Declarations of Competence in the Law of the Sea, a Very European Affair

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**Introduction**

The European Union, and before the Union the European Community, has long had the ambition to participate in international relations. In a state-oriented system, the European Union increasingly demands its own role in the international legal system. In the field of the law of the sea, the Community has been an active participant in the formulation of the 1982 UN Law of the Sea Convention. This contribution will address a specific aspect of the European Union's interest in the law of the sea, namely the declarations of competence with respect to the major law of the sea instruments, and their external aspects.

I will address the declarations of competence made by the European Community under UNCLOS and related instruments from the perspective of treaty relations with other (non-EU) states. Not much attention has been paid to these declarations in spite of the fact that they are somewhat problematic. While there have been recent discussions about the scope of the authority of the European Union to represent the institutions and the member States within the United Nations, this contribution will not discuss that matter in general. It is a largely political discussion, even if it is undeniable that such discussions reflect also on the role of the EU in UN law of the sea debates. The internal European debate will not be addressed either, as the focus will be on the external legal aspects of participation by the European Union.

Satya Nandan has often worked with the European Union and its predecessors during his long and distinguished career in the law of the sea. As Fiji’s

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2 J. Sack, ‘The European Community’s membership of international organizations’, 32 CML Rev.1995, 1227–1256 at 1238 takes this for granted, writing “The EC is now a global political reality and has to be accepted as such [my emphasis, LL] by the international community of States.”

3 See UN docs. A/RES/65/276*, A/65/834, A/65/865 and the related discussion.
permanent representative to the European Communities in Brussels from 1976 to 1981, he has had the opportunity to observe the functioning of the organization from nearby, and see it develop in its own unique manner. As an EU observer and a seasoned expert with a key role in steering diplomatic conferences to a fruitful conclusion, he has witnessed many of the steps taken by the Community and later the Union in the law of the sea. During negotiations both of the Law of the Sea Convention and later the Fish Stocks agreement, he has experienced the intricacies of the Community acting on the international legal plane and the difficulties of this undertaking.

Participation in the Convention by an International Organization

**International Organizations as Parties to a Treaty**

The possibility for an international organization to become a party to a treaty essentially depends on two things: the authority of that international organization to enter into treaty relations in a particular field, as well as the specific rules of the treaty concerned. Whether an international organization will have treaty-making power is determined by its constituent instrument(s), as is reiterated in article 6 VCLTIO. The provisions regulating the expression by international organizations of consent to be bound by a particular treaty will be discussed during its negotiation, and it is likely that the international organizations specifically concerned will play a role in the formulation of such provisions within the possibilities the negotiations offer.

However, at the time of drafting of the Convention it was not necessarily obvious that the European Economic Community should in fact have a distinct position during negotiations, or indeed should have the possibility of becoming a contracting party. Though the European Council of Ministers had decided in 1976 that the member States should work towards establishing the possibility for the Community to become a contracting party to the new Convention, other delegations at the Law of the Sea Conference needed to be persuaded of this view. Member States and the Commission reasoned that this novel idea was necessary because of the transfer of competence that

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Article 6 reads: “The capacity of an international organization to conclude treaties is governed by the rules of that organization”.