4. Legislation of a Member State which prescribes penalties for a contravention of the prohibition against fishing without authorization in its fishery limits, which is imposed on Spanish-registered fishing vessels by Council Regulation No 1376/78 of 21 June 1978 extending certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain to 31 July 1978, is not incompatible with Community law.

Kutscher Pescatore Koopmans Mertens de Wilmars Mackenzie Stuart

O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 14 October 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 10 JULY 1980 [1]

Mr President,
Members of the Court,

1. The questions which have given rise to the present case have been submitted for a preliminary ruling by the Circuit Court, County of Cork, Ireland, in the context of criminal proceedings pending against the master of a Spanish fishing vessel, Mr Burgoa. The principal charge against him is that of having contravened provisions of Irish law which prohibit any person on board a foreign sea-fishing boat from fishing or attempting to fish while the ship is within the exclusive fishery limits of the State. The acts alleged against Mr Burgoa took place on 10 July 1978 when his vessel was 20 miles off the west coast of Ireland and thus within the 200-mile zone which, under the Maritime Jurisdiction (Exclusive Fishery Limits)

1 — Translated from the Italian.

Order 1976, constitutes as from 1 January 1977 the exclusive fishery zone of Ireland.

In his defence the accused relied upon the London Fisheries Convention of 9 March 1964 from which he claimed to derive a right to fish at the point where the incident alleged against him took place. He also advanced the submission that, after the accession of Ireland to the EEC, that right was confirmed and upheld by Article 234 of the Treaty of Rome. That has led the Irish court to frame the four questions submitted for a preliminary ruling which have been mentioned and of which two are concerned with the interpretation of the said Article 234, whilst the third relates to the applicability of that article to the London Fisheries Convention and the last raises the issue of the compatibility of Community law with the possible conviction of the accused.

2. The first paragraph of Article 234 stipulates that "the rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty". This part of the provision is in accordance with the general principle of the law of treaties regarding the relationships between two successive agreements concerning the same subject-matter, whereby the rights and obligations created by the first agreement remain unaltered as respects all States which do not take part in the second agreement. In that regard it is appropriate to cite Article 30 (4) (b) of the 1969 Vienna Convention on the Law of Treaties which provides that "when the parties to the later treaty do not include all the parties to the earlier one: ... as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations". I would add that in the Decision in its judgment of 27 February 1962 in Case 10/61 *Commission of the European Communities* v *The Italian Republic* [1962] ECR 1 this Court recognized *inter alia* that Article 234 refers both to rights conferred on non-member countries by previous agreements and to the obligations of Member States which logically correspond to those rights.

In the second paragraph Article 234 then provides that to the extent to which such agreements are not compatible with the Treaty, "the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude". Here, clearly, the case of incompatibility between the EEC Treaty and prior agreements is taken into consideration from the viewpoint of the duty of the Member States to do everything possible to observe the Treaty by eliminating the incompatibility. But the result may not be assured where the consent (and thus the good will) of the third party vested with a right under the previous agreement is necessary. Accordingly, Mr Advocate General Lagrange, in his opinion in the aforementioned Case 10/61, properly distinguished that possibility from the converse case (the existence of a right vested in a Member State) by stating: "If this incompatibility concerns a right to

which a Member State was entitled under an earlier agreement, the 'appropriate steps' are merely renunciation of this right by the State in question. If it concerns the right of a third country, or an obligation of a Member State towards a third country, one will have to resort to the procedures necessary to eradicate the incompatibility by lawful means" ([1962] ECR at p. 17).

In its turn the Court appeared to support that argument by upholding in the said judgment the view that, by assuming a new obligation which is incompatible with the rights held under a prior treaty, a State *ipso facto* gives up the exercise of those rights to the extent necessary for the performance of its new obligations ([1962] ECR at p. 10).

