JUDGMENT OF THE COURT
6 December 1994

In Case C-406/92,

REFERENCE to the Court under 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 Court of Appeal for a preliminary ruling in the proceedings pending before that court between

The owners of the cargo lately laden on board the ship 'Tatry'

and

The owners of the ship 'Maciej Rataj'

on the interpretation of Articles 21, 22 and 57 of the Brussels Convention of 27 September 1968, cited above, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended text — p. 77),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris (Rapporteur) and J. L. Murray, Judges,

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the owners of the cargo lately laden on board the ship *Tatry*, by Clyde & Co., Solicitors, and Alistair Schaff, Barrister,

— the owners of the ship *Maciej Rataj*, by Lawrence Graham, Solicitors, and Charles Priday, Barrister,

— the United Kingdom, by John D. Colahan, replacing Susan Cochrane, of the Treasury Solicitor's Department, acting as Agent, and Lionel Persey, Barrister,

— the Commission of the European Communities, by Xavier Lewis and Pieter van Nuffel, of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the applicants, represented by Alistair Schaff, of the defendants, represented by Stephen Tomlinson QC, of the United Kingdom, represented by Stephen Braviner of the Treasury Solicitor's Department, acting as Agent, and by Lionel Persey, and of the Commission, represented by Xavier Lewis, at the hearing on 11 May 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1994,

gives the following

Judgment

1 By order of 5 June 1992, received at the Court on 4 December 1992, Court of Appeal referred to the Court for a preliminary ruling under 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 'the Convention' or 'the Brussels Convention'), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended text — p. 77) (hereinafter 'the Accession Convention'), several questions on the interpretation of Articles 21, 22 and 57 of the Convention.

2 Those questions were raised in two actions in which the facts and procedure before the national courts are summarized below.

3 In September 1988 a cargo of soya bean oil belonging to a number of owners (hereinafter 'the cargo owners') was carried in bulk aboard the vessel *Tatry*, belonging to a Polish shipping company, Zegluga Polska Spolka Alceyjna — referred to in the order for reference as 'the shipowners'. The voyage was from Brazil to Rotterdam for part of the cargo and to Hamburg for the rest. The cargo owners complained to the shipowners that in the course of the voyage the cargo was contaminated with diesel or other hydrocarbons.

4 There are three groups of cargo owners:

— 'Group 1': owners of cargo carried to Rotterdam under separate bills of lading;

— 'Group 2': this is not a 'group', but simply the company Phillip Brothers Ltd (hereinafter 'Phibro'), whose registered office is in the United Kingdom, which owned another part of the cargo also carried to Rotterdam under separate bills of lading;

— 'Group 3': four owners of cargo carried to Hamburg under four separate bills of lading; the owners in the group were Phibro (in respect of parcels other than those covered by Group 2) and Bunge & Co. Ltd, whose registered office is likewise in the United Kingdom, Hobum Öle und Fette AG and Handelsgesellschaft Kurt Nitzer GmbH, both of whose registered offices are in Germany.

5 Various actions were commenced in courts in the Netherlands and the United Kingdom by the various cargo owners and the shipowners.

(a) Actions brought by the shipowners

6 On 18 November 1988, before any other proceedings had commenced, the shipowners brought an action before the Arrondissementsrechtbank (District Court), Rotterdam against Groups 1 and 3, with the exception of Phibro, seeking a declaration that they were not liable or not fully liable for the alleged contamination.

7 The cargo owners in Group 1 were sued in the Rotterdam District Court on the basis of Article 2 of the Convention, and those in Group 3 on the basis of Article 6(1).

8 In 1988, no action had been brought by the shipowners against Group 2 (Phibro). It was not until 18 September 1989 that the shipowners initiated separate proceedings in the Netherlands for a declaration that they were not liable for the contamination of the cargo delivered to Group 2 in Rotterdam. Those proceedings were brought against Phibro's agents in Rotterdam, who had presented the bills of lading on behalf of Phibro.

9 On 26 October 1990 the shipowners initiated proceedings in the Netherlands seeking to limit their liability in respect of the entire cargo. Those proceedings were brought under the International Convention of 10 October 1957 relating to the limitation of the liability of owners of sea-going ships [International Transport Treaties, suppl. 1-10 (January 1986), p. I-76] .

(b) Actions brought by the cargo owners

10 The following actions were brought by the cargo owners in Groups 2 and 3 against the owners of the vessel *Tatry* seeking damages for their alleged loss.

