jurisdiction relating to proceedings which might be brought by such third parties, the latter, even if they have not expressly signed the said clause, may rely upon it provided that, as between the insurer and the policy-holder, the condition as to writing laid down by Article 17 of the Convention has been satisfied and provided that the consent of the insurer in that respect has been clearly manifested.

2. Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that it allows a defendant not merely to contest jurisdiction but at the same time to submit, in the alternative, a defence on the substance of the case without thereby losing the right to raise an objection of want of jurisdiction.

In Case 201/92

REFERENCE to the Court in pursuance of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Corte Suprema di Cassazione, Sezioni Unite Civili [Supreme Court of Cassation, Combined Civil Sections], giving its preliminary decision on a question of jurisdiction under Article 41 of the Italian Code of Civil Procedure, in the proceedings pending between

GERLING KONZERN SPEZIALE KREDITVERSICHERUNGS-AG, having its registered office in Cologne, AND OTHERS,

and

AMMINISTRAZIONE DEL TESORO DELLO STATO [Treasury Administration] (Central State Accounting Department, Office for Winding-Up Companies, Ente Autotrasporti Merci), in the person of the Minister for the Treasury for the time being,

on the interpretation of Articles 17 and 18 of the aforementioned Convention of 27 September 1968,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted in accordance with Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

A — The main proceedings

1. Facts

The international transportation of goods by road is governed, in particular, by the Customs Convention on the International Transport of Goods adopted in Geneva on 15 January 1959 and brought into force in Italy by Law No 1517 of 12 August 1962. The Convention lays down that motor vehicles which are provided with a special accompanying document (a TIR carnet) issued in the State of departure by authorized associations affiliated to the International Road Transport Union and sealed by the customs office of departure may cross frontiers en route without paying or depositing import or export duties or taxes, and without examination. Such payment is made by the national organizations authorized to issue the TIR carnet and affiliated to the Union.

The payment of taxes and duties found to be due, and supplementary charges and pecuniary penalties incurred for offences in connection with the transportation, is guaranteed by the abovementioned associations of the countries in which such payments are due, even if the carnet is issued by an association of another State which is also affiliated to the International Road Transport Union.

Each of those associations is itself guaranteed by an international consortium of insurers, pursuant to a contract concluded in 1961 in Geneva between, on the one hand, the Union acting on its own behalf and on behalf of each of the national organizations and, on the other hand, the aforesaid international consortium of insurers which combines seven insurance companies, including Gerling Konzern Speziale Kreditversicherungsaktiengesellschaft. The authorized association in Italy, which guaranteed each TIR carnet up to a maximum limit of LIT 30 000 000, was at the material time Ente Autotrasporti Merci [Bureau for Motor Transport of Goods]. It was subsequently put into liquidation and its activities have been continued in accordance with Italian law by the Ministry of the Treasury.

Thus the Italian customs administration claimed payment of pecuniary penalties, taxes, duties and sundries in connection with a series of transport operations with TIR cover, which it subsequently appeared were illegal under Italian law and as such became liable for the abovementioned charges.

2. Proceedings before national courts

By a writ dated 17 July 1974 the Amministrazione del Tesoro, in its

capacity as liquidator of the Ente Autotrasporti Merci, instituted proceedings before the Tribunale di Roma [District Court, Rome] against the aforesaid consortium of insurance undertakings, claiming that it should be ordered to pay a sum amounting in all to LIT 812 134 310, corresponding to the amount claimed by the customs administration. Having entered an appearance, the insurers raised a preliminary objection to the jurisdiction of the Italian court, and went on to elaborate arguments of substance in the alternative.

In the course of proceedings, the insurers applied to the Combined Civil Sections of the Corte di Cassazione on a procedural issue, pursuant to Article 41 of the Italian Code of Civil Procedure, requesting that the question of jurisdiction be tried as a preliminary matter.