The Irish Court now wishes to know, first, whether Article 234 creates rights and obligations for the Community institutions and the Member States. It appears to me that, with reference to the first paragraph of the Article in question, one may speak of an obligation on Community institutions not to impede the exercise of rights or the performance of obligations of Member States which flow from previous conventions binding them to non-member countries (provided, of course, that where rights are involved their exercise be compatible with Community obligations). There can however be no question whatever, always in relation to that paragraph, of any confirmation or novation of, and far less of any protection or Community guarantee for, the said obligations and rights of Member States towards non-member countries. An idea of that nature appears in the defence of the accused in the main proceedings and is thus included in the interpretative hypotheses which the Irish court has taken into consideration. That renders it necessary to stress strongly that the first paragraph of Article 234 adds nothing to the original juridical standing of the rights and obligations flowing from earlier agreements between Member States and non-member countries and that such rights and obligations remain completely foreign to Community law. In the final analysis, even had the provision under consideration not been inserted in the Treaty, the pre-existing legal position of relations with non-member countries would have remained equally unaffected.

As for the second paragraph, however, it is clear that it contains an obligation on Member States — namely, to put into effect all means of eliminating possible incompatibilities between the prior agreements and the Treaty — coupled with a general pledge to cooperate in regard to the stated aim. I am doubtful, however, whether that aspect of the article is of concern to the court making the reference.

3. In its second question the Irish court seeks to establish whether Article 234, or any other rule of Community law, maintains or upholds rights of the beneficiaries of treaties to which Articles 234 applies, which the national courts must uphold. The manner in which this question is framed leads it to be supposed that the Irish court intended to refer to treaties capable of conferring personal rights on individuals and that by

referring to "the beneficiaries" of such treaties it had in mind in this respect individuals instead of the States which are parties thereto and the addressees thereof. However that may be, the crux of the problem still remains the function of Article 234. It serves to "maintain" the effects of the earlier agreements to which it refers only in the sense that it declares them to be unaffected by the EEC Treaty (thus any possible direct effects as regards individuals, which are produced by an earlier agreement, also remain in being), but at the same time, in relations with non-member States, it does not alter in any way the nature or standing of pre-existing obligations or rights.

It would therefore be wholly inappropriate to state that such obligations or rights are "upheld" by Article 234 or any other rule of Community law and it would be out of the question to imagine that Article 234 obliges Member States to perform the obligations in question. Questions of the subsistence or observance of obligations of an individual Member State as against a non-Member State or of rights of individuals which have their source in an agreement concluded by that Member State with the non-Member State prior to the EEC Treaty (or prior to the accession of a State to the EEC) must be resolved by the national courts on the basis of an interpretation of the agreement and their own domestic legal order. Inasmuch as it is a clause coordinating the EEC Treaty and prior agreements Article 234 has no function of "upholding" to perform.

4. In the third question the Irish court asks whether the 1964 London Fisheries Convention is a treaty of the kind to which Article 234, as adapted in relation to Ireland, the United Kingdom and Denmark by Article 5 of the Act of Accession, applies.

It has been seen that Article 234 concerns "agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other". Under Article 5 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties of 22 January 1972, "Article 234 of the EEC Treaty ... shall apply, for the new Member States, to agreements or conventions concluded before accession". Moreover, the implied condition for the application of Article 234 is that the subject-matter of the prior agreement comes within that with which the Community is concerned. Such is certainly the case with fishing since under Article 38 (1) of the Treaty the products of fisheries are included amongst agricultural products subject to the rules of the common market. There is accordingly no doubt that the London Fisheries Convention, which was concluded eight years before the Irish, British and Danish accession to the EEC and in which all the States at present members of the Community and certain non-member countries (including Spain) participated, falls within the field of application of Article 234, as adapted by the said Article 5 of the Act of Accession as regards relations between Ireland, the United Kingdom and Denmark and the non-Member States which are parties to the Convention.

5. There remains to be considered the fourth question, in which the Irish court

asks whether a conviction of the defendant in this case under Section 222 (a), Subsection (1) of the Fisheries (Consolidation) Act 1959, as inserted by Section 7 of the Fisheries (Amendment) Act 1978. would be incompatible with Community law.

