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European Communities

EUROPEAN PARLIAMENT

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Report

drawn up on behalf of the Legal Affairs Committee

on the position of the European Communities in Public International Law

Rapporteur: Mr L. JOZEAU-MARIGNÉ

PE 47.680 /fin.

By letter of 31 May 1972, the Legal Affairs Committee requested authorization to draw up a report on the European Communities in Public International Law.

At the sitting of 16 June 1972, the President informed Parliament that the Legal Affairs Committee had been authorized to draw up this report.

At its meeting of 11 July 1972, the Legal Affairs Committee appointed Mr Jozeau-Marigné rapporteur.

At its meeting of 21 June 1977, the Legal Affairs Committee held an exchange of views on this matter and instructed the Legal Service to draw up a documentary survey dealing in particular with the positions Parliament had adopted on the Communities' relations in international law.

The documentary survey drawn up by the legal service was considered at the meeting of 21 February 1978 and is included as sections V and VI of the explanatory statement.

At the meeting of 27 February 1978, the motion for a resolution and the report as a whole were adopted unanimously.

Present: Sir Derek Walker-Smith, chairman; Mr Jozeau-Marigné, vice-chairman and rapporteur; Lord Ardwick, Mr Bayerl, Mr Berkhouwer (deputizing for Mr Pintat), Mr Bouquerel, Mr Fletcher-Cooke, Mr Geurtsen, Mrs Iotti, Mr Lemp (deputizing for Mr Broeks), Mr Luster, Lord Murray of Gravesend, Mr Plebe, Mr Poher, Mr Radoux (deputizing for Sir Geoffrey de Freitas), Mr Scelba, Mr Schwörer, Mr Sieglerschmidt and Mr Vergeer.

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beginning of the explanatory statement, see page 8)

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* Documentary survey drawn up by the Legal Service (Directorate-General for Research and Documentation) at the request of the Legal Affairs Committee.

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 position of the European Communities in Public International Law

The European Parliament,

- having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 6 thereof,
 - having regard to the Treaty establishing the European Economic Community, and in particular Articles 113, 114, 210, 228, 235 and 238 thereof,
 - having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 101, 184, 203 and 206 thereof,
 - noting the increasing activity of the European Communities in international relations, and fully aware of the role of the European Communities with regard to third countries and international organizations,
 - having regard to the specific legal characteristics of the European Communities which set them apart from intergovernmental organizations of the traditional type, both as regards the objectives assigned to them by the treaties establishing them, and as regards the distribution of powers between the Communities and the Member States, particularly in foreign affairs,
 - considering that in the true Community spirit the Treaties should be interpreted both in the light of their objectives and having regard to the provisions in the text,
 - having regard to the report of the Legal Affairs Committee (Doc.567/77),
1. Reaffirms that the activities of each of the European Communities in the area of international relations have their legal basis in the provisions of the respective Treaties;
 2. Fully supports the principles laid down and affirmed in the opinions¹ of the Court of Justice, whereby:
 - (a) the power of the Communities to enter into commitments with third countries derives implicitly from the provisions of the Treaties granting the Communities powers over internal matters provided that the aim is the achievement of one of the objectives of the Communities;

¹ OJ No. C 268, 22 November 1975, p. 18 and OJ No. C 107
3 May 1977, p. 4

(b) all Community powers to conclude trade agreements with third countries preclude - by their very existence - the exercise of any concurrent powers by the Member States.

3. Emphasizes the implications of the judgments¹ of the Court of Justice asserting the Communities' authority to negotiate and conclude external agreements whenever the international objectives are directly related to internal Community objectives;

4. Notes that such Community authority derives from the Treaties, that is to say, from the explicit provisions read in the context of the Treaties as a whole and their specified objectives, and from the necessary implications which flow from the provisions of the Treaties.

5. Urges the Council and the Commission, therefore, to use the instruments available to the Communities in such a way that the Communities' international relations further the achievement of the objectives laid down in the Treaties of Paris and Rome;

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6. Reaffirms the need to ensure democratic control of all Community action, and recalls its previous resolutions aimed - particularly in the light of the budgetary powers it now possesses - at greater and more effective participation by the European Parliament in the conclusion of the Communities' external agreements.

7. Notes that the Heads of State and of Government meeting at the Hague summit of December 1969, went beyond a literal interpretation of the Treaties establishing the Communities and set up the machinery for political cooperation between the Member States, thus paving the way for a true foreign policy, which is an essential feature of any future European union.

