and yet this area is a component of the common commercial policy and the EC type-approval procedure for motor vehicles became fully operational on 1 January 1993.

- 18c The Community is very active in the Office of the High Commissioner for Refugees (UNHCR) although its observer status limits its possibilities, partly because of the budgetary obligations that go with it (see point 24, *infra*). UNHCR now wishes the Community to become a member of the Executive Committee.
- 18d The Community's status in the UN Conference on Trade and Development (UNCTAD) is in effect observer status, since the Community speaks in debates in the same way as any other international organization but does not have the voting rights that go with statehood. The Rules of Procedure of the Trade and Development Board (the Conference's permanent body) confer observer status on non-governmental organizations only. In the Intergovernmental Group of Experts on Restrictive Business Practices (an UNCTAD subsidiary organ), the Community has been given non-voting member status. In UNCTAD's Special Committee on Preferences, the Member States are members and the Community is an observer. The Community, represented by the Commission on Group B to coordinate donor countries (industrialized countries giving preferences), alone conducts informal consultations with recipient countries (in the presence of the Member States) and (after coordination with the representatives of the governments of the Member States meeting within the Council) presents the Community

statement to plenary meetings with the Group of 77. The role thus played by the Commission on Behalf of the Community depends on the issues, which are within the Community's commercial policy powers and relate specifically to its generalized scheme of preferences.

18e The Community has observer status and is represented by the Commission at the UN Environment Programme (UNEP) but is commonly treated as a virtual member with, for instance, the right to speak at informal ministerial meetings.

18f The Community role at the World Food Programme (WFP) is even stronger, partly on account of the scale of its financial input (see point 24, *infra*). The WFP is an autonomous UN organ with administrative links to FAO; its primary function is to distribute food aid to developing countries. Only UN Member States and FAO members can serve on its governing body. The Community is an active observer at meetings of the governing body - the Committee on Food Aid Policies and Programmes (CFA) - and of the project subcommittees (PSCs). The CFA has 42 members representing 27 developing countries and 15 developed countries (including between five and seven Community Member States), plus observers. Until 1992 the PSCs had the same number of members as the CFA, but the number was reduced to 28 in December 1992. Observers are generally excluded; the Community is the exception to the general rule, enjoying a standing invitation to attend.

The Community does not attend drafting committees and, having no voting rights, cannot participate fully in discussions on the practical use to be made of contributions, including its own.

The Community enjoys a privileged position as compared with other observers, but that is still not enough in view of the role it plays, especially as it is the only major WFP donor which is not a CFA member.

In this committee, the Community speaks either as an observer or on behalf of the twelve Member States; in the latter case the Community's representative is introduced by the Member State holding the Presidency or by another one designated by it. For the future, Community membership could be envisaged as an appurtenance of its FAO

membership, but that would raise the question of practicalities since the number of CFA members is limited to 42, of which 15 are developed countries, and the Community and its Member States need to be assured of proper representation.

- 18g The Commission represents the Community as observer on the joint FAO/WHO Codex Alimentarius Commission, both in the full Commission and in subordinate bodies. Despite this observer status, the Community participates in consensus decision-making. It speaks on matters within Community powers. The Codex Alimentarius Manual of Procedures has been revised to permit international organizations to which Member States have transferred powers to participate in procedures for the acceptance and notification of Codex standards.

Although the Community is in a relatively comfortable position *vis-à-vis* both the Member States and the Codex Secretariat, this still remains to be given statutory form, notably in the Manual of Procedures. Following Community accession as such to FAO, the FAO Secretariat has raised the question of full Community participation.

- 18h The Community, represented by the Commission, has observer status at the World Intellectual Property Organization (WIPO), but enjoys full delegation status in three expert committees (Harmonization of Laws for the Protection of Marks, Protocol to the Berne Convention for the Protection of Literary and Artistic Works, and Settlement of Intellectual Property Disputes between States).

The Community is represented bicephalously on the working group for the application of the Madrid Protocol on the International Registration of Marks.

- 18i At the International Atomic Energy Agency (IAEA), which is responsible for maintaining and consolidating the international nuclear order, the Community has observer status with voice but no vote, so it can sit in

on the General Conference and the Board of Governors. Safeguards cooperation with the Agency is based on three tripartite agreements:

- Agreement between Euratom, non-nuclear-weapon Member States and the IAEA;
- Euratom/UK/IAEA Agreement;
- Euratom/France/IAEA Agreement.