Taken literally, that question clearly goes beyond the bounds of the procedure governed by Article 177 of the EEC Treaty since it seeks a review of the compatibility of national law with Community law, which lies outside the powers conferred on the Court by that article. However, the Court has more than once treated questions which are inappropriately formulated as a starting point for interpreting Community law in force in regard to the subject-matter under discussion in the main proceedings. It is therefore possible and, in my opinion, opportune now to examine the Community rules applying to the treatment of foreign fishermen (and in particular Spanish fishermen) who wish to pursue their livelihood in exclusive fishery zones.

I shall begin by recalling that on 3 November 1976 the Council adopted a series of resolutions on the common policy in fishery matters, including a resolution relating to the boundaries of fishery zones which provided *inter alia* that, as from 1 January 1977, the Member States concerned would, by concerted action, extend the limits of their fishery zones to 200 miles off their North Sea and North Atlantic coasts. In the same resolution the Council laid down that the exploitation of fishery resources in these zones by fishing vessels of non-member countries would be governed by agreements between the Community and the non-member countries concerned. It accordingly instructed the Commission forthwith to start the necessary negotiations, in accordance with directives issued by the Council. At the same time the need to arrive at common rules for the conservation of fishery resources was emphasized and Member States were given the power to adopt, in agreement with the Commission, interim measures which appeared appropriate pending the entry into force of common rules (Annex VI to the Resolution).

The Commission did in fact exercise its power to conclude treaties with non-member countries and has so far reached an understanding with a number of them by signing agreements recognizing the rights of the Member States in the 200-mile zone and at the same time laying down fishing quotas in favour of the other party. The agreement with Spain, which was signed on 28 October 1978 but is not yet in force, provides *inter alia* that each of the Contracting Parties may require that vessels of the other party shall be in possession of a licence to fish in its zone. But pending the entry into force of those rules interim measures for the conservation and management of fishery resources, which apply to all ships registered in any non-member country, have been adopted by the Council. It is appropriate to mention here in that regard Regulation No 373/77 of 24 February 1977 containing measures affecting Spanish, Finnish, Portuguese, Swedish, Canadian and United States vessels and the regulations which have extended that system as regards Spanish vessels, in particular, Regulation No 1376/78 of 21 June 1978 which was in force at the time of the actions with which Mr Burgoa is charged.

Those rules rest on the premise that in order to preserve fishing resources access by the fishing vessels of any non-member country to the 200-mile Community coastal zone must be restricted (see the fourth recital in the preamble to Regulation No 373/77). The rules may be broken down into two essential measures: the determination of the quantities of fish (sub-divided by species and fishing ground) which may be caught by the vessels of non-member countries and control of fishing activity by means of a system of Commission licences which may be withdrawn in the event of misuse or the exhaustion of the quantities laid down. Moreover — and this assumes considerable importance in the present case — Member States are bound to take the measures necessary to ensure to the fullest extent possible the implementation of the provisions laying down catch quotas for the 200-mile zone situated off the North Sea and Atlantic coasts, including regular inspection of the vessels of non-member countries (Article 4 of Regulation No 373/77).

Having regard to these rules of secondary Community law it is possible to state without question that Member States having coasts bordering on the North Sea and the Atlantic — one of which is Ireland — have the power to ensure by penal sanctions the observance of the restrictions placed on the activities of fishermen from non-member countries and in particular on Spanish fishermen. A complicating factor in the present case may lie in the fact that the offence alleged against Mr Burgoa has taken the shape of a contravention of Irish domestic law. However, in truth, the Irish provision in question (Section 222 (a) of the Fisheries (Consolidation) Act 1959, as inserted by Section 7 of the Fisheries (Amendment) Act 1978), provides that "a person on board a foreign sea-fishing boat shall not fish or attempt to fish while the boat is within the exclusive fishery limits of the State unless he is authorized by law to do so" and adds that any person who contravenes that prohibition "shall be guilty of an offence". A provision which may be regarded as complementing the Community system referred to above is therefore involved since the prohibition and the threat of a penalty represent the fulfilment of the obligation flowing from the said Article 4 of Regulation No 373/77 (they serve, that is, to ensure observance of the catch quotas in the 200-mile zone). It is hardly necessary to add that, in those circumstances, it may hardly be questioned that the conviction of persons who act in contravention of the principle of the exclusive nature of the 200-mile fishing zone and the consequent restriction by means of the fixing of catch quotas and the system of permits, on the activities of foreign fishermen, is in accordance with Community law.

