JUDGMENT OF THE COURT
19 February 1998 *

In Case C-4/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice in Northern Ireland, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

Northern Ireland Fish Producers' Organisation Ltd (NIFPO) and Northern Ireland Fishermen's Federation

and

Department of Agriculture for Northern Ireland

on the validity of Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1994 L 363, p. 1), on the validity of Annex VII to the Resolution of 3 November 1976 adopted by the Council at The Hague and on the interpretation of the principle of State liability for damage occasioned to individuals by breaches of Community law,

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm, R. Schintgen (Presidents of Chambers), G. F. Mancini, P. J. G. Kapteyn (Rapporteur), J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch and P. Jann, Judges,

Advocate General: A. La Pergola,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Northern Ireland Fish Producers' Organisation Ltd (NIFPO) and the Northern Ireland Fishermen's Federation, by David Vaughan QC, Fergus Randolph, Barrister, and Peter Martin, Solicitor,

— the United Kingdom Government, by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, Patrick Coughlin QC and Christopher Vajda, Barrister,

— the Danish Government, by Peter Biering, Kontorchef, acting as Agent,

— the Irish Government, by Michael A. Buckley, Chief State Solicitor, acting as Agent, Edwin R. Alkin and Caitlín Ní Fhlaitheartaigh, BL,

— the Council of the European Union, by John Carbery, Legal Adviser, acting as Agent, and

— the Commission of the European Communities, by Thomas van Rijn, Legal Adviser, and Xavier Lewis, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Northern Ireland Fish Producers' Organisation Ltd (NIFPO) and the Northern Ireland Fishermen's Federation, represented by David Vaughan and Fergus Randolph; the United Kingdom Government, represented by Stephanie Ridley and Christopher Vajda; the Irish Government, represented by Michael A. Buckley, Paul Gallagher SC and Edwin R. Alkin; the Council, represented by John Carbery; and the Commission, represented by Thomas van Rijn and Xavier Lewis, at the hearing on 6 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 30 September 1997,

gives the following

Judgment

1 By order of 13 October 1995, received at the Court on 11 January 1996, the High Court of Justice in Northern Ireland, Queen's Bench Division, referred for a preliminary ruling under Article 177 of the EC Treaty five questions on the validity of Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1994 L 363, p. 1), on the validity of Annex VII to the Resolution of 3 November 1976 adopted by the Council at The Hague (hereinafter 'the Hague Resolution') and on the interpretation of the principle of State liability for damage occasioned to individuals by breaches of Community law.

Legal framework

2 Those questions have been raised in judicial review proceedings brought before the High Court of Justice by the Northern Ireland Fish Producers' Organisation Ltd (NIFPO) and the Northern Ireland Fishermen's Federation (hereinafter 'the applicants') against the decision of 5 May 1995 of the Department of Agriculture for Northern Ireland (hereinafter 'the Department') allocating to NIFPO its 1995 catch quotas for cod and whiting in the Irish Sea.

3 The principles applicable under the common fisheries policy were established in Regulation (EEC) No 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry (OJ, English Special Edition 1970 (III), p. 703) and, following Community enlargement, in Council Regulation (EEC) No 101/76 of 19 January 1976 (OJ 1976 L 20, p. 19).

4 By the Hague Resolution, which was adopted in November 1976, at a time when a number of non-member countries had extended their exclusive fishing zones to 200 nautical miles, the Council set out a series of general guidelines for future development of the common fisheries policy. Annex VII to that Resolution, entitled 'Draft Council Resolution on certain aspects of the internal fisheries system', is worded as follows:

'The Council considers that the reconstitution and protection of stocks in order to permit an optimum yield from potential Community resources require strict control and Community-wide measures to that end.

The Council recognises that the protection and the control of the fishing zone off Ireland must not result, because of the size of this zone, in a charge, for that Member State, which is disproportionate to the volume of Community fish resources which can be exploited in that zone by the fishermen of that Member State. It agrees that the implementation of available means of surveillance or those to be foreseen must be accompanied by appropriate measures to ensure that the charges which ensue will be shared equitably.