Working relations between the Commission and the IAEA Secretariat extend beyond safeguards and cover practically all areas of common interest (nuclear research, know-how dissemination, biology, reactor safety, waste processing, transport of radioactive materials, health and safety, radioisotopes, irradiation of foodstuffs).

18j In the UN Commission on International Trade Law (UNCITRAL) the Community has only observer status, but it has the power to propose amendments to consensus decisions and thereby to influence the outcome. The function of UNCITRAL, set up by the General Assembly in 1966, is to lower or remove legal barriers to international trade. The Community has been particularly active in the groups dealing with international payments and with the new international economic order, which is preparing non-mandatory model legislation on public procurement.

18k Still in the area of private international law, the Community is present as observer at meetings of ECOSOC's UN Commission on Transnational Corporations (UNCTC). There are two subgroups - International Working Group of Experts on International Standards of Accounting and Reporting (ISAR) and on the Code of Conduct for Transnational Corporations - on which the Community is represented by the Commission and the Presidency respectively. The Commission has no brief to speak for the Community in the Code of Conduct Group and plays only a limited role there, whereas in ISAR it is a highly active observer, speaking for the Community on all matters covered by the Community Directives on company accounts and sometimes on other matters too. Its role is accepted by the Member States (even those not involved in the group), by the UN Secretariat and by the other States represented on the Group; the Commission representative

occasionally even coordinates the positions of OECD countries that are not members of the Community.

181 The Community is an observer at the International Union for the Protection of New Varieties of Plants (UPOV), whose constitution was recently amended to allow the Community to become a member. The Community has not actually exercised its powers in this respect as the relevant proposal is still before the Council. Some Member States at the moment oppose Community powers and Community accession to UPOV. But the Community, represented by the Commission, has encountered no difficulties in speaking at UPOV meetings on technical questions, and the organization is willing to accept Community membership.

18m Moving on to labour matters, the International Labour Organization (ILO) is structured in a slightly unconventional way. ILO members are States alone, and the International Labour Conference (the supreme deliberative body) is composed on a tripartite basis (each member sends four representatives - two government delegates, one employers' delegate and one workers' delegate).

The ILO's other two organs are the Governing Body and the International Labour Office, which are actively involved in preparing and organizing the Conference.

Under Article 93 of the Treaty of Paris the ECSC entered into its first agreement with the ILO in 1953, applying to exchanges of information and cooperation on a range of projects. In 1958 and 1961 the EEC and Euratom followed suit (the agreements have been adapted a number of times since then). The result is that the Community, as a "public international organization", has observer status giving it the right to participate without vote in the deliberations of the Conference. In addition, there are exchanges of letters between the International Labour Office and the Commission regarding cooperation and consultation on matters of common interest.

In 1986 the Council adopted a decision concerning Community participation in the preparation of ILO conventions applying to

matters within the exclusive powers of the Community. The question is now being considered by the Court of Justice (application for Opinion No 2/91).

- 18n On the drugs front, although the Community has observer status on the ECOSOC Commission on Narcotic Drugs, it has virtual member status in the UN International Drug Control Programme (UNIDCP) as a major donor (status reserved for those contributing more than \$500 000 annually). This is a new programme to bring together all the isolated drug control initiatives. In January 1993 the Commission signed an agreement under Article 229 of the Treaty giving it the right to participate fully. An international convention was also signed in 1988 (see point 23d, *infra*).
- 18o Turning to transport, the Community has observer status at the International Civil Aviation Organization (ICAO), which deals with matters where the Community exercises exclusive or concurrent powers (customs procedures, competition, noise levels, and so on) and more generally with matters of particular interest to the Community in the development of its air transport policy (fares, booking systems, etc.). Since there is no permanent observer status at the ICAO, the Community has been entered on the list of international organizations that are regularly invited to its meetings. Community participation (representation by the Commission) is based on case-by-case invitations; the Commission informs the Member States in advance each time.
- 18p The World Health Organization (WHO) and, since 1988, the International Telecommunication Union (ITU) give the Community observer status at selected conferences only (ITU administrative conferences and committees). The Community has no right to speak at the World Health Assembly and attends neither the ITU Plenipotentiary Conference nor the ITU Administrative Council. Following an exchange of letters between WHO and the Commission, the Community is regularly invited to attend the World Health Assembly, the WHO Executive Board and the Regional Committee for Europe as observer.

