

The European Community and the United Nations

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The United Nations (UN) has developed into one of the most significant forums for European cooperation in the sphere of foreign policy. In particular the UN General Assembly (UNGA) – the pre-eminent multilateral deliberation forum – is often seen as a natural showcase for the European Community (EC) and its Member States.¹ The regular UNGA agenda addresses all major international issues, such as the Israel-Arab conflict, Afghanistan, apartheid, etc., which are discussed by the Twelve within the framework of European Political Cooperation (EPC). It comes as no surprise that nowhere outside Brussels is the cooperation among the Twelve so active as in New York. More than 200 meetings of the Twelve are held in the second half of the year alone, when the UNGA is in session.

This essay is neither on the EC/EPC nor on the UN, but on the relationship between the two, and on Community performance within the world organization. It focuses on the work of the EC and its Member States at the New York headquarters of the UN,² in particular how an even closer cooperation is sought through joint statements in the UNGA, via submission of working papers and draft resolutions, and through joint replies to the Secretary General of the UN. Furthermore, it discusses how the Twelve seek to achieve, as far as possible, uniformity in voting on the more than 300 draft resolutions tabled in the General Assembly each year. It is not the main purpose of this essay to explain the development of EC/EPC positions in substance on the various agenda items, but rather to examine the process through

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The author alone is responsible for the views expressed in this article.
- 1 Unless otherwise indicated the expression "Community" or "European Community" (EC) are used in the present study as shorthand for describing the European Economic Community (EEC), the European Political Cooperation (EPC) or both. The expressions Member State(s), the Twelve or EPC refer to the members of the European Communities at any given time when they act individually or collectively outside the legal framework of the Treaties of Rome and Paris.
- 2 A list of the various members of the vast UN family with which the EC has established formal relations may be found in *The European Community, International Organizations and Multilateral Agreements* published by the European Commission.

which these positions are reached,³ and to illustrate the conduct of the Community as an operator within the UN.

I. The Legal Framework

A. European Community Status Within the United Nations

Regarding the development of organizational relations between the Community as such and the UN, a distinction should be made between the right of active legation, in this case the right of the Community to send a diplomatic mission to an international organization such as the UN, and the right to participate in the work of the organization.

In the latter regard one might distinguish between the question of participation in the strict sense of the term, i.e., the status of the Community within the framework of the international organization, and the problem concerning representation or, in other words, the question of which institution or person is entitled to speak for the Community in the UN. In this respect two sets of rules are relevant: on the one hand, the "external" rules, such as the statutes of the international organization, and on the other hand the "internal" rules, *in casu* the applicable Community rules.⁴

Contacts with various members of the UN family started very early in the history of the European Communities. As early as in 1953 the European Coal and Steel Community concluded a cooperation agreement with the ILO. In July 1958 the EEC obtained the status of observer at the meetings of the UN Economic Commission for Latin America (CEPAL). Since then, ties with an increasing number of UN family members have been made and reinforced.

In a letter of 28 November 1958, the then UN undersecretary-general for economic and social affairs, Mr Philippe de Seynes, replying to a letter of 9 November from Mr Jean Rey, offered the President of the EC Commission a range of practical cooperation measures between the UN Secretariat and the Community, in particular those relating to the regional UN Commissions. Mr de Seynes also referred to the question of Community participation in the meetings of ECOSOC, the UN Trusteeship Council, the UNGA main committees and conferences organized under

³ An excellent comprehensive essay on this subject is found in K.-D. Stadler, *The Co-operation of the EC Member States in the Framework of European Political Co-operation at the UN General Assembly in the 1980s* (unpublished); see also, by the same author, *Die Europäische Politische Zusammenarbeit in der Generalversammlung der Vereinten Nationen zu Beginn der Achtziger Jahre*, EUI Working Paper 89/371 and B. Lindemann, *EG-Staaten und Vereinte Nationen* (1978). For a general study of the development of the EPC, particularly at the UN, see Regelsberger, 'EPC in the 1980s: Reaching another Plateau', in A. Pijpers, E. Regelsberger and W. Wessels (eds.) *European Political Cooperation in the 1980's: A Common Foreign Policy for Western Europe?* (1988).

⁴ For a broader survey of the EEC and international organizations see J.V. Louis and P. Brückner, *Le droit de la Communauté européenne, Vol. 12: Les relations extérieures*, at 130.

the UN aegis. He concluded that this difficult problem could not be resolved at the UN Secretariat level, but depended on a decision by the UN organ in question. In his reply of 9 December 1958, Mr Rey agreed that for the time being it was not urgent to establish formal relations between the two organizations.

It was not until 1974 that the European Community secured formal status with the head of the UN family. Indeed, it was only when the Federal Republic of Germany joined the UN on 18 September 1973 – a step which completed full UN membership of the EC States – that it became politically possible to formalize the relations between the Community and the UN. However, according to Article 4 of the UN Charter, full membership of the United Nations is open to states only. In the absence of an amendment to the Charter – which remains very unlikely – the Community has had to settle for a more modest participation in the work of the world organization.