8. Stresses the special contribution which the European Parliament has always made to the Communities' international relations, both through meetings between its delegations and the parliamentary delegations of third countries, and through its well-established and continuous cooperation with the Council of Europe and in particular its Parliamentary Assembly.

¹ Court of Justice, 31 March 1971 (AETR, case 22/70), Court Reports 1971, p. 263
Court of Justice, 12 December 1972 (International Fruit Company, cases 21 - 24/72), Court Reports 1972, p. 1219
Court of Justice, 30 April 1974 (Haegeman, case 181/73), Court Reports 1974, p. 449
Court of Justice, 14 May 1974 (J. Nold, case 4/73), Court Reports 1974, p. 491
Court of Justice, 24 July 1976 (Kramer, cases 3, 4 and 6/76) Court Reports 1976, p. 1279
Court of Justice, 15 December 1976 (Donckerwolcke, case 41/76), Court Reports 1976, p.1921

9. Solemnly reaffirms the position it has adopted in numerous resolutions supporting resolute action by the Communities in their relations in international law, both as regards Community measures and those concerning the coordination of Member States' foreign policies.

10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the Communities and, for information, to the parliaments and the governments of the Member States.

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EXPLANATORY STATEMENTI. CONTEXT

(a) The Legal Affairs Committee requested authorization to draw up this report when some of its members raised doubts about whether the Communities could act officially on the international scene and, in particular, be a party to international agreements, particularly those not specifically referred to in the Treaty¹.

(b) Relying on observation of the facts, your Committee decided to consider the matter from a strictly legal point of view (analysis of the text of the treaties and the case law of the Court of Justice of the European Communities), while at the same time working within the political context of the achievement not only of the immediate objectives but also of the 'virtual' or 'potential' objectives of the three Community treaties, that is to say the establishment among the Member States of a political union in a form yet to be determined.

(c) Speaking of the Communities, a French politician has said that Europe is a 'non-person'; this is not the place for a debate on differing attitudes to Europe; suffice it to say that this statement is contradicted by the text of the Treaties establishing the Communities and by analysis of these texts and of the facts. The Court of Justice has, on several occasions, made just such an analysis and the European Parliament has also pronounced on these matters on numerous occasions.

(d) Articles 6 of the ECSC Treaty, 210 of the EEC Treaty and 184 of the EAEC Treaty state that 'the Community shall have legal personality', which, in line with general legal theory, means that each Community can be subject to active and passive law, that is to say can have rights and obligations; fundamentally, the legal personality of an international organization is not the source of its powers but a consequence of its powers. The powers² of an international organization derive from the Treaties establishing it.

¹ See the opinion (Doc. 57/72), by Mr Springorum, on behalf of the Legal Affairs Committee, on 'the Euratom research programme decided upon by the Council on 21 December 1971 and on the agreements between European states on certain joint research projects to be undertaken in cooperation with the Commission of the European Communities (COST agreements)'.

² All powers are limited by the objectives assigned to each organization; a system of extensive and diversified powers should be matched by a fully organized legal control; this is the case for the Communities (see example EEC Treaty, Articles 164 to 188).

(e) The legal personality of the Communities - deriving from the powers which the Member States have granted them by concluding and ratifying the Treaties - are manifest both internally and externally:

- The Communities are a reality for the Member States and for their citizens: from the legal point of view, suffice it to mention the principles of the primacy of Community Law over national law and of the direct applicability of certain provisions of Community Law¹.
- The Communities are a reality in international relations. In establishing them, the Member States not only gave them legal personality but also assigned to them certain aims in international affairs and gave them the means to achieve them. The Communities are therefore able to maintain a legal position different from that of the Member States.

(f) However, this personality can be expressed in international affairs only:

- (i) if other persons in international law (states and other international organizations) 'recognize' the Communities, such recognition falls within the 'sovereignty' of these persons in international law; it is extremely important to point out that they are free to grant or withhold such recognition;
- (ii) It is clear that one of the conditions necessary for such recognition would be lacking if the Member States, in practice, retained some of the powers which they transferred to the Communities when ratifying the Treaties. In this case, third states and other international organizations might feel that in their relations with the Communities there was a danger that they would have to deal with a body which did not in fact or - as the case may be - in law, possess the necessary powers to fulfil its undertakings.
- (iii) But the foregoing condition is a negative one; and when it is fulfilled, it only becomes a sufficient condition if the Community institutions exercise fully, in the field of international relations, not only the powers granted them expressly by the Treaties, but also the powers which are implicitly derived therefrom².