6. In the course of these proceedings there was also discussed the question of the validity of the rules of Community law previously described from the viewpoint of their possible incompatibility with the London Fisheries Convention of 9 March 1964. In fact, such a question has not been put forward by the court making the reference and that would lead one not to consider it. However, on the other hand, it is undeniable that that court is minded to decide the significance and role of the

London Convention as regards the Irish rules which are in accordance with Community rules and which prohibit unauthorized fishing in the 200-mile zone. To that end it would appear useful to explore the topic of the relationship between the London Convention and Community law from all angles.

In order to declare Regulation No 373/77, and the two regulations which successively extended it invalid, it would be necessary that one or other of the following propositions be correct: either that those regulations conflict with the rules of the London Convention and those rules are regarded as binding upon the Community, or that in promulgating them the Council breached the duty which, as has been seen, flows from the first paragraph of Article 234, not to obstruct the performance of Member States' obligations towards non-member countries which result from prior agreements. In regard to the first of those propositions it is convenient to recall the decisions of this Court concerned with the relationship between the rules of secondary Community law and international obligations of the Communities, in particular, the judgments of 12 December 1972 in Joined Cases 21 to 24/72 *International Fruit Co* v *Produktschap voor Groenten en Fruit* [1972] ECR 1219 and of 24 October 1973 in Case 9/73 *Schlüter* v *Hauptzollamt Lörrach* [1973] ECR 1135. In the operative part of the first of those two decisions and in the grounds of judgment of the second (paragraph 27) the Court pronounced to the effect that the validity of acts of the institutions, within the meaning of Article 177 of the EEC Treaty, cannot be tested against a rule of international law unless that rule is binding on the Community and capable of creating rights of which interested parties may avail themselves in a court of law. Therefore, in this case it would be necessary to establish — even before establishing the existence of a conflict between the London Convention and the said regulations — that that Convention is binding on the Community and produces direct effects for individuals.

Is it possible to take the view that by the fact of its having assumed the powers of the Member States in regard to the management of the resources in their fishing zones the Community is successor to them in the rights and obligations flowing from the London Convention? In order to resolve this question it is necessary to consider carefully the tests accepted in the above-mentioned decisions and in particular in the judgment of 12 December 1972 in the *International Fruit* case. The Court there came to the conclusion that the Community had succeeded the Member States in the GATT obligations not on the basis only of finding that it had assumed powers held by those States in regard to the subject-matter governed by the General Agreement but by taking account of at least four other decisive matters: the facts that the Member States were already bound by GATT when they concluded the EEC Treaty; the desire of those States to bind the Community by the obligations under the Agreement, which coincided with the "adherence of the Community to the same aims as those sought by the General Agreement", which follows from Article 110 of the Treaty of Rome; the action actually taken by the Community institutions in the context of that

agreement and the recognition by the other Contracting Parties of the transfer of power from the Member States to the Community (see paragraphs 10 to 18 of the grounds of judgment). But none of those factors is to be encountered in the present case. The London Fisheries Convention, although prior in date to the accession of the United Kingdom, Ireland and Denmark is subsequent to the creation of the EEC; no intention to have the obligations under the said Convention assumed by the EEC has been expressed by either the Member States or the Community; no action which may be regarded as being in implementation of the Convention has been taken by the Community; no acknowledgment that the Community has its own role in the context of the Convention has been made by the other contracting countries.