Having regard to the economic relationships which characterise fishing activity in Ireland, it declares its intention so to apply the provisions of the Common Fisheries Policy, as further determined by the Act of Accession, and adapted to take account of the extension of waters to 200 miles, as to secure the continued and progressive development of the Irish fishing industry on the basis of the Irish Government's Fisheries Development Programme for the development of coastal fisheries.

The Council furthermore recognises that there are other regions in the Community, *inter alia* those referred to in the Commission's proposal to the Council, [1] where the local communities are particularly dependent upon fishing and the industries allied thereto. The Council therefore agrees that in applying the Common Fisheries Policy, account should also be taken of the vital needs of these fishing communities.

The decisions and the guidelines set out in the preceding paragraphs and the directives adopted for negotiations with third countries in no way prejudice the specific provisions which it is necessary to adopt without delay in order to solve the problems of coastal fishing activity, in particular in economically disadvantaged regions, and to regulate fishing activity within a coastal belt.'

1 — The regions referred to are Greenland, the northern parts of the United Kingdom, and Ireland.

5 Of the eight annexes, only Annex I was published in the *Official Journal*, under the title 'Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977' (OJ 1981 C 105, p. 1).

6 In its Declaration of 30 May 1980 on the common fisheries policy (OJ 1980 C 158, p. 2), the Council pointed out that, in compliance with the Treaties and in conformity with the Hague Resolution, the common fisheries policy should, in particular, be based on 'fair distribution of catches having regard, most particularly, to traditional fishing activities, to the special needs of regions where the local populations are particularly dependent upon fishing and the industries allied thereto, and to the loss of catch potential in third country waters'.

7 Pursuant to Annex VII to the Hague Resolution, and particularly to the recognition therein of the special needs of those regions where the local communities are particularly dependent on fishing and allied industries, the Commission proposed to the Council, in a communication of 12 June 1980, that, for each fish stock, Ireland should be ensured a doubling of its 1975 catch and the United Kingdom catches of a volume equivalent to that of landings in 1975 by vessels of less than 24 metres in its northern regions (the 'Hague Preference' system). In terms of annual tonnage, these parameters, according to the Commission, represent 6 954 tonnes of cod and 7 196 tonnes of whiting for Ireland, and 1 223 tonnes of cod and 2 334 tonnes of whiting for the United Kingdom.

8 To supplement the provisions of Regulation No 101/76, the Council adopted 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). Article 3 of Regulation No 170/83 provided for, *inter alia*, the annual fixing both of total allowable catches ('TACs') for each stock or group of stocks and of the shares available to the Community. Under Article 4(1) of Regulation No 170/83, the volume of the catches available to the Community was to be distributed among the Member States in a manner which assured each Member State

relative stability of fishing activities for each of the stocks considered. Article 11 of the regulation provided that the annual fixing of TACs and the distribution of the catches available to the Community was a matter for the Council, acting by a qualified majority on a proposal from the Commission.

9 The notion of relative stability was defined as follows in the fifth, sixth and seventh recitals in the preamble to Regulation No 170/83:

'... conservation and management of resources must contribute to a greater stability of fishing activities and must be appraised on the basis of a reference allocation reflecting the orientations given by the Council;

... in other respects, that stability, given the temporary biological situation of stocks, must safeguard the particular needs of regions where local populations are especially dependent on fisheries and related industries as decided by the Council in its resolution of 3 November 1976, and in particular Annex VII thereto;

... therefore, it is in this sense that the notion of relative stability aimed at must be understood'.

10 By Regulation (EEC) No 172/83 of 25 January 1983 fixing, for certain fish stocks and groups of fish stocks occurring in the Community's fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished (OJ 1983 L 24, p. 30), the Council fixed for 1982 the TACs for the stocks or groups of stocks occurring in the fishing areas of the Member States, including those for cod and whiting, and the share available to the Community. Under Regulation No 172/83, the Council also, for the first time, allocated that share among the Member States.

11 As is clear from the fourth recital in the preamble to Regulation No 172/83, that allocation took account of traditional fishing activities (evaluated on the basis of average catches landed by each Member State during the period 1973-1978), the specific needs of areas particularly dependent on fishing and its related industries (determined on the basis of the Hague Preferences, as quantified by the Commission in its 1980 communication), and the loss of fishing potential in the waters of non-member countries (calculated for the reference period 1973-1976). With particular regard to Fishing Area VIIa (Irish Sea), the allocation keys were, for Ireland, 46.67% for cod and 39.625% for whiting, and, for the United Kingdom, 42.67% for cod and 52.83% for whiting ('the 1983 allocation keys').

12 While the TACs fixed by the Council through subsequent annual regulations have varied from one year to the next, the 1983 allocation keys established by Regulation No 172/83 have remained unchanged.

13 The Community scheme for the conservation and management of fishery resources, established by Regulation No 170/83, was restated, with certain amendments that are irrelevant to the main proceedings in this case, in Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

14 The first subparagraph of Article 2(1) of Regulation No 3760/92 provides that:

'As concerns exploitation activities the general objectives of the common fisheries policy shall be to protect and conserve available and accessible living marine aquatic resources, and to provide for rational and responsible exploitation on a sustainable basis, in appropriate economic and social conditions for the sector, taking account of its implications for the marine eco-system, and in particular taking account of the needs of both producers and consumers.'

15 Under Article 8(4) of Regulation No 3760/92, it is for the Council, acting by qualified majority on a proposal from the Commission, to determine, on a case-by-case basis, the TACs for each fishery or group of fisheries and to distribute the fishing opportunities between Member States in such a way as to assure each Member State relative stability of fishing activities for each of the stocks concerned. So far as the notion of relative stability is concerned, the 12th, 13th and 14th recitals in the preamble to Regulation No 3760/92 substantially reproduce the wording of the fifth, sixth and seventh recitals in the preamble to Regulation No 170/83.

16 Article 9(1) of Regulation No 3760/92 provides that Member States may, after notifying the Commission, exchange all or part of the fishing availabilities allocated to them.

17 According to the order for reference, TACs for cod and whiting in the Irish Sea were, for the period up to 1989, fixed by the Council at levels sufficiently high to guarantee that, under the 1983 allocation keys, Ireland and the United Kingdom were granted quotas no lower than those corresponding to their respective Hague Preferences.

18 However, since 1990 (in the case of whiting) and 1991 (in the case of cod), TACs have fallen below those levels, with the result that Ireland and the United Kingdom have each year had recourse to the mechanism triggering the Hague Preference system. Under that mechanism, Ireland and the United Kingdom are granted annual quotas calculated on the basis of the mid-point between the notional quotas resulting from the application of the 1983 allocation keys alone and the notional quotas corresponding to their Hague Preferences.

19 By Articles 2 and 3 of Regulation No 3362/94, the Council fixed the TACs for the stocks or groups of stocks present in the fishing areas of the Member States and the share of those stocks available to the Community for 1995, and allocated that share among the Member States. The 100% share of TACs for cod and whiting available to the Community in Area VIIa was thus fixed at 5 800 tonnes and

8 000 tonnes respectively. However, in view of the fact that this share was insufficient to guarantee that Ireland and the United Kingdom would, under the 1983 allocation keys, be granted quotas no lower than those corresponding to their Hague Preferences, Regulation No 3362/94, pursuant to the method of calculation described above, allocated to Ireland quotas of 3 820 tonnes for cod and 4 605 tonnes for whiting, and to the United Kingdom quotas of 1 670 tonnes for cod and 3 095 tonnes for whiting.

The dispute in the main proceedings

20 Following adoption of Regulation No 3362/94, the Department proceeded to allocate the quotas granted to the United Kingdom for its national fishing fleet and addressed to NIFPO the abovementioned decision of 5 May 1995 setting out NIFPO's cod and whiting quotas in Area VIIa for 1995.

21 Before the national court, the applicants have argued that the Department's distribution of quotas was unlawful inasmuch as the Council's allocation of those quotas to the United Kingdom in Regulation No 3362/94 was contrary to Community law. They submit that Annex VII to the Hague Resolution, which constitutes the basis of the Hague Preferences, was never formally adopted by the Council. They also contend that operation of the Hague Preference system is contrary to its own stated objectives, to the common fisheries policy and to the principle of proportionality.