The dispute derives from the fact that the contract of insurance concluded in 1961 contains a derogative clause governing jurisdiction, inserted for the benefit of the national associations (in this case, the Ente Autotrasporti Merci), whereby the latter were enabled, by way of derogation, to summon the insurers before the court having jurisdiction in the country in which the association in question had its registered office. Thus, Article 8 of the 1961 Contract between the pool of insurers and the International Road Transport Union stipulates that in case of dispute between the pool and one of the national associations the latter shall be entitled to insist on proceedings before the court having jurisdiction in the country in which it has its registered office, for the application of the law of that country.

Although the Brussels Convention of 1968 does not provide for jurisdiction of the court of the country in which the insured, as plaintiff, is domiciled, such jurisdiction may nevertheless be contractually stipulated by means of a clause conferring jurisdiction pursuant to Articles 12 and 17 of the Convention.

It is pecisely the interpretation of Article 17 which is the subject of the proceedings before the Corte di Cassazione, since the insurers argue that the clause conferring jurisdiction may be resisted inasmuch as it was not signed by Ente Autotrasporti Merci (or by the Ministry of the Treasury), whereas Article 17 of the Convention requires a writing to be signed for such a clause.

Such is the context in which the Corte di Cassazione, by an order dated 28 July 1982, stayed the proceedings and, requested the Court of Justice to give a preliminary ruling on the following questions:

"1. Where a contract has been duly signed by the contracting parties and there has been included by one of those parties, on its own behalf and in the interests of other beneficiaries under the contract, the jurisdiction clause agreed upon therein with reference to proceedings which may be brought by the said beneficiaries, does the requirement as to written form laid down by Article 17 of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters also apply in favour of those beneficiaries?

2. Is the effect of confirming the jurisdiction of the court before which an action is brought — which comes about, under Article 18 of the said Convention, as a result of the entry of an appearance by the defendant — also produced when the defendant, in entering an appearance, besides lodging a preliminary objection to the court's jurisdiction, sets out, purely in the alternative, a defence on the substance of the case?"

The order making the reference was lodged at the Court Registry on 6 August 1982.

In accordance with Article 5 of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968, written observations were submitted by the Commission of the European Communities, represented by Guido Berardis and Georges Kremlis, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the offices of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg, and by the Government of the Italian Republic, represented by its representative *ad litem*, with an address for service at the Italian Embassy in Luxembourg.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. It further decided to assign the case to the Third Chamber, pursuant to Article 95 (1) and (2) of the Rules of Procedure.

II — Written observations submitted to the Court

A — Observations submitted by the Commission

1. Observations of the first question raised by the Corte di Cassazione

At the outset, the Commision takes the view that it may be inferred from the order making the reference that the insurance contract at issue was not concluded by the International Road Transport Union in the capacity of representative of the affiliated national associations since, had that been the case, it would have had immediate legal effect for the person represented, who would then have all the rights and obligations arising under the contract.

The Commission considers that what is actually at issue is a contract of insurance entered into by a party in his own name but on behalf of a third party. In that type of insurance, the owner of the interest insured is necessarily a separate entity from the policy-holder and is either identified when the contract is concluded or is identifiable thereafter.

That type of contract, which may be assimilated to one which is concluded in favour of a third party, implies that the parties wish to confer an entitlement on that third party who none the less stands outside the contract.

The Commission explains that, in the present case, the parties to the contracts are the pool of insurance undertakings (as insurers) and the Union (as policy-holder). The national associations are the insured persons (third parties) and hold the rights arising under the contract itself, and in particular the clause conferring jurisdiction contained in Article 8 thereof.

In the Commission's opinion the question which arises is therefore whether the insured may avail itself of that clause even though it did not sign it itself, since the signatories were the insurer and the policy-holder.

The Commision takes the view that the question calls for an affirmative answer:

(a) The Commission considers that the rules governing jurisdiction in matters of insurance express a concern to protect the insured from the power of insurance companies, and it is that concern which has given rise to legislation in several Member States, as well as to the Brussels Convention of 27 September 1968.