11 After an unsuccessful attempt to arrest the *Tatry* in Hamburg, Group 3 brought an action *in rem* (hereinafter 'Folio 2006') before the High Court of Justice, Queens's Bench Division, Admiralty Court, against the *Tatry* and another ship, the *Maciej Rataj*, whose owners are the same as the owners of the *Tatry*. The writ was served on 15 September 1989 in Liverpool on the *Maciej Rataj*, which was arrested. Sub-

sequently, the shipowners acknowledged service of the writ and, by providing a guarantee, secured the vessel's release from arrest. The action continued in accordance with English law. However, doubts exist under that law as to whether the proceedings continue in those circumstances only *in personam* or both *in rem* and *in personam*.

12 Group 2 (Phibro) also commenced an action *in rem* before the same court (hereinafter 'Folio 2007') against the ship *Maciej Rataj*. The writ was served on 15 September 1989 in Liverpool on the *Maciej Rataj*, which was likewise arrested. The course of events in Folio 2007 was the same as in Folio 2006.

13 For the arrest of the *Maciej Rataj*, the Admiralty Court based its jurisdiction on sections 20 to 24 of the Supreme Court Act 1981, which implement the International Convention for the unification of certain rules relating to the arrest of seagoing ships, signed at Brussels on 10 May 1952 [International Transport Treaties, suppl. 14 (March 1990), p. I-64, hereinafter 'the Arrest Convention'], to which the Netherlands is also a party.

14 Furthermore, as a precautionary measure in the event that the English courts declined jurisdiction, Groups 2 and 3 (with the exception of Phibro) brought actions in the Netherlands on 29 September and 3 October 1989 respectively.

15 Group 1 brought no action before the English courts. However, on 29 September 1989 it brought an action for damages in the Netherlands against the shipowners.

16 As regards Folio 2006, the shipowners moved the Admiralty Court to decline jurisdiction in favour of the Netherlands court pursuant to Article 21 of the Brussels Convention relating to *lis pendens* or, in the alternative, pursuant to Article 22 on related actions. As regards Folio 2007, since they accepted that the Admiralty Court was the first seised, they did not rely on Article 21 of the Convention but none the less requested that the Admiralty Court decline jurisdiction on the basis of Article 22.

17 At first instance, the Admiralty Court decided that it was under no obligation to decline jurisdiction or stay proceedings in accordance with Article 21 of the Convention, since that provision was not applicable for the following reasons:

(a) in Folio 2006, on the ground that that action and the proceedings previously brought in the Netherlands did not have the same cause of action, since the English proceedings sought compensation for the cargo owners while the Netherlands proceedings sought neither to protect nor to enforce a right but sought a declaration that the cargo owners were not entitled to claim damages from the owners of the *Tatry*;

(b) in Folio 2007, on the ground that Group 2 was not a party to the proceedings commenced in the Netherlands.

18 The Admiralty Court accepted that Folio 2006 and Folio 2007 and the proceedings commenced in the Netherlands were related actions. It decided, however, that it was not appropriate to decline jurisdiction or stay proceedings in the two cases pending before it.

19 The shipowners appealed against that decision to the Court of Appeal.

20 The Court of Appeal, since it did not uphold the decision given at first instance and considered that the outcome of the proceedings depended on the interpretation of Articles 21, 22 and 57 of the Convention, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. For the purposes of the application of Article 21 of the Brussels Convention 1968 (as amended), where proceedings are brought in a Contracting State which involve the same cause of action as prior proceedings brought in another Contracting State, must the courts of the Contracting State second seised decline jurisdiction

(a) only where there is a complete identity of parties between the two sets of proceedings; or

(b) only where all the parties to the proceedings in the courts of the Contracting State second seised are also parties to the proceedings in the courts of the Contracting State first seised; or

(c) whenever at least one of the plaintiffs and one of the defendants to the proceedings before the courts of the Contracting State second seised are also parties to the proceedings in the courts of the Contracting State first seised; or

(d) whenever the parties in the two sets of proceedings are substantially the same?

2. In relation to the carriage of goods by sea in circumstances where goods are discharged in an allegedly damaged condition, does a claim brought by the cargo owners in a Contracting State in respect of such alleged damage in an action which was commenced *in rem* against either the carrying vessel or a sister ship thereof pursuant to the United Kingdom's admiralty jurisdiction involve the same parties and the same cause of action for the purposes of Article 21 of the Brussels Convention 1968 (as amended) as *in personam* proceed-

ings previously brought in another Contracting State by the ship owner against the cargo owners in respect of such alleged damage if the shipowner acknowledges service and procures the release from arrest of the vessel upon provision of security and thereafter

(a) the admiralty action continues both *in rem* and *in personam*; or

(b) the admiralty action continues only *in personam*?

