

# The United Nations and the European Union: An Ever Stronger Partnership

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## SESSION 1: Towards a Structural Cooperation between the UN and the EU

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Ladies and Gentlemen,

With your permission I will begin with a little anecdote. It's the last week of October 2003, imagine you're the legal adviser of Brazil in the 6<sup>th</sup> legal committee of the UN General Assembly and you take part in the discussion on the yearly report of the International Law Commission on the subject 'responsibility of international organisations', which is in the process of being codified now by the International Law Commission. The following scene plays out before your eyes and ears: the chair gives the floor to Italy, whose representative says: "Mr. Chair, I have the honour to speak on behalf of the EU, the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries Bulgaria, Romania and Turkey, align themselves with this statement", and the person goes on to speak and then, after 5 minutes, he announces a change behind the name plate, he says "Mr. Chair, given the specific subject matter of our discussion today, 'the responsibility of international organisations', and with your consent, I would like the remainder of the statement to be continued by Mr. Kuijper. And then you see someone descend from the row of observers above the Italian delegation's place and he sits in the place of the Italian delegate and he continues to speak, and you suddenly realize there's a change in the accent of English and that it's probably no longer Italian but you concentrate on the substance and you provisionally conclude for yourself that he must be European.

This practical example shows two things:

That the representation of the EU/EC, and I will speak about the EU/EC as a sort of amalgam of the first and second pillar, is difficult to understand for others. I will speak about the UN today in a broader sense than just the UN properly speaking, including the specialized agencies. So the representation of the EU/EC in the UN is difficult for others to understand at present. And also, you realize, if you pay close attention, that representation is not just decided internally by the EU/EC, but must follow relevant UN rules. It is as the Italian speaker said to the chair, "with your consent, I will pass the floor to Mr.X". So the title of the presentation is "***Institutional Ambiguities and Political Realities in the EU-UN relationship***" and I will first address the institutional ambiguities by giving you a little overview of the different legal statuses that the EC/EU can/could/does have in the UN system. Then I will discuss the political realities by giving an overview of what is the actual situation presently of the EC/EU in the UN system, which status has been achieved in certain situations, and where no status has been achieved at all. Then, we will very briefly touch upon the consequences of the Treaty on the EU Constitution, if the British referendum goes well, of course.

Our possible positions in the UN: first of all, there is of course membership, where you have full rights and obligations, but that is only possible if the founding treaty of the UN or any of its specialized agencies so allows. That is obviously not the case, as most of you will know. Article 4 of the Charter says that the UN is only open to "other peace-loving states", apart from the original founders, which have a place in Art. 3, and it is

very difficult to amend that provision, because art. 107 of the Charter makes that close to impossible. You need two thirds of the members in the General Assembly, unanimity of the Security Council... this is indeed the general problem of amendments of the Charter. In special organisations and agencies under the UN it is not much different. Those constitutions are generally not open to non-states, to international organisations, and amendments are only possible with very large qualified majorities to change the constitution. With those handicaps, when is it likely that the founding treaty of a UN organisation might be adapted? Our experience is, it happens if the communities' union's competence in the field covered by that organisation, has become so glaringly obvious that the partners in the organisation can no longer possibly deny it. Before that moment, they will seek every possible way of denying it.

