JUDGMENT OF THE COURT
9 July 1991 *

In Case C-146/89

Commission of the European Communities, represented by Robert Caspar Fischer, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

supported by

French Republic, represented by Jean-Pierre Puissochet, Director of Legal Affairs in the Ministry of Foreign Affairs, and by Claude Chavance, Principal Central Government Administrator in the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard Prince-Henri,

intervener,

v

United Kingdom of Great Britain and Northern Ireland, represented initially by Susan J. Hay, of the Treasury Solicitor's Department, and subsequently by H. A. Kaya, also of the Treasury Solicitor's Department, acting as Agents, and by Derrick Wyatt, Barrister, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

defendant,

APPLICATION for a declaration that, by applying in certain areas, for the purposes of the fisheries arrangements fixed for the coastal waters of the United Kingdom in Annex I, read together with Article 6(2), of Council Regulation

* Language of the case: English.

(EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal 1983 L 24, p. 1), new baselines which are shifted further out to sea than those in force on 25 January 1983, the United Kingdom has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: C. O. Lenz,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing the oral submissions of the parties at the hearing on 9 January 1991,

after hearing the Opinion of the Advocate General at the sitting on 19 February 1991,

gives the following

Judgment

1 By an application lodged at the Court Registry on 24 April 1989, the Commission brought an action under Article 169 of the EEC Treaty for a declaration that, by applying in certain areas, for the purposes of the fisheries arrangements fixed for the coastal waters of the United Kingdom by Article 6(2) and Annex I of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal 1983 L 24, p. 1), new baselines which are shifted further out to sea than those in force on 25 January 1983, the United Kingdom has failed to fulfil its obligations under the Treaty.

2 According to the general rules of international law, as consolidated in particular by Articles 3, 4 and 11 of the Convention on the Territorial Sea and the Contiguous Zone, signed at Geneva on 29 April 1958 (United Nations Treaty Series, Vol. 516, p. 205, hereinafter referred to as 'the Territorial Sea Convention') and by Articles 5, 7 and 13 of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 (UN Doc A/CONF 62/122, with corrigenda; Tractatenblad van het Koninkrijk der Nederlanden, 1983, No 83, hereinafter referred to as 'the Convention on the Law of the Sea'), the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State (Article 3 of the Territorial Sea Convention and Article 5 of the Convention on the Law of the Sea).

3 In localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is to be measured. The drawing of baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters. Straight baselines must not be drawn to or from low-tide elevations, that is to say, naturally formed areas of land which are surrounded by and above water at low tide but submerged at high tide, unless lighthouses or similar installations which are permanently above sea-level have been built on them or unless the drawing of such straight baselines has received general international recognition (Article 4(1) to (3) of the Territorial Sea Convention and Article 7(1), (3) and (4) of the Convention on the Law of the Sea).

4 Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. Where such a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own (Article 11 of the Territorial Sea Convention and Article 13 of the Convention on the Law of the Sea).

5 Prior to the United Kingdom's accession to the Community, relations between that State and the Member States of the Community in regard to fishing were governed in particular by the Fisheries Convention, signed in London on 9 March 1964 (United Nations Treaty Series, Vol. 581, p. 76, hereinafter referred to as 'the London Convention'). Article 2 of that Convention recognizes that the coastal State has the exclusive right to fish and exclusive jurisdiction in fishery matters within the six-mile belt measured from the baseline of its territorial sea. Under Article 3, the right to fish within the belt between six and 12 miles measured from the baseline of the territorial sea may be exercised only by the coastal State and by other contracting parties whose fishing vessels have habitually fished in that belt between 1 January 1953 and 31 December 1962.

6 As regards Community law, Article 2(1) of Regulation (EEC) No 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry (Official Journal, English Special Edition 1970 (III), p. 703) provided that the rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction were not to lead to differences in treatment of other Member States. Member States were in particular to ensure equal conditions of access to and use of the fishing grounds situated in those waters for all fishing vessels flying the flag of a Member State and registered in Community territory.