3. Where a Contracting State is party to the Brussels Arrest Convention 1952 and its merits jurisdiction has been invoked by the arrest of a vessel in accordance with the provisions of the Arrest Convention by cargo owners in respect of a claim for loss arising out of the discharge of cargo in an allegedly damaged condition, then in so far as proceedings have previously been brought by the shipowner against the cargo owners in respect of such alleged damage in another Contracting State, are the courts of the Contracting State in which merits jurisdiction has been founded by arrest entitled to retain such jurisdiction by virtue of Article 57 of the Brussels Convention 1968 (as amended by Article 25(2) of the Accession Convention) if

(a) the two actions involve the same cause of action and same parties for the purposes of Article 21 of the Brussels Convention 1968 (as amended); or

(b) the two actions are "related actions" for the purposes of Article 22 of the Brussels Convention 1968 (as amended) and it would otherwise be appropriate for the court second seised to decline jurisdiction or to stay its proceedings thereunder?

4. For the purposes of Article 22 of the Brussels Convention 1968 (as amended):

(a) Does the third paragraph of Article 22 provide an exclusive definition of "related proceedings?"

(b) In order for the courts of a Contracting State to decline jurisdiction or to stay their proceedings under Article 22, is it necessary for there to be a risk that if the two sets of proceedings are heard and determined separately, this might lead to legal consequences which are mutually exclusive?

(c) If proceedings are brought in one Contracting State in respect of a claim by one group of cargo owners against a shipowner for damage to their portion of a bulk cargo carried under specified contracts of carriage and if separate proceedings are brought in another Contracting State against the same shipowner based on essentially similar issues of fact and law but by a different cargo owner for damage to its portion of the same bulk cargo carried under separate contracts of carriage on the same terms, do these proceedings, if heard and determined separately, involve the risk of giving rise to legal consequences which are mutually exclusive or are they otherwise related actions for the purposes of Article 22?

5. In relation to the carriage of goods by sea in circumstances where goods are discharged in an allegedly damaged condition, if

(i) the shipowner commences proceedings in a Contracting State which involve a claim for a declaration of non-liability to cargo interests in respect of such alleged damage; and

(ii) the cargo claimants subsequently commence the proceedings in another Contracting State in which they claim damages against the shipowner for negligence and/or breach of contract and/or duty in respect of such alleged damage to their cargo,

do the latter proceedings involve the same cause of action as the former proceedings for the purposes of Article 21 of the 1968 Brussels Convention (as amended) so that the courts of the latter Contracting State must decline jurisdiction pursuant to Article 21?'

21 In the light of the interrelationship between the various questions referred, it is appropriate first to consider the third question, which concerns the scope of the Brussels Convention and of the special conventions. The first, fifth and second questions, all three of which seek an interpretation of Article 21 of the Convention, concerned with *lis pendens*, will be considered thereafter. Finally, the fourth question, which seeks an interpretation of Article 22 of the Convention, concerned with related actions, will be considered.

The third question

22 The national court's third question is essentially whether, on a proper construction, Article 57 of the Convention, as amended by the Accession Convention, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention always, subject to express exceptions, precludes the application of the Brussels Convention, or that the specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by it and not in those to which it does not apply.

23 Article 57 of the Convention, as amended by Article 25(1) of the Accession Convention, provides:

'This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.'

24 Article 57 introduces an exception to the general rule that the Convention takes precedence over other conventions signed by the Contracting States on jurisdiction and the recognition and enforcement of judgments. The purpose of that exception is to ensure compliance with the rules on jurisdiction laid down by specialized conventions, since in enacting those rules account was taken of the specific features of the matters to which they relate.

25 That being its purpose, Article 57 must be understood as precluding the application of the provisions of the Brussels Convention solely in relation to questions governed by a specialized convention. A contrary interpretation would be incompatible with the objective of the Convention which, according to its preamble, is to strengthen in the Community the legal protection of persons therein established and to facilitate recognition of judgments in order to secure their enforcement. In those circumstances, when a specialized convention contains certain rules of jurisdiction but no provision as to *lis pendens* or related actions, Articles 21 and 22 of the Brussels Convention apply.