Under General Assembly resolution 3208 (XXIV) of 11 October 1974, the EEC was invited “to participate in the sessions and work of the General Assembly in the capacity of observer.”⁵ At that time, this status was requested only in respect of one of the Communities having some interest in the UNGA work, namely the EEC. The Community’s right of legation *vis-à-vis* UN headquarters was exercised when the EC Commission established an official UN observer mission in New York. After a period serving as an unofficial mission, the EEC observer mission obtained its official diplomatic status in 1976, confirmed in a letter of 4 August 1977 from Secretary of State Kissinger to Commissioner Soames.

The EEC is described as an observer in the blue UN calendar under chapter IV, after the chapters listing the full members, the specialized agencies together with other UN bodies and states not members of the UN. Chapter IV is labelled: “International 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.” The other entities listed under chapter IV are COMECON, OAU and the Arab League. From a legal point of view, this categorization does not seem quite appropriate. Compared to its counterparts in this chapter, the EEC is the only “organization” to which its Member States have transferred powers or competences. It is precisely this feature which distinguishes the EEC from the traditional type of international organizations.

The way in which the EEC is listed does, however, illustrate some of the peculiarities relating to the organization of Community foreign relations in practice. The listing contains the names of the diplomatic members of the EC Commission’s del-

⁵ Simultaneously, and in the same manner, the Council for Mutual Economic Assistance (COMECON) was admitted as an UNGA observer. That same year, the EEC participation arrangement with the ECOSOC was formalized. Telexes of 23 and 24 June 1974 from the UN Secretariat informed the EC Commission of the ECOSOC decision adopted at its 50th session “to extend formal standing invitation to your organization to be represented by an observer at future sessions of the Council...”

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egation. However, a footnote mentions that the EEC is represented by the Permanent Representative of the Community Member State exercising the Presidency of the EC Council *and* by the head of the delegation of the EC Commission.

This two-headed or two-pronged formula for representation is a reflection of the Community's own arrangements pertaining to the role of spokesman for the EEC in the UN. This role is performed by the representative of the Presidency or the Commission according to circumstances, it being understood that the Commission representative, as a rule, speaks only on matters of Community competence.

This formula for two-headed representation, which is used in several other international organizations, is hardly compatible with the rules as perceived by the founding fathers of the Treaty of Rome. However, it does respond to a certain number of practical and political needs. The UNGA, like many other international organizations and conferences, deals with matters of Community and Member States competence, respectively, in such a mixture that it is impossible to make a clear distinction in every case.⁶ Furthermore, the two-pronged formula gives added freedom of manoeuvre to the Community. The Member State exercising the EC Presidency may use its full membership rights of action – also in the name of the Community – where other observers, who do not enjoy this sophisticated representation formula, may meet difficulties.

B. European Political Cooperation and the United Nations

The Luxembourg Report, adopted on 27 October, 1970 by the Foreign Ministers of the then six Member States of the Community, contained the political foundation for European Political Cooperation. Consultations in New York on political matters on the UNGA agenda started as early as 1971. However, they did not flourish until the Federal Republic of Germany joined the UN as a full member in September 1973. In the document on the European Identity, adopted shortly after on 14 December, 1973, the EC Foreign Ministers emphasized the need to seek common positions wherever possible in international organizations, in particular in the United Nations.

Ever since, the Member States have progressively developed disciplines, in written and unwritten rules and procedures, with a view to improving their cohesion in the UN through the various modes of political expression, in particular joint statements, voting, and common explanations of vote. The EPC at the UN is a function of political cooperation in European capitals. The UN objectives pursued by the Community over the years may be summarized as follows: to reinforce the support of the UN, to further respect for the Charter, to defend the principle of universality of the Organization, to contribute to avoiding confrontation, to develop a construc-

⁶ This appears in many statements made in the Second (Economic and Financial) Committee of the UNGA.

tive dialogue between industrialized countries and developing countries, and to reaffirm the identity of the Community by increasing the harmonization of its positions and actions to the greatest extent possible.

The present – legal – basis for EPC is found in the Single European Act (SEA) of February 1986, which essentially entails the codification of EPC practice plus the creation of an EPC Secretariat in Brussels. The relevant Title III of SEA “Provisions on European cooperation in the sphere of foreign policy” constitutes the up-dated, and now legal framework for EPC. Its general rules apply – *mutatis mutandis* – to EPC at the UN. Certain rules aim in particular at international organizations such as the United Nations.

Preambular paragraph five of the SEA makes a specific reference to “the undertaking entered into by them (the EC Member States) within the framework of the United Nations Charter.” The provisions of Article 30(2) describe ways and means of reaching the objective of Article 30(1). Accordingly, Member States “shall endeavour to formulate and implement a European foreign policy.” Article 30(2) points at the well-known means of prior consultations, common positions and joint action. Article 30(2)(d) stipulates that:

The High Contracting Parties shall endeavour to avoid any action or position which impairs their effectiveness as a cohesive force in international relations or within international organizations.⁷

Of direct relevance to the work at the UN are the provisions of Article 30(7):

(a) In international institutions and at international conferences which they attend, the High Contracting Parties shall endeavour to adopt common positions on the subjects covered by this Title.

(b) In international institutions and at international conferences in which not all the High Contracting Parties participate, those who do participate shall take full account of positions agreed in European Political Cooperation.