¹ These two principles, reaffirmed on numerous occasions by Parliament, are discussed both in the report by Mr RIVIEREZ (Doc. 390/75, points 1 to 13) and in my report (Doc. 297/72, points 7 to 10).

² See note 1 to point 1 below.

(g) If the above two conditions are fulfilled, the Communities can use the legal instruments¹ available to them for the exercise of their powers in international affairs. Legal personality only confers actual personality when the person is in a position to act. If the law recognizes the existence of the Communities' legal personality, but the political will is lacking, then the governments of the Member States could justly be criticized for failing to fulfil all the obligations incumbent on them through the signing of the treaties.

(h) The motion for a resolution before you is aimed at allowing Parliament to make it clear on as wide a front as possible both in the light of an analysis of its position on this subject² over the last five years and in the light of the decisions and judgments of the Court of Justice³, that the Community can and must be actively involved in all discussions on matters falling within the sphere of one of the three European Communities or within the framework of the coordination procedures drawn up by the Member States for the implementation of political cooperation⁴.

¹ See section V below.

² See section VI below.

³ See section IV below.

⁴ For this point see the report (Doc. 427/77) drawn up on behalf of the Political Affairs Committee by Mr BLUMENFELD.

II. THE PLACE OF THE EUROPEAN COMMUNITIES WITHIN THE LEGAL
CATEGORY OF INTERNATIONAL ORGANIZATIONS

General considerations

1. Unlike nation states, international organizations are not sovereign bodies possessing general and full powers. Their activities are restricted to a well-defined area covering the objectives they are intended to achieve. International organizations may be granted only those powers necessary for them to attain such objectives, which limit the activities and are the reason for the existence of the organizations.
2. This principle, which is analogous to that applied to public bodies under national law, has been defined as the principle of the particularity of international organizations. It provides their legal foundation, has been enshrined in their statutes and is confirmed by case law.
3. International organizations are in fact an instrument enabling the member states to achieve jointly objectives of mutual interest. They discharge the responsibilities given to them with a view to attaining their specific goals and are endowed with the powers necessary for this purpose¹.
- 4 and 5. Looking at the various types of international organization more closely it becomes apparent that their functions can be grouped into two broad categories, according to whether their underlying purpose is cooperation and coordination or unification and integration.
6. It is, however, apparent that all international organizations, regardless of the purpose for which they were set up and whatever their objectives, include among their aims cooperation and coordination. The attainment of these aims is in fact a minimum justification of their action in the service of international solidarity.

¹ In this connection mention may be made of the theory of implicit responsibility which is generally accepted in legal circles. This maintains that, in the light of the goal-oriented or functional conception of the responsibilities of international organizations, these organizations can only be assigned functions or powers directly linked to the purpose for which they were constituted. This implies that international organizations cannot be granted merely a part of the powers necessary to pursue the objectives for which they were set up, but must enjoy all the responsibilities connected with the achievement of their aims. The possibility thus remains open for the responsibilities of international organizations to be extended beyond the limits laid down in the acts establishing them.

7. Unification and integration, on the other hand, are the province of a specific type of international organization amongst which the European Communities have a leading role.

8. While presenting certain highly specific aspects, the general characteristics of the European Communities are such that they fall within the overall framework of international organizations as regards their legal personalities, responsibilities and institutions.

(a) Legal personality

9. Each Community is based on a treaty. These treaties are similar to those of other international organizations, but they also have a number of specific features. In addition to the special terminology used by their authors, these treaties also embody certain features proper to national constitutions. Thus, in the procedure for reviewing the treaties, the institutions established by the treaties themselves play a part and the traditional method, of passing a repealing act, does not apply. It should also be remembered that the EEC and EAEC Treaties were concluded for an indefinite period, which confirms the permanent nature of the Communities they established.

10. Each Community has its own legal personality, whereby it exercises the powers granted to it and defined in the treaties. The European Communities are characterized by an independence of purpose and possess a legal personality which takes its place in the international legal order, in the legal systems of the Member States and, lastly, in the specific legal system established by the various constitutive Acts¹.

