

Final report of the European Convention Working Group III on Legal Personality (1 October 2002)

Caption: On 1 October 2002, the European Convention Working Group III presents its final report on the consequences of explicit conferral of legal personality on the European Union and on the consequences of a merger of the Union's legal personality with that of the European Community.

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Final report of the European Convention Working Group III on Legal Personality (1 October 2002)

I. Introduction

1. Under the mandate received from the Praesidium of the Convention, the Working Group was to examine the following matters:
 - the consequences of explicit recognition of the Union's legal personality;
 - the consequences of a merger of the Union's legal personality with that of the Community;
 - the impact on the simplification of the Treaties.
2. The Group examined the above matters closely and for this purpose heard the views of a number of particularly qualified experts ¹. It emerged from the discussions that there was a very broad consensus (with one member against) that the Union should in future have its own explicit legal personality. It should be a single legal personality and should replace the existing personalities.
3. The Group then discussed the consequences which merging the legal personalities would have on the merging of the Treaties and concluded that the Union should have a single constitutional text (composed of two parts, the first of which would contain constitutional provisions). The Working Group also thought that, following a merger of the legal personalities and, if necessary, of the Treaties, it would be anachronistic to retain the current "pillar" structure. It therefore considered that to do away with this "pillar" structure would help to simplify the architecture of the Union considerably.
4. The Group also examined the implications which the Union's single legal personality would have on the procedures for negotiating agreements and saw a need for a single article in the new treaty, based on the current Article 300 TEC, to be supplemented by Articles 24 and 38 TEU. Some amendments were proposed to Article 24 TEU in order to take account of the Union's single legal personality. One fundamental issue was that of identifying simpler and more effective procedures for negotiating agreements, in particular for those coming under several "pillars" at the same time. The external representation of the Union was also discussed.
5. Other aspects were discussed and were the subject of broad consensus, namely the need to establish judicial control in this area and to provide for systematic consultation of the European Parliament. On some points, the work will undoubtedly be continued by the Working Group on External Action.
6. Although the Group had on occasion made proposals on the basis of actual texts, it emphasised that some of its recommendations could be reviewed or supplemented following the future guidelines of the Convention, particularly with regard to the allocation of competences, the pillar structure, and the procedures and powers of the institutions.
7. In the light of the outcome of discussions, the Group decided to present some general and other more technical recommendations.

II. Explicit conferral of legal personality on the Union

8. The Working Group decided by a broad consensus (with one member against) to recommend conferring explicit legal personality on the Union. The present situation was found to be ambiguous in a number of ways and likely to undermine affirmation of the Union's identity at international level and legal certainty, both of which are essential in international relations with third States and international organisations.
9. The Working Group considered the two possible options: either the Union would have a legal personality alongside those of the Community and Euratom, or it would be explicitly given a single legal personality to replace the existing legal personalities.
10. A broad consensus (with one member against) emerged in the Working Group in favour of the latter option. The Working Group took the view that giving the Union a legal personality additional to those that now exist would not go far enough in providing the clarification and simplification necessary in the Union's

external relations. In particular, it was suggested that if the Union were to be involved in concluding cross-pillar mixed international agreements (touching both on the competences of the Community and the Union under Titles V and VI of the TEU), the situation would be too complicated as the agreements would have to be concluded by both the Union and the Community. With a single legal personality the subject of international law will be the Union, which will replace the Community for that purpose ².

11. In this connection the Working Group took note in particular of the positions expressed by the Legal Services of the European Parliament, Council and Commission, which all emphasised forcefully that explicit conferral of a single legal personality on the Union was fully justified for reasons of effectiveness and legal certainty, as well as for reasons of transparency and a higher profile for the Union not only in relation to third States, but also vis-à-vis European citizens. The latter would thus be encouraged to identify more with the Union, which should respect their fundamental rights and those arising from European citizenship, in accordance with Article 6 TEU and Articles 17 et seq. TEC.

12. The same consensus emerged in favour of the Union's single legal personality paving the way for a merging of the Treaties and for greater coherence of the Union's constitutional architecture.

III. Implications of the Union having a single legal personality for the simplification of the Treaties and the pillar structure

13. The Working Group's mandate includes the question of whether explicitly recognising the Union's legal personality could contribute to the simplification of the Treaties. In this respect, there is a need to ascertain the implications which a single legal personality for the Union, subsuming the legal personality of the Community, would have for the present duality of the two main Treaties concerned, i.e. the TEU and the TEC.

