In Case 230/81

GRAND DUCHY OF LUXEMBOURG, represented by its Agent, Joseph Weiland, Director of International Economic Relations at the Ministry of Foreign Affairs, assisted by André Elvinger of the Luxembourg Bar, Jean Boulois, Professor at the University of Law, Economics and Social Sciences, Paris, and Francis Jacobs of the Middle Temple, Barrister, with an address for service at the Chambers of André Elvinger,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary General, Hans-Joachim Opitz, Francesco Pasetti-Bombardella, Director General, and its Legal Advisor, Roland Bieber, acting as Agents, assisted by Alessandro Migliazza, Professor at the University of Milan, with an address for service in Luxembourg at the office of the Secretary General of the European Parliament, Kirchberg,

defendant,

APPLICATION for a declaration that the resolution of the European Parliament of 7 July 1981 on the seat of the institutions of the European Community and in particular that of the European Parliament (Official Journal, C 234, p. 22), is void,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts

1. Article 77 of the ECSC Treaty is worded as follows:

"The seat of the institutions of the Community will be determined by common accord of the Governments of the Member States."

In the same way Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty provide:

"The seat of the institutions of the Community shall be determined by common accord of the Governments of the Member States."

2. At a conference held on the entry into force of the ECSC Treaty on 24 and 25 July 1952 the Ministers for Foreign Affairs of the six founder Member States of the Coal and Steel Community declared that the High Authority and the Court of Justice would begin their work in Luxembourg, the Assembly would hold its first meeting in Strasbourg and the ultimate decision on the seat would be taken in the light of the results of the negotiations which would be undertaken on the status of the Saar.

Following that decision the first meeting of the Common Assembly of the ECSC and likewise its subsequent meetings, apart from a meeting in Brussels and one in Rome, were held in Strasbourg. The General Secretariat of the Assembly began work in Luxembourg where the Council met and where the High Authority and its offices and the Secretariat of the Council were also located.

Until the entry into force of the Treaties of Rome there was no further decision or declaration on the question of the seat of the institutions or their working place.

3. After the entry into force of the EEC and ECSC Treaties the Ministers for Foreign Affairs of the Member States declared on 7 January 1958 in a press communiqué headed "Seat":

"The Ministers have agreed to bring together in the same place all the European organizations of the six countries as soon as that becomes possible and in accordance with the provisions of the Treaties.

In order to choose the seat they have decided to meet again before 1 June 1958 . . .

In the meantime the Commissions will meet when convened by their Presidents. Since no definitive or provisional seat has been fixed the Governments recommend the Commissions to hold their meetings at Val Duchesse (Brussels) or in Luxembourg for practical considerations and in view of the material facilities.

The Councils of Ministers of the two Communities and the Office of the Investment Bank will meet as called upon by their Presidents.

The Assembly will meet in Strasbourg.

..."

Following that decision the Assembly continued to hold its plenary sittings in Strasbourg and its General Secretariat continued to function in Luxembourg. As regards committee meetings the practice gradually began to be established of frequently holding them in Brussels where the Members of the Councils and the Commissions of the two Communities and the administrative apparatus of the institutions were to be found.

During the following years there was no further decision by the Governments of the Member States on the subject of the seat or working place of the institutions and the position remained unchanged in spite of several resolutions adopted by the European Parliament emphasizing that it needed to have its seat determined.

4. During the preparation of the Treaty establishing a Single Council and a Single Commission of the European Communities negotiations took place on the subject of the location of the institutions. Upon being informed of those negotiations the Parliament on the occasion of a vote on 2 November 1964, whilst asserting its right to decide for itself the working place of its committees and Secretariat, answered in the negative the question whether it was necessary to alter the provisional decision of the Governments of 7 January 1958 to hold the plenary meetings in Strasbourg.

On 8 April 1965 when the abovementioned Treaty was signed the Governments of the Member States adopted pursuant to Article 37 thereof a decision which entered into force on the same date as the Treaty, namely 1 July 1967 (Official Journal 1967, 152, p. 18), and provided *inter alia* as follows:

"Article 1

Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Communities."

"Article 4

The General Secretariat of the Assembly and its departments shall remain in Luxembourg."

Apart from those provisions that decision related in particular to meetings of the Council, the location of the Court of Justice and judicial and quasi-judicial bodies, the establishment of the European Investment Bank, the financial departments of the ECSC and other Community bodies and departments, the transfer of the departments of the Commission managing the coal and steel market and the transfer to or maintenance in Luxembourg of certain departments of the Commission. Its aim was to resolve, without prejudice to the establishment of the seat of the institutions, certain problems peculiar to the Grand Duchy of Luxembourg and resulting from the creation of a single Council and a single Commission.

5. On 19 July 1967 following a decision taken by its enlarged Bureau the Parliament for the first time held a sitting lasting one day in Luxembourg, which had become necessary because of urgent consultations with the Council.

Subsequently for practical reasons all sittings of the Parliament of short duration were generally held in Luxembourg.

When in 1970 the Luxembourg authorities undertook the construction of a new administrative building for the offices of the Parliament the building, at the Parliament's request, contained all installations necessary for holding plenary sittings and meetings of the committees and groups of the Parliament.

6. By letter dated 4 February 1971 sent to the President of the European Parliament the French Minister for Foreign Affairs expressed the concern of the French Government on noting an appreciable interest in the number of part-sessions held outside Strasbourg in 1971 so that what might have been considered to be exceptional cases tended to assume a regular character; he expressed reservations about the decisions of the Parliament with regard thereto which he did not consider compatible with the provisions of the Treaties or the decisions of the Governments on the subject.

By letter dated 8 March 1971 the President of the Parliament replied to the effect that the decision to hold part-sessions of a maximum of two days in Luxembourg rather than in Strasbourg was due to practical considerations only and should not be interpreted as in any way affecting the power of the Governments to decide the ultimate seat of the institutions.

On 26 January 1973 the French Minister for Foreign Affairs once again sent a letter to the President of the Parliament informing him of the serious concern caused to the French Government at the practice adopted by the Parliament of holding each year a number of part-sessions in Luxembourg including for the first time in 1973 long part-sessions.

7. After the Act concerning the election of representatives to the Assembly by direct universal suffrage was signed the President of the Parliament informed the President of the Council by letter dated 6 July 1977 of the practical problems confronting the Parliament in view of the election to Parliament by direct universal suffrage and the increase in the number of its Members. In that letter he described in particular the needs with regard to premises and conference rooms in the three current places of work, namely Strasbourg, Luxembourg and Brussels, and emphasized in particular the need to build a new large hemicycle for plenary sittings and an increased number of offices for Members and the departments of the Parliament in Luxembourg.

In his answer of 22 September 1977 the President of the Council informed the Parliament that the Governments of the Member States did not consider it necessary to amend the provisions then in force, either in law or in fact, concerning the provisional places of work of the Assembly, namely Strasbourg and Luxembourg where its General Secretariat and offices were established, the parliamentary committees being accustomed to meet in Brussels.

The Luxembourg Minister for Foreign Affairs by letter dated 19 January 1978 to the President of the Parliament confirmed that view of the President of the Council and stated that the provisional places where Parliament was established were Strasbourg and Luxembourg.

By letter dated 22 September 1978 sent to the President of the Parliament the French Minister for Foreign Affairs protested against the draft calendar of sessions drawn up by the enlarged Bureau of the Parliament for the first half of 1979 and stated that Strasbourg was the sole meeting place for the Assembly and that the practice which had provisionally developed of holding certain part-sessions in Luxembourg was contrary to the decisions taken by the Governments of the Member States; he insisted that at least three out of five meetings should be held in Strasbourg.

At the sitting of the Parliament on 13 February 1978 its President issued a declaration on what had been done to ensure that the Parliament elected by direct universal suffrage had normal working conditions in the current places of work and stressed the contacts with the competent authorities in Strasbourg and Luxembourg and the solutions being studied in Brussels in order to provide the premises and facilities necessary for plenary sittings in Strasbourg and Luxembourg and for meetings of the committees and political groups in Brussels.

8. After the election of the Parliament by direct universal suffrage it held its first part-sessions between 17 July 1979 and June 1980 in Strasbourg. After completion of the large new hemicycle in Luxembourg in June 1980 allowing it to meet in plenary sittings in Luxembourg the Parliament between the end of June 1980 and February 1981 held four part-sessions in Luxembourg.