11. It should be pointed out, however, that even though the general provisions of the treaties expressly define the legal personality of the European Communities², certain difficulties attach to any determination of the detailed content and the conditions for the exercise of this personality, particularly in the field of international relations, difficulties which the United Nations and other major international organizations have had to face.

12. The constitutive acts and the legal personality of international organizations together create a unique legal order whose basis is the activities of the bodies functioning within the framework of the organizations themselves.

¹ In this connection, see I. Brownlie, *Principles of Public International Law* (Oxford 1973), p.658, which summarizes the requirements of legal personality in international organizations as follows: (1) a permanent association of states pursuing legitimate aims and having the relevant organs; (2) separation of the responsibilities and aims of the organization itself from those of the Member States; (3) existence of responsibilities which can be effectively exercised at international level.

² See Art. 6 of the ECSC Treaty, Art. 210 of the EEC Treaty and Art. 184 of the EAEC Treaty.

In the majority of international organizations this legal order regulates the administrative matters connected with the organizations' activities (civil service, finances, organization of services) and, furthermore, all the acts of the international organization vis-à-vis the bodies falling under its jurisdiction and, in particular, vis-à-vis the Member States.

13. The Community's legal order is more vast and more varied than that of other international organizations. As the Court of Justice of the European Communities has stated, 'the Community constitutes a new legal order of international law'¹; this must be understood to mean that the specific characteristics of the Communities clearly set them apart from the traditional criteria hitherto applied to international organizations and to the responsibilities exercised by them.

(b) Responsibilities and normative acts

14. In considering the responsibilities given to an international organization, two aspects deserve consideration: the field in which these responsibilities are exercised and the legal form of the acts in which the exercise of these responsibilities finds expression.

15. The range of activities covered by the Communities and dealt with in the treaties, such as coal and steel production, the economy, developments in atomic energy, social welfare, agriculture, etc., are similar to those in which other international organizations are involved.²

16. What is different, however, is the legal form of the acts in which these responsibilities are articulated, since the Communities - unlike traditional types of international organization - are able to adopt acts which are binding in the Member States and (in the case of regulations) directly applicable in their domestic law.

17. Seen from this point of view the difference is apparent: the Communities do not follow the usual pattern of existing international organizations. Their role is in fact one of integration, independence vis-à-vis the national governments, and they exercise direct jurisdiction over the individual citizens of the Member States.

¹ See judgment in case 26/52, Reports of Cases before the Court, Vol. IX, 1963, p.12.

² It should be noted that the Communities' powers are essentially confined to the economic and social fields, international affairs in the strict sense (defence and foreign policy) being outside the scope of the treaties and remaining the sole responsibility of the Member States. Moreover, a large number of activities necessary to the development of the Communities (for example the coordination of economic, financial and monetary policy) can only be conducted under the rules applicable to international organizations for cooperation only.

(c) Institutions

18. It is not easy to classify the institutional system established by the treaties of the European Communities. Looking at the Communities in the general context of international organizations, it is apparent that they display far more highly evolved characteristics than those of an inter-governmental organization. Their institutions¹, which enjoy an individual personality and extensive powers, provide the means for implementing the Communities' responsibilities.

19. Under the treaty establishing a single Council and a single Commission of the European Communities², these two institutions were consolidated and now each carry out jointly the responsibilities assigned to them in the individual treaties. The European Parliament and the Court of Justice, on the other hand, were already common to all three Communities.

20. The enlargement of the European Communities, following the accession of the new Member States on 1 January 1973, brought no substantial innovations in the structure and responsibilities of the four Community institutions, either on the internal Community level or as regards external relations.

III. MAIN TREATY PROVISIONS GOVERNING THE COMMUNITIES' EXTERNAL RELATIONS

21. As regards the position of the Communities in international law, it should be noted at the outset that the Community legal system constitutes the foundation for an on-going process of construction destined to transcend its original form³. The proper political decisions will inevitably stimulate far-reaching internal developments affecting its very principles and legal foundations.

¹ European Parliament, Council, Commission and Court of Justice.

² This Treaty was signed in Brussels on 8 April 1965. It is probably responsible for the practice of commonly referring to the Community collectively. It should be noted, however, that reference to the Community is as a rule justifiable also as an implicit reference to the European Economic Community (EEC) which has the widest field of responsibilities of the three treaties. This 'error' points to the future role of the three Communities as the basis of a European Union with powers in all these fields.