14. Although the legal personalities could conceivably be merged without merging those Treaties ³, the Group's conclusion on this point was that merger of the two Treaties would be a logical consequence of the merger of the Union's legal personality and that of the Community, and would accordingly contribute to simplifying the Treaties. The further point was made that if the Community ceased to have a separate legal personality, the rationale for distinguishing between the TEU and the TEC would cease to apply, and that distinction would be a needless complication.

15. The underlying case for merging the Euratom Treaty is the same as for merging the TEC. The Euratom merger would in addition allow a large number of Euratom Treaty provisions that are identical or similar to the TEC to be deleted. However, in view of certain specific problems relating to the Euratom Treaty, it was felt that the possible implications of merging this Treaty needed to be further investigated.

16. Having concluded in favour of merging the Treaties, the Working Group went on to express a clear preference for the option of a new, single treaty, falling into two parts ⁴:

- a basic part comprising constitutional provisions, newly enacted or taken from the present Treaties;
- a second part, which would codify and reorganise all the provisions of the TEU and the TEC dealing with matters not covered by the basic part ⁵. The new Treaty would replace the current TEU and the TEC (and, where appropriate, the Euratom Treaty).

17. With regard to this matter, the Working Group took into account the dangers, for legal certainty in particular, of the other option which consisted in drawing up a new basic treaty to be superimposed on the present, non-merged, Treaties. Naturally, the Convention would also have to examine other aspects of simplifying the Treaties which were not directly linked to the Union's legal personality ⁶. Those questions mainly concern the architecture and content of the basic part, the form and structure of the second part, as well as a possible distinction between the procedures for revising the Treaties.

18. The Working Group also considered the Union's current "pillar" structure. Here, the Group concluded that neither the merger of legal personalities nor the merger of the Treaties had, in itself, any effect on the pillar structure. However, it was felt that the way in which the pillar structure was presented in the present

TEU would seem outdated, not to say obsolete, in a new, single Treaty ⁷. It would, moreover, be a needless complication since all the institutional and procedural features specific to the two intergovernmental pillars (CFSP and cooperation in criminal matters) which the Convention considers appropriate to maintain could be preserved in the new constitutional treaty.

The consequences of explicit conferral of single legal personality on the Union's external relations

19. The explicit conferral of legal personality on the Union heightens its profile on the world stage. The Union thus becomes *a subject of international law* – alongside the Member States but without jeopardising their own status as subjects of international law – and would as a result be able to avail itself of all means of international action (right to conclude treaties, right of legation, right to submit claims or to act before an international court or judge, right to become a member of an international organisation or become party to international conventions, e.g. the ECHR, right to enjoy immunities), as well as to bind the Union internationally.

20. Explicit conferral of a single legal personality on the Union does not *per se* entail any amendment, either to the current allocation of competences between the Union and the Member States or to the allocation of competences between the current Union and Community. Nor does it involve any amendments to the respective procedures and powers of the institutions regarding in particular the opening, negotiation and conclusion of international agreements.

21. That being said, the Working Group considered it advisable to suggest certain amendments to some provisions of the Treaties, to which it draws in particular the attention of members of the Working Group on External Action, in order to enhance the effectiveness of the Union's external action and simplify existing procedures. Some members of the Working Group pointed out that these amendments could be reviewed and supplemented in the light of the guidelines that would be produced by the Convention as regards the allocation of competences, procedures and powers of the institutions, and with particular reference to the functioning of external action and the area of freedom, security and justice.

A. The procedure for negotiating and concluding agreements: the case of "mixed agreements" (traditional and cross-pillar)

22. As regards the procedure for negotiating and concluding international agreements (treaty-making power), the Working Group's point of departure was that the existing distribution of competences between the Member States and the Union as well as the respective powers of the institutions should be maintained. However, it thought that a clear indication should be given in a single treaty article ⁸ of who negotiates and concludes such agreements. Consolidation of the various applicable procedures in a single provision is made easier by the fact that, whatever the area concerned, it is always the Council ⁹ which:

- authorises the opening of negotiations and issues the negotiating directives, and
- concludes the agreements once they are negotiated.

23. Consolidation into a single article might not necessarily involve changes to the specific features of the procedure according to the subject in hand. Hence, if the agreement under consideration fell solely under Community law, current Article 300 TEC would apply; if the agreement came solely under Title V or Title VI, Articles 24/38 TEU would apply; if, however, the agreement fell within the Community domain and at the same time came under Titles V and/or VI TEU ("cross-pillar mixity"), the negotiating procedure would be determined by the Council according to the subject-matter covered by the agreement, with due regard for the existing institutional balance; where the main purpose of the agreement concerned a specific subject, a single legal basis (and therefore a single procedure) would apply.