On 20 November 1980 the Parliament adopted a resolution "on the seat of the European Parliament" in which, concerned about the practical aspects and the cost of its activities and wishing to see the provisional arrangements concerning its places of work brought to an end, it requested the Governments of the Member States to take a decision by 15 June 1981 at the latest and declared that "if the Governments of the Member States have not reached a decision by the above date, it would have no option but to take the necessary steps to improve its working conditions."

On 12 January 1981 the Parliament adopted a resolution rejecting the calendar of part-sessions put forward by the Bureau for the first half of 1981 and providing for two part-sessions in Luxembourg; it decided to submit the calendar of part-sessions for 1981 to a vote of all its Members and to hold the July 1981 part-session in Strasbourg.

In accordance with that resolution a proposal in relation to the calendar and places for part-sessions of the Parliament for 1981 was submitted to the Parliament. That proposal was that part-sessions should be held exclusively in Strasbourg during the second half of 1981. It was adopted by the Parliament at a plenary sitting on 13 March 1981.

9. On 23 and 24 March 1981 the Heads of State and of Government met at Maastricht as the European Council, and issued a statement under the heading "Seat of the Institutions" as follows:

"The Heads of State and of Government decided unanimously to confirm the *status quo* in regard to the provisional places of work of the European institutions."

Moreover following a memorandum from the French Government referring

to the difficulties encountered by the Assembly in fulfilling the duties assigned to it by the Treaties by reason of the dispersal of the places in which it carried on its activities the representatives of the Governments of the Member States met together at a conference on the seat of the institutions of the Community which terminated on 30 June 1981 with the following agreement:

"1. The Governments of the Member States find that, in accordance with Article 216 of the Treaty, they alone are empowered to determine the seat of the institutions of the Community.

2. The decision of the Governments of the Member States taken at their meeting at Maastricht on 23 and 24 March 1981 to maintain the *status quo* in regard to the provisional places of work comes within the exercise of that power. It is without prejudice to establishing the seat of the institutions."

On the subject of that agreement the President of the Council emphasized at a meeting organized by the enlarged Bureau of the Parliament and the 10 Foreign Ministers on 16 November 1981 that it had appeared at the conference that of the various imperfect solutions the most satisfactory was the *status quo*, that is to say the designation of a number of provisional places of work.

10. On 7 July 1981 upon hearing the reports of its Political Affairs Committee the Parliament adopted a resolution "on the seat of the institutions of the European Community and in particular of the European Parliament" (Official Journal, C 234, p. 22). In the recitals to that resolution the Parliament stated that it did not call in question the rights or duties of the Governments of the Member States on the subject but referred to the difficulties resulting from the dispersal of the places of work in three different locations; it considered that disregard by the Governments of the Member States of the time-limit of 15 June 1981 forced it to improve its own working conditions and it asserted its right to meet and work in the place of its choice. The resolution then states that the Parliament:

"1. Calls on the Governments of the Member States to comply with their obligation under the Treaties and at long last fix a single seat for the institutions of the Community and asks for a conciliation procedure to be opened in good time on this matter;

2. Believes it is essential to concentrate its work in one place;

3. Decided, pending a final decision on a single meeting place of the European Parliament,

(a) to hold its part-sessions in Strasbourg,

(b) to organize the meetings of its committees and political groups as a general rule in Brussels,

(c) that the operation of the Secretariat and technical services of Parliament must be reviewed to meet the requirements set out in (a) and (b) above, particularly with a view to avoiding the need for a substantial number of staff of Parliament to travel constantly,

that, with that end in view, the fullest possible use should be made of the latest means of telecommunication both for personal contacts and for document transmission,

that the most advanced techniques must also be used to facilitate cooperation between the institutions, while road, rail and air links between the main centres of activity of the Community must be improved,

that under the guidance of the President and enlarged Bureau, the appropriate bodies of Parliament shall determine the measures to be taken and evaluate their costs; before the end of the year, they shall present to Parliament a report accompanied by appropriate proposals."

II — Written procedure and conclusions

1. By application lodged on 7 August 1981 the Grand Duchy of Luxembourg brought an action based primarily on Article 38 of the ECSC Treaty and in the alternative and in so far as necessary on Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty to challenge the resolution adopted by the Parliament on 7 July 1981.

The written procedure followed the normal course. At the request of the Grand Duchy of Luxembourg and upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the President of the Court decided to grant further time to the Grand Duchy of Luxembourg to answer certain arguments contained in the rejoinder of the Parliament without prejudice to the question whether those matters constituted a new issue within the meaning of Article 42 (2) of the Rules of Procedure. The Parliament did not consider it necessary to answer those further observations of the Luxembourg Government.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open that oral procedure without any preparatory inquiry. It did however put to the Parliament a question concerning the buildings at its disposal in Luxembourg, Strasbourg and Brussels and the changes in the number of staff assigned thereto; the Parliament answered in writing.

2. The *Grand Duchy of Luxembourg* claims that the Court should:

Declare null and void, on grounds of lack of competence and infringement of essential procedural requirements, the act of the Assembly of the European Communities of 7 July 1981, "Resolution on the Seat of the Institutions of the European Community and in particular of the European Parliament";

Make an appropriate order as to costs.

The *European Parliament* contends that the Court should:

Declare the action inadmissible;

Dismiss it as regards the substance thereof;

Order the applicant to pay the costs.

III — Submission and arguments of the parties

A — Admissibility

1. The availability of redress against measures of the Parliament

(a) In the view of the *Parliament* the action is inadmissible because neither Article 38 of the ECSC Treaty, relied on primarily by the Luxembourg Government, nor Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty, pleaded in the alternative, give a right of action against the Parliament in this case.

The power to declare an act of the Assembly void as provided in Article 38 of the ECSC Treaty has not been adopted in the EEC and EAEC Treaties and Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty do not provide an action against measures of the Parliament. To enlarge the EEC and EAEC Treaties by analogy to give the Court power to declare measures of the Parliament void would be unacceptable and would presuppose *inter alia* recognition of the right of the Parliament itself to bring an action pursuant to the same provisions.

By the resolution in question, and on the basis of the power of the Parliament, answerable to itself alone, to organize the way in which it fulfils its tasks (Article 142 of the EEC Treaty, Article 112 of the EAEC Treaty and Article 25 of the ECSC Treaty) the Parliament has made a single and identical use of its powers under the three Treaties. It is inconceivable for the resolution, which is of concern to the three Communities, to be declared void under the ECSC Treaty whilst preserving its force under the EEC and EAEC Treaties. Article 38 of the ECSC Treaty is therefore inapplicable.

(b) The *Luxembourg Government* emphasizes that Article 38 of the ECSC Treaty has remained unchanged after the entry into force of the Treaties of Rome and Article 2 of the Convention of 25 March 1957 on certain Institutions Common to the Communities. The ECSC, EEC and EAEC Treaties apply concurrently. Recourse to Article 38 is therefore excluded only in respect of measures relating specifically and exclusively to the EEC or EAEC. For decisions the subject-matter of which is of an institutional nature the application of Article 38 must retain a general scope since decisions concerning the functioning of the Assembly are indivisible and the fact that henceforth a single institution is involved is not capable of destroying an existing means of action.

As regards the admissibility of the action on the basis of Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty, the Luxembourg Government challenges the argument that the authors of those Treaties deliberately intended to exempt the Parliament from any review of legality for that argument neglects the organic and fundamental provisions contained identically in Article 31 of the ECSC Treaty, Article 164 of the EEC Treaty and Article 136 of the EAEC Treaty which make the Court the guardian of legality in the most absolute sense. For the Court to have jurisdiction over measures of the Parliament would not be excessive or abnormal. Several national constitutional systems in the Community allow review of the measures

of a national parliament by a court or council. The difference between the ECSC Treaty on the one hand and the EEC and EAEC Treaties on the other is explained by the fact that many of the measures of the Assembly did not have the nature of decisions in the eyes of the authors of those Treaties since the Council and the Commission were in the original system of the Treaties of Rome the only institutions called upon to adopt legal measures. It would be an extremely serious matter to allow the creation of an authority which is not and cannot be made answerable to the courts and to give the Parliament legal immunity. Sovereignty of the Assembly, even if elected by universal suffrage, would be incompatible in present circumstances with the origin, nature and structure of the institutional system. Further the idea that the sovereignty of representative institutions would exclude review of the constitutionality of the measures they adopt would be contrary to contemporary trends in liberal constitutional law. The subjection of the Assembly to review by the Court is a general principle necessary to ensure that the law is observed.