26 The cargo owners argue that the Arrest Convention contains provisions relating to *lis pendens* in Article 3(3), which provides: 'A ship shall not be arrested ... more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant'.

27 The cargo owners' argument cannot be accepted. Where an arrest has already been made in the jurisdiction of a Contracting State, Article 3(3) of the Arrest Convention prohibits a second arrest by the same claimant in respect of the same claim in the jurisdiction, in particular, of another Contracting State. Such a prohibition has nothing to do with the concept of *lis pendens* within the meaning of Article 21 of the Brussels Convention. That provision is concerned with the situation where proceedings are brought before two courts both of which have jurisdiction and it governs only the question which of those two courts is to decline jurisdiction in the case.

28 The answer to the third question therefore is that, on a proper construction, Article 57 of the Convention, as amended by the Accession Convention, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply.

The first question

29 The national court's first question is essentially whether, on a proper construction, Article 21 of the Convention is applicable in the case of two sets of proceedings involving the same cause of action where some but not all of the parties are the

same, at least one of the plaintiffs and one of the defendants to the proceedings first commenced also being among the plaintiffs and defendants in the second proceedings, or *vice versa*.

30 The question refers to the term 'the same parties' mentioned in Article 21, which requires as a condition for its application that the two sets of proceedings be between the same parties. As the Court held in Case 144/86 *Gubisch Maschinenfabrik* v *Palumbo* [1987] ECR 4861, the terms used in Article 21 in order to determine whether a situation of *lis pendens* arises must be regarded as independent (paragraph 11 of the judgment).

31 Moreover, as the Advocate General noted in his Opinion (paragraph 14), it follows by implication from that judgment that the question whether the parties are the same cannot depend on the procedural position of each of them in the two actions, and that the plaintiff in the first action may be the defendant in the second.

32 The Court stressed in that judgment (paragraph 8) that Article 21, together with Article 22 on related actions, is contained in Section 8 of Title II of the Convention, a section intended, in the interests of the proper administration of justice within the Community, to prevent parallel proceedings before the courts of different Contracting States and to avoid conflicts between decisions which might result therefrom. Those rules are therefore designed to preclude, in so far as is possible and from the outset, the possibility of a situation arising such as that referred to in Article 27(3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in a dispute between the same parties in the State in which recognition is sought.

33 In the light of the wording of Article 21 of the Convention and the objective set out above, that article must be understood as requiring, as a condition of the obligation of the second court seised to decline jurisdiction, that the parties to the two actions be identical.

34 Consequently, where some of the parties are the same as the parties to an action which has already been started, Article 21 requires the second court seised to decline jurisdiction only to the extent to which the parties to the proceedings pending before it are also parties to the action previously started before the court of another Contracting State; it does not prevent the proceedings from continuing between the other parties.

35 Admittedly, that interpretation of Article 21 involves fragmenting the proceedings. However, Article 22 mitigates that disadvantage. That article allows the second court seised to stay proceedings or to decline jurisdiction on the ground that the actions are related, if the conditions there set out are satisfied.

36 Accordingly, the answer to the first question is that, on a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.

The fifth question

37 The national court's fifth question is essentially whether, on a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

38 It should be noted at the outset that the English version of Article 21 does not expressly distinguish between the concepts of 'object' and 'cause' of action. That language version must however be construed in the same manner as the majority of the other language versions in which that distinction is made (see the judgment in *Gubisch Maschinenfabrik* v *Palumbo*, cited above, paragraph 14).

39 For the purposes of Article 21 of the Convention, the 'cause of action' comprises the facts and the rule of law relied on as the basis of the action.

40 Consequently, an action for a declaration of non-liability, such as that brought in the main proceedings in this case by the shipowners, and another action, such as that brought subsequently by the cargo owners on the basis of shipping contracts which are separate but in identical terms, concerning the same cargo transported in bulk and damaged in the same circumstances, have the same cause of action.

41 The 'object of the action' for the purposes of Article 21 means the end the action has in view.

42 The question accordingly arises whether two actions have the same object when the first seeks a declaration that the plaintiff is not liable for damage as claimed by the defendants, while the second, commenced subsequently by those defendants, seeks on the contrary to have the plaintiff in the first action held liable for causing loss and ordered to pay damages.