Both are covered by existing EPC texts. According to Simon Nuttall the final words of paragraph (a) – “on the subjects covered by this Title” – make it plain “that EPC cooperation does not extend for example to international institutions or conferences in the monetary or economic fields.”⁸ By implication, such fields ought then to be covered by Community competence or, at least, be of particular interest to the

⁷ Simon Nuttall provides an excellent commentary to Title III of the SEA in ‘EPC and the Single European Act’ *5 Yearbook of European Law* (1985) at 203-32. On Article 30(2)(d) he notes that it is “all that remains of Article 5(2) of the British draft, which came to be known, rather unkindly, as the “Falklands Clause.” The British draft was, in fact, largely based on existing EPC texts, but took on a different significance out of context.” Article 5(2) in the British draft read as follows: “In particular, a Member State shall not support a resolution in such organs or conferences which directly criticizes or might gravely affect the vital interests of another Member State. The Member State shall also work to avoid a situation where one or more of them co-sponsor a resolution which another or others of them vote against.”

⁸ See Nuttall, *supra* note 7, at 213.

Community and handled by Community (and not EPC) instances. However, this conclusion does not seem to be drawn by all Member States. The result of such a divergent view would be that the world of monetary and/or economic fields escapes Community as well as EPC cooperation.

The provisions of Article 30(7)(b) aim at the problem of the procedures to be followed in international forums like ECOSOC or the UN Human Rights Commission in Geneva where not all EC states are members. As highlighted by Simon Nuttall, the wording does not clarify whether Member States concerned are called upon to take full account of positions previously agreed within the EPC, or whether coordination among the Twelve is to be organized in specific cases to ensure that an EPC position exists. The ambiguity does reflect variations in practice. During the 1989 session of the UN Human Rights Commission, in which some EC Member States, not being full members, only participated as observers, it was possible to agree for the first time on a joint statement delivered by the Spanish presidency representative.

During the negotiations on the SEA, France and the United Kingdom, two of the five permanent members of the UN Security Council, are said to have stated categorically that Article 30(7)(b) does not apply to the work of the Security Council.⁹ It is true that the issues taken up by the Council are rarely discussed in New York, even if they often relate to areas where elaborated EPC positions exist, such as the Middle East, Central America, Southern Africa, etc. Formally, at this stage of EPC evolution, it appears correct not to bind EC States by a rule like Article 30(7)(b).

The Security Council, in principle, is not a debating forum like the General Assembly where general policy guidelines are discussed. The role of the Security Council is to deal with concrete cases concerning potential or actual threats to international peace and security. The members of the Council – and they alone – are individually responsible for the views expressed and votes cast in the Council. In particular, the U.K. and France must be constantly aware of their particular responsibilities as permanent members where votes have a particular weight: a no-vote is a blocking veto.

It is inconceivable, however, that the EC States members of the Security Council would not feel bound by the basic policies adopted within the EPC and hence apply them to individual cases.

There is nothing to prevent EPC developing to a point where individual cases – or rather the main issues which they raise – could be discussed among the Twelve in New York in a more regular fashion. The Non-Aligned Movement has established a special caucus for consultations with NA countries members of the Security Council, for example, on positions to be taken with regard to draft resolutions.

⁹ See C. Bramsen in 'EF-pakken og det udenrigspolitiske Samarbejde (EPS)', *Det udenrigspolitiske Selskab* (June 1987) at 24-25.

C. EC/EPC Policy Coordination

As a rule, the various items on the UNGA agenda are considered in one of the seven main committees of the General Assembly before they are taken up and brought to a vote in the Plenary. Unfortunately, at least as seen from a point of order, the agenda is not composed with any regard to the division of competences between the Community and its Member States, and rarely can any item be put entirely into one of the three categories in which the EC/EPC system operates:

- 1) Firstly, an item may involve Community competence. That competence may be exclusive, i.e., Member States no longer have competence in commercial and agricultural policies.¹⁰
- 2) Secondly, an agenda point may be of particular interest to the Community, while not being within EC competence.¹¹
- 3) Thirdly, an item may involve matters exclusively within the competence of Member States.

In practice, many subjects fall entirely under Member States' national competence and hence within the scope of European Political Cooperation (EPC). Some issues are of a "mixed" character and fall partly under national, partly under Community competence. Very few agenda items belong exclusively to the field of Community competence. These are essentially the economic and financial matters dealt with in the Second Committee.

Very often the various items on the agenda of the UNGA are tied together – for the EC and its Member States – in an "untidy bundle;"¹² many issues are presented in such a way that both the Community and the Member States have competence. A pertinent example of "mixed" competence is development policy. The Community is competent for its development policy (Lomé, aid to other Less-Developed Countries, etc.). Member States are competent for their own. In the Second Committee, issues like trade, debt and monetary problems may traditionally include elements of all three categories, intertwined in a grey area where the basis on which one is working is unclear. Now a similar experience is made in the Third Committee with regard to issues concerning narcotics, refugees, discrimination against women and racism.

Lastly, many joint statements cover a number of issues, in particular the Presidency's statement in the Plenary general debate, and most often more than one of the above-mentioned categories. That is why many joint speeches are prefaced by the words: "On behalf of the European Community and its Member States..."

¹⁰ To be complete, one could also mention areas where Community competence may be only potential.

¹¹ For example, economic consequences of disarmament, i.e., in the context of "the relationship between disarmament and development."

¹² A well chosen expression coined by an earlier head of the Commission's UN delegation, Michael Hardy.