24. In this connection, most members of the Working Group stressed that the cohesion of the Union's position would be strengthened if the Union was represented by a single voice in negotiations. But the Working Group accepted that, in certain exceptional cases of mixed agreements coming under several pillars, a double Union delegation might be justified (Presidency of the Council or High Representative, Commission).

25. Most members of the Working Group also felt it would be useful to make it clear that if the Council (and, in the case of traditional mixed agreements, the Member States) wanted to make the Commission responsible for conducting negotiations on all aspects of an agreement on behalf of the Union (or even the Member States), it would of course be free to do so. This already occurs to a large extent in practice and enables the Union to speak with a single voice.

26. As regards the right to initiate negotiations under the first pillar, informal contacts are made by the Commission, often at the request of third countries, and the Commission informs the Council. On the basis of these contacts, the Commission recommends to the Council that negotiations be opened and the Council takes the decision to authorise the Commission to negotiate (Articles 133(3) and 300(1) TEC). Most members of the Working Group considered that the right to initiate negotiations for agreements on matters under Titles V and VI could belong to the Presidency of the Council (with the possibility of its being extended to the High Representative in the future). In the case of mixed agreements under several pillars, the right of initiative would depend on the subject-matter of the agreement.

27. The Working Group emphasised here that its proposals were drawn up on the basis of the current allocation of competences between the Union and the Member States or between the institutions as regards the initiative for and the negotiation and conclusion of international agreements, i.e. "*à droit constant*" (on the basis of established law). But if the Convention – following the discussions of the Working Group on External Action – were to decide to merge the duties of the High Representative and the Commissioner for External Relations, this new figure would have to play a role in the opening and conduct of negotiations. Most members of the Working Group thought that such a merger would contribute to the overall consistency of the Union's external action (within the meaning of Article 3 TEU) but that it should not involve a substantial modification of the existing institutional balance.

28. Furthermore, a majority in the Working Group proposed the principle of a reorganisation of staff with a view to creating a single structure to give the conduct of the Union's external action greater consistency and avoid overlap between administrations. Without questioning this principle, other members of the Working Group said that reorganisation raised technical and administrative problems and suggested that one solution might be to establish synergies. This question should probably be discussed further by the Working Group on External Action.

B. The procedure for concluding agreements concerning Titles V and VI: need to adjust the wording of Article 24 TEU

29. At present, Article 24 TEC – which applies only to subjects covered by the second and third pillars – lays down that "no agreement shall be binding on a Member State whose *representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them*".

30. This clause can be taken to mean that before the Union is bound by an international agreement a Member State may initiate a national procedure for the ratification of the agreement by its national parliament (or, where appropriate, by referendum). It is true that, if the subject-matter of an international agreement is covered partly by the exclusive competence of the Union and partly by the competence of the Member States (traditional "mixed agreements")¹⁰, the Member States must approve the part of the agreement that comes within their national competence in accordance with their respective constitutional requirements. But insofar as Article 24 TEU refers to agreements covered by Union competence, and once the Union has legal personality and concludes them, national ratification procedures are not justified.

31. This legal requirement must not be confused with the possibility open to any national parliament of examining its government's position on the decision-making procedure in the Council concerning the conclusion of an international agreement. Any national parliament is of course entitled to monitor its government politically, including by means of the "parliamentary reservation" procedure, before the Council takes the decision to conclude the international agreement in question. It could even oblige its government to

oppose the conclusion of the agreement for "*important ... reasons of national policy*" (see Article 23(2) TEU), but this still concerns the internal decision-making procedure in the Council. Once the Council has decided to conclude the agreement, the Union has consented to be bound by the agreement in accordance with the rules of international law.

32. Moreover, the current wording of Article 24 TEU entails legal insecurity in agreements whose provisional application under this provision ought to be terminated if, following internal constitutional procedures, a Member State were to declare its intention of not associating itself with the agreement. While this mechanism has never been used, it appears to conflict with the legal personality of the Union and could seriously damage the coherence of the Union's external policy.

33. Accordingly, a majority in the Working Group proposes that the abovementioned passages from Article 24 TEU should be deleted. In this connection the Working Group would also refer to the views expressed by the Legal Services of the European Parliament, the Council and the Commission: none of the three saw any impediment to deleting the reference to "constitutional requirements" in Article 24 TEU.