The actual text of the Convention gives expression to that concern to protect the insured: whereas Article 2 of the Convention lays down a basic criterion for determining jurisdiction, namely that of the defendant's domicile, and whereas

Articles 5 and 6 thereof provide a series of special jurisdictions amongst which the plaintiff may freely choose, the Convention has, in the context of insurance, established a system of special jurisdictions inasmuch as Articles 7 to 10 thereof make a whole series of possible jurisdictions available to the plaintiff, being the insured person. Conversely, and in the same spirit, the range of jurisdictions open to the plaintiff, being the insurer, is strictly limited (Article 11).

The concern to protect the insured is also reflected by the Jennard report on the Convention.

The Commission stresses that the Court of Justice itself has had occasion, in connection with the sale of goods on instalment credit terms, to expound the objective of protecting the weaker party, which it has made into nothing less than a device for interpreting the Convention (judgment of 21 June 1978 in *Bertrand* v *Ott* Case 150/77 [1978] ECR 1431). The same considerations should similarly apply to insurance contracts, regard being had to the fact that the Convention deals with them in the same manner as with the sale of goods on instalment credit terms.

Finally, the Commission points out that although Article 17 of the Convention provides a general option to confer jurisdiction by means of an agreement between the parties, in the context of insurance such a clause cannot be valid unless the specific conditions imposed by Articles 12 and 15 are satisfied, and it is the concern to protect the insured which lies behind the conditions laid down by Article 12.

(b) After examining the implications of a clause conferring jurisdiction where the contractual relationship is a normal one, the Commission emphasizes the repercussions of such a clause in cases where the contractual relationship involves third parties. In the field of insurance, the Commission explains, there may be three parties: the policy-holder, the insured and the beneficiary. The parties may be fused in one and the same person, or they may take the form of two or three separate parties. Where insurance is taken out on behalf of a third person, the policy-holder is always separate from the insured (the International Road Transport Union and the national associations affiliated to it), which indicates that the insured holds certain rights (in particular, the right to be paid the sum insured) without being party to the contract, in relation to which he remains a third party. The rights in question may be relied upon in proceedings brought directly against the insurer. The Commission takes the view that even if the third party insured does not physically sign the clause conferring jurisdiction (if any) which would entitle him to institute proceedings before a given court, he may none the less avail himself thereof notwithstanding the requirement of writing laid down by Article 17.

In the Commission's opinion that answer is indicated, in particular, by the purpose of Article 17 as set forth above, and by the whole set of special rules which the Convention lays down for insurance contracts.

In that connection, Article 8 of the Convention provides that an insurer domiciled in a contracting State may be sued, either in the courts of that State, or in another contracting State in the courts for the place where the policy-holder is

domiciled. Should either the insured or the beneficiary be separate persons from the policy-holder, their place of domicile is disregarded.

Furthermore, Article 12 provides a series of conditions governing the validity of a clause conferring jurisdiction in the context of insurance, which may enlarge the scope of Article 8 so as to include the domicile of the insured or the beneficiary as a criterion for determining jurisdiction. In the context of insurance, Article 12 further allows an agreement to depart from the provisions of the Convention only when it "allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section".

The Commission infers from that that the Convention expressly contemplates the possibility of inserting clauses conferring jurisdiction not only in favour of the policy-holder, as party to the contract, but also in favour of the insured or the beneficiary who, by definition, are not parties thereto. Therefore, the Commission goes on to argue, if the condition concerning writing as contained in Article 17 were to be interpreted to mean that the insured or the beneficiary was required physically to sign the clause conferring jurisdiction inserted in his favour before being able to take advantage of it, Article 12 would be voided of its substance and frustrated in its objectives.

Indeed, unless they coincide with the policy-holder, the insured and the beneficiary, by definition, stand outside the relationship created by an insurance contract, and the beneficiary, incidentally, is often unknown at the time when the contract is concluded.

The Commission further points out that such a thesis would void of its substance a frequently-used expedient, and one of undisputed usefulness in national and international trade relations, namely the insurance contract entered into for and on behalf of a third party or of a person for the time being covered.

(c) The Commission emphasizes that the actual wording of Article 17 and the manner in which it is construed militate in favour of the contention that a clause conferring jurisdiction inserted in a contract of insurance in favour of the insured or of the beneficiary, being third parties in relation to that contract, is valid provided that the requirements as to form laid down by Article 17 are complied with in the relations between insurer and policy-holder.