(c) In answer the *Parliament* states that as regards the applicability of Article 38 of the ECSC Treaty in view of the independence of the legal systems a direct action challenging the three Communities cannot be based on a single Treaty. Enlargement or amendment of the system of judicial review embodied in the Treaties of Rome would not be justified. The authors of the Treaties of Rome knowingly omitted to provide for the possibility of a direct action against the Parliament. Judicial protection is both wider and more precise in the Treaties of Rome than in the ECSC Treaty. The applicant's arguments concerning such an enlargement or amendment of the system of judicial review are only arguments *de lege ferenda.* Moreover it is the most recent Treaties which translate most faithfully the intentions of the contracting parties and previous provisions can only be interpreted restrictively.

A measure of internal organization relating to the three Treaties may therefore be challenged directly only if its ECSC aspects are identifiable and separable. Otherwise only review under Article 177 of the Treaty is possible. That result is confirmed by the fact that in the constitutional systems of several Member States judicial review of measures of the Parliament is regarded as contrary to the principle of the separation of powers.

That result is not affected by the role of the Court in ensuring that the law is observed. The Court exercises its review only by using the means expressly provided by the Treaties. It has always recognized that principle for it has always specified the rule in the Treaty giving it jurisdiction in a given case. Judicial protection of those concerned in relation to measures of the Parliament is not wanting but it must be achieved by other kinds of procedure. In that respect the Parliament cites the possibility of an action for damages under the second paragraph of Article 215 of the EEC Treaty.

2. The legal nature of the contested resolution

(a) The *Parliament* observes that the contested resolution is not an act within the meaning of Article 38 of the ECSC Treaty, neither is it a measure which may be challenged under Article 173 of the EEC Treaty or Article 146 of the EAEC Treaty.

The meaning of "act" is confined to measures in the nature of a decision, that is to say which have direct legal effects. To declare a decision void would have no sense unless it has legal effects, in contrast to a "declaration" expressing a political stance.

It is necessary in any event to distinguish clearly between measures of the Parliament intended to have effects in respect of other institutions and possibly Member States and those relating to the internal organization of the Assembly, for the latter fall within a category in which the independence of the Parliament is guaranteed by the Treaties (Article 25 of the ECSC Treaty). A measure based on the principle of the Parliament's internal independence cannot be the subject of an action.

Even if it is accepted that measures of internal organization may be the subject of an action, comparison of the amendments put forward to the draft of the contested resolution with its ultimate wording illustrates the absence of any legal effect. Thus amendments seeking a clear decision of the Parliament in favour of a specific principal place of work or inviting the Bureau to cancel existing tenancy agreements for the purpose of moving all the departments were rejected. The ultimate resolution falls entirely within the framework of the decision of the representatives of the Governments on the provisional places of work of 8 April 1965 of which it represents the application and it does not therefore have an independent legal character.

Finally it may be asked whether the action is not out of time, for the contested resolution merely confirms the decisions taken on 12 January and 13 March 1981 against which Luxembourg did not bring any action.

(b) The *Luxembourg Government* maintains that a "resolution" of the Parliament may, according to its content, be either of an advisory or declaratory nature, as in the case of an opinion on proposals from the Commission or resolutions in favour of Community action in certain spheres, or of a mandatory nature, as in the case of a vote on a censure motion or a budgetary matter. In the event of the Parliament's exceeding its powers the mandatory nature depends on the content of the measure; legal effects are not therefore excluded simply because a measure has been adopted *ultra vires* by an authority.

In the present case the nature of the resolution as a decision has been further confirmed by the fact that it has now been followed by specific measures of implementation. The Luxembourg Government refers in that respect to an information mission entrusted by the Bureau of the Parliament to Mr Vice-President Dankert during which the General Secretariat, the Secretariat of

the Bureau and the Staff Committee were questioned and given the first outlines of the measures contemplated concerning the transfer of staff and the dismantling of the premises; there are letters from the Staff Committee to the same effect. That information mission was followed by a report from Mr Vice-President Zagari to the enlarged Bureau and to the Parliament. Following those preparatory inquiries the Parliament at its session on 16 December 1981 adopted a resolution instructing the relevant departments to continue to look at appropriate solutions for "the implementation of Paragraph 3 (c) of its Resolution of 7 July 1981" and invited them to submit not later than 30 June 1982 "a report including the financial implications". In the discussion preceding the vote on that resolution Mr Fergusson, a Member of the Parliament, stated that Luxembourg would no longer be a place of work for the Parliament.

It is not possible to regard the contested resolution as being exempt from review by the Court because it relates to the so-called internal autonomy of the Parliament. Under Article 25 of the ECSC Treaty, Article 142 of the EEC Treaty and Article 112 of the EAEC Treaty even decisions of the Parliament in relation to its rules of procedure, and all rules adopted in relation to the functioning of the Assembly are subject to the principle of legality. That is confirmed by the case-law of the Court and in particular the judgments of 12 July 1957 in Joined Cases 7/56 and 3 to 7/57 *Algera and Others* v *Common Assembly of the ECSC* [1957 and 1958] ECR 39, of 12 May 1964 in Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195 and 15 September 1981 in Case 208/80 *Lord Bruce of Donington* v *Aspden* [1981] ECR 2205. Internal and inter-Community measures are in no way outside the jurisdiction of the Court. The distinction between external and internal measures moveover is not recognized by the national system of countries which provide for a review of the constitutionality of parliamentary measures as is the case of the Federal Republic of Germany and France. Moreover while the Treaties make each institution responsible, in the exercise of its internal autonomy, for its own rules of procedure, they expressly reserve to the Member States the decision on the seat of the institution, and any provision concerning that is therefore excluded from the sphere of the internal autonomy of each institution.

The Parliament attempts to minimize the scope of its resolution to the point of denying it any significance, which is inconsistent with the fact that the Parliament began with a call to the Member States constituting genuine formal notice to them; it is also inconsistent with the formal drafting of the resolution, its heading and numerous references to the seat. The recital in the resolution casting doubt on the will of the Governments to resolve the question of the seat also shows that the object of the resolution is to substitute action by the Parliament for that of the Governments. The resolution itself sets out the procedure for its implementation which has already been effectively put in motion.

It is apparent from the substantive content of the provisions adopted by the contested resolution that it disregards the

confirmation of the *status quo* decided upon by the European Council at Maastricht and confirmed on 30 June 1981 by the Conference of the Governments of the Member States on the seat of the institutions, for Luxembourg is no longer mentioned in Paragraph 3 (a) or (b) of the resolution and the decision is made to review the operation of the Secretariat and its technical branches to meet the requirements of the establishment of the Parliament in Brussels and Strasbourg.

As to being out of time by reason of the so-called confirmatory nature of the contested resolution the Luxembourg Government emphasizes that the resolution of 12 January 1981 and the vote of 13 March 1981 on the calendar of part-sessions related only to a particular part-session or to those of a particular year whereas the contested resolution is both unlimited in time and general in its purpose for it applies to all the spheres of activity of the Parliament.

(c) According to the *Parliament* its resolutions are regarded generally as "opinions" or recommendations. Only its measures in relation to censure motions (Article 24 of the ECSC Treaty), budgetary matters (Article 78 of the ECSC Treaty) and revision of the Treaty (Article 95 of the ECSC Treaty) are intended to have outward legal effects. In the contested resolution the Parliament merely confirmed that it would continue to hold its plenary sittings in Strasbourg "pending a final decision on a single meeting place of the European Parliament". The fixing of meeting places is a measure of the Parliament's normal internal organization. The mere fact that the decision on the fixing of the part-sessions mentions only Strasbourg and not Luxembourg does not make a measure of internal organization binding and capable of having legal effects. The case-law of the Court confirms that the Parliament possesses such an area of internal autonomy. In that respect the Parliament challenges the interpretation of that case-law by the Luxembourg Government.