34. Some members said that, while not opposed to deleting these passages, they would have liked Article 24 TEU to refer to the fact that a Member State could invoke Article 23(1) and have recourse to constructive abstention.

C. External representation of the Union

35. The Working Group stressed the idea that the Union's external political action would be more effective and credible if it succeeded in speaking with a single voice as far as possible. Arrangements should be made to ensure that the Union expressed a "common position" both in its representation in international organisations and in its representation vis-à-vis third countries ¹¹.

36. As regards the Union's international representation in the various international organisations and conferences ¹², Article 18(1) TEU stipulates that "*the Presidency shall represent the Union in matters coming within the common foreign and security policy*" ¹³. Article 19(1) TEU lays down that "*Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.*" Lastly, Article 302 TEC states that "*it shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies. The Commission shall also maintain such relations as are appropriate with all international organisations*".

37. The current provisions of the treaties thus allow for separate representation of the Union and the Community. It is worth emphasising that a complex system, involving in particular more than one representative in international negotiations, makes it more difficult for the Union's action to be effective in that it could generate incomprehension or even resistance on the part of the Union's partners in international relations. It would therefore be advisable to establish mechanisms in the treaty to ensure that, as far as possible, the Union expresses a single position, and is even represented by a single delegation. Of course, from a legal standpoint, the Union can act only within the limits of its own competence. If a matter came partly under the competence of the Union and partly under that of the Member States, that situation of mixed competence would imply, in principle, participation by representatives both of the Union and of each of the Member States in the negotiations. Even in such cases, however, it would undoubtedly be more efficient to seek to establish a single Union position and even a single Union delegation ¹⁴.

38. In view of the above, the Working Group recommends that with regard to the international representation of the Union in international organisations the treaty contain mechanisms to ensure that the Union can express a single position, or even be represented by a single delegation, at least in some fields and within international organisations to be determined on a case-by-case basis. This recommendation could be examined further by the Working Group on External Action.

D. The need for review by the Court of Justice of agreements concluded by the Union

39. In accordance with the case-law of the Court of Justice, the Community is a community based on the rule of law in that neither the Member States nor the institutions escape review to ensure that their acts comply with the basic constitutional charter that is the treaty ¹⁵.

40. Moreover, Article 6 TEU expressly provides that the Union is founded on the principles of the rule of law and respect for fundamental rights as general principles of Community law.

41. In general, judicial review by the Court of Justice can be preventive (examination of the compatibility with the Treaty of the agreement envisaged, as provided in Article 300(6) TEC), or *a posteriori*, following conclusion of the agreement by the Union (review of legality as laid down in Article 230 TEC or ruling on validity as laid down in Article 234 TEC).

42. In this context it should be noted that, according to the case-law of the Court of Justice ¹⁶, the subject of an action for annulment is not the agreement itself but the act by which the institution concerned concludes the agreement. It follows that if the agreement is incompatible with the Treaty or the general principles of Community law, the act by which the institution approved its conclusion is annulled or declared null and void, not the agreement itself.

43. On the other hand, and more generally speaking, it should be noted that increasingly the Union is adopting instruments liable directly or indirectly to affect the rights of individuals ¹⁷. It should thus be possible for the latter to defend their claims before a court.

44. The majority of the Working Group is in favour of the Court of Justice having jurisdiction *ex ante* in the field of Title V and Title VI (consultative procedure provided for in Article 300(6)), and *ex post* in preliminary ruling proceedings (Article 234 TEC), for annulment (Article 230 TEC) and liability (Articles 235 and 288(2) TEC). However, the Working Group feels that the arrangements for the Court of Justice's jurisdiction in this area should be examined in greater depth later.

E. The need to consult the European Parliament

45. At the political level – while being aware of the particular features specific to international agreements within the CFSP framework – it seems difficult to justify the exclusion of the European Parliament from all consultation as regards these agreements. This also applies to Community matters where, in Article 300 TEC, the European Parliament should no longer be denied a role in relation to commercial agreements. A large majority of the Working Group was in favour of extending the procedure for consultation of the European Parliament to international agreements concluded on the basis of Articles 38 and 46 TEU and Article 133 TEC.