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In any event, these examples illustrate the importance of ensuring coordination between Community and Member States areas. As is known, Article 30(5) of the SEA provides that: "The external policies of the European Community and the policies agreed in European Political Cooperation must be consistent." In this respect, Article 30(9) on local cooperation among the UN missions of EC Member States and of the EC Commission comes into play: "The High Contracting Parties and the Commission through mutual assistance and information, shall intensify co-operation between¹³ their representations accredited to third countries and to international organizations." In practice it may sometimes be difficult to discern the EC from EPC in New York. As a matter of legal principle, however, it is important to recall the major differences between the two modes of cooperation.

A first difference between the EC and EPC which is often overlooked "relates to the transparency of objectives and methods."¹⁴ While both processes may work towards the very general aim of achieving "an ever closer union among the peoples of Europe" the similarity ends there. The Treaty of Rome carefully defines the objectives of the parties and lists the instruments by which these goals are to be reached: a customs union and a common market. The Treaty also contains a series of substantive policy commitments in different economic areas. However, the EPC has no such substantive foundation. It remains a mechanism for coordination. The SEA has changed nothing in this respect when it says "to formulate and implement a European foreign policy." There is no mention as to what this policy might be. Additionally, the decision process follows different voting rules depending on the area of activity. Trade issues – in the UN context as well – would in principle be subject to the simple majority rule of Article 113 of the Treaty of Rome. EPC decision-making is based on the consensus rule.¹⁵ Finally, if in an area governed by Community competence it turns out that no Community position can be reached, the result according to Community law is that neither the Community nor its Member States can express any position on that matter. Areas remain under Community competence and are not re-delegated to Member States just because no valid decision can be made.

In practice, however, the picture is blurred. In theory, the logical consequence of the lack of a Community position should be a *non liquet*, i.e., that Member States do not participate in the voting (abstention is not enough). In reality, nearly all draft resolutions containing matters under Community competence belong to the Second

¹³ As suggested by Nutall, *supra* note 7 at 213, one should read "cooperation among their representations."

¹⁴ See Weiler and Wessels, 'EPC and the Challenge of Theory' in *European Political Cooperation in the 1980s*, *supra* note 3 at 235.

¹⁵ The SEA has not involved any change of this principle but may have softened it somewhat by adding a supplementary rule in Article 30(3)(c) of the SEA stating that the Member States "shall as far as possible refrain from impeding the formation of a consensus and the joint action which this could produce."

Committee which by tradition always tries to obtain consensus, thus avoiding a formal vote.

If no agreement can be obtained on an EPC matter, Member States are free to express their national positions. However, in doing so, account should be taken of the positions and legitimate interest of their EC partners. This principle, which has its counterpart in Article 5 of the Treaty of Rome, is reflected notably in Article 30(2)(c) of the SEA. In practice, this means that a Member State should give advance notice to its EC partners if it plans, for example, to make a national declaration or an explanation of vote when a common declaration is made. Such advance notice should also be given to partners before approaching other countries when a delegation envisages participating in drafting and/or co-sponsoring of resolutions during the UNGA.

In theory, the ball does not stop in New York. If an EC or EPC position cannot be obtained locally, the matter should be referred to Community instances in Brussels (COREPER) or the EPC presidency capital (the Political Committee), respectively, to be decided by the EC Council or a ministerial EPC meeting or ultimately by the European Council (not to be confused with the Council of Europe).

In daily life at the UN Headquarters, it is hard to discern a difference in the EC and EPC decision-making processes and it very rarely happens that UN matters under Community deliberation in New York are referred back to capitals.¹⁶

The major difference is a practical one, i.e., that EC and EPC matters are dealt with in different locations. Meetings of representatives of the Twelve in the Second Committee, which handles the bulk of issues under Community competence, meet at the office of the delegation of the EC Commission where partners are seated in EC Council formation, i.e., the Commission representative opposite the Presidency representative. All other meetings of representatives of the Twelve are held at the premises of the UN mission of the Presidency Member State.

EC/EPC cooperation is now a regular feature with regard to practically all aspects of the work in the UNGA and ECOSOC or in their subsidiary bodies. Major exceptions are election questions. This is due to a number of factors. Two of the EC Member States are permanent members of the Security Council (France and the U.K.). These states have a special standing in many UN elections: they are either born members of an organ, e.g., the General Committee, or cannot assume certain posts, for example, membership on the bureaus of the UNGA main committees. Furthermore, EC Member States belong to different sub-regional groups within

¹⁶ Nuttall, *supra* note 7, at 211 makes the following observation: "It is the nature of diplomatic gatherings to negotiate a compromise; the difference between EPC and the Community in this respect is less great than some believe. It is doubtful whether there exists any meaningful stage between the type of consensus formation followed at present and described in Article 30(3)(c) and straightforward decision-making by majority vote."

WEOG (Western European and Others Group). One Member State (Denmark) participates in the extensive Nordic cooperation in election questions.¹⁷

II. Preparing for the UNGA: The Twelve at Work

Community preparations for the forthcoming regular UNGA session start in the early summer months. One of the last duties of the UN mission of the outgoing EC Presidency is to ensure that EC capitals receive the collective wisdom of the Twelve in New York with regard to the draft agenda of the forthcoming UNGA. The focus is traditionally on items and areas where the Community may have particular interests and where cohesion of the Twelve may be improved.