The fixing of the place where plenary sittings are to be held is left to the discretion of the Assembly by the 1965 decision of the Governments. Since Strasbourg is the town mentioned by the Governments of the Member States as the place of plenary sittings and since the plenary sittings in Luxembourg were organized there as a result of an internal decision which the Parliament is entitled to change by the same means, the Parliament has acted within the framework of the 1965 decision of the Governments. As regards the operation of the Secretariat and its technical branches the resolution simply instructs the enlarged Bureau and the appropriate bodies to determine the measures to be taken and to present a report. From that point of view it is completely devoid of legal effect. The Parliament emphasizes that any factor other than the official measures of the institution must be left out of account in that context and it is opposed to the Luxembourg Government's attempt to have the Court consider unofficial documents such as individual opinions of Members of the Parliament during a debate or even

opinions expressed by officials of the institution.

Finally as regards being out of time by reason of the confirmatory nature of the contested resolution, the Parliament claims that the resolution was adopted pending the fixing of a single meeting place for the Parliament and operates as an extension of the decision of 13 March 1981 to fix temporarily the meeting place for a period which might even have terminated before the end of the year.

3. The right to institute proceedings

(a) The *Parliament* claims that the Luxembourg State is not entitled to take action in an area which according to its own argument was the exclusive domain of all the Member States acting unanimously. Only the Member States as a whole are entitled to bring such an action. There is however no agreement among all the Member States on the appropriateness of bringing the action.

The Commission, moreover, which is custodian of the Treaties, has raised no objection to the resolution.

(b) The *Luxembourg Government* considers that the Parliament's submission finds no support in the general principles of procedure. The Luxembourg Government refers first of all by way of analogy to the principles of national law on the subject of the "individuality of rights" where each party entitled to an indivisible right may bring proceedings. Further the Court has never required from Member States evidence of their capacity or even of their interest in bringing proceedings. It has even recognized that a Member State which had approved the adoption of a regulation by the Council might subsequently bring an action for a declaration that the same regulation was void (judgment of 12 July 1979 in Case 166/78 *Italy* v *Council* [1979] ECR 2575).

In contrast to Article 170 of the EEC Treaty, neither Article 38 of the ECSC Treaty nor Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty provide for putting the matter to the Commission prior to bringing an action for a declaration that a measure is void. Moreover since the decision in relation to the seat is for the Member States alone the Commission could not intervene in that area.

(c) In the view of the *Parliament* a personal right which is the joint right of several persons must as a general rule be vindicated at law by all those concerned. Community citizens may bring actions only in respect of rights at their own disposal. The applicant's argument disregards the distinction between the capacity for bringing an action and an interest in taking action. Before claiming that it is not necessary to show *legitimatio ad causam* before bringing an action in a matter such as that of the seat, it is necessary to show either that an institution of the Community has adopted a measure coming within the scope of Article 173 in which case any Member State or any institution would have an interest in taking action to have the legality of the measure reviewed, or that Article 170 of the EEC Treaty is applicable. Since the second case does not apply here the Luxembourg Government must show that the

contested resolution is a measure other than an opinion or a recommendation within the meaning of Articles 173 and 189 of the EEC Treaty, which it is not. Nor can the right to take action be inferred from the constituent power of the Member States.

4. The duty of the Member States to determine the seat and contribute to the orderly working of the institution

(a) The *Parliament* is of the opinion that in view of their obligations which are defined for example in Article 5 of the EEC Treaty the Governments of the Member States are called upon to contribute to the better working of the Parliament. An action brought against a resolution which is intended solely to improve the extraordinary position in which the Parliament is placed and which does not call in question the prerogatives of the Governments is contrary to the principle of the responsibility of the Member States for the orderly working of the institutions of the Community.

(b) The *Luxembourg Government* objects that the right to bring an action before the courts is part of the elementary and fundamental guarantees of any system based on the principle of respect for the law. To say that a State is in breach of the Treaties because it brings a matter to the attention of the Court of Justice would be to call in question the division of powers which is the very foundation of the Communities and would be tantamount to abolishing the role of the Court in ensuring that the law is observed.

(c) In its rejoinder the *Parliament* states that in reserving to themselves the right to determine the seat the Member States have made a *pactum de contrahendo* which infers the obligation to take all necessary action to determine the seat. As the collaboration of the Member States becomes more pronounced in the Community that obligation to negotiate becomes more binding. The express requirement to do everything necessary (Article 5 of the EEC Treaty) to fulfil the Treaties involves the duty of the Member States to negotiate to make a rule in the Treaties effective. The failure to act on the part of all the Member States, including Luxembourg, prevents the applicant from having recourse to action before the Court in accordance with principles of general international law and the doctrine of estoppel according to which a Member State may not rely on legal proceedings when it may employ means more compatible with the spirit of international collaboration. That principle has been embodied in Article 5 of the EEC Treaty.

(d) The *Luxembourg Government* considers that those latter arguments are inadmissible as being a fresh issue within the meaning of Article 42 (2) of the Rules of Procedure. The doctrine of estoppel in international law is not applicable in Community law. Community law and the case-law of the Court know no rule to the effect that a measure adopted *ultra vires* by an authority may escape being declared void for lack of competence on the ground that the competent authority has not used or has not exhausted its powers. Moreover the Luxembourg Government cannot be held responsible for any failure to act (which is in any case a relative failure since the Member States have exercised their powers in relation to the seat but have not exhausted them) when it has actively taken part in the discussions of the Governments of the

Member States and it is not responsible for the fact that no conclusion has been reached.

B — Substance

1. Lack of competence

(a) The *Luxembourg Government* bases its action above all on the ground of lack of competence. It observes that the contested resolution is a decision on the seat of the institutions and in particular of the Parliament. That matter comes within the exclusive powers of the Governments of the Member States.

That is apparent from the heading of the resolution, namely "On the Seat", and its scope. Moreover before adopting the resolution the Parliament dismissed a preliminary question on the undesirability of usurping the responsibilities which are reserved to the Governments. It is significant that there is no reference in the resolution to the power of the Parliament to determine its rules of procedure; the resolution was thus clearly intended to be more than a simple measure of organization of work.

The substance of the contested resolution relates also to the seat. Power to determine the seat of the institutions implies the power to designate the places of work. In adopting temporary provisions and in determining several places of work in the absence of common agreement on the designation of a seat the Governments allowed Community work to proceed and acted, as the Heads of State and of Government last recalled on 30 June 1981, within the framework of the powers reserved to them by the Treaties. The Governments of the Member States have always been opposed to any fragmentation of their powers. To fix the place of work moreover would inevitably prejudge the decision on the seat. The ending of such a situation cannot be unilaterally decreed or determined by an institution without powers to do so. By its resolution of 7 July 1981 the Parliament arrogated to itself a right which has always been recognized as belonging exclusively to the Governments and it had recourse to unilateral action. The new rules adopted by the Parliament compromise the application of successive decisions of the Governments of the Member States and in particular the maintenance and operation in Luxembourg of the General Secretariat of the Assembly and its branches.

Certain recitals in the disputed resolution wrongly attempt to claim that the Governments of the Member States have failed to make use of their powers, in particular as regards the seat of the Parliament. First of all a body without powers does not acquire them simply because the competent authority has failed to exercise its powers or has done so only partially. Designation of a place of work is an established practice the legality of which the Parliament itself has always recognized. The Governments have repeatedly reminded the Parliament that any *ad hoc* arrangements must remain compatible with their decision in relation to the place of work. The

resolution was passed at a time when the Governments of the Member States had again twice exercised their powers by confirming the *status quo*. It amounts to an exceptionally serious encroachment upon the powers reserved to the Member States.

(b) The *Parliament* observes that the title of the contested resolution is only indicative. The resolution should be considered from the point of view of its substance. The Parliament has always recognized the powers of the Governments of the Member States in relation to the seat as is confirmed by Rule 10 (1) of its rules of procedure which reads: "Parliament shall hold its plenary sittings and meetings at the place fixed as its seat under the provisions of the Treaties." In rejecting the preliminary question the Parliament gave no interpretation of the wording of the resolution but simply reasserted its right to discuss freely the organization of its work.

