OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 22 February 1990 *

Mr President,
Members of the Court,

1. The Kingdom of Spain has applied to the Court for a declaration that Council Regulation (EEC) No 3483/88 of 7 November 1988 amending Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities is void. [1]

2. The object of that regulation is to remedy certain difficulties which Member States have experienced in monitoring fishing quotas. Before I consider the main provisions of that regulation and the grounds of the application, it is necessary to recall the main features of the common fisheries policy.

3. The Community system for the conservation and management of fishery resources was established under Regulation (EEC) No 170/83. [2] Article 3 of that regulation provides for the annual fixing of the total allowable catch (TAC) available to the Community for each stock or group of stocks where it becomes necessary to limit the catch in the case of one species or a group of related species. Under Article 4(1), 'the volume of the catches available to the Community . . . shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered'. Article 5(2) provides that 'Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them'. Each Member State is free to allocate its quotas by whatever methods it considers to be most suitable, provided that the criteria used comply with Community law. Those methods include the system of granting licences to certain vessels, as is the case, for instance, in both the United Kingdom and Spain, but that is a matter to which I shall have occasion to return. Fish caught by those vessels are charged against the quota of the Member State of registration, irrespective of the place of landing. In this way, amounts by which quotas are exceeded are deducted from subsequent quotas allocated to that State. It is thus necessary for the latter to have rapid and accurate information on the amounts of fish caught by vessels flying its flag, in order that it may be able to suspend fishing in good time and avoid exceeding its quota.

4. Compliance with that obligation, however, is made more difficult by the possibility that the vessels in question may land their catches in any Community port whatever. Such a possibility derives from Article 6(1) and Article 7 of Regulation No 2241/87. [3] Although the Court, in its recent decision in *Jaderow*, [4] accepted that national

* Original language: French.

1 — OJ 1988, L 306, p. 2.

2 — Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983, L 24, p. 1).

3 — Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987, L 207, p. 1).

4 — Judgment of 14 December 1989 in Case C-216/87 *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Jaderow Limited and Others* [1989] ECR 4509.

rules on quota management which functioned through the granting of licences could require recipient vessels to operate from national ports and that the methods for proving compliance with that requirement might include the landing of specific proportions of catches in those ports, it nevertheless required that

'the frequency with which the vessel is required to be present in those ports does not impose, directly or indirectly, an obligation to land the vessel's catches in national ports or hinder normal fishing operations'. [5]

Consequently, it is still possible to land catches in a port of a Member State other than that of the vessel's flag, even though such a possibility may on occasion be subject to restrictions.

5. In response to calls from several Member States who were experiencing difficulties in monitoring how their quotas were being used, the Community institutions decided to remedy the situation by adopting the regulation in dispute. The latter adds five new articles to Regulation No 2241/87 in order 'to strengthen the application of the fisheries conservation rules by improving cooperation between the Member States in preventing overfishing' [6] and, more particularly, to encourage the Member States of landing to play a more active monitoring role.

6. Only the first four articles added to Regulation No 2241/87 are criticized by the applicant Member State. I shall therefore examine in turn the complaints made against each of those provisions.

5 — Paragraph 4 of the operative part of the judgment.

6 — First recital in the preamble.

7. Article 9a, as added by the contested regulation, obliges the Member State of landing, at the request of the Member State of registration, to provide information on fish landed in its ports by vessels flying the flag of the Member State of registration. The Kingdom of Spain has two objections in this regard — first, that such an obligation entails considerable expense for the Member State of landing and, secondly, that each individual Member State ought to be responsible alone for the supervision of its own quotas.

8. The representative of the Spanish Government also argued during the hearing that the provision infringed the principle of proportionality. Such an argument is, in fact, no more than the expression in legal terms of the first complaint, the essentially political nature of which was emphasized by the interveners in their written observations. The argument that an obligation imposed by Community law entails expense for a Member State is of relevance to the Court only if it involves an infringement of the principles of equality and proportionality. In its judgment in *Howe & Bainbridge*, the Court stated that

'although difficulties caused by the application of a Community provision may be relevant to its interpretation, they are not of such a nature as to call its validity in question'. [7]

However, the Court has also stated in several decisions that

'measures adopted by Community institutions must not exceed what is appropriate and necessary to attain the objective pursued'. [8]

7 — Judgment of 30 September 1982 in Case 317/81 *Howe & Bainbridge BV* v *Oberfinanzdirektion Frankfurt am Main* [1982] ECR 3257, paragraph 19.