The preparatory work slowly accelerates under the new Presidency after July 1, mainly in the EPC UN Working Group. A major task is to prepare the EPC section of the statement by the EC and its Member States in the Plenary UNGA general debate. The section concerning areas under Community competence is prepared by the EC instances in Brussels (Commission, General Affairs Group, and COREPER). On the basis of these contributions, the Presidency prepares a comprehensive draft. The traditional meeting of political directors in New York on the first Monday of the Plenary general debate is confined mainly to a formal reading of the draft speech, which is delivered the following day by the Foreign Minister of the Presidency Member State. He may also add a separate section on national UN views, but this is not the rule. All in all, the Presidency Member State sees itself increasingly as a servant of the Community, a function which is rarely compatible with the promotion of purely national concerns.

Among the first actions during the opening weeks of the UNGA are a series of meetings between the Twelve and other UN Member Countries. Indeed, one of the important functions of the UN is to provide an international meeting place which is of particular importance for countries having no other possibilities to meet. For those who cannot meet for domestic political reasons, but who would like to dialogue, the UN has an advantage over most other meeting places: it is discreet. The recent agreement between the United Kingdom and Argentina to resume talks was reached in New York. In particular, during the first weeks of the UNGA there are so many state leaders in the corridors of the UN headquarters that you can hardly see the forest for the trees.

Sometimes, all the twelve Foreign Ministers meet collectively with their interlocutor. The most prominent meeting for all Twelve is the working dinner with the US Secretary of State, an innovation from the Danish presidency in 1987 and repeated each year since. Furthermore, the twelve Foreign Ministers hosted a working

¹⁷ This type of cooperation is covered by the Declaration of Denmark relating to Title III of the SEA; see *infra* note 26.

lunch with the Soviet Foreign Minister for the first time ever on 26 September, 1989, during the French Presidency. Such meetings are held nowhere else.

These meetings of all Twelve, in particular with the US Secretary of State, could be interpreted as a sign of growing self-confidence on the side of the Community's Member States. In any event, all Foreign Ministers have expressed great satisfaction with the free, but at the same time substantive, discussions on matters of common interest. The EC Foreign Ministers also meet with their colleagues from the Group of Eight Latin American countries and the Gulf Cooperation Council.

The EPC can also be represented by the Troika (current Presidency accompanied by preceding and succeeding Presidency representatives, the representative of the Commission and sometimes an official from the EPC Secretariat) in meetings with, for example, the Foreign Ministers of the Central American countries and Japan. Finally, the Presidency representative meets alone with a number of other Foreign Ministers, and may on these occasions often carry his national cap as well.

To the extent possible, EC partners speak after the Community spokesman in the general debate and often refer to the joint statement in their speeches.¹⁸ This order is followed in other UNGA fora in case individual Member States feel the need to add national observations after the joint Community statement. How frequently does this happen? It is difficult to formulate a principle or guide-line in this respect. A stricter and more legalistic view would be as follows: the more a common position on a given subject is rich in substance and detail, the more it could be weakened and put into question if it were followed by individual EC partner statements, which adds to or subtracts from the joint statement. This applies not only to interventions in a debate but in particular to explanations of vote. In case the Twelve present a common explanation of their identical votes it would, as a rule, not serve cohesion if individual explanations of the same vote are made.¹⁹ However, in certain cases national statements constitute the political price to be paid for reaching a common voting position, and often it is low because the individual partner view only refers to a particular paragraph, not the resolution as a whole.²⁰

In the Plenary general debate, Foreign Ministers of the Twelve may speak on any subject even if it involves some duplication and repetition of joint statements.

18 It is becoming increasingly difficult to find appropriate slots in the speakers list for the UN General Assembly Plenary debate. An increasing number of UN members wish to speak during the first week of the three week general debate. This is the week where the major powers, in particular the US and the USSR, speak in the debate. These events attract Foreign Ministers, Heads of State or Governments of other key nations, who seek to arrange bilateral meetings with each other during that week. For the Twelve, it is particularly important to be present in New York during the same period since many events involve all of them.

19 This happened on Res. 43/176 concerning the question of Palestine. (International Peace Conference on the Middle East).

20 A colleague from an Eastern European country once described the difference between the EC and Comecon behaviour in the UN as follows: the Twelve attempt to have one speak for all whereas within the Comecon all speak for one. That was before the Glasnost era.

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Foreign Ministers are in New York to speak and to be seen doing so. In all other situations, it has to be considered case by case if individual Member States' interventions are appropriate. If such are delivered in parallel with a Community statement, logically, the minimum requirement seems to be that the national statement must not be incompatible with the common statement. I am personally not convinced that individual Member States' participation in the debate along side the Community statement needs to be avoided as a rule within the UN. The Community and the Twelve should rather try to profit from the situation they actually enjoy: Twelve plus one voice in the UN. In some cases, it is important to speak with one voice only, see above. In other cases, it may serve Community interests better to have several voices address the same subject with the same melody but with different pitch. In such situations a Community statement may constitute a "chapeau" under which Member States' concurrent statements are made, not necessarily to make a national point but to reinforce the joint position.