In fixing the meeting places of the agencies of the Parliament the disputed resolution kept within the scope of the decision of the Governments of the Member States of 1965 providing that Luxembourg, Brussels and Strasbourg should remain the temporary places of work of the institutions of the Community. The contested resolution makes no mention of the determination of the "seat". No executive measure about the place of work or the organization of the work can prejudge the ultimate choice of the seat of the institutions. Contrary to what the Luxembourg Government claims the disputed resolution involves no decision regarding the location of the General Secretariat of the Parliament. As regards Parliamentary meetings in Luxembourg another Member State has formally challenged the legality of sessions of the Parliament in Luxembourg. The resolution is confined to organizing the work of the Parliament.

The Parliament as an institution and representative of the citizens of the Communities must require the Member States to observe the provisions of the Treaties by asking them to proceed without further delay to fix the seat of the Communities. From the point of view of procedure it is for the Commission to take the measures necessary to ensure that the provisions of the Treaties in relation to the seat are observed by the Member States.

(c) The *Luxembourg Government* states in reply that in adopting the contested resolution the Parliament has acted in relation to the seat. The Parliament's lack of competence to take a decision on that subject is absolute, irrespective of the existence and content of decisions of the Member States on the subject.

In addition the disputed resolution infringes the decisions taken by the governments, which made genuine and very formal, albeit partial, use of their powers, as recently as 30 June 1981.

The content of the decision of the Member States was the maintenance of the *status quo*. The *status quo* involves both a legal content based on the maintenance of certain previous decisions and a factual content manifesting itself in declarations, attitudes and interpretations of the parties concerned and above all the specific realities of the situation.

Confirmation of the factual position by the competent authority gives it in its turn all the force of law. The legal position regarding the *status quo* is based on the decision of 1965 in relation to the provisional places of work of the institutions and the location of the General Secretariat of the Assembly in Luxembourg and other formal factors, such as the letter from the President of the Council to the President of the Parliament of 22 September 1977 and the declaration made by the President of the Parliament at the session of the Assembly on 13 February 1978. The factual position regarding the *status quo* concerns the establishment of the Secretariat and its branches in Luxembourg from the beginning, the holding of part-sessions in Strasbourg and Luxembourg and the holding of committee meetings in Brussels. Finally as regards Luxembourg as a place of work, the *status quo* may be defined as meaning that Luxembourg is the sole place of work of the Secretariat and its branches and one of the three meeting places of the Parliament.

The contested resolution for its part states that Strasbourg and Brussels are the meeting places and that the Secretariat must be reorganized on the basis of those two meeting places alone.

The content of the *status quo* and that of the disputed resolution, as thus determined, are incompatible. As regards the meeting places it is no longer a question, as in the case of previous decisions and resolutions, of a decision drawing up a calendar of part-sessions or meetings showing the place, but of a final decision eliminating Luxembourg. As regards the Secretariat and its branches a review of their operation is to take place on the basis of part-sessions and meetings which, without exception, are to take place outside the place where the Secretariat operates. In spite of the careful wording and seemingly anodyne nature of the measures listed in the resolution measures of implementation have already been put in hand, thus confirming the surreptitious transfers which have previously taken place and involving the dismantling and gradual transfer of the Secretariat. The Luxembourg Government refers in that respect to the measures taken by the Vice-Presidents Mr Dankert and Mr Zagari, to which it has already referred in its arguments on the legal nature of the disputed resolution.

(d) In the view of the *Parliament* the contested resolution does not determine the seat of the institutions; the part referring to the seat constitutes a request of a political nature addressed to the Governments of the Member States and recommending them to take certain measures. To claim that by including in the heading of a resolution the word "seat" and requesting the Governments to take a decision with regard thereto the Parliament exceeded its powers would be to deny to the Parliament its fundamental power of discussion and expression of opinion.

The disputed resolution contains confirmation of the manner of organizing the internal working of the Parliament. The right to adopt the measures necessary for the internal working of the institution which Article 142 of the EEC Treaty gives to the Parliament as do similar provisions of the other Treaties and

which is confirmed by the case-law of the Court, is really the subject of the present case. Only the activity of the Parliament in session falls directly under the Treaties. On the other hand the decisions to set up committees and to provide itself with a Secretariat fall exclusively within its right to organize itself.

Only exercise of the prerogatives conferred on the Governments by Article 77 of the ECSC Treaty binds the Parliament. All the declarations of the Governments of the Member States in the matter have been expressed as being provisional and without prejudice to the application of Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty. It follows that the powers exercised were not those conferred by the said articles. The decision of 8 April 1965 moreover has regard expressly to Article 37 of the Merger Treaty and that Treaty does not affect the Parliament.

The Parliament has always respected the content of the provisional decisions. Those decisions were supplemented by certain measures which the institutions ought to have taken of their own motion in the exercise of a certain latitude which is available to them and such as the Parliament itself exercised in deciding to establish its Secretariat in Luxembourg.

As regards the plenary sittings only the two declarations of the Ministers for Foreign Affairs refer thereto — and moreover entirely provisionally — when they specify Strasbourg as the meeting place. The fact that a number of part-sessions were held in Luxembourg was the result of a decision taken by the Parliament itself within the scope of the latitude allowed to it and the Parliament is therefore free also to decide to meet solely in Strasbourg. As regards the construction of buildings by the Luxembourg authorities the Parliament has always expressed reservations with regard to future decisions and the determination of a seat. The Luxembourg Government has therefore not shown that there is any obligation on the Parliament to hold its plenary sittings in Luxembourg.

As regards the committee meetings in Brussels there is nothing in writing from the Governments alluding thereto. The President of the Council took formal note in his letter of 22 September 1977 of the decision of the Parliament. That decision taken by the Parliament of its own motion has never been challenged by any Government. In that respect the disputed resolution merely confirms a practice established since 1958.

As regards the General Secretariat of the Parliament the declarations contained in the contested resolution do not call in question any legal obligation. The Parliament has asked for a report to be submitted to it containing proposals for improving its working. Changes arising from plenary sittings in Strasbourg and meetings in Brussels are even mandatory for the purposes of the sound financial management which each institution must ensure (Article 206 a (2) of the EEC Treaty). For a long time the Parliament has maintained the infrastructure needed for carrying out its work in Brussels and that has not been regarded by the Governments as a breach of the Treaties. It is scarcely imaginable that Luxembourg should wish to interfere in the working out of purely administrative problems within a Community institution

and thus make it impossible to comply with the obligations imposed by Article 5 of the EEC Treaty. The Parliament, with a view to stressing that the Governments must remain free to adopt a decision in relation to the seat and even change, if necessary, the present places of work, has never committed itself without reservations with regard to the infrastructure made available to it. Moreover the Parliament intends to retain its full freedom of action with regard to its autonomy affecting its organization and working.

2. Infringement of essential procedural requirements

(a) The *Luxembourg Government* further claims that there has been infringement of essential procedural requirements since Article 77 of the ECSC Treaty requires that the Governments of the Member States should reach a decision on the matter of the seat by common accord. In a case such as the present there is a genuine relationship between the infringement of essential procedural requirements and lack of powers. It may be asked further whether in adopting the disputed resolution the Parliament followed the requisite rules inasmuch as it deliberated upon hearing only the report of its Political Affairs Committee without consulting its Legal Affairs Committee.

(b) The *Parliament* emphasizes that no specific formality and no qualified majority was required for the adoption of the contested resolution. Breach of a formal rule cannot be based on the ground that the body which acted had no powers. By virtue of Rule 101 of the Rules of Procedure no opinion of any other committee was necessary in this case. Therefore the requisite formalities were observed.

IV — Oral procedure

The Grand Duchy of Luxembourg, represented by Jean Boulouis, André Elvinger and Francis Jacobs, and the European Parliament, represented by Francesco Pasetti-Bombardella, Alessandro Migliazza and Roland Bieber presented oral argument at the sitting on 20 October 1982.

The Advocate General delivered his Opinion at the sitting on 7 December 1982.

Decision

1 By application lodged at the Court Registry on 7 August 1981 the Grand Duchy of Luxembourg brought an action under Article 38 of the ECSC Treaty, and in the alternative Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty, for a declaration that the resolution of the European Parliament of 7 June 1981 on the seat of the institutions of the European Community and in particular the European Parliament (Official Journal, C 234, p. 22, of 14 September 1981) was void.

2 According to Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty the seat of the institutions of the Community is to be determined by common accord of the Member States. The latter however have taken no decision determining the seat of the European Parliament and the other institutions and have confined themselves to determining provisional places of work.