In the first place, the Commission notes that Article 17 demands an agreement in writing between the parties for the purpose of determining a court having jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship.

The Commission considers that those provisions similarly apply to contracts of insurance entered into on behalf of another person and that, in this case, there was indeed a written agreement between the parties, that is to say, between the insured (the pool of insurers) and the policy-holder (the International Road Transport Union), and it further considers that, in the agreement, the insurer gave his consent, in favour of the insured (namely the national TIR associations), that the jurisdictions indicated under the Convention might be departed from should the insurer be the defendant.

The Commission maintains that the agreement signed by both parties affects a very specific legal relationship, namely that between insurer and insured.

In the second place, the Commission takes the view that the aims and purpose of Article 17, as they have been examined above, bear out its own thesis. Thus, since Article 17 is designed to ensure that a contract exists between the parties which the judge is required to confirm, then, if the clause in question is — as here — inserted in favour of one of the parties only, the latter, pursuant to the third paragraph of Article 17, retains the right to bring proceedings before any other court which has jurisdiction by virtue of the Convention, whereas the other party is precluded from opposing such a departure if his assent is manifest.

In the present case the Commission concludes that, even if it is not conceded that the policy-holder's signature validates a clause conferring jurisdiction which has been accepted by the insurer in favour of the insured, the insurer, having clearly signified his consent, may not contest the application of that clause.

(d) Fourthly, the Commission maintains that the question raised involves the problem of the principle of good faith. In that connection it argues that allowing the insurer to contest the application of a clause in favour of the insured when he has duly put his signature to it and when, *ex hypothesi*, the insured has not done so, would be tantamount to endorsing the bad faith of the insurer at the outset who, at the time when the contract was made, consented to the insertion of the clause in favour of the insured, whilst knowing full well that the latter would in any event be unable to avail himself of it.

The Commission notes that it is particularly important to observe the principle of good faith in fields such as insurance, where protection of the weaker parties is the main objective of the relevant provisions.

(e) Lastly, the Commission notes that the new version of Article 17 (as amended by the Convention signed on 9 October 1978 but not yet in force) gives recognition to "a form which accords with practices in ... [international] trade ... of which the parties are or ought to have been aware".

The Commission considers that that concept of international trade practices embraces, in particular, contracts of insurance such as the one in question, which do much to facilitate trading relations.

In brief, the Commission proposes that the following answer be given to the first question raised by the Corte di Cassazione:

"In the context of a contract of insurance, a clause conferring jurisdiction in favour of the insured, being a separate person from the policy-holder, must be regarded as valid for the purposes of Article 17 of the Convention if the requirement of writing contained in that article is fulfilled as between the insurer and the policy-holder."

2. Observations of the Commission on the second question raised by the Corte di Cassazione

The Commission notes that the Court of Justice has already had occasion to answer the question, namely in its judgment of 22 October 1981, in Case 27/81 (*Rohr* v *Ossberger* [1981] ECR 2431). The Court held that Article 18 of the Convention enables the defendant who raises the objection that the Court

seised of the matter lacks jurisdiction, to submit a defence on the substantive issues at the same time, and in the alternative; the defendant does not thereby forfeit the right to object that the Court is without jurisdiction. On those grounds, the Commission proposes that the following answer be given to the second question raised by the Corte di Cassazione:

"Article 18 of the Convention must be interpreted as meaning that it enables the defendant not only to contest the jurisdiction, but at the same time to submit, in the alternative, a defence on the substantive issues, without thereby forfeiting the right to raise an objection of lack of jurisdiction."

B — Observations submitted by the Government of the Italian Republic

1. Observations on the first question raised by the Corte di Cassazione

The Government of Italy claims that there is no doubt that, as far as national associations are concerned, the contract contains a stipulation on behalf of third parties and that the International Road Transport Union, when contracting, did not act as representative of the national associations.

It concludes that the failure of the national association, not being a party to the contract, to sign either the contract or, consequently, the clause relating to the conferment of jurisdiction, is not relevant as regards the validity of that clause in favour of a national association invoking it.