The joint EC statement in the Plenary general debate is normally a very comprehensive and substantive catalogue of the common positions of the Twelve on the problems preoccupying the UN and reflected in the GA agenda. It rarely contains any news. The positions of the Twelve have most often been coined on previous occasions. However, the common Plenary statement sets the stage for subsequent declarations in specific agenda items during the session. Together, these statements form the basis and chart the course for further diplomatic action by the Twelve.

When the Foreign Ministers have left New York, cooperation among the delegations of the Twelve and of the EC Commission is ensured through regular meetings at the level of Permanent Representatives, as a rule every Thursday evening, and at the level of experts. There is one expert group for each of the seven main committees and some special expert groups. Their work is to examine the possibilities for formulating joint positions through joint statements, draft resolutions, explanations of votes and, of course, the voting itself. With a view to enhancing cohesion, consideration has recently been given to cases where the Twelve – outside the realm of the Second Committee – could go further than speaking with one voice and acting with one hand; in other words, cases in which the Community spokesman is mandated to negotiate the texts of resolutions with third-country delegations, or, to use the terminology of P. de Schoutheete, to move from a "communauté de vues" to a "communauté d'action."²¹

More than 200 EC/EPC meetings are held during the UNGA session. During the regular UN General Assembly session, the Presidency often has to organize parallel meetings of different UN expert groups of the Twelve. Most UN missions cannot host more than one or at most two meetings at the time and they therefore rent separate office space to accommodate the many meetings of the Twelve, often called at very short notice. Some meetings of the Twelve have to be organized on-the-spot in

²¹ P. de Schoutheete, *La coopération politique européenne* (1986), at 49.

a corner of, or just outside, the UN meeting room. A local COREU²²-type network by telex or telefax serves to ensure communications at all times, in particular, to convene meetings and to distribute drafts of joint statements. Approximately 400 local "coreus" are exchanged during a Presidency period in the second half of the year.

Apart from the joint statements in the general debate of the Plenary and of the First Committee, all other UNGA statements are as a rule prepared locally in New York on the basis of first drafts elaborated by the Presidency's staff. These drafts are circulated to partner missions and then examined by the local expert group.

At what stage of the coordination process do the EC UN missions seek their instructions? It depends, of course, on the individual mission and the subject matter. It is my impression, however, that the experts of the Twelve increasingly seek agreement "ad referendum" in New York before they send the text to capitals for instructions.

If the capitals agree to the draft, the Presidency may proceed to take action in New York. In case one or more capitals have comments and/or suggestions for amendments to the draft, which cannot be handled by "phone", a new meeting is called to solve outstanding differences. If disagreement prevails at the expert level, a normal solution is to leave out the controversial passage. In certain cases, where the dispute cannot be solved this way, e.g., because deletion would render the joint position void of any substance, experts refer to their superiors. These are the Permanent Representatives if the problem is sure to find a solution at this level. Most often experts refer back to capitals with a view to having the problem solved by the Political Committee or Foreign Ministers. In some instances, the Deputy Permanent Representative may be requested by the Heads of Delegations in New York to try to resolve outstanding difficulties.

In practice, statements in the UNGA are delivered in almost all cases by the representative of the Presidency. Statements on behalf of the Community and its Member States are normally delivered in one of the EPC languages English or French, which are also official UN languages. A small complicating factor emerged during the Spanish Presidency in the first part of 1989. Although the texts were prepared in one of the EC languages the presidency spokesman, of course, felt obliged to deliver the speech in Spanish, which is an official UN language.

The Commission representative is allowed to perform as the Community spokesman only where the entire subject-matter is covered by Community competence, such as trade and the Community's own development aid. Only 4 out of 105 common statements were delivered by the Commission representative during UNGA 43.

The fact that the Commission representative is only exceptionally admitted as Community spokesman is due to a number of reasons beyond the more legalistic

22 COREU – "correspondance européenne" is the name given to the telex network established between the Foreign Ministers of the Twelve.

arguments. In the first years of Community performance in the UN family where the EC was not recognized by everybody, in particular not by the Eastern bloc, it often met with difficulties in presenting Community views through the Commission representative. However, to my knowledge, a Member State has never been denied the right to speak when it took the floor as president of the EC Council on behalf of the Community (and its Member States).

This spokesman's role is important, particularly during the Plenary general debate where observers are not allowed to speak. In this case, the Head of the Commission delegation, who is exclusively a Community representative and not, as well, a Member State representative, cannot speak for the Community.

Apart from this particular case, a certain evolution might have been expected now that third country opposition and other external obstacles have progressively disappeared in the UN – particularly after the agreement between the Community and the COMECON in June 1988. Indeed, it might have been thought that the Commission representative would speak more often for the Community, especially in mixed cases where the main emphasis is on Community affairs and only minor marginal matters fall under Member States' competence. This has so far not happened. It may be that Member States fear that matters will become "communautarisé" just because the Commission representative speaks on them, i.e., that this fact alone is sufficient to transfer the subject from Member States' to Community competence. It should be added that the Commission representative in New York almost never speaks in its own name as an institution of the EC.