7 Article 100 of the Act concerning the conditions of accession and the adjustments to the Treaties, annexed to the Treaty concerning the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and the European Atomic Energy Community (Official Journal, English Special Edition, 27 March 1972, p. 14, hereinafter referred to as 'the Act of Accession'), authorized the Member States to derogate from the provisions of Article 2 of the aforementioned Regulation No 2141/70 and, until 31 December 1982, to restrict fishing in waters under their sovereignty or jurisdiction, situated within a limit of six nautical miles calculated from the baselines of the coastal Member State, to vessels which had fished traditionally in those waters and which operated from ports in that geographical coastal area (first subparagraph of paragraph 1). It was made clear that that provision did not affect more favourable arrangements which applied at the time of accession (second subparagraph of paragraph 1) and that, if a Member State extended its fishing limits in certain areas to 12 nautical miles, the existing fishing activities within 12 nautical miles had to be protected against any retrograde change by comparison with the situation on 31 January 1971 (paragraph 3).

8 Regulation No 2141/70 was subsequently replaced by Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal 1976 L 20, p. 19), Article 2 of which contains provisions identical to those of Regulation No 2141/70. The seventh recital in the preamble to Regulation No 101/76, however, points out that, when the regulation is being applied, it is necessary to take account of the derogations provided for, in particular, by Article 100 of the Act of Accession.

9 Article 6 of Council Regulation (EEC) No 170/83, cited above, authorizes Member States to retain until 31 December 1992 the arrangements defined in Article 100 of the Act of Accession and to extend, up to 12 nautical miles, the limit of six miles laid down in that article. However, the fishing activities covered by those arrangements are subject to the detailed provisions contained in Annex I, which fix for each Member State the geographical areas within the coastal bands of other Member States where those activities are pursued and also the species concerned.

10 As far as the coastal waters of the United Kingdom are concerned, Annex I lists a series of areas lying between the six-mile and 12-mile lines in which France, Ireland, the Federal Republic of Germany, the Netherlands and Belgium may exercise the right to fish for certain species.

11 At the time of its accession to the Communities, the United Kingdom had a territorial sea of three miles and laid claim to an exclusive fishing zone of 12 miles, subject to the traditional fishing rights of other States, in accordance with the provisions of the London Convention. The breadth of its territorial sea was extended to 12 miles by section 1(1) of the Territorial Sea Act 1987. That statute provides that the baselines from which the territorial sea is measured are to be determined by Order in Council. Section 1(4) refers for this purpose to the Territorial Waters Order in Council 1964, as subsequently amended; section 1(5), however, provides that every time such acts contain a reference to the territorial sea adjacent to the United Kingdom, that reference is to be construed in accordance with section 1 of the Territorial Sea Act 1987.

12 The Territorial Waters Order in Council 1964 provides that, in general, the baseline from which the breadth of the territorial sea is measured is to be the low-water line along the coast, including the coast of islands. For this purpose, low-tide elevations, defined as naturally formed areas of drying land surrounded by water which are below water at mean high-water spring tides, are to be treated as islands, provided that they lie wholly or partly within the territorial sea as it would be measured if such elevations were disregarded.

13 The Fishing Boats (European Economic Community) Designation Order 1983, which indicates the areas lying within the United Kingdom fishing limits where fishermen from other Member States may pursue fishing activities, sets out the same list of areas between six and 12 miles from the baselines as is contained in Annex I to Regulation No 170/83. It is expressly stipulated that the baselines to be considered are those defined in accordance with the Territorial Waters Order in Council 1964.

14 By a letter of 1 October 1987, the United Kingdom informed the fisheries authorities of the Member States concerned and the Commission of the entry into force on that date of the Territorial Sea Act. It pointed out in particular that, following the extension of the territorial sea, certain low-tide elevations situated within the 12-mile limit would henceforth constitute base points for the drawing of the baselines of the territorial sea, on the basis of which the six-mile and 12-mile fishery zones would also be measured. The new limits were indicated on maritime charts sent to the authorities in the Member States in question, which were requested to forward the charts to those fishing organizations which might be affected by the changes. The United Kingdom authorities also announced that, during a familiarization period of two to three months, the Fishery Protection Service would bring the changed situation to the attention of any vessel fishing within the new limits, but that any persistent offender might be detained with a view to prosecution.

15 On 27 October 1987, following protests from the fishermen and authorities of the other Member States concerned, the Commission requested the United Kingdom not to apply the new legislation to vessels from Member States fishing in areas

where they were authorized to do so by Community law pending a detailed examination of the situation. As a result of discussions between the United Kingdom, Belgium, France and the Commission, the United Kingdom announced on 8 December 1987 that it had instructed the relevant fisheries authorities to refrain from acting in any manner which might aggravate the dispute.