8 — Judgment of 17 May 1984 in Case 15/83 *Denkavit Nederland BV* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, paragraph 25; see also the judgments of 20 February 1979 in Case 122/78 *Buitoni* v *Forma* [1979] ECR 677 and of 23 February 1983 in Case 66/82 *Fromençais* v *Forma* [1983] ECR 395.

It is therefore necessary to consider the legality of Article 9a, as added by the contested regulation, in the light of the principle of proportionality.

9. In that regard, one may ask first whether that article really does create a new requirement or, more precisely, whether it entails significant additional expense for the Member State of landing. Article 9(1) of Regulation No 2241/87 in fact already requires Member States to ensure that all landings by fishing vessels flying the flag of a Member State are recorded, where such landings relate to stocks or groups of stocks subject to TACs or quotas. In addition, Article 9(2) requires each Member State to notify the Commission, before the 15th of each month, of the quantities of each stock or group of stocks subject to TACs or quotas landed during the preceding month. The Commission may request more detailed and more frequent information where catches of stocks subject to TACs or quotas appear likely to reach the prescribed maximum level. Article 9(3) provides that 'The Commission shall inform Member States of the notifications received ... within 10 days of the date on which it received them'.

10. The sole effect of Article 9a is thus to make it possible for information to be sent *directly* from the Member State of landing to the Member State of registration, whereas that information had previously to be sent via the Commission. Moreover, this new obligation applies only in individual cases when the Member State of registration so requests. While the information must, as the Spanish Government pointed out during the hearing, be sent within four days, a requirement distinct from that of sending comprehensive notifications to the Commission, Article 9(2) of Regulation No 2241/87 does, as I have just pointed out, allow the Commission to request more detailed or more frequent information. Similarly, Article 9(1) obliges Member States to ensure that a record is kept of fish landed. As the responsible authorities of the Member State of landing therefore already possess the information requested, the additional expense which Spain alleges, even if the Court should consider it at all relevant, would appear in any case to be negligible.

11. Secondly, and more importantly, the disputed provision does not appear to be disproportionate to the objectives of improving the monitoring and conservation of fishery resources, since its purpose is to enable the Member State of registration to be informed more rapidly of fish caught by vessels flying its flag and also to dissuade skippers of such vessels from providing the competent authorities of that State with false information. It is difficult to imagine any system which might enable those objectives, which, after all, are perfectly legal, to be met in a more satisfactory manner. That the expense of collating such information falls in practice more heavily on the Kingdom of Spain than on other Member States is due solely to the fact that the ports of that State have, for a variety of reasons, been chosen by numerous fishing undertakings as landing places. However, that is a situation which may well change. In any case, it is not possible to make the legality of a Community regulation depend on administrative charges arising from factual circumstances which are eminently capable of altering. It is my view, therefore,

that the first complaint ought not to succeed.

12. The second complaint presupposes that there is a rule under the common fisheries policy which allows each Member State to monitor solely its own vessels. That argument is also put forward by the applicant Member State to substantiate its criticism of the other provisions in the contested regulation, criticism which is based wholly on the principle that the Member State of registration alone is required to carry out such monitoring, without any cooperation whatever from the Member State of landing. Complaints of this nature place in question the very objectives of the contested regulation and make it necessary, in my opinion, to take an overall look at the structure and coherence of the Community system for preserving fishery resources. I shall therefore consider them together later on. [9]

13. The second disputed article, Article 11a, requires the Member State of landing to check that vessels registered in a Member State which has introduced a licensing system for the disposal of its quotas themselves hold a licence. The Kingdom of Spain makes two complaints in respect of that provision: on the one hand, it would have the effect of 'communalizing' the licensing system, and, on the other, it would result in the transfer to one Member State of the expenses associated with the supervision of an administrative system established by another Member State. Once again, the representative of the applicant Member State, during the oral procedure, linked this second complaint to infringement of the principle of proportionality.