III. The Twelve as a Collective Actor: An Overall Assessment

It is a considerable burden for the Presidency to prepare drafts for the growing number of joint statements. Where common positions have been tested and developed over the years, the Presidency may find it easier to arrive at the least common denominator language in the first draft and thereby reduce the time required for the negotiations among partners. The prospects of hitting the target in the first run also depend on the Presidency's readiness to forego its own priority issues which are not part of the "acquis politique" of the Twelve. Furthermore, UN issues do change over time. The UNGA is not only about apartheid, the Middle East and disarmament, which are among the longest-standing questions on the UN agenda, but those on which common positions have developed most slowly.²³

New subjects that have appeared most recently on the UN agenda are ecological and environment issues, degradation of world climate, etc. At the end of the presidency of Greece, in 1988, a Greek colleague made the observation that it seemed to

²³ See P. de Schoutheete, *supra* note 21 at 210-211.

be easier to obtain agreement among the Twelve on new UN issues than on older topics, where efforts to improve the cohesion of the Twelve have either been slow or in vain. At first glance, there may be a lot of truth in this supposition. Some of the old issues reflect fundamental divergences that can only be overcome in a broader political context, for example, concerning nuclear disarmament. Other UN issues, like the Middle East and apartheid, surfaced long before the inception of EPC and had been the subject of elaborate national positions long before political cooperation aimed at reaching common positions was developed. It is difficult to bridge long-standing divergences on such international issues, in particular if they relate, or are perceived to relate, to important national interests. Conversely, if a subject has been internationalized recently and therefore has not been subject to a traditional national policy-making process, joint positions of the Twelve sometimes seem to be reached more easily. One explanation might be that EPC has involved a new kind of working habit or discipline among policy-makers of the Twelve. Whenever a new topic is brought up it is now a first and perfectly natural reaction for each partner to ask: "What do the other Community partners think about this? Let's consult." The position of each EC partner evolves through the consultation process.

EC/EPC cooperation now covers the work of all main committees. The Twelve attempt to coordinate before meetings are held in the broader caucuses of like-minded, most often Western delegations.²⁴ In certain cases the need for separate prior meetings of the Twelve is hardly felt, mainly because of the broad Western commonality of views on the subject. This is true in particular of legal matters in the Sixth Committee. Generally speaking the Twelve – after a deviation in the early 1980s – have progressively improved their cohesion in the UN. Outsiders often perceive the EC/EPC as more cohesive than the Twelve themselves. Recently this has been experienced in particular in the Second Committee where the Community is increasingly seen as the most important interlocutor of the G-77.²⁵ This develop-

24 UNGA:

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| Main Committee: | Western caucuses |
| First: | "Barton" (named after Canada's UN Permanent Representative in 1973-74): Western European and other Group Members + Japan (- Sweden, Finland, Austria and Malta). |
| Second: | "Vinci" (named after Italian UN Perm. Rep.): OECD-member states. |
| Third: | Western Group: all WEOG-members + Japan. |
| Fifth: | id. |
| Sixth: | id. |

The Commission representative participates only in the work of the Vinci-group. The question of his/her participation in other Western caucuses in New York has been raised but remains unresolved.

25 G-77 originally comprised 77 developing countries at its inception at UNCTAD in 1964. The group now has 124 members trying to establish common positions on all economic UN issues.

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ment has been magnified by the self-imposed isolation of the USA, especially in economic and financial UN matters.

The increasingly higher profile of the Community is not always met with enthusiasm in the broader Western forums. Some non-EC Western Countries, Australia, and New Zealand, have on various occasions expressed misgivings about the Twelve having reached, or being in the process of reaching, joint positions before the matter is brought up in the larger Western arena. The concern is understandable to the extent that Western partners feel that their possibilities for influencing EC delegations individually is decreasing. It may be an unwarranted concern, but it does demonstrate the extent to which the EC has succeeded in developing its own profile in the UN.

The Twelve are hardly less valuable as Western partners because they stand more united. Apart from the fact, recognized by Western partners, that greater unity is the logical consequence of the European Community process, they have hardly been able to find one case where the Twelve have refused consultations with other Western friends. Nothing prevents the Twelve from consulting with an open mind, prepared to be convinced by more forceful arguments of their partners. In practice, it is often harder to make Washington modify a US position once it has been determined at the highest level than to persuade the Twelve to change their minds. Finally, the Community – apart from the Nordics²⁶ – is the only operative Western group in the UNGA which addresses substantive issues. The Western European and Others Group (WEOG) discusses only procedural and electoral subjects and all the other Western caucuses are merely forums for exchange of information and consultation lacking the commitment to reach a common position. The novelty and core of EPC is precisely the obligation of the Twelve to “endeavour jointly to formulate and implement a European foreign policy.”

With some minor setbacks in the early 1980s, the common voting pattern has been steadily improving. Common positions on all votes at UNGA 43 in 1988 was 76.2% (1987: 75%). Omitting consensus resolutions the level was 47.4% in 1988 (1987: 46.7%). Comparing statistics, however, is not a wholly reliable way of assessing cohesion of the Twelve. There are many variables. The content of a reso-

²⁶ Denmark remains a member of the long-standing Nordic Foreign Policy Cooperation and made a declaration at the conclusion of the SEA: “The Danish Government considers that the conclusion of Title III on European Political Cooperation in the sphere of foreign policy does not affect Denmark’s participation in Nordic Cooperation in the sphere of Foreign Policy.” As stated by Christopher Bramsen in ‘EF-pakken og det udenrigspolitiske Samarbejde (EPS)’, *Det udenrigspolitiske Selskab* (June 1987) at 40, Denmark’s participation in the Nordic Cooperation is by now accepted by the other EC partners. The dual Danish affiliation may often serve to ensure a broader Western consensus on certain issues. See also Wiberg ‘Denmark mellem Norden og Europa’ (Denmark between the North and Europe) published in *Danmark og det internationale System, Festschrift til Ole Karup Pedersen* (1989). His cautious conclusion, based also on UN performance, is that EC membership has not made Denmark “slip away” from the Nordic camp.

lution on the same issue may change over the years. Some agenda items only appear once every two years, etc.