16 By a letter of 11 December 1987, the Commission requested the United Kingdom to submit its observations in accordance with Article 169 of the Treaty. In its reply of 7 January 1988, clarified and corrected by letters of 11 and 19 January 1988, the United Kingdom contested the Commission's arguments and rejected its complaints. On 9 June 1988, the Commission delivered the reasoned opinion provided for in Article 169. By letters of 29 July and 8 August 1988, the United Kingdom stated that it was not in a position either to accept or comply with the reasoned opinion.

17 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

18 It should be noted at the outset that the Commission does not suggest that the new United Kingdom provisions are at variance with the rules of international law relating to the demarcation of the territorial sea and the drawing of baselines.

19 Secondly, it must be borne in mind that the parties are essentially in dispute over the interpretation to be given to the combined provisions of Article 6 and Annex I of Regulation No 170/83, which determine the areas within the 12-mile limit in which fishermen from other Member States may engage in certain fishing activities. The Commission, supported by the French Government, takes the view that the zones indicated in those provisions, and in particular the zones located in the United Kingdom coastal waters between the six-mile and 12-mile limits, must be measured from the baselines as they existed on 25 January 1983, the date on which Regulation No 170/83 was adopted. The United Kingdom, on the other hand, believes that the baselines to be taken into consideration for this purpose are those

which exist from time to time, as drawn in accordance with international law by the Member State concerned.

20 It is thus necessary for the Court to examine the arguments put forward by the parties in support of their respective contentions. The Commission draws its arguments essentially from the general structure of Regulation No 170/83, from the objectives pursued by the Community legislature and from the practical consequences of the measures adopted by the United Kingdom authorities. For its part, the United Kingdom bases its arguments on the text of the provisions in question, the relationship between those provisions, the Act of Accession and pre-existing international conventions, on the practice followed in the case of earlier adjustments to the baselines, on the case-law of the Court dealing with the consequences ensuing from the extension of national fishing zones, and on the practical difficulties which would arise under the interpretation advocated by the Commission, particularly in respect of the presentation of maritime charts, the activity of the authorities responsible for applying Community fisheries law and, finally, as regards the administration of the so-called 'Shetland Area'.

The general structure of Regulation No 170/83 and the objectives pursued by the Community legislature

21 The Commission contends that, at the time Regulation No 170/83 was adopted, the Community legislature wished to draw up an agreed inventory of the activities of fishermen from Member States other than the coastal Member State. In its view, coastal Member States could not, by shifting their baselines, unilaterally alter the scope of protection which Community law confers on certain fishing activities, the nature of which depends on the location of the waters in which such activities are carried out. The application of the new United Kingdom provisions on the territorial sea to the zones defined in Regulation No 170/83 has, according to the Commission, the effect of excluding fishermen from other Member States from areas which are rich in fish and easy to exploit.

22 It should first be noted in this connection that Regulation No 170/83 represents a carefully achieved balance between the system of exclusive access to coastal waters for national fishermen, a system which, in derogation from the principle of equal access, the regulation allows both to continue and to be extended to the zones situated within the 12-mile limit, and the protection of certain activities of fishermen from other Member States within the areas listed in Annex I.

23 Secondly, it is clear that these activities are inextricably linked to the nature and depth of the fishing grounds in which they are carried out, as well as to the general features of the maritime area in question, such as the contours of the neighbouring coast, the presence of islands, rocks or low-tide elevations, the existence and characteristics of tides and currents, meteorological conditions prevailing in the area, the degree of marine pollution and maritime traffic. It follows that the objectives of Regulation No 170/83 could be compromised if the zones in which the fishing activities defined and authorized therein are carried out were to be shifted — by as much as several nautical miles in the present case — and were to be included in areas in which the fishing grounds, natural conditions and density of maritime traffic were to prove very different.

24 The scope of Annex I to Regulation No 170/83 cannot therefore be altered by the unilateral action of a Member State. Furthermore, the joint declaration of the Council and the Commission, recorded in the Council minutes at the time of the adoption of Regulation No 170/83 and produced to the Court in these proceedings, stipulates that Annex I shall, following a joint request by the Member States directly concerned, be amended by a regulation of the Council, acting on a proposal from the Commission.