F. Other technical modifications

46. A number of technical modifications will also undoubtedly be required. It is not necessary to analyse such changes exhaustively at this stage, but attention could be drawn to two points as of now:

– in the event of the Union being given single legal personality, the need to stipulate that the Union replaces and supersedes the EC (and, where appropriate, Euratom) and hence takes over all the international obligations assumed by those two organisations;

– the fact that the Union will also have internal legal personality and that, in each of the Member States, it will enjoy the most extensive legal capacity accorded to legal persons under their laws, being able, in particular, to acquire or dispose of movable and immovable property and to be a party to legal proceedings. To that end, it will be represented by the Commission (Article 282 TEC). In this context it is proposed that consideration be given to extending these rights to all the institutions.

V. Recommendations

47. In the light of the above, the Working Group submits some general and some more technical recommendations to the Convention; some of the more technical ones could most certainly be examined in greater depth by the Working Group on External Action.

A. General Recommendations

1. The constitutional treaty should contain a new provision at the beginning of the text stipulating that "The Union shall have legal personality". The Union's legal personality will replace the legal personalities of the existing organisations and the Union will take over all their obligations;
2. A single legal personality for the Union is fully justified for reasons of effectiveness and legal certainty, as well as for reasons of transparency and a higher profile for the Union not only in relation to third States, but also vis-à-vis European citizens. The latter will be encouraged to identify more closely with the Union, which will undertake to respect their fundamental rights and those arising from European citizenship;
3. The merger of the legal personalities of the Union and the Community will pave the way for merging the Treaties into a single text, which would contribute to simplifying the Treaties. The single text could consist of two parts, the first of which would be the basic part comprising constitutional provisions. The new treaty could replace the current TEU and TEC (and, where appropriate, the Euratom Treaty);
4. Neither the merger of legal personalities nor the merger of the Treaties automatically entails merging the "pillars". But to preserve the current design of the "pillar" structure in a single Treaty would be anachronistic. To eliminate that structure would instead contribute to greatly simplifying the Union's architecture, without prejudging any subsequent substantive amendments that the Convention may wish to make to the current procedures and instruments applying to the various "pillars";
5. The explicit conferral of a single legal personality on the Union does not *per se* entail any amendment, either to the current allocation of competences between the Union and the Member States or to the allocation of competences between the current Union and Community. Nor does it involve any amendments to the respective procedures and powers of the institutions regarding in particular the opening, negotiation and conclusion of international agreements. Certain amendments, however, do seem desirable in order to enhance the effectiveness of the Union's external action and simplify existing procedures. Those amendments could always be reviewed or supplemented depending on the line taken by the Convention subsequently.

B. Technical Recommendations

1. If the Union had single legal personality (and perhaps a single treaty), a sole article regarding international agreements would be sufficient;
2. The single article could consolidate the existing procedures, taking as a point of departure that the existing allocation of competences between the Member States and the Union as well as the respective powers of the institutions should be maintained. Its content could nevertheless be reviewed or supplemented depending on the line taken subsequently by the Convention, in particular regarding the procedures and powers of the institutions.
3. Article 300 TEC (as amended by the Treaty of Nice) could serve as the basis for this new article and the provisions of Articles 24/38 TEU (with, perhaps, some amendments) added to it. In this connection, there is in particular a suggestion that Article 24 TEU should no longer provide for the possibility of a national constitutional procedure for the approval of agreements concluded by the Union on the basis of its competences. Ratification by national parliaments could, however, continue to be required for traditional mixed agreements (cumulative competence of the Union and the Member States);
4. The negotiation and conclusion procedure applicable for agreements would be the one arising from the

area of law concerned (Community law and/or Titles V and VI TEU). When dealing with an agreement which covers several fields at the same time ("cross-pillar mixity"), the negotiating procedure would be determined by the Council depending on the subject-matter of the agreement, while maintaining the present institutional balance. If the main subject of the agreement comes under a specific subject-matter, a single legal basis (and therefore a single procedure) would apply;

5. The Working Group stresses that the cohesion of the Union's position would be strengthened if it were represented by a single voice in negotiations. Nevertheless, the majority of the Working Group recognises that in certain exceptional cases of mixed agreements which came under areas corresponding to the current pillars, there could be justification for a multiple Union delegation (Council Presidency or High Representative, Commission), while maintaining the institutional balance provided for in the Treaties;

6. The majority of the Working Group thought it would be useful to specify that if the Council (and the Member States, in the case of traditional mixed agreements) wished to charge the Commission with negotiating the entire agreement, it would be free to do so (in this context, the Working Group hoped that the Working Group on External Action would examine the scope for ruling out any pointless duplication);

7. It was stressed that the Union's external representation would be more effective and credible if it managed to speak with a single voice. Mechanisms should therefore be provided for in the treaty to ensure that the Union could express a single position, as far as possible, or even be represented by a single delegation, at least in some fields and international organisations to be determined on a case-by-case basis;

8. The Working Group is in favour of the Court of Justice having jurisdiction *ex ante* in the field of Title V and Title VI (Article 300(6) TEC), and *ex post* in preliminary ruling proceedings (Article 234 TEC), for annulment (Article 230 TEC) and liability (Articles 235 and 288(2) TEC). However, the Working Group feels that the arrangements for the Court of Justice's jurisdiction in this area should be examined in greater depth later.

9. The Working Group is in favour of extending the procedure for consultation of the European Parliament to international agreements concluded by the Union on the basis of Articles 38/46 TEU and 133 TEC.

Annex

List of experts heard by the Working Group

The following experts were heard concerning the implications of explicit conferral of legal personality upon the Union:

- Professor Alan DASHWOOD, University of Cambridge
- Mr Gregorio GARZON-CLARIANA, Legal Advisor to the European Parliament
- Professor Jean-Victor LOUIS, Free University of Brussels
- Mr Michel PETITE, Director-General of the Commission Legal Service
- Mr Jean-Claude PIRIS, Legal Advisor to the Council
- Mr Antonio TIZZANO, Advocate-General, Court of Justice of the Communities
- Mr Carlos WESTENDORP y CABEZA, Chairman, the European Parliament Committee on Industry, External Trade, Research and Energy

The following experts were heard concerning the merger and simplification of the Treaties:

- Professor Bruno DE WITTE, European University Institute of Florence
- Professor Peter-Christian MÜLLER-GRAFF, University of Heidelberg

¹ See list in Annex.

² A majority of the Working Group felt that the Union's legal personality would replace that of the Community and of Euratom, although some members of the Group suggested that the inclusion of Euratom was not absolutely essential given the specific nature of that Treaty. It is, however, to be noted that under the Euratom Treaty, it is the Commission which is competent in the matter of

conclusion of international agreements, not just for negotiation, but also for conclusion, after obtaining the approval of the Council acting by a qualified majority (Article 101 Euratom). The ECSC Treaty has ceased to exist.

³ A new clause would merely stipulate that the Union supersedes and acts as successor to the European Community, without amending the provisions of the TEC.

⁴ WG III – WD 06: Option 1(b).

⁵ For example, the second part could comprise statutes (for the institutions) or special protocols (for policy areas: internal market, EMU, JHA, CFSP, common policies, etc.).

⁶ On this subject see CONV 250.

⁷ See in particular Articles 1, 28, 41 and 47 of the TEU.

⁸ In view of their specific nature, it is not proposed that the provisions concerning the conclusion of agreements in the field of EMU be incorporated into this single provision

⁹ With the exception of the Euratom Treaty.

¹⁰ See, for example, Article 174(4) TEC.

¹¹ This last aspect will be discussed further by the Working Group on External Action.

¹² The nature of such representation depends on the treaty establishing the international organisation or the rules of procedure of the international conference in question. Some international fora are open only to States (e.g. ILO) whereas others provide for membership by international organisations (e.g. FAO).

¹³ See also Article 37 TEU concerning Title VI.

¹⁴ In 1991, the Court of Justice, referring to an agreement that fell partly within the competence of the Community and partly within that of the Member States (traditional mixed agreement), emphasised the need " *to ensure close cooperation between the Member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the Community .* " (Opinion 2/91 of the Court of Justice, 19 March 1993, ECR pp. I-1061 et seq.).

There is no doubt that the position of the Court as expressed above is transferable to the situation in which the Union would possess a legal personality replacing that of the Community. Moreover, Article 11(2) TEU stipulates that the Member States "shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations".

¹⁵ Judgment of 23 April 1986, Case 294/83 *Les Verts v. Parliament* [1986] ECR 1339, paragraph 23.

¹⁶ Judgment of 9 August 1994, Case C-327/91 *France v. Commission* [1994] ECR I-3641, in particular paragraphs 14 and 15.

¹⁷ Case of an officer who invoked Union liability for bodily injury sustained in Bosnia and Herzegovina; case of a company invoking the Union's non-contractual liability for damages sustained as a result of sanctions against FRY; case of Yugoslav citizens invoking Union liability for damages sustained as a result of the visa ban on the basis of a Council joint action.