Indeed, in a contract concluded in favour of a third party, if that third party wishes to take the benefit of the stipulation made in his favour, he himself acquires rights arising under the contract independently of any acceptance, solely on the strength of the stipulation agreed between the parties.

He may take steps to ensure that the rights conferred upon him by the contract are honoured, and may similarly take advantage of the clause entitling him to bring the matter before a given court of law, without the need to have signed or ratified that clause in writing before exercising the option in question.

Moreover, the Italian Government notes that, since the clause has been invoked by a third party *vis-à-vis* a contracting party who has signed it, the requirements of Article 17 of the Convention, aiming as it does to neutralize the effect of clauses which might slip through unobserved and to validate only those clauses which are expressly stipulated, have been satisfied in the present case.

Lastly, the Government of Italy notes that Article 12 of the Brussels Convention which refers, in the context of insurance, to the possibility of derogating from the provisions on jurisdiction in favour of a beneficiary who is not a party to the contract makes no mention of any need, on the part of that beneficiary, to sign such a derogative agreement.

The Italian Government therefore considers that an affirmative answer should be given to the questions raised by the court making the reference.

2. Observations on the second question raised by the Corte di Cassazione

The Italian Government points out that the problem of interpreting Article 18 of the Brussels Convention has already been solved by the Court of Justice in a number of recent judgments, and it proposes that a reply to that effect be given in the present instance.

III — Oral procedure

Gerling Konzern Speziale Kreditversicherungs-AG and Others, represented by A. Pesce, the Government of the Italian

Republic, represented by O. Fiumara and the Commission of the European Communities, represented by G. Berardis, presented oral argument at the sitting on 28 April 1983.

Gerling Konzern maintained that as regards the first question the requirement of writing provided for in Article 17 of the Convention must be strictly observed and that it is apparent from a consideration of the case-law of the Court that any clause extending jurisdiction must be clearly accepted. Thus if the beneficiary under a contract considers that the clause in derogation suits him he must accept it, even *ex post facto*, in writing. There is a strict logic in the Brussels Convention in accordance with which all the parties to the contract and even beneficiaries who are not parties thereto must know precisely the conditions under which a clause extending jurisdiction may apply.

That is moreover the effect of the case-law applicable in several other national legal systems.

It moreover alleged that the main proceedings in the circumstances of the present case are not concerned with a problem of insurance policy so called but a relationship of a financial type and that there is no contractual relationship between a strong party (the insurer) and a weaker party (the insured). Thus the provisions of Article 12 et seq. of the Convention cannot weaken the scope of the requirement of writing in Article 17 since written acceptance is required of all the parties and as consideration enables them to claim the benefit of the clause extending jurisdiction.

Gerling Konzern argued that as regards the second question submitted for a preliminary ruling, although the case-law of the Court regarding the interpretation of Article 18 of the Convention is well established, it is possible to reconsider it on the basis of the principle of the need for preliminary proceedings to make it possible to determine with certainty the jurisdiction of the court before which the matter is brought, regard being had to the substance of the case. It proposes that the question should be answered as follows: "Article 18 is an independent rule of Community law which may be adopted in all national types of proceedings and accordingly requires the court whose jurisdiction in international law is challenged to determine its jurisdiction as a preliminary issue."

The Advocate General delivered his opinion at the sitting on 8 June 1983.

Decision

1 By order of 28 July 1982, received at the Court Registry on 6 August 1982, the Corte Suprema di Cassazione, Sezioni Unite Civili [Supreme Court of Cassation, Combined Civil Sections] pursuant to the Protocol of 3 June 1971

on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Convention"), referred to the Court for a preliminary ruling two questions on the interpretation of Articles 17 and 18 of the Convention.

2 Those questions arose in proceedings between the Amministrazione del Tesoro dello Stato [Treasury Administration] and Gerling Konzern Speziale Kreditversicherungs-AG and Others (hereinafter referred to as "Gerling"), whose registered office is in Cologne, in which the plaintiff sought to recover a sum representing pecuniary penalties, taxes, duties and supplementary charges in connection with a series of transport operations under the TIR system, which it subsequently appeared were illegal under Italian law and as such became liable for the above-mentioned charges and taxes.