25 The objection of the United Kingdom, to the effect that the Territorial Sea Act 1987 cannot be regarded as a unilateral measure in view of the fact that it complies with the rules of international law, cannot be accepted. International law merely authorizes States to extend their territorial sea to 12 nautical miles and, in certain circumstances, to draw the baselines used to measure the breadth of the territorial sea to and from low-tide elevations which are situated within that territorial sea. In those circumstances, the decision to make use of the options under the rules of international law and to apply the new provisions for the purpose of determining the areas listed in Annex I is attributable solely to the United Kingdom authorities, which have thereby unilaterally altered the scope of the provisions in Regulation No 170/83.

The consequences of the measures adopted by the United Kingdom authorities

26 That the combined provisions of Article 6 and Annex I of Regulation No 170/83 should be interpreted as referring to the baselines as they existed on 25 January 1983 is confirmed by a consideration of the potential consequences of the measures adopted by the United Kingdom authorities.

27 The Commission and the French Government quite correctly pointed out that the application of those measures would have the effect of excluding fishermen from other Member States from the zones in which they have hitherto fished, zones which are situated close to the coast, are often characterized by the presence of low-tide elevations, are generally rich in fish, are relatively sheltered and are at some distance from the busiest lanes of maritime traffic; such fishermen would be relegated to zones in which, by virtue of fundamentally different circumstances, it is generally less advantageous, if not impossible, for them to continue fishing.

28 A result of this kind would be at variance with the objectives of Regulation No 170/83. In the first place, that regulation is designed specifically to safeguard the activities of those fishermen, in the context of a complex balance between such activities and the exclusive rights conferred on a temporary basis upon fishermen from the coastal Member State. In this regard, the new United Kingdom provisions would clearly reduce the effectiveness of Regulation No 170/83.

29 Secondly, the provisions of that regulation are also designed to promote the relative stability of fishing activities, as is illustrated by the fifth, sixth and seventh recitals in the preamble to the regulation. This objective would be endangered if Member States were entitled unilaterally to modify the nature and scope of the activities of fishermen from other Member States.

30 Finally, as the French Government has pointed out, fishermen from the other Member States concerned were already entitled to carry on their activities in the new zones defined by the United Kingdom provisions. Those zones were situated beyond the 12-mile limit, such as it existed on 25 January 1983, and consequently did not come within the system of exclusive access for coastal fishermen. There is therefore not merely a displacement, but an abolition of the zones in which fishermen from other Member States carried on their activities. The regulation in question must be interpreted in such a way as to avoid such consequences, in so far as that is at all possible.

The text of Article 6 and Annex I of Regulation No 170/83

31 The United Kingdom takes the view that the text of Article 6 and Annex I of Regulation No 170/83, which refer without more to the six-mile and 12-mile

limits, can relate only to limits measured from such baselines as are defined from time to time by the Member State concerned, in accordance with the rules of international law ('ambulatory baselines'), and not from baselines such as they existed when the regulation in question was adopted ('fixed baselines').

32 According to the United Kingdom, the concept of baselines is used in a great many Community texts and the Commission itself acknowledges that it is invariably used to mean ambulatory baselines. The United Kingdom finds it difficult to imagine that the position could be different in the case of Regulation No 170/83 alone, which in any event contains no indication to that effect.

33 Finally, the United Kingdom believes that the method of referring to baselines, which are necessarily ambulatory, is totally inadequate for the purposes of determining particular maritime areas on a permanent basis. If the Council had actually wished to define the coastal belts situated between the six-mile and 12-mile limits other than on the basis of ambulatory baselines, it would have used the technique of lines drawn between points of latitude and longitude, as it did in Annex II to Regulation No 170/83 for the purpose of delimiting the so-called 'Shetland Area', in respect of which Article 7 provides for a system of fishing licences managed by the Commission on behalf of the Community.

34 None of the arguments put forward by the United Kingdom appears to be conclusive. Admittedly, it would, as the Commission itself acknowledged, have been desirable if the Council, when referring to the baselines in the contested provisions, had clearly specified that such baselines were to be understood as being those which existed at the time the regulation was adopted. The absence of such a definition, however, does not preclude such an interpretation if it is the only one which makes it possible to attain the objectives of the regulation in question.

35 Furthermore, the fact that other Community texts may attach a different meaning to the concept of baselines can be explained by the fact that such texts have different objectives, concerning in general the conservation of fishery resources and having nothing whatever to do with the protection of certain fishing activities in specific areas.