3 Following the decision taken by the Ministers for Foreign Affairs of the Member States on 25 July 1952 when the ECSC Treaty entered into force the High Authority and the Court of Justice began their work in Luxembourg and the Assembly began to hold its plenary sessions in Strasbourg. Its Secretariat was however established in Luxembourg where the Council of the European Coal and Steel Community also met and had its offices, as did the High Authority. When the Ministers for Foreign Affairs met on 7 January 1958 on the entry into force of the EEC and EAEC Treaties they agreed to assemble in one and the same place all the European organizations of the six countries as soon as such concentration became practicable and in accordance with the provisions of the Treaties and then decided *inter alia* that the Assembly should meet in Strasbourg. When the Councils and Commissions provided for by the Treaties were established in Brussels, the committees and political groups of the European Parliament began the practice of holding a large number of their meetings there.

4 The Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, which entered into force on 1 July 1967, resulted in a reorganization of the offices of those institutions and thus a transfer of staff from the High Authority of the ECSC to Brussels. Article 37 thereof provided that without prejudice to the application of Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty, the representatives of the Governments of the Member States should "lay down the provisions required in order to settle certain problems peculiar to the Grand Duchy of Luxembourg which arise out of the creation of a single Council and a single Commission of the European Communities."

5 On the basis of that article the representatives of the Governments of the Member States adopted on the signing of the aforesaid Treaty the decision on the provisional location of certain institutions and departments of the

Communities (Official Journal, 152, 1967, p. 18), which entered into force on the same date as the Treaty of 8 April 1965. Article 1 of the decision provides that

" Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institution of the Communities."

The decision provided for the holding in Luxembourg of certain meetings of the Council and the establishment in Luxembourg of certain Community institutions, bodies and departments. As regards the European Parliament Article 4 provides that

" The General Secretariat of the Assembly and its departments shall remain in Luxembourg."

Article 12 stipulates:

"Subject to the preceding provisions, this decision shall not affect the provisional places of work of the institutions and departments of the European Communities, as determined by the previous decisions of the Governments."

6 From July 1967 the Parliament established the practice of holding some of the part-sessions of the Parliament in Luxembourg and the number of days of the sittings of the Parliament in Luxembourg amounted even to some half of the total number of days of sittings for 1975 to 1978. At the request of the Parliament premises and facilities necessary for holding plenary sittings and meetings of committees and political groups were provided in the buildings constructed for the Parliament by the Luxembourg authorities. In 1971, 1973 and 1978 the French Government protested to the Parliament about the practice of holding part-sessions in Luxembourg.

7 Following the signing of the Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage the President of the Parliament informed the President of the Council by letter dated 6 July 1977 of the operational problems with which the existence of three places of work confronted the Parliament in the light of its election by universal suffrage and the increase in the number of its members. In his answer of 22 September 1977 the President of the Council informed the Parliament that

the Governments of the Member States considered that there was no cause for altering either in law or in practice the provisions then in force regarding the provisional places of work of the Assembly, namely Strasbourg and Luxembourg, where its Secretariat General and offices were established, the parliamentary committees being accustomed to meet in Brussels with the minimum of infrastructure necessary to ensure the working of such meetings.

8 After its election by direct universal suffrage the Parliament held its first part-sessions between July 1979 and June 1980 in Strasbourg. After completion of a new large hemicycle in Luxembourg, built at the request of the Parliament, four part-sessions were held in Luxembourg between June 1980 and February 1981.

9 On 20 November 1980 the Parliament adopted a resolution stating that it was concerned with the physical conditions and financial cost of its operations and anxious that an end should be put to the provisional arrangements for its places of work; the Parliament therefore requested the Governments of the Member States to take a decision regarding its seat by 15 June 1981 at the latest and stated that in default thereof the Parliament would have no other choice but to make the necessary provisions itself to improve its conditions of work.

10 On 12 January 1981 the Plenary Assembly of the Parliament rejected the calendar of part-sessions drawn up by its Bureau on the ground that the calendar provided for two part-sessions in Luxembourg during the first six months. It decided to submit the calendar of part-sessions for 1981 to a vote of the Plenary Assembly and to hold the July part-session in Strasbourg. Pursuant to that resolution a proposal for the calendar and places of session for 1981 involving part-sessions exclusively in Strasbourg during the second half of 1981 was submitted to the Parliament and approved by it on 13 March 1981.

11 Following a memorandum from the French Government which emphasized the difficulties encountered by the Assembly in carrying out its duties entrusted to it by the Treaties by reason of the dispersal of the places of work in which it operated the representatives of the Governments of the

Member States met at the end of 1980 and the beginning of 1981 for a conference on the seat of the institutions of the Community. That conference found that there were still divergences of view and that of the various imperfect solutions the most satisfactory was the *status quo,* that is to say the designation of a number of provisional places of work. On 23 and 24 March 1981 the Heads of State and of Government of the Member States met as the European Council in Maastricht and unanimously decided to confirm the *status quo* in regard to the provisional places of work of the European institutions. The conference on the seat of the institutions took note of that decision and ended on 30 June 1981 by reaffirming the position of the Governments of the Member States to the effect that the determination of the seat of the institutions was their exclusive responsibility. It moreover observed that the decision taken in Maastricht was an exercise of that responsibility and did not prejudge determination of the seat of the institutions.

12 On 7 July 1981 the Parliament adopted the contested resolution. In that resolution it states in particular that it does not call in question the rights or duties of the Governments of the Member States in this regard, that the difficulties resulting from the dispersal of its places of work in three different towns make it essential to concentrate its work in one place and that disregard by the Governments of the Member States of the time-limit of 15 June 1981 requires it to improve its own working conditions. After asserting its right "to meet and work where it chooses" the Parliament calls, in the resolution, on the Governments of the Member States to comply with their obligation under the Treaties in fixing a single seat for the institutions, expresses the belief that it is essential to concentrate its work in one place and

"...

3. Decides, pending a final decision on a single meeting place of the European Parliament,

(a) to hold its part-sessions in Strasbourg,

(b) to organize the meetings of its committees and political groups as a general rule in Brussels,

(c) that the operation of the Secretariat and technical services of Parliament must be reviewed to meet the requirements set out in (a) and (b) above, particularly with a view to avoiding the need for a substantial number of staff of Parliament to travel constantly,

that, with that end in view, the fullest possible use should be made of the latest means of telecommunication both for personal contacts and for document transmission,

that the most advanced techniques must also be used to facilitate cooperation between the institutions, while road, rail and air links between the main centres of activity of the Community must be improved,

that under the guidance of the President and enlarged Bureau, the appropriate bodies of Parliament shall determine the measures to be taken and evaluate their costs; before the end of the year, they shall present to Parliament a report accompanied by appropriate proposals".

Admissibility

13 The Parliament has put forward several objections of inadmissibility against the action brought by the Grand Duchy of Luxembourg for a declaration that the resolution is void and those objections must be considered first.

1. Right of action in respect of measures of the Parliament

14 In the Parliament's view the action is inadmissible because neither Article 38 of the ECSC Treaty nor Article 173 of the EEC Treaty or Article 136 of the EAEC Treaty gives a right of action in respect of the measures of the Parliament in the present case. As regards Article 38 of the ECSC Treaty that is so because in adopting the contested resolution the Parliament made a single and indivisible use of its powers under the three Treaties so that the resolution cannot be declared void solely in respect of the ECSC Treaty. The Parliament moreover referred to the principle of the separation of powers and emphasized that the contested resolution was based on the sovereign power of the Parliament to organize the way in which it performs its tasks.

15 In the view of the Luxembourg Government recourse to Article 38 of the ECSC Treaty is excluded only in relation to measures relating specifically and exclusively to a field within the EEC or EAEC Treaties. Further Article 173 of the EEC Treaty and Article 136 of the EAEC Treaty on which the application is based in the alternative should be given a wide interpretation in the light of the increased powers of the Parliament in order to avoid lacunae in the legal protection provided by the Court.

16 The first paragraph of Article 38 of the ECSC Treaty provides that "the Court may, on application by a Member State or the High Authority, declare an act of the Assembly or of the Council to be void." The power of a Member State to bring an action before the Court against measures of the Parliament relating to that Treaty is not therefore open to doubt. Nevertheless that power is restricted by the third paragraph of Article 38 of the ECSC Treaty to grounds based on lack of competence or infringement of an essential procedural requirement.