14. With regard to the first complaint, the Commission points out that Article 1(1) of Regulation No 2241/87 requires each Member State to monitor fishing activity and related activities 'in order to ensure compliance with all the regulations in force concerning conservation and control measures'. It interprets that provision and in particular the expression 'all the regulations in force' as referring not only to Community regulations adopted to promote the common fisheries policy, but also to national provisions introduced on the basis of a delegated power and designed to bring about the objectives of that common policy, provisions such as those which set up a licensing system for the allocation of fishing quotas.

15. Such an argument strikes me as being relevant. Article 5(2) of Regulation No 170/83 authorizes Member States to determine, 'in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them'. In its judgment in *Jaderow*, which I have already cited, the Court also held that

'the system of national quotas was adopted in order to enable the measures for the conservation of fishery resources provided for by Article 102 of the 1972 Act of Accession to be implemented in the shortest possible time. It thus constitutes a stage towards a Community fisheries policy designed to lead to the restructuring and adaptation of the fishing fleets to the fishery resources available', [10]

and concluded that

9 — See paragraphs 40 to 43 below.

10 — Paragraph 24 of the judgment.

'the measures which the Member States may adopt when exercising the power conferred on them by Article 5(2) of Regulation No 170/83 with a view to excluding certain of the vessels flying their flag from sharing in the utilization of their national quota are justified only if they are suitable and necessary for attaining the aim of the quotas'. [11]

16. It is therefore beyond dispute that a licensing system forms part of the provisions 'in force concerning conservation and control measures' referred to in Article 1 of Regulation No 2241/87. If such a system is one of the measures applicable under the common fisheries policy, it is difficult to understand why the Community legislature should not take that system into account in order to make all Member States, subject to certain conditions, play their part in monitoring the possession of licences.

17. Of course, there is nothing to prevent the Council from laying down such a provision for cooperation in respect of systems of quota management other than that based on licences. That, however, has not been done. Among the various systems for managing quotas which might have been envisaged, the licensing system alone was taken into account by the Community legislature, since the disputed Article 11a provides that a Member State which has instituted such a system for managing its quotas may inform the Commission and the other Member States of the identity of licensed vessels and of the withdrawal or suspension of licences, in which case the Member State of landing must check that the vessels concerned do hold a licence. It appears, in this regard, that most Member States have adopted the licensing system.

18. The question, however, is not without significance. We enter at this point into the realm of legislative expediency. Without actually 'communalizing' the licensing system, the Council does, to some extent, confer on it the advantage of a cooperative obligation which all Member States are required to implement. I believe that there is nothing, apart from infringement of the principle of equality, which prevents the Community legislature from recognizing the existence of, and according a degree of recognition to, national rules or legislative provisions which in its view are the most suitable for bringing about the objectives of the Treaty. Community law must be able to draw inspiration from those systems of national law which appear to be the most effective in terms of technique. Unless it were to take the place of the Council, the Court cannot in this case place in question those choices which derive from legislative expediency. Infringement of the principle of equality alone could persuade me to take a different view. In this connection, one need go no further than to point out, as the Commission stated during the hearing, that the majority of Member States, including Spain, have chosen the licensing system for managing their quotas and that the applicant Member State has failed to show how the disputed provision infringes the principle of equality.

19. The second complaint based on the transfer to a Member State of the costs connected with a system set up by another Member State also rests on the principle, the existence of which is affirmed by the applicant Member State, that each Member State ought to be responsible only for the monitoring of its own vessels. That is a matter which, as I have already stated, I shall be considering at a later stage. [12]

20. Article 11b, as added to Regulation No 2241/87, allows the Member State of registration to require a fishing vessel flying its

11 — Paragraph 25 of the judgment.

12 — See paragraphs 40 to 43 below.

flag, which has failed to comply with rules concerning conservation or fishery control measures, to retain on board, when landing catches in a port or transhipping in the maritime waters of another Member State, a document certified by the Member State of registration and stating that the latter has inspected the vessel within the preceding two months. That measure remains in force for one year from the recording of the infringement.

21. The applicant Member State directs only one complaint against that provision, namely, that it amounts to a measure having an effect equivalent to quantitative restrictions on exports, as prohibited under Article 34 of the EEC Treaty. During the oral procedure, the representative of the Spanish Government pointed out that Community measures taken pursuant to the common fisheries policy may not derogate from Article 34.

22. The latter point is, in my view, perfectly correct. According to Article 38(1) of the EEC Treaty, fishery products come under the common agricultural policy. The Court has long held that provisions relating to free movement of goods became applicable, on the expiry of the transitional periods, to products coming within the common agricultural policy.[13] Although all those decisions concerned national measures, rather than provisions of Community law, the Court held in its judgment in *Commissionnaires réunis* v *Receveur des douanes*[14] that

'the extensive powers, in particular of a sectoral and regional nature, granted to the Community institutions in the conduct of the common agricultural policy must, in any event as from the end of the transitional period, be exercised from the perspective of the unity of the market to the exclusion of any measure compromising the abolition between Member States of customs duties and quantitative restrictions or charges or measures having equivalent effect'.[15]

23. In its judgment in *Denkavit Nederland BV* v *Hoofdproduktschap voor Akkerbouwprodukten*,[16] the Court applied that doctrine to the specific case of Article 34 in order to determine whether Commission Regulation (EEC) No 1725/79,[17] which introduced a system of administrative control for bulk exports of compound feedingstuffs which differed slightly from that applicable to the domestic marketing of such feedingstuffs, was compatible with that article.

24. Furthermore, as the Spanish Government stresses in its application,[18] the origin of fish is determined by the flag of the vessel which caught it, in accordance with Article 4(1) and 4(2)(f) of Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods.[19] The sale of a catch in a port of a Member State other than that of the vessel's flag therefore constitutes an export.

13 — Judgments of 10 December 1974 in Case 48/74 *Charmasson* v *Minister for Economic Affairs and Finance* [1974] ECR 1383, of 29 March 1979 in Case 231/78 *Commission* v *United Kingdom* [1979] ECR 1447, of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, of 3 February 1983 in Case 29/82 *F. van Luipen en Zn BV* [1983] ECR 151, and of 5 June 1985 in Case 116/84 *Roelstraete* [1985] ECR 1705.

14 — Judgment of 20 April 1978 in Joined Cases 80/77 and 81/77 [1978] ECR 927.

15 — Paragraph 35 of the judgment.

16 — Case 15/83, cited above.

17 — Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (OJ 1979, L 199, p. 1).

18 — At p. 7 of the French translation.

19 — OJ, English Special Edition 1968 (I), p. 165.

25. I must now turn to consider whether Article 11b is compatible with Article 34 of the EEC Treaty. The Court has consistently held that Article 34 concerns measures

'which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States'. [20]

26. It seems to me therefore that there are three constituent elements in the type of measure prohibited under Article 34 of the Treaty: first, the existence of a *specific* restrictive effect on patterns of export; secondly, a difference in treatment between a Member State's domestic trade and its export trade; thirdly, the requirement that the measure is intended specifically to place domestic production or the domestic market at an advantage.

27. Article 11b does not, in my opinion, satisfy the three conditions which I have just outlined. Although the measure at issue does require vessels thus subjected to additional monitoring to return at least once every two months to a port in the Member State of registration for the purpose of inspection, such an inspection may well take place *before* the fishing period if that period is less than two months; in such a case, the vessel in question may, contrary to the assertions put forward in the application, land its catch without any problem in one or more ports of its choice without previously being obliged to return to the Member State of registration. Furthermore, the Commission pointed out during the oral procedure that only three vessels have to date been made subject to this measure (two by the French authorities and one by the Belgian authorities). Therefore, if there is a restrictive effect at all on patterns of exports, it is exceedingly weak and, in particular, is not *specific* because the disputed provision derived from a general system of administrative monitoring of compliance with Community obligations in respect of fishing.

28. Secondly, while the measure would appear to introduce a difference in treatment between domestic trade within Member States and their export trade, inasmuch as a vessel which regularly lands its catches only in ports of the Member State of registration cannot be required to undergo periodic inspections, such a difference in treatment is more apparent than real, when one considers the fact that Member States have in general introduced penalty and control measures for their vessels, as they are entitled to do under Article 15 of Regulation No 2241/87. Such measures lead in fact to a comparable restriction on the marketing of catches on the domestic market of the Member State concerned.

29. Even if we were to assume that a difference in treatment does exist, such difference has neither the object nor the effect of securing a particular advantage for the domestic market of a Member State.

20 — Judgments of 8 November 1979 in Case 15/79 *Groenveld* v *Produktschap voor Vee en Vlees* [1979] ECR 3409, paragraph 7, of 14 July 1981 in Case 155/80 *Oebel* [1981] ECR 1993, paragraph 15, of 1 April 1982 in Joined Cases 141 to 143/81 *Holdijk* [1982] ECR 1299, of 15 December 1982 in Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575, paragraph 13, of 10 March 1983 in Case 172/82 *Syndicat national des fabricants raffineurs d'huile de graissage* v *Inter-Huiles* [1983] ECR 555, paragraph 12, of 7 February 1984 in Case 237/83 *Jongeneel Kaas* v *Netherlands* [1983] ECR 483, paragraph 22, in Case 15/83, cited above, paragraph 16, and of 13 December 1984 in Case 253/83 *Haug-Adrion* v *Frankfurter Versicherungs-AG* [1984] ECR 4277, paragraph 20

30. Those are the reasons why I do not believe that Article 11b infringes Article 34 of the Treaty and why the complaint made by the applicant Member State ought not to succeed.

31. Finally, the application criticizes Article 11c which was added by the disputed regulation to Regulation No 2241/87. That provision requires the competent authorities of the Member State of landing to take against the master of the vessel concerned, or against any other responsible person who has infringed the third subparagraph of Article 11(3), Article 11a or 11b, penal or administrative action such as is likely to deprive them of the economic benefit of the infringement. The prosecution of such an infringement may be transferred to the competent authorities of the Member State of registration, if the latter so agree, provided that such transfer is more likely to secure the intended result. If the Member State of landing should fail to act in this regard, the illegal landings may be counted against its own quota.

32. The Kingdom of Spain challenges this provision in four respects. First, it claims that it imposes additional duties on the Member State of landing, which should only be required to monitor vessels flying its own flag. Secondly, it is at variance with the normal rules in criminal matters which limit a State's jurisdiction to its territorial waters. Thirdly, it infringes the principle of proportionality in so far as the counting of illegal landings against the quota of the Member State of landing is detrimental to the interests of fishermen from that State and burdens that State with the effects of the negligent failure on the part of another Member State in its duty to monitor its own vessels. Finally, the penalty which such a charge represents infringes the principle of the right to a judicial remedy. Instead of recourse being had to the procedure under Articles 169 and 170 of the EEC Treaty, all that is required is a simple decision of the Commission taken after consultation with the Management Committee.

33. I shall leave to the end my examination of the first and third complaints, which are merely the transposition to the area covered by Article 11c of criticisms previously directed at the other provisions of the contested regulation and which are all based on the refusal to recognize any obligation on the part of the Member State of landing to cooperate in control measures directed at vessels from another Member State.

34. As I have already stated, the second complaint concerns the traditional limits on the jurisdiction of States in criminal matters. The specific problem here is how to determine what constitutes exceeding a quota for the purposes of the third subparagraph of Article 11(3) of Regulation No 2241/87. According to the wording of that provision, fishing vessels must cease fishing once the quota has been exhausted; they must also cease retention on board, transhipment or landing of catches taken after the date of cessation of fishing. Thus, once a Member State has announced that fishing is to cease, infringement of Community rules may equally well result from the catching, retention on board, transhipment or landing of fish.

35. Some of those operations take place outside territorial waters. There are, however, two factors which convince me that the complaint ought to be dismissed.

36. In the first place, the very principle of the primacy of Community law precludes a Member State from pleading provisions of its national law, even its criminal law, in

order to refuse to carry out its Community commitments. As the Court has already held,

'The effectiveness of Community law cannot vary according to the various branches of national law which it may affect'. [21]

The primacy of Community law thus renders such an argument inoperative. It should also be noted that the freedom of Member States with regard to criminal procedure and penalties is not put in question by Article 11c, provided that the measure selected deprives the wrongdoer of the economic benefit of the infringement. It is also open to the Member State of landing to impose a solely administrative penalty.

37. Secondly, it seems that the legality of the regulation may only be questioned in the light of the rules of public international law. Such an argument was not put forward expressly by the Kingdom of Spain, although it is apparently referring to rules of that kind when it relies on the territorial nature of the power which States have to impose penalties. [22] That argument is significant in so far as the Community, when it exercises jurisdiction which previously devolved on the Member States, is required to comply with the obligations imposed on States by public international law. For that reason it is necessary to examine briefly the relevant rules in the matter.

38. I would refer at this point to the United Nations Convention on the Law of the Sea which, even if it has not yet come into force, reflects international legal opinion on the subject, since, in the words of the International Court of Justice, 'the rules of international maritime law have been the product of mutual accommodation, reasonableness and cooperation'. [23] Under Article 61(1) of the Convention, 'the coastal State . . . shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by overexploitation. As appropriate, the coastal State and competent international organizations, whether subregional, *regional*[24] or global, shall cooperate to this end'. Moreover, Article 73(1) provides that: 'the coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and *judicial proceedings*, [25] as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention'. According to Article 57: 'the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured'. [26] As a general rule, States limit the extent of their territorial waters to 12 nautical miles. Spain became a signatory to that Convention on 4 December 1984, as did the Community on 7 December 1984. For the sake of completeness, I ought to point out that the combined effect of Article 63(2) and Article 116(b) of the Convention

21 — Judgment of 21 March 1972 in Case 82/71 *Pubblico Ministero della Repubblica italiana* v *SAIL* [1972] ECR 119, paragraph 5; see also, generally, D Maidani and J. Biancarelli: 'L'incidence du droit communautaire sur le droit pénal des Etats membres', *Revue de science criminelle et de droit penal comparé 1984* No 2, p. 225, and No 3, p. 455.

22 — Written observations, at p. 10 of the French translation.

23 — Judgment of 25 July 1974 *Federal Republic of Germany* v *Iceland* fisheries jurisdiction case, *Recueil des arrêts 1974*, p 175, paragraph 45

24 — My emphasis.

25 — My emphasis.

26 — For the French text of the Convention, see R. J. Dupuy and D. Vignes: 'Traite du nouveau droit de la mer', *Economica*, Bruylant, 1985.

with regard to the high seas is that 'where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or *regional organizations*,[27] to agree upon the measures necessary for the conservation of these stocks in the adjacent area'.[28] Furthermore, the Community has acceded to two conventions on future multilateral fisheries cooperation in the North Atlantic,[29] which point out that the coastal States concerned 'have, in accordance with relevant principles of international law, extended their jurisdiction over the living resources of their adjacent waters to limits of up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured'. The Convention dealing with the North-West Atlantic entered into force on 1 January 1979, while that relating to the North-East Atlantic became operative on 17 March 1982.

39. I do not therefore believe that the jurisdiction of the Kingdom of Spain to ensure conservation of fishery resources is limited to its territorial waters, as it contends. On the contrary, the United Nations Convention expressly makes possible cooperative measures, in relation to fishing within the exclusive economic zone and even on the high seas, between States which belong to a regional organization, such as the European Economic Community.

27 — My emphasis.

28 — Article 63(2) of the Convention.

29 — For the North-West Atlantic: Council Regulation (EEC) No 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries (OJ 1978, L 378, p. 1); for the North-East Atlantic: Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ 1981, L 227, p. 21).

40. However, this analysis stems merely from my desire to be comprehensive, since it should not be forgotten that such a submission was not expressly made by the applicant Member State, and, to reiterate, the principle of the primacy of Community law should by itself lead the Court to dismiss the complaint.

41. The fourth complaint, relating to the procedure whereby illegal catches are counted against the quota of the Member State of landing, appears to me to lack any relevance. I do not believe that the Court need take a position on the question which divided the parties as to whether that system of attribution amounts to a penalty against the Member State of landing. Whatever may be the legal nature of such a measure, the basic criticism levelled by the applicant Member State actually refers to the principle of the right to a judicial remedy, since the application draws a comparison between the procedure under Article 11c of the contested regulation, a procedure which is strictly 'administrative' and that under Articles 169 and 170 of the EEC Treaty which also involve the bringing of proceedings before the Court. On that point, however, all that is required is to hold that nothing precludes the Member State in question from bringing an action under Article 173 of the EEC Treaty for the annulment of the Commission decision. There has therefore been no infringement of the right to a judicial remedy.

42. The first and third complaints are based on a double infringement of the principle of proportionality, in the first place because the obligation imposed on the Member State of landing to prosecute infringements of the Community rules, including infringements by vessels not flying its own flag, would

involve undue expense, and secondly, because the counting against its quotas of illegal catches in respect of which no proceedings have been brought represents a disproportionate sanction. As I have already pointed out on several occasions, the Kingdom of Spain believes that there is a principle of Community law to the effect that each Member State must monitor and penalize only those vessels flying its own flag. Let there be no mistake, an argument of that nature casts doubt over both the Council's objective in adopting the disputed regulation and the cohesion of the Community system for conserving fishery resources.

43. Since the common fisheries policy may not create exemptions from the other types of freedom guaranteed under the EEC Treaty, the system whereby exploitation of marine resources is allocated by way of national quotas cannot obstruct freedom of establishment or free movement of workers and goods. The result, which the Court accepted in its judgment in *Jaderow*,[30] is that vessels fishing on the quota of a Member State may land their catches in any other Member State of the Community. However, each Member State is responsible for any amounts by which its quota is exceeded and the Court has interpreted that obligation very strictly, since, in its judgment in a case involving the Netherlands and the Commission, it dismissed the argument put forward by the Netherlands Government that it would be impossible to monitor by pointing out that

'it is for the Member States, which are required to implement Community rules under the common organization of the markets in the area of fishery products, to overcome those difficulties by taking the appropriate measures'.[31]

44. Each Member State of registration is thus required to monitor catches and consequently to obtain as quickly as possible all information necessary for that purpose. It must therefore also be in a position to obtain help from other Member States with regard to monitoring of licences in so far as the Member State of registration will be unable to exercise any control whatever if the vessel which holds a licence normally lands its catches in the ports of another Member State. The same is true of the additional control measure contained in Article 11b.

45. Let me make the point once again that this will not be possible without the cooperation of the Member State of landing. The supposed principle that each Member State ought only to monitor its own vessels would in any case be ineffective unless vessels from Community Member States were obliged to land their catches only in the ports of the Member State whose flag they fly. That would represent a major barrier, in particular, to the free movement of goods. Since vessels subject to the rules of the common fisheries policy may land their catches in any Community port whatever, the participation of the Member State of landing in the monitoring procedures imposed by Community legislation cannot be brought in question. It is therefore entirely logical for Article 1 of Regulation No 2241/87 to impose an obligation on all Member States to ensure compliance with the regulations adopted in order to achieve the aims of the common fisheries policy. Furthermore, what we have here is merely the application to the

30 — Case 216/87, cited above.

31 — Judgment of 2 February 1989 in Case 262/87 [1989] ECR 225 (summary publication), paragraph 15.

particular case of the common fisheries policy of the principle of Community solidarity, which the Court has already recognized as one of the foundations of the Community,[32] as well as the obligation on Member States to cooperate in achieving the objectives of the Treaty as laid down in Article 5 of the EEC Treaty.

46. With regard to the measure which makes all the obligations imposed on the Member State of landing effective, namely the penalty whereby illegal catches which have not been prosecuted are counted against its quota, it is proportionate by its very nature because it stands *in direct relation* to the damage done to Community resources. To quote from the case-law of the Court, such an obligation does not exceed 'what is appropriate and necessary to attain the objective pursued'.[33] The applicant Member State has in any case failed to prove the existence of appropriate measures for attaining that objective which would involve lower administrative costs. I would finally point out that this cooperation between Member States with regard to the common fisheries policy in no way derogates from measures which already apply within the other common policies.

47. For the above reasons, none of the complaints made appears in my opinion to cast doubt on the validity of Articles 9a, 11a, 11b and 11c which the disputed regulation added to Regulation No 2241/87.

48. In conclusion, I would propose that the Court dismiss the application brought by the Kingdom of Spain and that the costs, including those of the interveners, be borne by the applicant Member State.

32 — Judgment of 29 June 1978 in Case 77/77 *BP* v *Commission* [1978] ECR 1513, paragraph 15.

33 — Case 15/83 *Denkavit Nederland*, cited above, paragraph 25 of the judgment.