43 As to liability, the second action has the same object as the first, since the issue of liability is central to both actions. The fact that the plaintiff's pleadings are

couched in negative terms in the first action whereas in the second action they are couched in positive terms by the defendant, who has become plaintiff, does not make the object of the dispute different.

44 As to damages, the pleas in the second action are the natural consequence of those relating to the finding of liability and thus do not alter the principal object of the action. Furthermore, the fact that a party seeks a declaration that he is not liable for loss implies that he disputes any obligation to pay damages.

45 In those circumstances, the answer to the fifth question is that, on a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

The second question

46 The national court's second question is whether a subsequent action has the same cause of action and the same object and is between the same parties as a previous action where the first action, brought by the owner of a ship before a court of a Contracting State, is an action *in personam* for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action *in rem* concerning an arrested ship, and has subsequently continued both *in rem* and *in personam*, or solely *in personam*, according to the distinctions drawn by the national law of that other Contracting State.

47 In Article 21 of the Convention, the terms 'same cause of action' and 'between the same parties' have an independent meaning (see *Gubisch Maschinenfabrik* v *Palumbo*, cited above, paragraph 11). They must therefore be interpreted independently of the specific features of the law in force in each Contracting State. It follows that the distinction drawn by the law of a Contracting State between an action *in personam* and an action *in rem* is not material for the interpretation of Article 21.

48 Consequently, the answer to the second question is that a subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action *in personam* for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action *in rem* concerning an arrested ship, and has subsequently continued both *in rem* and *in personam*, or solely *in personam*, according to the distinctions drawn by the national law of that other Contracting State.

The fourth question

49 The national court's fourth question is essentially whether, on a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and

judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

50 It is clear that that question arises only if the conditions for the application of Article 21 of the Convention are not satisfied.

51 The third paragraph of Article 22 provides that 'actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

52 The purpose of that provision is to avoid the risk of conflicting judgments and thus to facilitate the proper administration of justice in the Community (see the Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1979 C 59, p. 1, and in particular at p. 41). Furthermore, since the expression 'related actions' does not have the same meaning in all the Member States, the third paragraph of Article 22 sets out the elements of a definition (same report, p. 42). It follows that the concept of related actions there defined must be given an independent interpretation.

53 In order to achieve proper administration of justice, that interpretation must be broad and cover all cases where there is a risk of conflicting decisions, even if the judgments can be separately enforced and their legal consequences are not mutually exclusive.

54 The cargo owners and the Commission contend that the adjective 'irreconcilable', which is used both in the third paragraph of Article 22 and in Article 27(3) of the Convention, must be used in the same sense in both provisions, meaning that the decisions must have mutually exclusive legal consequences, as was held in Case

145/86 *Hoffmann* v *Krieg* [1987] ECR 645 (paragraph 22). They point out that the Court there held that a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable, within the meaning of Article 27(3) of the Convention, with a national judgment pronouncing the divorce of the spouses (paragraph 25).

55 That argument cannot be accepted. The objectives of the two provisions are different. Article 27(3) of the Convention enables a court, by way of derogation from the principles and objectives of the Convention, to refuse to recognize a foreign judgment. Consequently the term 'irreconcilable ... judgment' there referred to must be interpreted by reference to that objective. The objective of the third paragraph of Article 22 of the Convention, however, is, as the Advocate General noted in his Opinion (paragraph 28), to improve coordination of the exercise of judicial functions within the Community and to avoid conflicting and contradictory decisions, even where the separate enforcement of each of them is not precluded.

56 That interpretation is supported by the fact that the German and Italian versions of the Convention use different terms in the third paragraph of Article 22 and in Article 27(3).

57 The conclusion is therefore inescapable that the term 'irreconcilable' used in the third paragraph of Article 22 of the Convention has a different meaning from the same term used by Article 27(3) of the Convention.

58 Consequently the answer to the fourth question is that, on a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on

the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

Costs

59 The costs incurred by the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Court of Appeal by order of 5 June 1992, hereby rules:

1. On a proper construction, Article 57 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, means that, where a Contracting

State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply.

2. On a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.

3. On a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

4. A subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action *in personam* for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action *in rem* concerning an arrested ship, and has subsequently continued both *in rem* and *in personam*, or solely *in personam*, according to the distinctions drawn by the national law of that other Contracting State.

5. On a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

Rodríguez Iglesias Joliet Schockweiler

Kapteyn Mancini Kakouris Murray

Delivered in open court in Luxembourg on 6 December 1994.

R. Grass G. C. Rodríguez Iglesias

Registrar President