3 To enjoy the facilities provided for by the Customs Convention on the International Transport of Goods under cover of TIR carnets adopted in Geneva on 15 January 1959, transport must in particular be effected under a TIR carnet issued by the authorized association in each country signatory to the Customs Convention and the carriage takes place under its guarantee. The national association which gives the guarantee is liable for payment of the duties and taxes held to be payable and for penalties incurred by the holder of the TIR carnet.

4 The authorized national association in Italy at the material time was the Ente Autotrasporti Merci. Since it has been wound up its rights have been vested in the Italian Ministry of the Treasury pursuant to the combined provisions of Law No 1404 of 4 December 1956, Law No 413 of 18 March 1968 and Law No 1139 of 23 December 1970.

5 The national associations are affiliated to the International Road Transport Union. Each of those national associations enjoys in turn insurance cover from an international group of insurers represented by Gerling pursuant to a contract made in 1961 by the International Road Transport Union on its own behalf and on behalf of each of the national associations on the one hand and by the aforesaid international group of insurers on the other.

6 Article 8 of the contract of insurance provides: "In case of a dispute between the pool and one of the national associations the latter shall be entitled to insist on proceedings before the court having jurisdiction in the country in which it has its registered office, for the application of the law of that country."

7 Since the Italian Customs Administration claimed payment of a series of penalties, charges and duties connected with road transport under the TIR system in Italy the Ministry of the Treasury brought an action before the Tribunale di Roma [District Court, Rome] against the aforesaid group of insurers claiming payment of a total sum of LIT 812 134 310.

8 During the proceedings the group of insurers brought an interlocutory action before a section of the Corte di Cassazione pursuant to Article 41 of the Italian Code of Civil Procedure for a preliminary ruling on jurisdiction. The insurers deny that the aforesaid clause conferring jurisdiction may be relied upon inasmuch as it was not signed by the Ente Autotrasporti Merci (or by the Treasury Administration) whereas Article 17 of the Convention required such a clause conferring jurisdiction to be in writing and signed by the parties.

9 It is against that background that the Corte di Cassazione has referred the following two questions to the Court for a preliminary ruling:

"1. Where a contract has been duly signed by the contracting parties and there has been included by one of those parties, on its own behalf and in the interests of other beneficiaries under the contract, the jurisdiction clause agreed upon therein with reference to proceedings which may be brought by the said beneficiaries, does the requirement as to written form laid down by Article 17 of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters also apply in favour of those beneficiaries?

2. Is the effect of confirming the jurisdiction of the court before which an action is brought — which comes about, under Article 18 of the said Convention, as a result of the entry of an appearance by the defendant — also produced when the defendant, in entering an appearance, besides lodging a preliminary objection to the court's jurisdiction, sets out, purely in the alternative, a defence on the substance of the case?"

1. First question

10 The Corte di Cassazione is asking the Court basically to clarify whether the Convention, and in particular Article 17 thereof, may be interpreted as meaning that under a contract of insurance a person in whose favour the contract is made but who is not a party to the contract and is separate from the insured, is entitled to rely on a clause extending jurisdiction inserted for his benefit although he has not himself signed it, albeit the insurer and insured have duly done so.

11 In applying the Convention it is necessary to interpret it by reference mainly to its structure and objectives in order to make it fully effective.

12 The first paragraph of Article 17 of the Convention provides:

"If the parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement evidenced in writing, agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction."

13 As the Court has repeatedly held in particular in its judgments of 14 December 1976 in Case 24/76 *Estasis Salotti* [1976] ECR 1831 and Case 25/76 *Ségoura* [1976] ECR 1851 and of 6 May 1980 in Case 784/79, *Porta Leasing* [1980] ECR 1517, the purpose of the requirement of writing under Article 17 of the Convention is to ensure that the consent of the parties, who, by an agreement conferring jurisdiction, depart from the general rules for determining jurisdiction laid down in Articles 2, 5 and 6 of the Convention, is clearly and precisely demonstrated and is actually established.