It is true that a comparison between action taken in the context of GATT and that referable to implementation of the Convention is hard to draw given the dynamic nature of the General Agreement which represents a kind of permanent framework for negotiations and fresh agreements between the parties. That, however, does not alter the fact that at least one of the factors indicated is, in my opinion, essential to any hypothesis of succession by the Community to the Member States in the obligations under an agreement. I refer to the intention of the former and the latter. In this case one may speak, on the contrary, of a clear lack of intention by the EEC to be bound by the London Convention. It is to be noted in that regard that at the time of the European Conference on Fishing which took place in London between December 1963 and March 1964 the EEC did not yet have its own policy in this sphere and the Commission was represented at the Conference only in the capacity of a mere observer. When, in the subsequent decade, the Community began to formulate its own line of approach to fishing matters profound changes had already taken place in the legal position in relation to which the London Convention had been drawn up. The latter was based on the criterion of a maximum extension of the fishing rights of States to a belt 12 miles from their respective coast lines. The exclusive right of the coastal State to fish (and to have exclusive jurisdiction in matters of fisheries) was therefore recognized in a belt of 6 miles measured from the base-line of its territorial sea (Article 2) whilst in the zone between 6 and 12 miles the right to fish, in addition to being conferred on the coastal State, was also conferred on other contracting States the vessels of which had habitually fished in that zone between 1 January 1953 and 31 December 1962 (Article 3). In the course of the 1970s, however, under the pressure of the economic demands of developing countries, a general international rule authorizing States to extend their exclusive fishery zones to 200 miles took shape and was rapidly consolidated. Hence the Community began its positive action in this sector (as I recalled earlier) by itself providing in 1976 that a system of protection for fishing should be provisionally laid down for the 200-mile zone pending the conclusion of agreements with interested non-member countries, which are intended to be based on this new criterion. In that manner the Community set its own

action in motion completely superseding the London Convention which proved to be no longer capable of providing a satisfactory body of rules for the new subject-matter of the international law of the sea.

In those circumstances there can be no question of the London Convention's having become binding on the Community. That renders superfluous an examination of whether that Convention has direct effect for individuals or whether Community fishery rules are compatible with the Convention. The proposition that those rules are invalid through being in conflict with international law binding on the Community may be rejected without further consideration.

7. I turn now to a consideration of the other proposition that Regulation No 373/77 and those which extended it successively are invalid, that is to say, that by promulgating those rules the Council infringed the first paragraph of Article 234 by failing in the duty of Community institutions not to hinder the performance of obligations owed by Member States to non-member countries and flowing from earlier agreements. In this case in so far as the performance by Ireland of obligations owed to Spain flowing from the London Convention may be regarded as impeded to that extent it would follow that an infringement of the obligations imposed by that Convention has actually occurred and that observance of Community rules of law was incompatible with the performance of those commitments.

Examination of those assumptions clearly calls for a consideration of the facts in the light of the London Convention and an interpretation of its rules. In its observations the French Government submitted that the Court has no jurisdiction to interpret the London Convention on the ground that it falls outside the Community framework. In support of that argument the French Government referred to the judgment of 27 November 1973 in Case 130/73 *Vandeweghe* [1973] ECR 1329 which stated that "the Court has no jurisdiction under Article 177 of the EEC Treaty to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of Community law".

However, I consider that that decision is not in point in this case. Here, in fact, the legislative content of the London Convention takes on the standing of an issue of fact, the ascertainment of which is necessary in order that the Court may deliver a ruling on the question under consideration. But that question has as its subject not just the interpretation of the Convention but rather the supposed contravention of Article 234 of the Treaty.

That said, I would recall that, according to the arguments advanced by the accused in the main proceedings, by expressly conferring fishing rights on habitual fishermen (including Spanish fishermen) in the sea belt lying between 6 and 12 miles from the coasts of the contracting States, the London Convention becomes the source of analogous rights in favour of habitual fishermen within the belt lying between 12 and 200 miles as from the date on which the exclusive fishing zone was extended to 200 miles. Hence, it is said,

the fishing carried on by Mr Burgoa 20 miles from the Irish coast must be regarded as lawful and the fact of his having been prosecuted for that occurrence amounts to an infringement of the London Convention.