19. Where the Community has no observer status, relations have been established in terms of administrative cooperation under Article 229 of the EEC Treaty, generally in the form of information exchanges via relations between officials. These relations have often been given concrete form through exchanges of letters between the Commission and the Secretariat of the organization, such as the exchange between the President of the Commission and the Secretary-General of UNESCO. The fact that one Community Member State is not a UNESCO member, and the way in which that organization operates, complicates relationships with an agency that is a veritable mine of information in the areas it covers. There have also been exchanges of letters with the UN regional economic commissions, subsidiary organs and other specialized agencies.

The Community has no observer status at the Universal Postal Union (UPU), but administrative relations have been established between UPU's international network and the Commission so that Commission officials have since 1991 been able to attend certain meetings (Executive Council and selected committees).

There have been exchanges of scientific information between the Commission's Scientific and Technical Development Programme and FAO, WHO, UNESCO, UNDP and the World Bank, designed in particular to avoid duplication of research efforts.

20. The Community has no defined status with the UN Children's Fund (UNICEF), the World Bank or the International Monetary Fund (IMF). Nor does it have capacity to proceed in the International Court of Justice, which by Article 7 of the UN Charter is one of the principal organs. It cannot defend its interests in litigation between two or more States in that Court where matters within its powers are affected. This will be a growing source of difficulties with the growth in Community participation in international conventions and the current trend towards conferring on the Court jurisdiction over disputes arising from them. There is the further question of the Community's standing in procedures for obtaining advisory opinions from the Court on the interpretation of instruments establishing international organizations in the UN family, especially where the Community is a member (e.g. FAO).

II. THE STATUS OF THE COMMUNITY IN UN CONFERENCES

21. The status enjoyed by the Communities is generally that which flows from the resolution admitting it to the General Assembly in 1974 (see point 15, *supra*), namely the non-voting observer status it has been given at conferences held under UN auspices.

22. But in many of these conferences the Community's observer status is being enhanced somewhat - as in the UNCTAD Conference on the Code of Conduct for Liner Conferences. Again in the UNCTAD context, the Community has attended conferences on commodities (cocoa, coffee, tin, olive oil, sugar, etc.) with special status enabling it to negotiate and conclude the resultant agreements.

In the area covered by the International Maritime Organization (IMO), the Community has observer status but has felt the need to boost cooperation on research and to participate as contracting party in all new conventions (maritime safety; prevention of pollution) so as to secure consistency between these conventions and internal market rules. On the road safety front, the ECE began work in 1986 for revision of the Vienna Convention on Road Signs and Signals; the Community, represented by the Commission, has been involved. Difficulties have been encountered in discussions on changes to the rules on international road traffic and on driving licences.

23. For several years the Community has been negotiating special provisions in the rules of procedure of conferences to obtain full-member status (with voting rights) or full-participant status (with voice but no vote). As has been seen in Part IA, *supra*, full-member or full-participant status is justified by the need to secure the exercise of Community powers in the negotiation and conclusion of international agreements.

23a The UN Conference on Environment and Development (UNCED: Rio de Janeiro, 1-14 June 1992), whose Preparatory Committee adopted a recommendation to the General Assembly on 3 April 1992, gave the Community full-participant status (with all rights pertaining but no

vote) by reason of the Community's powers in relation both to the environment and to development and specifically on account of its legislative activity in environmental matters (e.g. elimination of CFCs, waste, chemicals, air and water pollution, protection of habitats). The procedural technique elaborated by the Council was as follows:

- the Commission would present the Community position at the Conference, negotiate on its behalf and express its views on all questions falling within the Community's exclusive powers;
- the Presidency would generally express the common position on all matters within concurrent powers and negotiate accordingly.

However, the Commission would present the common position and negotiate from it where that had been agreed in coordination.

23b The Community is currently negotiating full-participant status in the Commission on Sustainable Development responsible for follow-up to the Rio Conference, in accordance with conclusions reached by the Council on 23 November 1992.

23c The Community is a contracting party or signatory to a wide range of conventions concluded under the auspices of the General Assembly, UNEP and the ECE.¹ They include the Convention on Climate Change, the Vienna Convention on the Ozone Layer, the Montreal Protocol, the Basle Convention on Hazardous Wastes, the Convention on Biological Diversity, the Barcelona Convention for the Protection of the Mediterranean and the additional Protocols thereto, the Convention on Long-Range Transboundary Air Pollution, and the Conventions on Environmental Impact Assessment in a Transboundary Context, the Protection and Use of Transboundary Watercourses and International Lakes, and the Transboundary Effects of Industrial Accidents.

¹ By 1988 the Community was the sole signatory for the Community to 16 multilateral agreements and had signed 24 agreements alongside the Member States.

- 23d On the drugs front, the Community is a contracting party, within its powers in relation to precursors, to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
- 23e Following the UN Conference on the Law of the Sea (UNCLOS), which ended in 1982, the Community, represented by the Commission, is a member of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (but the Convention is not yet in force). The Commission also represents the Community in the Special Commission for Land-based Producer States.

III. COMMUNITY FINANCIAL PARTICIPATION

24. The Community does not make financial contributions to the budget of the UN (only the Member States do so), nor to the other international bodies in which it has the most advanced forms of status (e.g. GATT); but it does contribute to the lower-level bodies active in areas within which the Community acts on a substantial scale.

It contributes ECU 550 000 to the UNEP Plan of Action for the Mediterranean, for instance, and in 1991 it was the second largest contributor (behind the USA) to the UNHCR's humanitarian aid budget.

It is one of the three biggest contributors to the WFP; its input is constantly expanding (ECU 180 million in 1991). The WFP distributes a sizeable portion of Community food aid (emergency aid and aid to refugees), and supplies services to the Community on a bilateral basis by acquiring, conveying and monitoring food aid granted direct by the Community to governments.

25. In other cases the Community contributes to the administrative costs flowing from its participation (FAO, commodity agreements, UNEP conventions, etc.).

26. The development of Community cooperation with UN agencies, notably through specific financial aid projects (e.g. for developing countries in Asia and Latin America) or research projects, raises the problem of the conditions to which those agencies are subject. All action on the ground and all research entrusted by the Commission to an outside body must be performed in full compliance with Community rules applicable to the matter in question.

The UN's internal and external audit procedures tend to conflict with the Community audit clause inserted in all project agreements, and this makes financial cooperation between the two sides very difficult.¹ In the past some UN agencies have waived their audit procedures. The Community preference clause in relation to public procurement can also give rise to difficulties of implementation in the UN context. And differences in payment procedures between the two organizations do not make the development of cooperation between them any easier.

27. In general terms the question of Community participation in financial machinery established by international conventions (including the Global Environment Facility which is likely to be the chief financial instrument for the implementation of the Rio conventions) remains open.

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CONCLUSIONS

28. The first conclusion to be drawn from the foregoing considerations is that the Community is present, one way or another, in most organs of the UN family. The variety in the ways it is represented is liable to affect the external image and the efficiency of the Community and also to elicit

¹ Question now under study in the Community institutions.

behaviour of very different kinds both from its own Member States and from the other members and managing bodies of the organizations in which it is present.

29. The second conclusion is that relations between the Community and the UN family have developed gradually as specific needs have come to be felt by the institutions and so as to allow the Community to exercise its growing responsibilities on the international scene.

The purpose of the status enjoyed by the Community in UN organs and conferences is to ensure that it can genuinely exercise its powers. Observer status, although it is not of a uniform pattern, commonly meets the need in that the Community can make its presence felt and in most cases speak in formal and informal debates as well (even if it is not on an equal footing with the States as regards voting or contributing to consensus decisions).

The Community's observer status within a UN organ does not in law preclude it from being a contracting party to conventions concluded there. But there is a need to see that observer status is not used to debar it from the actual negotiations in matters within its purview: it must therefore be a full participant in intergovernmental negotiating committees and a full contracting party to agreements negotiated under UN auspices.

That said, however, there are disparities between the Community's status at the UN and its actual contribution to achievements - the Community is the second or third largest contributor to the WFP and UNHCR but only has observer status; and there are calls from some organizations for a stronger Community role.

The situation might be seen differently in the case of standing or temporary conferences, where the Community is given the same status as it has with the parent organization unless special rules of procedure are negotiated. But the Community needs to be given the possibility of exercising its full powers whenever a conference formally or informally negotiates an international agreement - both where Community powers are sufficiently substantial and where there is a good political reason for seeing they should be exercised (e.g. Rio Conference). A distinction should be made between cases where observer status is adequate to permit defence of the

Community position in matters within its powers (e.g. UNCTAD) and those where it is not adequate by reason of the structure of the organization (as where the bulk of negotiating activity takes place at informal sessions from which observers are excluded).