36 Finally, the use of the technique of lines drawn between successive points of latitude and longitude, as suggested by the United Kingdom for the purpose of defining fixed maritime areas, is clearly unsuitable for determining coastal belts. Such belts are required to follow faithfully the contours, often indented, of the coastline, subject to the use of straight baselines in areas where international law so allows, with the result that a very large number of latitudinal and longitudinal points would be necessary and the resultant delimitation would be difficult to understand.

37 It follows that there is nothing in the combined provisions of Article 6 and Annex I of Regulation No 170/83 to prevent the concepts of six-mile and 12-mile limits mentioned therein from being understood as referring to limits measured from baselines as they existed on 25 January 1983.

The relationship between Regulation No 170/83, the Act of Accession and pre-existing international conventions

38 The United Kingdom submits that the system of exclusive access for fishermen from the coastal State to coastal waters situated within the 12-mile limit, along with the system regulating the activities of fishermen from other Member States referred to in Article 100 of the Act of Accession and the contested provisions of Regulation No 170/83, may be traced back to the system provided for in the London Convention and in bilateral agreements concluded between the Member States concerned for the purpose of defining traditional fishing activities in the zone lying between the six-mile and 12-mile limits whose continuation was authorized by that Convention. All the maritime zones mentioned in those instruments were defined on the basis of ambulatory baselines. Provisions such as those of Article 100 of the Act of Accession and Regulation No 170/83, which replaced the provisions of pre-existing conventions, ought, in the view of the United Kingdom, to be interpreted in the light of those conventions, as the Court of Justice did in its judgment of 23 November 1977 in Case 38/77 *Enka* [1977] ECR 2203. The Court should for that reason decide that the provisions of Regulation No 170/83, like the provisions of the earlier conventions, refer to ambulatory baselines.

39 The United Kingdom also points out that Member States were entitled, at the date of their accession, to exercise their sovereignty or jurisdiction in matters relating to fishing in the zone situated within the 12-mile limit either by extending their terri-

torial sea to 12 miles or by virtue of the rights which the London Convention accorded to coastal States. In both cases, coastal zones subject to jurisdiction based on international law could be determined only by reference to baselines as they existed from time to time, in accordance with international law. The provisions of Article 100 of the Act of Accession, which was intended to apply to areas falling under the sovereignty or jurisdiction of Member States, and also the articles in Regulation No 170/83 which retained the arrangements introduced by that Act, thus refer necessarily to the same ambulatory baselines.

40 With regard to the first argument, it should be pointed out that whereas the Court, in its judgment in *Enka*, relied on by the United Kingdom, interpreted a Community regulation in a manner which was consistent with an international convention, the provisions of which were largely reproduced in the regulation, the relationship between Regulation No 170/83 and the London Fisheries Convention does not justify such an approach. While the London Convention accorded exclusive fishing rights to the coastal State, Regulation No 170/83 is based on the contrary principle that Community fishermen should have equal access to resources situated within waters coming under the sovereignty or within the jurisdiction of Member States, subject to a number of temporary derogations.

41 Furthermore, the provisions of the London Convention, which applied to relations between the original Member States up to 31 January 1971, were replaced from that date, in respect of relations between those States, by the system provided for under Regulation No 2141/70, which accorded Community fishermen the right of equal access to and use of fishing grounds in maritime waters coming under the sovereignty or within the jurisdiction of Member States, without providing for any exceptions for coastal waters. It follows that, whilst Article 100 of the Act of Accession, which re-established on a temporary basis the exclusive rights of coastal States within the six-mile zone, subject to special fishing rights which the Member States were entitled to claim on 31 January 1971, certainly has a connection with the London Convention, it cannot be treated as a continuation thereof in the context of Community law.

42 The lack of continuity between the system established by the London Convention and that introduced by the Act of Accession and Regulation No 170/83 is also apparent from the fact that the former accorded the coastal State exclusive fishing rights within the six-mile or 12-mile limits, irrespective of the vessels used, whereas

the latter reserves certain coastal fishing activities to vessels which have traditionally fished in those waters and which operate from ports in that geographical coastal area.

43 Finally, Regulation No 170/83, unlike the Act of Accession, makes no mention of such special fishing rights as existed on 31 January 1971, but does safeguard certain fishing activities which are listed in a detailed inventory in its Annex I and which are not necessarily identical to the fishing rights that are enjoyed by States other than the coastal State and are protected under the London Convention. For that reason, the provisions of the regulation cannot be interpreted in the light of that Convention.