In my opinion, that argument is wholly untenable. In terms of Article 31 (1) of the above-mentioned Vienna Convention on the Law of Treaties, which recently codified the general law on this topic: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." It certainly cannot be maintained that a clause such as Article 3 of the London Convention, which contained a clear indication of the limits of the sea-belt under consideration (in terms of miles from the base-line) and clearly presupposed the existence of an exclusive fishery zone of 6 miles, fixed under Article 2, may be interpreted in wholly different terms as a result of a supervening event not foreseen by the parties to the document containing the stipulation (the extension of the exclusive fishery zone to 200 miles). Nor, on the other hand, may there be talk of an analogous application of the Convention to the new situation resulting from that event since it is well known that recourse to analogy is precluded by a general principle of international law where conventional rules are concerned. Indeed, that would lead to overstepping both the wording of the agreement and the intention of the contracting States. The truth is that — as its short preamble demonstrates — the purpose of the London Convention was to "define a régime of fisheries of a permanent character" whereas the supervening customary rule has revolutionized that régime by permitting States to exercise exclusive rights of fishing up to 200 miles from the coastline. It is impossible therefore to profess to "adapt" the rules of the London Convention to that radical change in general international law. In my opinion, the sounder view is to regard the customary rules in force as having abrogated the rules agreed on in London in 1964.

Clearly, if in fact there has been no contravention of the Convention — and *a fortiori* if the same is no longer in force — the argument that the Council has thwarted its observance, thereby infringing Article 234 of the Treaty of Rome, fails entirely. But I should like to add that even were the Convention to be held still to be in force and the audacious argument on its interpretation advanced in Mr Burgoa's defence were to be upheld (thereby recognizing the rights of habitual fishermen in the zone between 12 and 200 miles), it would also be necessary to exclude the alleged conflict between the Convention régime and the system of fishing licences which characterizes the Community legal rules. In fact, the acknowledgement of the rights of habitual fishermen contained in Article 3 of the Convention must be interpreted in the context of the instrument and therefore by taking account of Article 5 according to which the coastal States have power to adopt measures for the conservation of fishery

resources provided that discrimination does not result therefrom.

As I have already had occasion to state, the Community system of fishing licences unquestionably falls within the framework of measures aimed to preserve marine resources. Further, in regard to the non-discrimination clause I would observe that even though fishermen of Member States do not require a licence to be able to fish in the zone in question they are also subject at the time of landing to checks on their fishing operations for the purpose of avoiding excessive impoverishment of fishery resources. It is plain that that method of control cannot be used as regards fishermen from non-member countries who normally land their catches in a port in their own country. Finally, it must not be overlooked that the special nature of that treatment is permitted by Article 10 of the Convention which provides that nothing in that instrument shall prevent the maintenance or establishment of a special régime in matters of fisheries between the Member States and Associated States of the European Economic Community.

8. A final argument submitted in Mr Burgoa's defence remains to be discussed, namely, that the recognition of the fishing rights of habitual fishermen derives from a generally recognized principle of international law the observance of which is also required of the Community and which prevails over any contrary provisions.

It appears to me that the content of such a principle has not been made sufficiently clear. In truth, the concept of "habitual fishermen" is very vague. It has been seen that the London Convention defines it by reference to a clearly specified period selected for the special purposes of that Convention ("fishing vessels ... which have habitually fished in that belt between 1 January 1953 and 31 December 1962"). A wholly different matter are the historical rights of States which are recognized on the basis of other conditions and in various contexts (which are not, however, eternal or immutable). The fate of the habitual fishermen concerned depends on the results of negotiations between States. The point is not governed by general international rules of law. Moreover, it would be even more difficult to infer principles from the practice of States inasmuch as the practice, if any, followed before the extension of the exclusive zone to 200 miles may not be used as proof of a rule "adaptable" to the new legal situation brought about by that extension.