14 Moreover, Article 17 of the Convention in requiring writing between the parties does not have either the object or the effect of subjecting a third party benefiting from the requirement imposed on others to the same requirement of writing where the clause conferring jurisdiction is made for his benefit and he seeks to rely on it in proceedings between him and the insurer.

15 In such circumstances it appears to the Court that the insurer, if his original consent has been made clear in the provisions of the contract, cannot object to such an exclusion of jurisdiction on the sole ground that the party benefiting from the requirement imposed on others, not being a party to the contract, has not himself satisfied the requirement of writing prescribed by Article 17 of the Convention.

16 Consideration of the provisions of Section 3 of the Convention relating to jurisdiction in matters relating to insurance confirms that view.

17 It is apparent from a consideration of the provisions of that section in the light of the documents leading to their enactment that in affording the insured a wider range of jurisdiction than that available to the insurer and in excluding any possibility of a clause conferring jurisdiction for the benefit of the insurer their purpose was to protect the insured who is most frequently faced with a predetermined contract the clauses of which are no longer negotiable and who is in a weaker economic position.

18 Moreover, Article 12 of the Convention allows the parties to depart from the provisions of Section 3 "by an agreement ... (2) which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section". It is thus clear that the Convention has expressly provided for the possibility of stipulating clauses conferring jurisdiction not only in favour of the policy-holder, being a party to the contract, but also in favour of the insured and the beneficiary who may not be parties to the contract when, as in the present case, they are different persons whose identity may even be unknown when the contract is signed.

19 Consequently if the requirement as to form referred to in Article 17 were to be regarded as requiring the insured or beneficiary, not being a party to the contract but a person for whose benefit the clause conferring jurisdiction is made, expressly to sign the said clause so as to validate it and to entitle him to rely on it, the effect of such an interpretation would be to place on the latter, in view of the fact that originally the insurer has unequivocally given his consent to an open and general system of extension of jurisdiction, a

pointless restriction amounting even, it may be, to a formality with which it would be difficult to comply if, before any proceedings, the insured has not been informed by the policy-holder of the existence of a clause conferring jurisdiction which has been made for his benefit.

20 It follows from all the foregoing that the answer should be that where in a contract of insurance a clause conferring jurisdiction is inserted for the benefit of the insured who is not a party to the contract but a person distinct from the policy-holder, it must be regarded as valid within the meaning of Article 17 of the Convention provided that, as between the insurer and the policy-holder, the condition as to writing laid down therein has been satisfied and provided that the consent of the insurer in that respect has been clearly and precisely manifested.

2. Second question

21 As regards this question it is sufficient to recall that the Court in its judgments of 24 June 1981 in Case 150/80 *Elefanten Schuh GmbH* [1981] ECR 1671, of 22 October 1981 in Case 27/81 *Rohr* [1981] ECR 2431 and of 31 March 1982 in Case 25/81 *CHW* [1982] ECR 1189 has recognized that Article 18 of the Convention must be interpreted as meaning that it allows a defendant not merely to contest jurisdiction but at the same time to submit, in the alternative, a defence on the substance of the case without thereby losing the right to raise an objection of want of jurisdiction.

Costs

22 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities, who have submitted observations to the Court, are not recoverable. Since the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions referred to it by the Corte Suprema di Cassazione (Sezioni Unite Civili), by order of 28 July 1982, hereby rules:

1. **The first paragraph of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that where a contract of insurance, entered into between an insurer and a policy-holder and stipulated by the latter to be for his benefit and to enure for the benefit of third parties to such a contract, contains a clause conferring jurisdiction relating to proceedings which might be brought by such third parties, the latter, even if they have not expressly signed the said clause, may rely upon it provided that, as between the insurer and the policy-holder, the condition as to writing laid down by Article 17 of the Convention has been satisfied and provided that the consent of the insurer in that respect has been clearly manifested.**

2. **Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that it allows a defendant not merely to contest jurisdiction but at the same time to submit, in the alternative, a defence on the substance of the case without thereby losing the right to raise an objection of want of jurisdiction.**

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 14 July 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber