Regulation No 3151/87, the application of certain provisions of that regulation concerning catch declarations to stocks not subject to total allowable catches or quotas caught by Community vessels in the maritime waters under the sovereignty or jurisdiction of developing countries under an agreement between the Community and one of those countries. Regulation No 3151/87 must therefore be declared void.

REPORT FOR THE HEARING
delivered in Joined Cases 6 and 7/88 *

I — Facts and procedure

1. *The fisheries agreements between the Community and certain developing countries*

The Community operates fisheries agreements with certain developing countries based on the principle of financial compensation for the fishing rights obtained (see in particular the agreements with the following States: *Guinea-Bissau*, Official Journal L 226, 29.8.1980, p. 34, most recently amended in Official Journal L 261, 13.9.1986, p. 20; *Equatorial Guinea*, Official Journal L 188, 16.7.1984, p. 1, amended in Official Journal L 372, 31.12.1986, p. 18; *Guinea*, Official Journal L 111, 27.4.1983, p. 2, amended in Official Journal L 372, 31.12.1986, p. 27; *Madagascar*, Official Journal L 73, 18.3.1986, p. 26, amended in Official Journal L 98, 10.4.1987, p. 7; *Sao Tome and Principe*, Official Journal L 54, 25.2.1984, p. 2, amended in Official Journal L 300, 23.10.1987, p. 31; *Senegal*, Official Journal L 226, 29.8.1980, p. 17, most recently amended in Official Journal L 127, 20.5.1988, p. 15; *Seychelles*, Official Journal L 119, 7.5.1987, p. 24; *Mozambique*, Official Journal L 98, 10.4.1987, p. 10; *Gambia*, Official Journal L 146, 6.6.1987, p. 1; *Angola*, Official Journal L 268, 19.9.1987, p. 64; *Mauritania*, Official Journal L 302, 24.10.1987, p. 24; *Comoros*, Official Journal L 137, 2.6.1988, p. 18; and *Morocco*, Official Journal L 99, 16.4.1988, p. 45). The terms and conditions for the financial compensation are laid down in protocols annexed to the agreements. They provide that the compensation funds are normally payable in annual tranches.

Under the agreements, if the authorities of a coastal State decide, as a result of changes in fish stocks, to adopt conservation measures which affect the activities of Community vessels, consultations take place between the parties with a view to adjustment of the agreement. Some of the agreements expressly provide that the consultations are to be based on the principle that any substantial reduction in the fishing rights envisaged in the protocol is to result in a proportionate reduction in the financial compensation to be paid by the Community (see in particular the

* Languages of the case: Spanish and French.

abovementioned agreements with Mozambique and Mauritania). Furthermore, if the catches taken exceed a specified quantity, the financial compensation is increased proportionately.

The agreements also provide that fishing by Community vessels in the waters of the coastal State is subject to payment of a licence fee by the shipowner concerned. For tuna fishing, the licence fee is calculated per tonne of catch. Tuna-fishing licences are issued against advance payment of a flat rate per annum per tuna seiner. At the end of each calendar year the Commission prepares a provisional statement of the fees due for the previous season, based on the catch statements made by the owners and forwarded simultaneously to the authorities in the coastal States and to the Commission. The final statement of fees is drawn up by the Commission after verification of the volume of each catch by a specialist scientific body in the region. The owners are notified of the Commission's statement and have a period of 30 days in which to discharge their financial obligations.

In addition to the catch statements of tuna fishermen, vessels authorized to fish under an agreement are required to forward catch statements to the competent departments in the coastal States either at the end of each expedition, or monthly or else once per quarter. Certain agreements, however, go further and provide for a copy of all catch statements to be sent to the Commission delegation in the coastal State (see the agreements with Senegal and Equatorial Guinea, mentioned above) or require the statements to be forwarded to the competent authorities though the Commission delegation (see the abovementioned agreement with Guinea). Other agreements provide that tuna fishermen are to keep a fishing log-book which must be sent as soon as possible after the fishing season to the authorities of the coastal State through the Commission delegation (see the agreements with Mozambique and Angola). Other vessels fishing in the same zone must forward their catch statements directly to the competent authorities. By contrast, certain agreements provide that, with the exception of tuna-fishing vessels and long-liners, all Community vessels are required to forward their catch statements to the competent departments through the Commission delegation (see the agreement with Mauritania). The statements are monthly and must be presented at least once every six months. Finally, a number of agreements do not specify any further information to be notified to the Commission concerning catches taken (see the agreements with Guinea-Bissau, Madagascar, the Seychelles and the Comoros).

Moreover, whilst fishing in the zone of a coastal State, Community vessels are required, under the various agreements, to notify the radio station of the coastal State of each entry into or departure from the zone and also their position and the volume of their catches.

2. *The contested regulation*

On 22 October 1987 the Commission adopted Regulation No 3151/87 concerning the catch declarations of vessels flying the flag of a Member State and operating in the fishing zones of certain developing countries

(Official Journal 1987, L 300, p. 15, corrigendum of 10 February 1988, Official Journal 1988, L 37, p. 19). The references in the preamble include one to Council Regulation No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (Official Journal 1987, L 207, p. 1), in particular Article 14.

According to the second recital in the preamble to the contested regulation, 'it is essential to the proper management of such fisheries agreements, which require the Community to grant substantial financial compensation in return for fishing rights and to provide the non-member countries concerned with certain information on the catches taken, that the Commission be informed of the outcome of the activities of vessels flying the flag of a Member State in waters falling within the jurisdiction of a partner country; ... therefore, rules should be laid down for the recording and notification of catch data'. The Commission took the view that by virtue of Article 10 of Council Regulation No 2241/87 of 23 July 1987 the application of certain provisions of that regulation should be extended to stocks not subject to a TAC (total allowable catch) or quota fished by Community vessels in maritime waters under the sovereignty or jurisdiction of the developing countries mentioned above (fourth recital).

The first two articles of Regulation No 3151/87 are worded as follows:

'*Article 1*

1. Articles 5, 6, 7(1), (3) and (4) and 9(1) and (4) of Regulation (EEC) No 2241/87 shall apply to the activities of Community vessels fishing in maritime waters under the sovereignty or jurisdiction of developing countries on the basis of an agreement between the Community and one of the countries mentioned.

2. The list of the countries referred to in paragraph 1 will be published in the *Official Journal of the European Communities*, C series.

Article 2

1. Before the end of the first month of each quarter of the calendar year, each Member State shall notify the Commission of the quantities caught in the fishing zones concerned and landed during the preceding quarter as well as of any information received pursuant to Article 7(1) of Regulation (EEC) No 2241/87.

2. The data provided under paragraph 1 shall be broken down in accordance with the tables contained in Annexes I and II by country and by species or group of species, for all stocks in the fishing zone concerned.

3. The Commission shall communicate to the Member States the information which it has received pursuant to this article.'

3. *The basic regulations*

Regulation No 2241/87, which is the legal basis for the contested regulation, estab-

lished certain control measures for fishing activities. They are general rules for the implementation of Regulation No 170/83 of 25 January 1983 (Official Journal 1983, L 24, p. 1), which established a Community system for the conservation and management of fishery resources in order to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions. The system consists in particular of conservation measures, rules for the use and distribution of resources, special provisions for coastal fishing and supervisory measures.

With regard to the control measures which it establishes, Title I (Articles 1 to 4) of Regulation No 2241/87 lays down rules concerning the inspection and monitoring of fishing vessels and their activities and Title II (Articles 5 to 10) lays down rules concerning monitoring of catches. Article 10 of Regulation No 2241/87 provides that:

'In accordance with the procedure laid down in Article 14, additional stocks or groups of stocks may be made subject to Articles 5 to 9.'

For the adoption of detailed rules for the implementation of Articles 3 to 10 of Regulation No 2241/87, Article 14 refers to the procedure under Article 14 of Regulation No 170/83.

4. *Procedure*

The applications lodged by the Kingdom of Spain and the French Republic were received at the Court Registry on 11 January 1988. By order of 18 January 1989 the Court joined the cases for the purposes of the oral procedure and the judgment.

Upon 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. However, it asked the Commission to provide a complete list of all the fisheries agreements concluded between the Community and developing countries, and the Commission did so within the period indicated.

II — Conclusions of the parties

1. In Case 6/88, the Kingdom of Spain claims that the Court should:

(i) annul Commission Regulation (EEC) No 3151/87 of 22 October 1987 concerning the catch declarations of vessels flying the flag of a Member State and operating in the fishing zones of certain developing countries;

(ii) order the defendant to pay the costs.

The Commission contends that the Court should:

(i) dismiss the application as unfounded;

(ii) order the applicant to pay the costs.

2. In Case 7/88, the French Republic claims that the Court should:

(i) annul Commission Regulation (EEC) No 3151/87 of 22 October 1987;

The Commission contends that the Court should:

(i) dismiss as unfounded the French Republic's application for the annulment of Regulation No 3151/87;

(ii) order the applicant State to pay the costs.

III — Submissions and arguments of the parties

In support of their applications, the applicants essentially make submissions falling into three categories, based on (1) incorrect legal basis and lack of powers of the Commission, (2) manifest error of assessment and (3) inadequate statement of the reasons on which Regulation No 3151/87 is based.

1. *Incorrect legal basis and the Commission's lack of powers*

In Case 6/88, the Spanish Government considers in the first place that the contested regulation cannot in any circumstances be properly based on Article 14 of Regulation No 2241/87 since it does not merely adopt rules for the implementation of control measures for fishing activities governed by Regulation No 2241/87 but regulates for the first time a sector not previously regulated. Whereas Regulation No 2241/87 is concerned exclusively with control measures for fishing activities in Community waters, Regulation No 3151/87 governs catch declarations of vessels flying the flag of a Member State fishing in maritime waters under the sovereignty or jurisdiction of a developing country under an agreement between the Commission and one of those countries. The Spanish Government considers therefore that the rules constitute a new system of control for catches taken outside Community waters.

The Spanish Government then points out that under Article 4 of the Treaty 'each institution shall act within the limits of the powers conferred upon it by this Treaty'. The Commission's powers are listed in Article 155 of the Treaty, which provides *inter alia* that the Commission is to 'exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter'. Although it does not adopt the traditional separation of powers of the classic constitutional system, the Community does allocate powers between the various institutions, in a manner described by academic legal writers and in case-law as an institutional balance. In the present case, Regulation No 2241/87 does not give the Commission power to lay down control measures relating to catches taken in non-Community waters, since the contested regulation has an entirely different purpose.

The Spanish Government maintains that all the provisions relied on by the Commission to show that the Community has powers to regulate certain aspects of fishing activity outside Community waters are provisions emanating from the Council and not the Commission. Accordingly, it is established practice that whenever the Community has regulated a particular aspect of fishing outside Community waters it has done so by Council legislation, the Commission not having been given any powers in that regard.

The Spanish Government considers that the fisheries control policy applicable to Community waters and to certain zones elsewhere, as in the case of agreements concluded with the Nordic countries, is not applicable to the developing countries. It states that the approach underlying the agreements concluded with the Nordic countries, where the situation of fishery resources is well known and where stocks are evaluated and TACs and quotas are fixed for the Community and for each Member State, has not been applied to the agreements with developing countries and consequently the Community fleet covered by those agreements does not, save in exceptional cases, allocate catches to quotas.

The Spanish Government does not deny that the Community has the power to regulate certain aspects of fishing outside Community waters. It is obvious that the Community may conclude fisheries agreements with non-member countries or delimit catch zones for certain stocks of fish outside Community waters, but the Commission is not thereby authorized on the basis of Article 10 of Regulation No 2241/87 to apply a control system for catches laid down for stocks governed by a TAC or quota system for specific zones, as in the case of the developing countries covered by the contested regulation, which establishes neither TACs nor quotas.

Article 10 must therefore be interpreted as meaning that the additional stocks to which it refers are stocks of which catches were previously subject to a TAC or quota.

In Case 7/88, the French Government also considers that the Commission had no power to adopt Regulation No 3151/87 on the basis of Article 10 of Regulation No 2241/87. It claims that Article 10 of Regulation No 2241/87 refers to Articles 5 to 9 of the same regulation, which relate to stocks or groups of stocks subject to a TAC or quota. Those provisions can therefore relate only to zones for which TACs or quotas already exist, and they do not exist in the developing countries covered by Regulation No 3151/87.

That interpretation is confirmed by Article 1 of Regulation No 2241/87, which defines its scope by stating that 'each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities'.

According to the French Government, Article 10 is intended to introduce a degree of flexibility into the TAC or quota system. That article thus makes it possible:

(i) to extend Articles 5 to 9 to species subject to TACs or quotas located not in Community waters but in another zone where TACs or quotas exist, as in the case of the NAFO (North-West Atlantic Fisheries Organization) zone;

(ii) in certain cases, in those zones where there are TACs and quotas and therefore appropriate control procedures and methods, to subject species not yet subject to TACs or quotas to the controls envisaged in Articles 5 to 9; this second possibility is provided for in the 11th recital in the preamble to Regulation No 2241/87, which states that 'it is appropriate to permit the provisions concerning the log-book, the declarations of landings and information about transhipment and registration of catches to be extended to stocks not subject to total allowable catches or quotas' (the possible extension relates to stocks, not to zones).

The French Government also claims that the contested regulation cannot be seen as a detailed implementing rule within the meaning of Article 14 of Regulation No 2241/87. The scope of the contested regulation is different from that of Regulation No 2241/87, since it covers zones of developing countries and not zones covered by TACs or quotas. In the French Government's opinion, to extend the scope of a Council regulation cannot be regarded as a mere implementing measure, and in any event to do so goes beyond the Commission's powers of implementation under the general rules of the Treaty and of Regulation No 2241/87, particularly since the situation in the fishing zones of the developing countries concerned is very different from that of the zones covered by Regulation No 2241/87.

Finally, the French Government recalls that it was the Council that adopted Regulation No 3251/87 of 19 October 1987 (Official Journal 1987, L 314, p. 1) and Regulation No 3984/87 of 15 December 1987 (Official Journal 1987, L 375, p. 63) concerning, respectively, control of Community fishing vessels and catch possibilities in the regulatory area of the NAFO.

The Commission considers that the applicants' arguments have no foundation in Regulation No 2241/87.

It contends in particular (in both Cases 6/88 and 7/88) that the effect of Article 10 of Regulation No 2241/87, in referring to Article 14 of the same regulation, is not to allow the Commission only to lay down detailed arrangements for the application of Articles 5 to 9 thereof; indeed, the same powers derive from Article 14 itself in any event. Article 10 has a twofold purpose: it defines, by reference to Article 14, the institution empowered to take action, laying down the procedure for that purpose, and it sets the limits of the powers thus conferred.

The Commission contends that two separate powers are involved, which merely have the common procedural feature of enabling the Council to oversee the exercise of the two powers thus delegated by making it subject to the opinion of the management committee. Moreover, in the contested regulation the Commission made a clear distinction, using a normal legislative method, between the basis of its powers, which result from Article 14 of Regulation No 2241/87 (second recital in the preamble to the contested regulation), and the definition of the substance of those powers, which derives from Article 10 of Regulation No 2241/87 (fourth recital).

As regards the institution empowered to take action, the Commission observes that Article 14 of Regulation No 2241/87 refers to the management-committee procedure provided for in Article 14 of Regulation No 170/83. Unless the management committee gives a negative opinion within the period laid down by its chairman, the Commission is empowered to subject additional stocks to Articles 5 to 9 of Regulation No 2241/87. According to the Commission, the absence of any opinion of the management committee in the present case cannot affect the legality of the Commission regulation — only a negative opinion can transfer the matter from it to the Council.

In Case 6/88 the Commission also contends that the Community provisions on the conservation and management of fishery resources and therefore the rules for the control of fishing are applicable to all fishing by fishermen and vessels of the Member States, irrespective of the zone in which they operate. According to the Commission, the best proof that those control measures are not limited to catches taken in Community waters is provided by Regulation No 2241/87 itself, which states that, where catches have been taken in waters subject to the sovereignty or jurisdiction of non-member countries, landing declarations both inside and outside Community territory and in transhipment declarations, provided for in Articles 6 and 7, must indicate that information separately by reference to the waters of each non-member country concerned.

As regards the applicants' argument that the adjective 'additional' used in Article 10 of Regulation No 2241/87 applies to stocks of which catches were previously subject to a TAC or quota, the Commission observes that according to the 11th recital in the preamble to Regulation No 2241/87 additional stocks are 'stocks not subject to total allowable catches or quotas'. That definition certainly does not require the stocks to have been previously subject to a system of TACs or quotas. The Community legislature placed no geographical limitation on the concept of stocks not subject to TACs or quotas. That concept is not therefore territorially limited to zones where fishing is subject to a system of TACs or quotas but extends to all stocks or groups of stocks not subject to TACs or quotas, regardless of where they are caught.

The Commission also considers that an extension of those control rules to stocks not subject to TACs or quotas is all the more justified in the present case since their purpose is the application and management of international fisheries agreements entered

into by the Community, which are intended to organize fishing by Community vessels by making it subject to a system of licences issued against payment of a fee, with the Community, for its part, paying financial compensation corresponding to the fishing rights granted by non-member countries. The extension also meets the purpose which Article 1 of the basic regulation, Regulation No 170/83, attributes to control measures in general. According to the second paragraph of Article 1, control measures, that is to say the measures contained in Regulation No 2241/87, are intended *inter alia* to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions. Those purposes are the same as those underlying the conclusion by the Community of fisheries agreements with developing countries.

As regards the two Council regulations cited by the French Government, the Commission observes (Case 7/88) that they do not establish exclusive powers for the Council to extend beyond Community waters the application of Articles 5 to 9 of Regulation No 2241/87 to Community vessels operating there. Regulation No 3251/87 created an obligation to impose a new control, additional to that provided for in Article 1 of Regulation No 2241/87, which requires each Member State to monitor fishing activities in its own waters. It was therefore exclusively for the Council to establish that obligation.

As regards Council Regulation No 3984/87, in the Commission's view it establishes independently the catch quotas imposed in 1988 on Community vessels fishing in the NAFO regulatory area. The Member States' obligation to give notice to the Commission also of catches of species not subject to quotas simply reflects the right of the institution vested with the relevant powers occasionally to resume those powers, in particular for reasons of simplification, without thereby affecting the Commission's exercise of the powers permanently delegated to it by Article 10 of Regulation No 2241/87.

2. *Manifest error of assessment*

(a) In Case 7/88, the French Government considers in the first place that the purpose of monitoring and controlling fishing activities in the manner laid down in the Council regulations cannot be achieved in the zone concerned by the contested regulation, since the requisite sovereign authority is vested in non-member countries. Nearly all the landings take place in the zone concerned and the vessels return to their countries of origin only exceptionally. The system established by Regulation No 2241/87, whereby the owner notifies landings to the Member State where they take place and the latter, after checking, notifies them, under its own responsibility, to the Commission, is diverted from its proper purpose in the contested regulation since the Member State can no longer play any role other than that of forwarding information.

The Commission states that the Community is competent to determine unilaterally or by international agreement the obligations concerning fishing by vessels flying the flag of a Member State in waters outside the European economic zone, as is confirmed

both by an analysis of Regulation No 170/83 and by legislative practice in that field. The Community conservation rules are intended to embrace the fishing activities of Community vessels wherever they are carried out. As an integral feature of those rules, monitoring must necessarily follow fishing activities where they are carried on in so far as they are subject there to rules restricting fishing.

The Commission considers therefore that the obligations imposed by Title II of Regulation No 2241/87 to ensure the monitoring of catches are not in any way restricted to catches taken by Community vessels in waters under the jurisdiction of a Member State. The Member States are thus subject to the same obligation of verification whether the catches are taken in the NAFO zone or in a zone of a non-member country with which the Community has concluded a fisheries agreement. The only real limit fixed by Articles 5 to 9 of Regulation No 2241/87 concerns the substantive scope of those obligations, which relate only to species subject to a TAC or quota, regardless of the geographical origin of the catch. It is precisely that limit which Article 10 of Regulation No 2241/87 allows to be exceeded, as was made clear in the examination of the first submission.

According to the Commission, the geographical delimitation of the Member States' exercise of their powers to monitor Community fishing activities, as indicated in Article 1 of Regulation No 2241/87, is therefore not relevant in interpreting the scope *ratione loci* of the rules concerning the means of monitoring catches laid down in Title II thereof. Article 1 in principle requires each Member State physically to monitor a Community vessel which lands at a Community port catches which it has taken in the fishing zone of a non-member country, to check the accuracy of the records of catches in the log-book kept by its skipper and in the landing declarations, and indeed to take proceedings for any infringement of the monitoring obligations, in accordance with Article 1(2) of Regulation No 2241/87.

The Commission recognizes that Community vessels operating in zones covered by agreements concluded by the Community with developing countries often land their catches in those countries and not in the Community. It emphasizes, however, that although verification of the accuracy of the information declared can be facilitated when Community vessels return to the Community, it cannot be contingent on that. It is for the Member States to take 'appropriate measures' to check the accuracy of catch declarations, which may involve physical monitoring of Community vessels in the waters under their jurisdiction but is not limited to that. The Commission considers in particular that it is for the Member States to determine, for all vessels flying their flag and fishing in the waters of the non-member countries concerned, the detailed arrangements for forwarding information relating to catches landed and to ensure that such vessels comply with the rules in those terms, if necessary taking proceedings for infringements.

The Commission also observes that, for catches taken in the waters of developing countries, the Member States already have means at their disposal for carrying out such checks through scientific bodies empowered to process declarations of catches of thunnidae, such as Orstom in France and the Instituto de Oceanografía in Spain.

(b) The French Government then states that the monitoring methods devised for TAC or quota zones are not suited to the exclusive economic zones covered by the contested regulation. That fact was taken into account by the fisheries agreements concluded by the Community with the non-member countries covered by the contested regulation, in respect of which a limitation of fishing effort was imposed in terms of vessels rather than of TACs or quotas, which countries with limited logistical resources would have found difficult to monitor.

The Commission refers to the considerations which led to its adopting the contested regulation, namely:

(i) the implementation and management of the agreements concluded with certain developing countries, in particular determination of the financial compensation to be paid by the Community, are based on knowledge of the volume of catches;

(ii) the purpose of the agreements, as in Community waters, is to facilitate better appraisal of fishing possibilities and therefore greater control of fishing activity;

(iii) the methods of monitoring catches introduced by Title II of Regulation No 2241/87 are already applicable to Community vessels fishing in Community waters or waters of non-member countries.

In that connection, the Commission contends that the nature of the methods laid down for controlling fishing activity is not decisive in applying Article 10 of Regulation No 2241/87. It is of scant importance whether fishing activity is defined in terms of TACs or quotas or, as in the case of agreements with developing countries, in terms of gross register tonnage or numbers of vessels. The essential point is that the aim thus pursued is in all cases to establish, for the purpose of controlling fishing activity, the total volume of catches of stocks which are subject to conservation measures in a given zone.

(c) In Cases 6 and 7/88, the Spanish Government and the French Government then challenge the need for the contested regulation.

The Spanish Government (Case 6/88) refers in particular to the second recital in the preamble to the contested regulation, according to which the Commission is to be informed of the activities of vessels flying the flag of a Member State and fishing in waters under the jurisdiction of a non-member country with which a fisheries agreement exists, so as to ensure the proper management of the agreement in question. According to the Spanish Government, that

aim must be attained by straightforward application of the separate procedures laid down in the fisheries agreements themselves, without the need for recourse to a Community regulation which transfers the system in force for catches in Community waters to catches taken in waters under the sovereignty or jurisdiction of non-member countries. The fisheries agreements with non-member countries establish satisfactory machinery whereby the Commission is regularly informed of total catches and catches by species of fish. By way of example, the Spanish Government refers to the measures for monitoring catches provided for in some of the abovementioned agreements.

The French Government (Case 7/88) states in that connection that the fisheries agreements with the countries referred to in the contested regulation already lay down the obligation for skippers to declare catches (for example, the agreement with Guinea-Bissau). Similarly, in order to calculate the amount of fees paid to those countries under the agreements, the agreements impose the obligation to send that information to the authorities of the country and to the Commission at the same time (for example, the agreement with the Seychelles). The French Government observes that the declarations used for the provisional calculation of fees payable are made by skippers on their own responsibility, without any guarantee that the figures are reliable.

The definitive statement provided for in the agreements, which alone can guarantee the production of reliable figures, is prepared much later by the Commission and the authorities of the coastal State together, taking account of the scientific data available, in particular those from Orstom. The French Government observes that that body, which several countries have entrusted with the collection of information concerning fishing in those regions, is able to provide precise and conclusive data within about one year, taking account of the necessary cross-checks. The production in the short term of figures subject to a margin of error of 20 to 30% is therefore pointless, in view of the mechanisms operating under the fisheries agreements with the countries concerned. The French Government considers that it may even be dangerous, in so far as the figures produced under the contested regulation may then be used against the Member States which have assumed responsibility for notifying them, undermining the definitive figures produced under the abovementioned agreements.

The Commission considers in the first place (Cases 6 and 7/88) that the catch data are essential for the Commission in so far as they serve as a basis for fixing the financial compensation, which must be of an amount corresponding to the economic results of fishing activity in the zone. The Commission also needs the data in order to decide what position to take at the annual meetings organized with the coastal States in order to monitor the application of the agreements and make any adjustments. Similarly, when in possession of those data, the Commission is in a better position, in negotiations, to appraise the observations of the coastal States regarding the protection of stocks.

The Commission considers that it already has certain information at its disposal for implementation of the fisheries agreements, since the latter usually require skippers of

fishing boats to declare catches, but the conditions applicable to catch declarations under the agreements are not such as to enable it to manage them correctly and realistically.

The system of catch declarations provided for in the agreements is not the same for tuna-fishing vessels and other vessels. This is due, according to the Commission, to the difference in the method of calculating the fees payable by owners, which, for tuna-fishing vessels, are fixed at a specified amount per tonne caught, whereas for other vessels they are calculated by reference to the their gross tonnage. For the latter vessels, the catch declarations therefore fulfil a statistical function which makes it possible to monitor stocks and observe the practical effects of the agreements, whereas in the case of tuna-fishing vessels the catches determine the amount of the fees. Under the agreements, tuna-fishing vessels must make their catch declarations to the authorities of the coastal State and to the Commission. In practice they notify the details of catches by radio to the coastal State and by means of a standard document (the ICAT form) to the organization from the State whose flag they fly which is responsible for monitoring fishing activities (Orstom, Instituto de Oceanografía, etc.), which, in turn, notifies the details to the Commission, generally after three to six months have elapsed.

The declaration forms for catches by vessels not engaged in tuna fishing are different for each agreement: they go to sea for shorter periods and land fish more frequently; in most cases, monthly or quarterly declarations are prescribed. In practice, such catch declarations are made only where the port of landing is in the coastal State in whose waters the catch was taken. In most cases, the declarations are forwarded to the organization from the State whose flag the vessel flies, which notifies the details to the Commission irregularly and in all cases after much delay, and in turn the Commission notifies them to the coastal State.

According to the Commission, it is clear that the information provided to it under the system laid down in the agreements does not enable it properly to fulfil the functions incumbent on it regarding the management and negotiation of the agreements.

The contested regulation merely reinforces the obligation to give information by means of declarations of the skippers of Community vessels which fish in those waters — an obligation already laid down by the agreements concluded with the non-member countries concerned — by adding the obligation to enter catches in the log-book and to declare them when landing catches in the Community or in a non-member country or in the event of transhipment. For their part, the Member States are required to verify the exactitude of the information received and to notify the Commission quarterly of the quantities caught and landed and of the information received of transhipments and landings outside the Community.

According to the Commission it is clear that the reinforcement of controls will result in the receipt of more reliable information, better knowledge of the practical application of the agreements, through the combined use of all the details received, and

better availability of information. In any event, it considers it to be its responsibility to prepare, at the end of each year, the definitive statement of fishing fees on the basis of the provisional statements prepared by it after each season.

(d) The Spanish Government and the French Government go on to argue that there are serious difficulties in applying the contested regulation.

The Spanish Government claims in particular that no maps exist of the territorial waters of most of the non-member countries where the catches are taken, so that it is impossible to determine to which country they must be attributed. Tuna freezer-seiners are much more mobile and much faster since they fish for migratory species and must therefore continually move from zone to zone in the non-member countries and in international waters. It is also difficult to specify the species captured and their tonnages.

The French Government maintains that the difficulty of providing reliable catch declarations of the kind envisaged in Regulation No 2241/87 is inherent in the kind of fishing carried out, which concentrates on thunnidae, a highly migratory species found in the open sea and thus on the borders of the exclusive economic zones which it is not easy for skippers to identify. Monitoring of where fishing is carried out, the total weight of catches and the proportions of the various species, broken down according to size, requires the data to be processed by a scientific body (Orstom in France's case), this being the only way of producing definitive information.

The Commission considers (Cases 6 and 7/88) that the argument as to the lack of maritime charts is unacceptable since, on the rare occasions on which the situation may arise, it should not prevent skippers from determining the fishing zone in which they are operating. Otherwise, it is not apparent how it has so far been possible to meet the obligation to give notice of the catches taken in the waters of those countries, which is already imposed on them by the existing agreements.

