Chapter 3

The European Community and International Law

3.1. Introduction

The European Community is an unusual entity in the international arena. It participates in many international conventions and organisations, but is distinguished from the other participants in that it is neither a conventional intergovernmental organisation nor a State. It has been described as a “hybrid conglomerate situated somewhere between a State and an intergovernmental organization”.1 The various legal and practical complexities which follow from this hybrid nature are reflected in the EU’s external relations law. The maritime sector is no exception to these complexities. On the contrary, factors such as the long-standing traditions of international regulation, the relative completeness of the international substantive rules in the field and a series of complex jurisdictional rules give rise to particular challenges when it comes to establishing the legal relationship between international conventions and the Community legal order. This relationship has certainly undergone significant changes over the last few years.

A detailed examination of the Community’s external relations law in general goes beyond the scope of this study.2 However, since the constitutional questions relating to the interaction between the Community and international conventions and organisations are fundamental for ascertaining why and how the Community acts on the international scene, a description of the main features of EU law in this respect, with particular reference to maritime safety, is deemed justified. It is worth pointing out at the outset, however, that the law on the Community’s legal relationship with international agreements or institutions is not a complete system which will provide answers in any situation. As this matter

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2 The voluminous literature on EU external relations law includes Frid (1995); MacLeod et al. (1996); Koskenniemi (ed.) (1998); Dashwood & Hillion (eds.) (2000); Kronenberger (ed.) (2001); Heliskoski (2001); Cannizzaro (ed.) (2002); Eeckhout (2004); and Koutrakos (2006).
is only scarcely regulated in the EC Treaty, the EU law on external relations is largely a judicial construction by the ECJ and is being continuously developed, although not necessarily clarified, as new cases are brought before the Court.

The chapter begins with an analysis of the law relating to the Community's external powers, or competence, to enter into international commitments (section 3.2). This represents a core aspect of EU foreign relations law and underlies many of the questions discussed in the remainder of the chapter. The findings of section 3.2 indicate that while competence over maritime safety is a priori shared between the Community and its Member States, the fields for which the Community is exclusively competent are widening. The effect of this widening competence on the participation of the Community and the Member States in the international conventions which are relevant for this study is reviewed in section 3.3. The section places particular emphasis on recent developments in relation to the IMO liability conventions where a relatively formalistic stance has been adopted, clearly illustrating the range of legal issues surrounding ‘mixed’ participation in international conventions. Some of the key international conventions of relevance for this study have already been ratified or acceded to by the Community and it seems probable that joint participation in the maritime conventions will increase in the future. A review of the legal consequences of international agreements in the EC legal order is made in section 3.4, while section 3.5 analyses the relationship between EC law and international law from the other perspective, that of international law, and concludes, not surprisingly perhaps, that the legal status and consequences of a particular agreement which has been concluded by the Community and/or the Member States may differ depending on whether the matter is analysed from the point of view of the Community legal order or that of public international law.

3.2. **External Competence**

3.2.1. *Treaty-Making Competence*

The Community is based on the principle of attributed powers and therefore any external Community activity needs a legal basis or source according to the precise power in question. The Treaty does not prescribe that external powers

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3 The draft Constitution (see note 12 in chapter 1) regulates the division of competence in the field of external relations in considerable more detail than its predecessors (see notably its Articles I-11-18). Yet, as those provisions largely represent an effort to codify the Court’s case law, the Constitution’s eventual entry into force will not fundamentally alter the legal situation described below. Rather, a more detailed study of the underlying case law appears essential for understanding the provisions of the draft Treaty. See e.g. Cremona (2003), p. 1351.