17 The first paragraph of Article 173 of the EEC Treaty and the first paragraph of Article 146 of the EAEC Treaty provide that the Court "shall review the legality of acts of the Council and the Commission" and for that purpose it has jurisdiction in actions "brought by a Member State, the Council or the Commission". There is no express provision in those articles for active or passive participation of the Parliament in the proceedings before the Court.

18 Pursuant to the Convention on Certain Institutions common to the European Communities of 25 March 1957 the powers and jurisdiction which the three Treaties confer upon the Parliament and the Court are to be exercised "in accordance with those Treaties". The differences existing in that respect in the various Treaties have thus not been erased by the creation of those common institutions.

19 Since the single Parliament is an institution common to the three Communities it necessarily acts in the field of the three Treaties including that of the ECSC Treaty when it adopts a resolution relating to its operation as an institution and the organization of its Secretariat. It follows that the jurisdiction of the Court and the proceedings provided by the first paragraph

of Article 38 of the Treaty are applicable to measures such as the contested resolution which relate simultaneously and indivisibly to the spheres of the three Treaties.

20 Since the first paragraph of Article 38 of the ECSC Treaty applies in the present case, there is no need to consider the question whether the principles appertaining to observance of the law and review in that respect by the Court as embodied in Article 164 of the EEC Treaty and Article 136 of the EAEC Treaty require that Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty be interpreted as meaning that the Parliament may be a party to proceedings before the Court.

21 That objection must therefore be dismissed.

2. The capacity of the Grand Duchy of Luxembourg to bring an action

22 The Parliament has contended that the action is inadmissible because it has been brought by a single Member State whereas the right to determine the seat belongs to all the Governments of the Member States acting by common accord. Such an action must, it claims, be brought by all the Member States or, in default, by the Commission. Moreover the bringing of an action is barred by the principle of estoppel inasmuch as the failure of the Member States, including Luxembourg, to do everything necessary to reach agreement on the seat of the Parliament prevents Luxembourg from having recourse to legal proceedings.

23 The Luxembourg Government emphasizes that according to Article 38 of the ECSC Treaty the Member States do not have to adduce any evidence of their capacity or their interest in bringing proceedings. In any event each Member State is entitled to bring proceedings and thus entitled individually to bring proceedings before the Court. The doctrine of estoppel in international law is not applicable in Community law. Further the Luxembourg Government cannot be held responsible for any failure on the part of the Governments of the Member States since the inconclusiveness of the discussions in which it has actively taken part is not attributable to it.

24 It must be emphasized that the first paragraph of Article 38 of the ECSC Treaty provides that the Court may declare an act of the Assembly or of the

Council void "on application by a Member State or the High Authority". In contrast to the provisions giving undertakings and associations legal remedies such as the second paragraph of Article 33 of the ECSC Treaty, the exercise of the right of action by a Member State or the High Authority is not subject to any additional condition involving proof of an interest or capacity to bring proceedings.

25 It follows that the right of action given by the first paragraph of Article 38 is available to each of the Member States individually and the admissibility of an action brought pursuant to that article cannot depend on the participation of other Member States or the Commission in the proceedings before the Court.

26 Any failure of the Member States as a whole to use their powers cannot therefore exclude the admissibility of an action claiming that the Parliament has usurped those powers. Moreover where questions concerning the institutional structure of the Community are involved the admissibility of an action by a Member State cannot depend on any prior omissions or errors on the part of the Governments of the Member States.

27 That objection must therefore also be dismissed.

3. The legal nature of the contested resolution

28 According to the Parliament the contested resolution is not an act within the meaning of Article 38 of the ECSC Treaty because it concerns only its internal organization and that of its departments and therefore has no legal effect. It is alleged to be a measure arising from the Parliament's power to determine its own internal organization, which moreover keeps completely within the limits outlined by the decisions of the Governments of the Member States.

29 In the view of the Luxembourg Government the Parliament intended by the contested resolution to substitute its own action for that of the Governments of the Member States in relation to the seat. It moreover denies that measures relating to internal organization thereby escape review by the Court.

30 In that respect it must be observed that a determination of the legal effect of the contested resolution is inseparably associated with consideration of its content and observance of the rules on competence. It is therefore necessary to proceed to consideration of the substance of the case.

Substance

31 In support of its action the Luxembourg Government puts forward, in accordance with Article 38 of the ECSC Treaty, two submissions based on lack of competence and infringement of essential procedural requirements.

1. Lack of competence

32 The Luxembourg Government observes in the first place that the Parliament has no power to take decisions in relation to the seat of the institution since that matter is reserved to the Member States. By reason both of its title and of its content the contested resolution relates to the seat of the Parliament, a matter which lies completely outside the powers of the Parliament independently of the existence and content of decisions of the Member States in the matter. Moreover the contested resolution infringes the decisions adopted by the Governments, in exercise of the powers reserved to them, in relation to the provisional places of work of the institutions. In abandoning the established practice of holding part-sessions in Luxembourg the Parliament infringed the decision confirming the *status quo* taken by the Heads of State and of Government of the Member States at Maastricht on 23 and 24 March 1981 and at the conference on the seat of the institutions of the Community on 30 June 1981. In providing for a change in the operation of the Secretariat and the departments of the Parliament on the basis of part-sessions in Strasbourg and meetings of the committees and political groups in Brussels the Parliament infringed Article 4 of the decision of 8 April 1965.

33 The Parliament contends that the Governments of the Member States have made no use of their power to fix the seat and there can therefore be no usurpation of that power. In any event the contested resolution constitutes on the one hand a request of a political nature addressed to the Governments of the Member States recommending them to adopt certain measures in relation to the seat and on the other hand a measure of organization of its

internal administration adopted in conformity with Article 142 of the EEC Treaty, Article 112 of the EAEC Treaty and Article 25 of the ECSC Treaty. That measure of internal organization respects the decisions of the Governments of the Member States on the provisional places of work and in particular, as regards plenary sessions, the declarations of the Ministers for Foreign Affairs of 25 July 1952 and 7 January 1958. The holding of the meetings of committees and political groups in Brussels follows a practice established in an area which is not governed by any provisions in writing. In the contested resolution the Parliament took no decision on the location of the General Secretariat and dealt only with the proper functioning of the institution and the use of certain modern technology. Moreover this question does not concern the seat of the institution but the internal organization of the Parliament in respect of which the Parliament is entitled and even required to adopt measures in accord with good administration.

(a) Competence in relation to the seat and places of work

34 In order to give a decision on this issue it is necessary first of all to consider the respective powers of the Governments of the Member States and the Parliament on the subject.

35 In that respect it is necessary to observe that according to Article 77 of the ECSC Treaty and also of Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty it is for the Governments of the Member States to determine the seat of the institutions. In giving the Member States power to determine the seat those provisions make them responsible for supplementing in that respect the system of institutional provisions provided for by the Treaties in order thus to ensure the working of the Communities. It follows that the Member States have not only the right but also the duty to exercise that power.

36 It is common ground that the Governments of the Member States have not yet discharged their obligation to determine the seat of the institutions in accordance with the provisions of the Treaties. Nevertheless, as is apparent from the above-mentioned facts, the Governments of the Member States have at different times taken decisions fixing the provisional places of work of the institutions on the basis of that same power and, as regards the decision of 8 April 1965, on the basis of the power expressly provided for in

the aforesaid Article 37 of the Treaty establishing a Single Council and a Single Commission of the European Communities.

37 It must nevertheless be emphasized that when the Governments of the Member States make provisional decisions they must in accordance with the rule imposing on Member States and the Community institutions mutual duties of sincere cooperation, as embodied in particular in Article 5 of the EEC Treaty, have regard to the power of the Parliament to determine its internal organization. They must ensure that such decisions do not impede the due functioning of the Parliament.

38 Furthermore the Parliament is authorized, pursuant to the power to determine its own internal organization given to it by Article 25 of the ECSC Treaty, Article 142 of the EEC Treaty and Article 112 of the EAEC Treaty, to adopt appropriate measures to ensure the due functioning and conduct of its proceedings. However, in accordance with the above-mentioned mutual duties of sincere cooperation, the decisions of the Parliament in turn must have regard to the power of the Governments of the Member States to determine the seat of the institutions and to the provisional decisions taken in the meantime.