44 As to the second argument, it is sufficient to recall that the Member States, in accordance with the resolution passed at The Hague on 30 October 1976 and formally adopted by the Council on 3 November 1976, extended the limits of their fishing zones, with effect from 1 January 1977, to 200 nautical miles along their North Sea and North Atlantic coasts. Consequently, the 12-mile zone defined in accordance with the baselines as they existed on 25 January 1983 is in any case included within the waters coming under the sovereignty or within the jurisdiction of the Member States, with the result that there is no possibility of conflict with the rules of international law.

45 It follows that the arguments which the United Kingdom has derived from the relationship between Regulation No 170/83, the Act of Accession and pre-existing international conventions do not support the conclusion that the combined provisions of Article 6 and Annex I to Regulation No 170/83 refer to ambulatory baselines.

Practice of the Member States with respect to adjustments to their baselines

46 The United Kingdom points out that it has made numerous adjustments to baselines since 1972 in order to take account of natural phenomena, and it claims that France, Denmark, the Federal Republic of Germany and the Netherlands have made similar adjustments, particularly in areas where the fishermen of other Member States engage in fishing pursuant to the combined provisions of Article 6 and Annex I to Regulation No 170/83. Furthermore, Belgium and Ireland

extended their territorial seas in 1987 and 1988 respectively and it would appear that the resultant adjustments to the baselines were not unrelated to fishing.

47 It must first be pointed out in this regard that, according to the well established case-law of the Court (see in particular the judgment of 26 February 1976 in Case 52/75 *Commission* v *Italy* [1976] ECR 277), a Member State cannot justify its failure to fulfil obligations under the Treaty by pointing to the fact that other Member States have also failed, and continue to fail, to fulfil their own obligations. Under the legal order established by the Treaty, the implementation of Community law by Member States cannot be made subject to a condition of reciprocity. Articles 169 and 170 of the Treaty provide suitable means of redress for dealing with the failure by Member States to fulfil their obligations under the Treaty.

48 Secondly, in the case of Belgium, the Royal Decree of 28 January 1988 regarding complementary measures for the conservation and management of fishing resources, which was produced by the Commission, expressly provides that fishing activities are reserved to vessels flying the Belgian flag in the coastal waters extending to 12 miles from the baselines from which the territorial sea was measured at the time the Community system for the conservation and management of fishery resources was established, that is to say 25 January 1983.

49 Finally, it is a well-established principle of Community law (see in particular the judgment of 21 March 1991 in Case C-209/89 *Commission* v *Italy* [1991] ECR I-1575) that an action for failure to fulfil obligations is objective in character and that the Commission alone assesses whether it is appropriate to bring such an action before the Court. The Commission was therefore entitled to refrain from initiating proceedings under Article 169 of the Treaty when the adjustments made to baselines because of natural phenomena had only a limited effect on fishing activities, and to decide, on the other hand, to bring the present action in respect of an adjustment arising from the extension of the territorial sea which had an appreciable effect upon fishing activities.

50 The arguments based on the practice of Member States with respect to adjustments to baselines must therefore be rejected.

The case-law of the Court dealing with the consequences of the extension by Member States of their maritime zones

51 The United Kingdom relies on the Court's judgment of 16 February 1978 in Case 61/77 *Commission* v *Ireland* [1978] ECR 417, in support of its contention that any adjustment by Member States of their maritime waters automatically entails an identical adjustment in the sphere of application of Community rules. From this it concludes that the adjustment of its baselines by a Member State must have an automatic effect in defining the limits of the zone within which coastal fishermen enjoy exclusive fishing rights, subject to the activities of vessels from other Member States which are protected under the rules of Community law.

52 That argument must be rejected. As the Advocate General noted at paragraph 45 of his Opinion, Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal 1976 L 20, p. 19), which was the subject of the judgment of 16 February 1978 in *Commission* v *Ireland*, cited above, lays down rules on fishing activities which apply without distinction to all those concerned and under which the problem of safeguarding certain fishing activities does not arise. The reasoning of the Court in that judgment cannot therefore be transposed to the present case.