In the former case, there is no need to change the Community's status. But in the latter case, given the powers already conferred on the Community, the Community should obtain full-member or full-participant status in a form adapted to the Community's specific nature.

30. The inadequacies of the Community's legal status in UN organs flows from the 1974 General Assembly resolution (amendment of which is not on the agenda). The Community should accordingly reflect, in the light of its recent accession to FAO as full member, on the pros and cons of member status in UN organs and specialized agencies. Also, the inadequacies consequent upon the resolution should first be remedied by increased coordination between the Commission and the Member States in the Council (and by improved linkage between decision-making in Brussels and local coordination) and/or by specific measures to improve the Community's status where that is essential if the Community is to speak and exercise its powers as such.

This second option should be taken in the specific case of participation in UN conferences that negotiate multilateral agreements in matters where the Community's powers are extensive enough to warrant their exercise on the international scene in addition to national powers.

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COMMUNITY PARTICIPATION IN UN ORGANS

NB For definitions of statuses, see principal document. Full names of organizations are given only if they have not been mentioned there.

<u>UN ORGAN/AGENCY</u>	<u>COMMUNITY STATUS</u>
<u>PRINCIPAL ORGANS</u>	
<u>General Assembly</u>	Observer
Main Committees	Observer
Standing Committees	No status
<u>Security Council</u>	No status
<u>Trusteeship Council</u>	No status
<u>Economic and Social Council</u>	Observer
<u>International Court of Justice</u>	No status
<u>Secretariat</u>	Exchange of letters
<u>SUBSIDIARY ORGANS</u>	
1. <u>Regional economic commissions</u>	
Economic Commission for Europe	Observer
Economic and Social Commission for Asia and the Pacific	Observer
Economic Commission for Latin America and the Caribbean	Observer
Economic Commission for Africa	Observer
Economic and Social Commission for Western Asia	Observer

2. Subsidiary organs of the General Assembly and ECOSOC

UNICEF	No status Cooperation on food aid
UNHCR	Observer
UNRWA (UN Relief and Works Agency for Palestine Refugees)	No status Cooperation and contributions in kind and in cash
UNCTAD	Observer
Intergovernmental Group of Experts on Restrictive Business Practices	Full member
Major commodity agreements (e.g. sugar, olive oil, natural rubber)	Full member
Codex Alimentarius (FAO/WHO)	Observer
UNEP	Observer
UNDRO	No status Various forms of cooperation
UNDP	Observer
UNCITRAL	Observer
CND (Commission on Narcotic Drugs)	Observer
UNIDCP	<i>De facto</i> member (as major donor)

SPECIALIZED AGENCIES

ILO	Observer
FAO	Full member
WFC (World Food Council)	Observer
WFP (World Food Programme)	Observer
IMF	Observer
IBRD (International Bank for Reconstruction and Development)	Observer
IFC (International Finance Corporation)	No status
IDA (International Development Agency)	No status
UNESCO	Observer
ICAO	Observer
ITU	Observer
WHO	Observer at the European Regional Office
UPU	No status

WMO (World Meteorological Organization)	Observer
IMO	Observer
IADF (International Agricultural Development Fund)	No status
UNIDO	Observer
WIPO	Observer

SUI GENERIS ORGANIZATIONS ATTACHED TO THE UN

GATT	<i>De facto</i> member
IAEA	Observer

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Resolution 3208 (XXIX) of 11 October 1974

"The General Assembly,

Wishing to promote cooperation between the United Nations and the European Economic Community,

Requests the Secretary-General to invite the European Economic Community to participate in the sessions and work of the General Assembly in the capacity of observer".

Observers at the United Nations

A. Intergovernmental organizations having received a standing invitation to participate in the sessions and the work of the General Assembly as Observers and maintaining permanent offices at Headquarters:

1. Asian-African Legal Consultative Committee
2. Commonwealth Secretariat
3. European Economic Community
4. International Committee of the Red Cross
5. League of Arab States
6. Organization of African Unity
7. Organization of the Islamic Conference

B. The following intergovernmental organizations, which have also received a standing invitation to participate in the sessions and the work of the General Assembly as observers, do not maintain permanent offices at Headquarters.

1. African, Caribbean and Pacific Group of States
2. African Development Bank
3. Agency for Cultural and Technical Cooperation
4. Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
5. Council of Europe
6. Latin American Economic System
7. Organization of American States