39 What is more, it must be emphasized that the powers of the Governments of the Member States in the matter do not affect the right inherent in the Parliament to discuss any question concerning the Communities, to adopt resolutions on such questions and to invite the Governments to act.

40 It follows that the Parliament cannot be considered to have exceeded its powers solely because it has adopted a resolution "on the seat of the institutions of the European Community and in particular of the European Parliament" and dealing with the question of the place of work. In order to determine whether the Parliament has acted *ultra vires* in adopting the contested resolution the content thereof, *qua* decisions, must be examined and in particular its third paragraph in the light of the above-mentioned duty to have regard to the respective powers of the Member States or the Parliament in the matter.

(b) Plenary sittings

41 In the first place the contested resolution decides in Paragraph 3 (a) that pending a final decision on a single meeting place of the European Parliament part-sessions will be held in Strasbourg.

42 In that respect it must be observed that although the holding of sessions of the Parliament is not expressly mentioned in the decision of 8 April 1965, Article 1 thereof states that "Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Community". At the time the holding of the plenary sittings of the Parliament was the only activity of the Community institutions which regularly took place in Strasbourg. The declarations adopted by the Ministers for Foreign Affairs on the entry into force both of the ECSC Treaty and the EEC and EAEC Treaties had already clearly shown the intention of the Governments of the Member States that the "Assembly will meet in Strasbourg".

43 It is true that as from 1967 the Parliament adopted the practice of holding up to half its plenary sittings in Luxembourg. It is on that practice and the decision taken in 1981 to maintain the *status quo* that the Luxembourg Government relies in claiming that the decision to hold all the plenary sittings in Strasbourg is contrary to the decisions of the Governments of the Member States in the matter.

44 It is appropriate nevertheless to observe that the practice had been decided upon by the Parliament of its own motion and had never been approved either expressly or by implication by the Member States. On the contrary the French Government several times denied that the practice was compatible with the decisions of the Member States and requested that it be changed. The Luxembourg Government is therefore wrong in alleging that the practice had created a custom in its favour supplementing the decisions of the Member States in the matter and requiring the Parliament to hold part of its plenary sittings in Luxembourg.

45 That assessment is not affected by the conclusions of the conference on the seat of the institutions which took place in 1981. In view of the differences existing with regard to its conclusions and the absence of any alteration in

the decisions taken previously, the declaration to maintain the *status quo* with which the conference ended can be understood only as an expression of the intention not to change the previous legal position. That declaration does not therefore prevent the Parliament from abandoning a practice which it had begun of its own motion.

46 It follows that the decision of the Parliament to hold in future all plenary sittings in Strasbourg is not contrary to the decisions of the Governments of the Member States in the matter and is not beyond the powers of the Parliament.

(c) The holding of meetings of committees and political groups in Brussels

47 In the second place the disputed resolution records in Paragraph 3 (b) the decision to organize the meetings of committees and political groups of the Parliament as a general rule in Brussels.

48 In that respect it must be observed that the practice of the Parliament, developed in the exercise of its independent powers, to hold meetings of its committees and political groups in Brussels has never been called in question by any Member State.

49 In those circumstances it is appropriate to declare that the Parliament in confirming that practice in Paragraph 3 (b) of the contested resolution has not exceeded its powers.

(d) The location of the General Secretariat and other departments

50 In the third place the contested resolution refers in Paragraph 3 (c) to the operation of the Secretariat and technical services of the Parliament which it states must be reviewed to meet the requirements of holding the part-sessions in Strasbourg and the meetings of the committees and political groups in Brussels, particularly with a view to avoiding the need for a substantial number of staff of the Parliament to travel constantly.

51 In that respect it is appropriate to emphasize first of all that the Governments of the Member States resolved in Article 4 of the decision of 8 April 1965 that "the General Secretariat of the Assembly and its departments shall remain in Luxembourg".

52 In view of the fact that meetings of the committees and political groups were held in Brussels the Parliament established the practice of assigning a number of its officials and other employees there. The President of the Council expressed the point of view of the Governments of the Member States in a letter of 22 September 1977 when he took formal note that the Parliament maintained in Brussels the minimum level of staffing required for the holding of such meetings.

53 In the light of the duty incumbent upon the Member States on the one hand and the Parliament on the other, in exercising these powers, to have regard to the powers of the other the aforesaid Article 4 must be interpreted as meaning that is does not stand in the way of certain measures of the Parliament which are necessary for the purposes of its proper functioning.

54 It follows that in the absence of a seat or even a single place of work, the Parliament must be in a position to maintain in the various places of work outside the place where its Secretariat is established the infrastructure essential for ensuring that it may fulfil in all those places the tasks which are entrusted to it by the Treaties. Within those limits the establishment of such an infrastructure outside the place where the Secretariat is located may therefore be considered compatible with the above-mentioned principles governing the respective powers in the matter.

55 It should nevertheless be added that the transfers of staff must not exceed the limits mentioned above since any decision to transfer the General Secretariat of the Parliament or the other departments, wholly or partially, *de jure* or *de facto*, would constitute a breach of Article 4 of the decision of 8 April 1965 and of the assurances which that decision was intended to give to the Grand

Duchy of Luxembourg pursuant to Article 37 of the aforesaid Treaty establishing a Single Council and a Single Commission of the European Communities.

56 The contested resolution, in so far as it provides that the operation of the Secretariat and the technical services "must be reviewed" to meet the requirements of the conduct of the activities of the Parliament in Strasbourg and Brussels, must be examined in the light of the considerations set out above in order to determine whether it has regard to the limits which are placed on the power of the Parliament to determine its own internal organization.

57 Although some of the recitals to the disputed resolution and the circumstances of its adoption and certain opinions expressed during the parliamentary debates may tend to indicate that the resolution in fact intends at least a partial transfer of the staff of the General Secretariat to the other places of work, it is necessary to bear in mind also the content of the last three explanatory subparagraphs of Paragraph 3 (c), which relate in particular to the use of the means of telecommunication, the most advanced techniques to facilitate cooperation between the institutions and the improvement of road, rail and air links between the main centres of activity of the Community. In the light of those three subparagraphs and the declarations of the representatives of the Parliament during the proceedings before the Court the statement that the operation of the Secretariat and the other departments "must be reviewed" must not be understood as meaning that it embodies a decision on specific measures or in particular upon a transfer of staff. The decision relating to specific measures was left for subsequent consideration and its adoption will be possible only after the powers specified above have been taken into account.

58 On the basis of that interpretation it must be declared that Paragraph 3 (c) of the contested resolution does not infringe the decisions of the Governments of the Member States in the matter or in particular Article 4 of the aforesaid decision of 8 April 1965. It is thus not beyond the powers of the Parliament.

59 The submission of lack of competence is thus unfounded.

2. Infringement of essential procedural requirements

60 The Luxembourg Government has further relied on infringement of essential procedural requirements inasmuch as the Governments of the Member States have not given their assent to any decision on the subject of the seat nor did the Parliament consult its legal committee before adopting the contested resolution.

61 In that respect it suffices to observe that in the present case the Luxembourg Government has not established the infringement of any essential procedural requirements which must be observed by the Parliament before it adopts a resolution such as that in dispute.

62 That submission is therefore unfounded.

63 It follows from the foregoing that the application must be dismissed.

Costs

64 According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Nevertheless according to Article 69 (3) where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the parties bear their own costs in whole or in part.

65 In this case such an exceptional circumstance is present by virtue of the fact that certain matters in the contested resolution and certain circumstances surrounding its adoption might give rise to reasonable doubts. It is therefore appropriate to make use of the powers provided by Article 69 (3) of the Rules of Procedure and to order the parties to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Delivered in open court in Luxembourg on 10 February 1983.

Mertens de Wilmars Pescatore O'Keeffe Everling
Mackenzie Stuart Bosco Due Bahlmann Galmot

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 7 DECEMBER 1982 [1]

Mr President,
Members of the Court,

1. The case to be decided by the Court is concerned principally with two problems, both of great constitutional importance: the first concerns the review which the Court of Justice may effect — in direct actions — of measures of the Parliament; it is then necessary to establish what powers, if any, the Parliament has in deciding where its offices

1 — Translated from the Italian.