The practical difficulties in taking account of two different types of baseline

53 In the opinion of the United Kingdom, the taking into account of baselines as they existed on 25 January 1983 solely for the purpose of the fishing activities protected by the combined provisions of Article 6 and Annex I of Regulation No 170/83, even though the ambulatory baselines defined in accordance with international law remain generally applicable, would result in several practical difficulties. In the first place, the presentation of maritime charts would be greatly complicated. Secondly, the authorities responsible for applying Community law would be required to take into account two different methods for delimiting coastal zones. Thirdly and finally, the administration of the so-called 'Shetland Area', which is subject to a fish licensing system administered by the Commission on behalf of the Community, is liable to interfere with the system of coastal fishing which results from Article 6 and Annex I. Annex II to Regulation No 170/83 defines that zone on two occasions by reference to the limit of 12 miles from the baselines, precisely

in order to avoid any overlap between those two systems. Such an overlap would, however, occur if the line taken into account for the purpose of delimiting the Shetland Area was to be the ambulatory line, whereas the coastal zone between the six-mile and 12-mile limits was to be defined with reference to fixed baselines.

54 With regard to the first point, it is sufficient to note that map-making procedures make it very straightforward to draw maritime charts with two 12-mile limits which deviate at certain points. The onus is on the United Kingdom cartographical authorities to indicate on the new charts that the baselines, such as they existed on 25 January 1983, are to be taken into account for the purposes of applying Article 6 and Annex I to Regulation No 170/83.

55 As to the second point, the Commission referred during the present proceedings to the Belgian Royal Decree of 28 January 1988, cited above, which refers specifically to those baselines which existed at the time Regulation No 170/83 was adopted. There is nothing to suggest that the competent Belgian fisheries authorities have experienced problems in applying that decree. Moreover, coastal surveillance activities require in any case, on account of the existence of different fishing arrangements depending on the zone, a very great degree of accuracy on the part of the competent authorities in determining the zones in which the vessels subject to control are situated. The United Kingdom has been unable to prove that the taking into account of baselines as they existed on 25 January 1983 requires a higher degree of diligence than that which is normally required of competent authorities.

56 Finally, with regard to the so-called 'Shetland Area', the United Kingdom quite correctly points to the need to avoid any confusion and overlapping between the licensing system introduced by Article 7 of Regulation No 170/83 for fishing in that zone and the arrangements for coastal fishing defined in Article 6 of that regulation. It was, moreover, to that end that the Council, which in general delimited the Shetland Area by reference to points of latitude and longitude, had

recourse, in Annex II to that regulation, to the 12-mile limit measured from baselines at two points where there was a risk that the contours of the two zones would overlap.

57 Contrary to the view expressed by the United Kingdom, however, the fact that the coastal zone next to the Shetland Area is delimited by the 12-mile line measured from the baselines as they existed on 25 January 1983, does not give rise to any risk of interference between the two systems, since the same 12-mile line has to be taken into account at two relevant points for the purpose of delimiting the Shetland Area. That zone is the subject of a system necessitated by specific conservation requirements which cannot vary as a result of an adjustment to the baselines, particularly where such an adjustment is independent of any natural phenomenon, as in the present case.

58 It follows that the arguments based on the practical difficulties which might be caused by taking into account two different baselines lack any foundation.

59 It follows from all the foregoing considerations that the combined provisions of Article 6 and Annex I to Regulation No 170/83 must be understood as referring to baselines as they existed on 25 January 1983. It is thus necessary for the Court to hold that, by applying in certain areas, for the purposes of the fisheries arrangements laid down for the coastal waters of the United Kingdom in those provisions, new baselines which are shifted further out to sea than those in force on 25 January 1983, the United Kingdom has failed to fulfil its obligations under the Treaty.

Costs

60 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to bear the costs. Under Article 69(3), however, the Court may order that the parties bear their own costs in whole or in part where the circumstances are exceptional. Account has to be taken in the present case of the exemplary conduct

of the United Kingdom, which voluntarily suspended the application of the contested measures following its discussions with certain of the Member States concerned and the Commission, without any need for the latter to apply to the Court for interim measures. For that reason, each of the parties, including the intervener, should be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by applying in certain areas, for the purposes of the fisheries arrangements laid down for the coastal waters of the United Kingdom in Annex I, read together with Article 6(2), of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, new baselines which are shifted further out to sea than those in force on 25 January 1983, the United Kingdom has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders each of the parties, including the intervener, to bear its own costs.**

Due Mancini Moitinho de Almeida Rodríguez Iglesias

Díez de Velasco Slynn Kakouris

Joliet Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 9 July 1991.

J.-G. Giraud
Registrar

O. Due
President