CHAPTER 5

The Accession and Participation of the EC, Next to its Member States, in the UN Law of the Sea Convention (LOSC) and Regional Seas Agreements

5.1 Introduction

Chapter 4 discussed the general rules governing the joint participation of the Community next to its member states in the negotiation, conclusion and implementation of mixed agreements and their joint action within IOs. The present Chapter looks closely at the way these general rules found application in the negotiation, conclusion and implementation of the LOSC and the main Regional Seas Conventions applying to European Seas. Particular attention is given to the manner in which the Community and its member states coordinate their action within the bodies set up by these Conventions.

The discussion begins with the Community’s participation alongside its member states in the UNCLOS III and their joint accession to the LOSC. This was the first time that they had taken part alongside each other in the negotiation of such an ambitious Convention, which still represents the most elaborate mixed agreement ever concluded by the Community. Their joint accession to the LOSC confronted third parties and the Community itself with problems of unprecedented complexity of a legal and political nature, which are discussed in Chapter 5.2.1. The so-called “EEC Participation Clauses” were among the most debated and controversial items on the Conference table. They were the result of a highly political compromise between the need to provide guarantees to non-EC parties and secure the Community’s accession to the Convention, but they left both sides largely unsatisfied. The EEC clauses and their main limits are examined in detail in Chapter 5.2.2. The focus will subsequently move on to the participation and the role played by the Community in the bodies established by the LOSC (Chapter 5.2.7.1), in the UN discussions under the agenda item “oceans and the law of the sea” (Chapter 5.2.7.2) and Community coordination in these fora (Chapter 5.2.7.3). As discussed in Chapter 5.2.7.4, the Community’s participation in the UN oceans-related discussions is conducted within the framework of the 2nd pillar of the EU Treaty, which limits the role of the EC (and the Commission) to a great extent. The Chapter raises some questions as regards the consistency of this approach with EC law, especially when the foreign policy format is used to discuss matters under the EC’s exclusive competence.

The analysis then shifts to the Community’s accession to and participation in the OSPAR Convention (Chapter 5.3), the 1992 Helsinki Convention (Chapter 5.4) and the 1976 BARCON and its Protocols, as amended (Chapter 5.5). The focus of the discussion is on the main issues raised by the Community’s accession and the role played by the Commission in these frameworks. The Chapter concludes with some observations on the legal, political and practical factors that currently limit the role of the Community.
in the LOSC and Regional Seas Conventions and the pragmatic approach taken by the Commission in these frameworks.

5.2 The EC and the 1982 LOSC

5.2.1 EC Participation in the Third UN Conference on the Law of the Sea (UNCLOS III)

UNCLOS III was launched in 1973 with the ambitious mandate to adopt a Convention “dealing with all matters relating to the law of the sea”. From the beginning, the Community’s participation appeared to be necessary because the negotiations covered areas, such as fisheries conservation and commercial matters, under the EC’s exclusive competence. In these areas the member states (at that time: Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands and the UK) had completely transferred their competence to the Community (at that time still the EEC), including the power to negotiate and conclude international agreements. Starting with the Caracas Session in 1974, therefore, the EEC was invited to participate in UNCLOS III as an observer. This observer status, however, provided it with limited powers to attend (upon invitation and concerning matters within the scope of its activities) the main committees and subsidiary organs, but without the right to vote in the deliberations of the Conference. For the EEC, therefore, it was crucial that member states coordinated their positions in matters affecting its competence. The member states had a legal obligation to reach common positions only on agenda items under the EEC’s exclusive competence, while with regard to items of shared competence they were invited by the Council to consult each other in the presence of the Commission. The Community participated with a delegation composed of officials from the Commission and the Secretariat of the Council, while each member state was present with its own delegation.

5 See: Council Decision of 4 June 1974 (in: Bull. EC 6- 1974, point 2.3.26). With regard to agenda items under the EEC’s competence, common positions should be established according to “the usual procedure”, while for issues of an economic nature affecting EEC policies, the member states should enter into consultation in the presence of the Commission.