In practice, however, the Commission has found that the information on catches reaches it very late. In view of the Community's interest in having regular and complete information at its disposal, the Commission endeavoured to improve the organization of reporting of catches by subjecting the persons concerned to the Community obligations provided for in Articles 5 to 8 of Regulation No 2241/87 and by requiring the Member States to register, pursuant to Article 9(1) of Regulation No 2241/87, the catch declarations thus forwarded and to notify them to the Commission periodically pursuant to Article 2(1) of the contested regulation. The new requirements reinforce the monitoring of catches by attaching responsibility to the Member State whose flag the vessel flies and thereby obliging it to ensure that landing declarations are made by its fishermen and to verify them. They can thus only improve the reliability of the information collected, by means of cross-checks, and, in the longer term, lead to better knowledge of the real scope for fishing in those zones based on processing of all the data forwarded.

Finally, the Commission considers that the measures for monitoring catches laid down in the contested regulation are perfectly applicable not only to catches taken in the fixed fishing grounds but also to catches of migratory species. The recording in log-books of the volume, date and place of catches and landing and transhipment declarations do not, in the Commission's opinion, constitute obligations which impede the fishing activity of any vessel, including those which fish for migratory species.

(e) The Spanish Government and the French Government also consider that the time-limits laid down in the contested regulation are not applicable to the fishing zones concerned because the Member States are called on to notify the Commission within one month after the end of each quarter of the quantities caught in the zones concerned and landed (Article 2(1) of the contested regulation).

The Spanish Government observes that tuna-fishing vessels usually go to sea for five to six months without returning to port, in view of the fact that that species migrates over long distances.

According to the French Government, a fishing expedition may last up to 60 days, to which 10 days should be added for unloading, and processing and forwarding of the required information may take up to 20 days. The total time which may elapse between the start of an expedition and the moment at which the information is available may therefore be as much as three months, of which at least one month follows the arrival of the vessel at port. It is therefore impossible, in view mainly of the matters referred to above concerning the nature of this type of fishing, to deliver reliable, verifiable and complete figures within the periods laid down in the contested regulation.

The Commission states that Article 2 of the contested regulation requires the Member States to notify the Commission of the quantities caught and landed during the preceding quarter, which extends the time-limit beyond that laid down for catches of stocks subject to TACs or quotas. Moreover, what the Member States must notify is the quantities caught and landed. If in the case of tuna-fishing vessels the periodicity of landings exceeds three months it is obvious that the Member States' notification to the Commission must be made in the first month following the quarter during which the fish were landed.

(f) Finally, the Spanish Government considers that in any event the fleet of tuna freezer-seiners should be excluded from the scope of the contested regulation.

The Commission considers that different treatment for the tuna-fishing fleet is not justified by any particular difficulty which the latter may experience in discharging its obligations under the contested regulation.

3. *Inadequate statement of reasons*

According to the French Government, the contested regulation does not satisfy the requirement under Article 190 of the Treaty

that it state the reasons on which it is based. As regards the reference in the second recital to the fact that 'it is essential to the proper management of [the fisheries agreements with the countries concerned] ... that the Commission be informed of the outcome of the activities of vessels flying the flag of a Member State in waters falling within the jurisdiction of a partner country', the Commission is already entitled to that information under those fisheries agreements and the decisions and regulations relating to them. The fourth recital, according to which 'pursuant to Article 10 of [Regulation No 2241/87], the application of these provisions should be extended to stocks not subject to TAC or quota fished by Community vessels in maritime waters under the sovereignty or jurisdiction of the developing countries mentioned above' contains nothing to justify the extension envisaged by the contested regulation under Article 10 of Regulation No 2241/87.

The Commission considers that Regulation No 3151/87 unambiguously sets out the reasoning on the basis of which it was adopted, as regards both 'external' justification (management of the fisheries agreements) and its 'internal' legal basis (Article 10 of Regulation No 2241/87).

It contends that the objective of the contested regulation is apparent from its second recital: to improve, by virtue of the specific obligations which it imposes, the management of the fisheries agreements concluded by the Community with certain developing countries, by improving reporting of catches taken by Community vessels. For that purpose, it was therefore laid down that the monitoring procedures established by Regulation No 2241/87 for each stock subject to a TAC or quota, expressly referred to in the third recital of the contested regulation, should be extended, pursuant to that regulation, to the species caught in the waters of the non-member countries concerned, as is clearly apparent from the fourth recital of the contested regulation, and that the Member States should be placed under an obligation regularly to report the quantities landed and to forward the information received concerning catches, pursuant to the penultimate recital. Articles 1 and 2 of the contested regulation precisely reflect the reasons thus indicated.

M. Zuleeg
Judge-Rapporteur