Full participation is another status that you might reach, it is a somewhat informal status which implies that you can be present at all meetings, formal and informal, and you can make interventions, including the right to make proposals, but you don't have a right to vote. And it is usually possible in the meetings in which you have this right of full participation, to change procedural rules with fairly simple majorities. A third possibility, is to have (enhanced) observer status. The precise content of that regime varies according to the body in which you find yourself. The presence may be limited to formal meetings, or include presence in informal meetings sometimes, formal interventions are usually only possible at the end of all the interventions of the parties or official participants, so that your interventions carry less political weight. Moreover, normally you may not propose amendments during the debate, although in some cases there are exceptions to that, and, obviously, you have no right to vote. In some cases the community union doesn't achieve any distinct status in international organisations of the UN system, and then there is the general obligation of loyalty which exists both under the EC and under the EU Treaty, which should stimulate member states to act broadly in the interest of the community and of the EU. The EU presidency may represent all the member states in the common forum and security policy matters, with specifically agreed statements on behalf of the EU as for instance was the case of the Italian chair in the 6<sup>th</sup> committee. The provisional conclusion of that is that the procedural hurdles for full membership are quite high. The chances to get the full participant or observer status are better, and the concrete outcome depends on the goodwill of the others represented in the relevant bodies. In practice, the status may cover the whole range of nuances between full participant and mere observer. And if there is no distinct status, member states and the presidency should take care to maintain at least some coherence. There are obviously certain ambiguities in our relationship to the UN, also due to our own imperfect constituent instruments at the moment. Ambassador Van Meeuwen referred to art. 19 of the EU Treaty, which concerns the coordination of the position in all international organisations, and in particular the coordination and information on the part of the members of the Security Council. And there is this often overlooked small art. 302 of the EC Treaty, which says that the Commission will maintain 'all proper and appropriate relationships with the UN Secretariat', which provides a very flimsy base on which to undertake anything vis-à-vis the UN. Obviously at present, this has been the approach of the Commission so far, the idea is to get membership for the EC wherever that is possible. And that may become very useful later on when we get to the constitutional stage, where the EU and the EC will be integrated. We have been successful in obtaining membership in the FAO in 1991, often that is accompanied –because it is rare to have an absolute parallelism between the area covered by the organisation and the competences exclusively held by the Community, the result of which is a mixed accession, a mixed agreement with that organisation, and mixed representation- by elaborate declarations of competence (i.e. is it a member state or the community that speaks on a certain issue and that votes on specific issues?). Yet, I won't go into the details of that. We have become a member of the WTO, we are even an original member, but that was a rather specific situation, and the WTO is not an official member of the UN system. So far, the Community has been unsuccessful and is still discussing very intensely the EU/EC accession to organisations as the International Maritime Organisation, and the ICAO, where it is clear that after certain judgements of

our Court of Justice the competences of the Community (esp. in civil aviation) have been growing. There's also the oddity of our relationship with the IMF, where monetary policy actually has exclusive competence, but where it is still not possible to realize that in a specific position in the IMF. However, the ECB has an observer status. Full participation has been achieved in a number of big conferences under UN auspices, such as the Commission on sustainable Development, and world conferences like the Monterrey conference, and the World Conference on the Information Society. It has been impossible so far, because of political obstacles, to achieve a sort of special upgraded observer status in the UNHCR Executive Board, whilst the EC is nevertheless one of the biggest donors of that refugee organisation. As far as the observer status is concerned, we are observers in the UN General Assembly, since 1974, and in ECOSOC since 1981, and also in several specialist agencies like the World Bank and the IAEA. On a practical level, my colleagues have already pointed out there are desk-to-desk exchanges, there is a financial and administrative framework agreement, concluded between the UN and the Community, that covers all the financial transactions between the organisations, esp. when the UN (agencies) are using EC budgetary money for certain operations and projects in the development area. And the volume and the subjects of the common EU statements in the UN and in other specialized agencies is continually on the rise. It is also very gratifying to see that sometimes these interactions become very close, like in the unfortunately failed attempt to have Cyprus enter as one island in the community, recently, which was preceded by very intensive discussions both on the island and later in Switzerland. One of the interesting features of those discussions was that there was constant interaction between Commission and Council officials and UN officials and that there is one example of two Commission officials being seconded to the UN team for a brief period, so that the team would have sufficient expertise on community law in order to judge immediately whether certain proposals made by the two parties would be in conformity with both what the UN wanted to do politically, and with the *Acquis communautaire*. These are very encouraging aspects of cooperation.

As far as the future is concerned, if the EU Constitution comes about, we will have one legal personality, and I think that the approach to this should then be that the community simply advises the UN that the EU will inherit its various statuses in the UN bodies. I think that, as is in conformity with the Council's reaction to the Commission's communication on the UN, it would lead -fairly shortly after the entry into force of the new constitution- to an initiative on the part of the EU to ask for an upgrading of the status inherited of the EC. That way it can be in better conformity with the actual contribution and the actual possibilities of the new EU to act within the UN framework. To come back to my anecdote in the beginning, if that comes about, it will be possible for the legal advisor not to enter the debate any longer as a disguised Italian, but to sit there behind the EU name plate and to give his opinion on the responsibility of international organisations straight under that flag.

Thank you