Greater voting cohesion would require political decisions by capitals in order to overcome remaining political hurdles. Of course, harmonizing the votes of the Twelve should remain a common objective. However, the degree of their cohesion should be measured not only in quantitative terms but also in the ability of the Twelve to address the critical issues and to make an impact on the deliberations and negotiations of the world organization.

One way of improving EC/EPC performance which might be further explored would be to empower the spokesman of the Twelve to perform not only in that capacity but also as a negotiator on their behalf. In the Second Committee this is already the rule, as it should be, where matters under Community competence are on the table. In other areas, it is only recently that the Presidency has started to perform as an EPC negotiator. The experience gained at the UN Conference on the Relationship between Disarmament and Development (UNCDD) in August 1987 was very interesting. The major lesson was the importance of providing the Presidency representative with a genuine mandate allowing for concessions and compromises in negotiations with third countries. Of course, the greater the divergences among the Twelve the more difficult it was to obtain the necessary fallback positions. Confidence and confidentiality become key terms under such circumstances.

In a multilateral forum like the UNCDD, where consensus was the rule and where in practice the West was the reactive element which had to make concessions if consensus were to prevail, experience showed that the consensus-building process within the Twelve became identical with the consensus process of the UNCDD. What the Twelve could agree upon the whole conference could accept. This meant that EC partners, who had to make the most concessions in order to reach consensus had no incentive to negotiate fallback or bottom line positions within the Twelve when it turned out that defining such positions would be tantamount to negotiating the final outcome of the Conference.

In this delicate negotiation process each delegation of the Twelve had to assess, step by step, how far the collective bargaining could be carried and in particular if they remained prepared to accept the consequences of failure. The question was in reality whether the solidarity of the Twelve was strong enough. Would it extend also to the point of going down together and breaking the consensus process of the conference at the eleventh hour? That question is critical if one category of partners can accept the result of negotiations, while others cannot go that far but require additional accommodations.

At the UNCDD a question, which fortunately never became acute, was for the first category of partners to consider the domestic consequences of sharing the responsibility with other EPC partners for the breakdown of the conference, even if their instructions would have allowed them to accept the likely outcome at any given stage of the conference. Indeed, the SEA system still allows each partner to

regain his freedom if agreement fails. But solidarity is only built where that temptation is resisted.

IV. Conclusion

It seems fair to conclude in light of the UNGA performance over the years that the Community has demonstrated a growing awareness "of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence."²⁷

Against the background that the foreign policy of the Community and its Member States is forged according to different sets of complex rules and procedures it is surprising that EC/EPC is able to perform jointly as fast as circumstances at the UNGA often require. Other UN Member States, in particular developing countries, have often optimistically perceived the EC/EPC as more cohesive than it really was. The Community is increasingly able to deliver according to these expectations. Other Western UN Member States express some concern about what they see as an increased collective Community influence within the Western caucuses. In any event, it is perhaps time that the Community observer changes its label from the EEC to the EC in order to illustrate that it is no longer just one international organization performing within the framework of another larger one, but the European Community acting within the United Nations.

To a large extent, the EC/EPC still confines itself to making statements and declarations. The prospects for increasing the EC/EPC role as an actor have to be further explored. The possibilities for the Twelve taking initiatives, for example, by tabling their own draft resolutions or co-sponsoring those of other UN partners should be used where joint action is likely to promote the Community interests. More time should be taken from internal Community discussions in New York and used for cultivating contacts and dialogue with third country delegations. In particular, the possibilities of negotiating resolutions should be further exploited. In this respect, a heavy responsibility rests with the Presidency. Perhaps the Troika formula should be utilized more frequently in New York in order to share the burdens more evenly among EC partners. In that connection, it is important for the EC/EPC negotiator to show flexible openness in consultations with like-minded partners and constructive firmness in negotiations with adversaries, without pretending to speak for the whole of Europe.

Cohesion of the Twelve in the UNGA should be measured not only in quantitative but also in qualitative terms, i.e., the Community's ability to influence important issues. In that regard, the negotiator-role is in itself significant. "Harmony is

²⁷ Quotation from the fifth preambular paragraph of the SEA.

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clearly more likely to be achieved if a pattern of common negotiating with third parties can be established. Common interests are sometimes only definable in contradistinction to those of outsiders.”²⁸

The potential of the EC/EPC as an actor on the UNGA scene holds promising prospects within the framework of a United Nations Organization which is steadily moving the set-pieces from an East-West to a North-South scenario. The EC/EPC may be better equipped to tackle many of the future challenges than any of the two superpowers.

²⁸ Hill, 'Research into EPC: Tasks for the Future,' in *European Political Cooperation in the 1980s*, *supra* note 3 at 211.