Interested States may undoubtedly seek, in international treaties, to ensure that certain traditional situations are maintained even in the framework of the new fishery régime but that might call for the introduction of new laws (let it not be forgotten that, in the present case, what would be involved is the granting to habitual fishermen of the right to fish no longer between 6 and 12 miles of the coast but between 12 and 200, that is, in a much larger belt of sea!). On the other hand, taking account of the different

limits in which the need for conservation of fishery resources is set today, nothing prohibits access to the 200-mile zone from being restricted in a manner which may, if appropriate, be more strict than that provided for by the London Convention for the 6 to 12-mile belt. In any event, it would not be reasonable to speak of a right vested in traditional fishermen to the maintenance, pure and simple, of the *status quo ante.*

The actions taken by very many States confirm that opinion. Following the laying down of the 200-mile rule the conflicts of interest which resulted therefrom between each coastal State and other countries the fishing vessels of which were accustomed to visit the adjacent sea zone have, as a rule, been settled by the contracting of bilateral agreements. In such agreements, the coastal State, taking account of the pre-existing situation and the interests of habitual visitors to the zone, grants them for a certain period the opportunity of continuing to carry out fishing in its own exclusive zone, restricting, however, fishing as a rule to the types of fish customarily caught in the past and frequently imposing quantitative restrictions as well. The accepted temporal limitation goes to show that the States concerned did not consider that there existed in international law any general principle whereby traditional fishermen in a given zone had the right to continue their habitual activity there. By the agreements in question coastal States simply agreed to mitigate the adverse economic effects which might have resulted for the habitual fishermen from other countries in the sea zone over which they had exerted their own sovereignty following upon the abrupt transition from a maritime zone regarded as having the status of high seas to that of an exclusive fishing zone of the coastal State. For their part, the States concerned to maintain fishing opportunities for their fishing vessels in the habitual sea zones did not consider themselves able to call upon a general principle of international law which guaranteed them rights; otherwise they would not have agreed to a temporary recognition of the power to fish in the 200-mile zone with the prospect of not being able to obtain an extension without guaranteeing a suitable concession to the coastal State in return.

The action taken by Spain also appears to be in accordance with that interpretation. As the Commission points out, in the course of the negotiations between the Community and Spain which followed the announcement of the Community's proposal to establish a 200-mile fishing zone as from 1 January 1977 the Spanish Government never claimed rights for its fishing vessels in the zone beyond 12 miles from the baseline. It appears further (from a document of the Food and Agriculture Organization of the United Nations, produced as an annex to the Commission's observations) that as from 1978 Spain also extended her own exclusive fishing zone to 200 miles from her coasts thereby following the great majority of other coastal States.

9. For the reasons above set forth I conclude by suggesting that in answer to the questions referred to it for a preliminary ruling by the Circuit Court, County of Cork, by order of 7 December 1979 the Court should declare that:

1. It is to be inferred from Article 234 of the EEC Treaty that Community institutions are bound not to hinder the performance of the obligations and the enjoyment of the rights of Member States in relation to non-member countries on the basis of international agreements concluded prior to the coming into force of the Treaty and that Member States are bound to adopt all appropriate measures to eliminate any incompatibilities between those agreements and the Treaty itself.

2. Article 234 of the EEC Treaty does not have the function of upholding rights of the parties to or the beneficiaries of the prior agreements to which it refers. It confines itself to declaring, in accordance with a general principle of international law, that those rights are not prejudiced by the Treaty.

3. The 1964 London Fisheries Convention falls within those contemplated by Article 234 of the EEC Treaty as adapted in relation to Ireland, the United Kingdom and Denmark by Article 5 of the Act of Accession.

4. In accordance with Council Regulation No 373/77 of 24 February 1977, and the regulations which have successively extended it, fixing fishing quotas for Spanish fishing vessels in the sea zone extending up to 200 miles off the coasts of Member States on the North Sea and Atlantic and making the carrying on of fishing by them subject to authorization by the Commission, the Irish authorities have power to impose penal sanctions on persons who, while on board such vessels, fish without authority.

5. No factor has been disclosed of such a kind as to affect the validity of Council Regulation No 373/77 of 24 February 1977 and the regulations which have successively extended it, including, in particular, Regulation No 1376/78 of 21 June 1978.