³ Starting from the customs union, the first achievement of the EEC Treaty, the next phase is economic and monetary union as a step towards the final objective of political union (see final communiqué of the Paris Summit of 19-21 October 1972).

22. The treaties establishing the Communities contain differing texts regarding the substance of the Communities' international relations. The ECSC and EAEC Treaties, which cover highly specific areas, lay down general responsibilities as a function of the objectives or in relation to the specific responsibilities of the two Communities. The EEC Treaty, however, which covers a far wider area without precisely defined boundaries, assigns responsibilities in specific areas such as customs tariffs, the common commercial policy, associations with third States and relations with other international organizations.

(a) ECSC Treaty

23. The most explicit provision in this connection is Article 6 of the ECSC Treaty, which gives the Community legal personality and adds specifically that 'in international relations, the Community shall enjoy the legal capacity it requires to perform its functions and attain its objectives'.

The fact that the capacity to act internationally, explicitly granted to the ECSC to enable it to perform its functions and attain its objectives, does not figure amongst the provisions on international relations of the EEC and EAEC Treaties in no way affects the juridical reality of these Communities' existence at international level as regards their rights to perform their functions and attain their objectives¹.

¹ It has been pointed out in this connection that Article 6 of the ECSC Treaty does not specify the extent to which the Community has the legal capacity under international law to achieve its objectives and that this omission represents a factor of uncertainty for third countries. Nevertheless, once relations have been established and international obligations entered into, the ECSC acts independently of the Member States with a view to achieving its own objectives.

(b) EAEC Treaty

24. Article 184 of the EAEC Treaty lays down that 'the Community shall have legal personality'. Chapter X of the EAEC Treaty is concerned with the 'external relations' of this Community. Article 101 is of particular importance as regards this Community's capacities under international law. This concerns essentially the conclusion of agreements or conventions by this Community on matters falling within its terms of reference with a third State, an international organization or a national of a third State.

25. In view of the extremely technical nature of such agreements or conventions, the Commission is authorized not only to conduct the relevant negotiations in accordance with directives given to it by the Council, but also to conclude them with the approval of the Council. In certain cases, moreover, the Commission negotiates and concludes the agreement or convention; it then merely informs the Council.

26. Article 206 of the EAEC Treaty, however, takes over the text of Article 238 of the EEC Treaty as regards association agreements with a third State, a union of States or an international organization.

(c) EEC Treaty

27. The articles of the EEC Treaty on which the external relations of this Community are based are subdivided, in accordance with established practice, as follows:

- Art. 113, covers the conclusion of tariff, commercial and cooperation agreements
- Art. 238, covers association agreements.

These two articles, which are of central importance to the Community's responsibilities in the field of international relations, are complemented by Articles 114 and 228.

28. Article 113 lays down that, where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council. The latter shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations with the third State on the basis of directives issued to it by the Council. A special Committee, appointed by the Council, shall assist it during the negotiations.

29. Article 114 gives the Council the power to conclude, on behalf of the Community, agreements with third countries. This article requires the Council's decisions to be taken unanimously during the first two stages and by a qualified majority thereafter.

30. Article 238 of the EEC Treaty covers the conclusion of agreements of association between the Community and a third State, a union of States or an international organization. This article is the only provision relating to agreements which specifically provide for consultation of the European Parliament.

Association agreements are concluded by the Council, acting unanimously.

Where such agreements involve amendments to the Treaty, these amendments must first be adopted in accordance with the procedure laid down in Article 236 of the EEC Treaty¹.

31. Article 228 lays down the forms and procedures to be adopted in the conclusion of agreements between the Community and one or more States or an international organization. It provides that:

- (a) negotiations concerning such agreements are the responsibility of the Commission;
- (b) the conclusion of agreements thus negotiated is the responsibility of the Council;
- (c) where required by the Treaty, the European Parliament must be consulted;
- (d) if required, the Court of Justice can be requested, prior to the conclusion of the agreement, to give an opinion as to whether that agreement is compatible with the provisions of the Treaty;
- (e) where the Court of Justice declares the agreement to be incompatible with the provisions of the Treaty, the agreement may only enter into force following a modification of the Treaty pursuant to Article 236 of the EEC Treaty;
- (f) an agreement concluded under these conditions is binding both on the Member States and on each institution.

¹ Article 236 of the EEC Treaty provides for the calling of a conference of the permanent representatives of the governments of the Member States with a view to determining their common accord to the amendments to be made to the Treaty.