22 The national court first notes in this regard that the fact that Ireland invoked its Hague Preference for Irish Sea cod and whiting reduced the size of other Member States' quotas, including those of the United Kingdom. While the United Kingdom can mitigate the effect on its quotas by defensively invoking its own Hague Preference, the quotas ultimately secured are still lower than they would have been had Ireland not invoked its Hague Preference.

23 The national court adds that the losses suffered by the United Kingdom as a result of the operation of the Hague Preference system on the stocks in question have, however, been offset, either in part or fully, by exchanges of quota between the United Kingdom and other Member States pursuant to Article 9 of Regulation No 3760/92.

24 Finally, the national court points out that the Irish fishing fleet which fishes for cod and whiting in the Irish Sea has caught on average around 30% of the Irish quotas in Area VIIa, whereas, since 1990, the United Kingdom fleet has caught virtually 100% of the United Kingdom cod and whiting quotas for that area. Ireland, it states, has used some of its surplus cod and whiting quotas in Area VIIa for the purposes of exchanging quota with other Member States.

25 The High Court of Justice decided to stay the proceedings and to refer the following five questions to the Court for a preliminary ruling:

'(1) Is the validity of the allocation to the United Kingdom of its cod and whiting quotas in Area VIIa pursuant to Article 3 of Council Regulation (EC) No 3362/94 dependent on whether Annex VII to the Council Resolution of 3 November 1976 was properly adopted?

(2) If the answer to Question 1 is in the affirmative, was Annex VII properly adopted?

(3) Are the answers to Questions 1 or 2 affected by the fact that Annex VII is a document which is classified as secret and which has not been published or otherwise made available to the parties?

(4) Having regard to all other circumstances, was the fixing of the said quotas by the Council compatible with:

(i) the common fisheries policy, and in particular Council Regulation (EEC) No 3760/92;

(ii) the principle of proportionality?

(5) If the fixing of the said quotas by Regulation (EC) No 3362/94 is invalid, are the Applicants entitled to claim damages against the Respondent and, if so, what are the conditions for liability?'

The first question and the first part of the third question

26 The substance of these questions, which should be examined together, is whether the validity of the allocation to the United Kingdom of its cod and whiting quotas in Area VIIa by Regulation No 3362/94 depends on whether Annex VII to the Hague Resolution was properly adopted, in particular since it appears that this Annex has not been published or otherwise made available to those affected by it.

27 The applicants take the view that Annex VII to the Hague Resolution was not properly adopted, thus affecting the validity of both Regulation No 3362/94 and the Department's abovementioned decision of 5 May 1995. According to the case-law of the Court, a Council resolution may be relevant for the purpose of assessing the validity of a national decision adopted pursuant to that resolution. They submit that, in any event, Regulation No 3362/94 must be consistent with the

basic regulations establishing the common fisheries policy (in particular, Regulation No 170/83, replaced by Regulation No 3760/92). The principles of the common fisheries policy established by those regulations must prevail unless any changes to those principles can be justified by the Hague Preference system, in so far as the latter was properly adopted.

28 The Irish Government takes the view that the Hague Resolution is binding in nature, since it makes specific the duties of cooperation which Member States assumed under Article 5 of the EC Treaty when they acceded to the Community. Moreover, the Court has, in its case-law, consistently held that the provisions of Annex VI were binding on Member States, and the same should therefore be true of Annex VII. It follows that, since the Council intended to bind itself by the Hague Resolution and has consistently acted in accordance therewith, the principles of legitimate expectations and of the *acquis communautaire* should preclude it from departing from that resolution without Ireland's consent.

29 The United Kingdom Government, supported by the Danish Government, the Council and the Commission, takes the opposite view, that resolutions reflect solely the political will of the Council and are not binding acts producing legal effects that are capable by themselves of limiting the Council's legislative powers. There is, however, nothing to prevent the Council from having regard to the principles set out in Annex VII to the Hague Resolution when adopting a binding act such as a regulation.

30 It should be noted in that connection that, according to the terms of Annex VII to the Hague Resolution, the Council, having regard to the economic relationships which characterise fishing activity in Ireland, declared its intention so to apply the provisions of the common fisheries policy as to secure the continued and progressive development of the Irish fishing industry. It further agreed to take account of the vital needs of the local communities in other regions.

31 Annex VII, which expresses essentially the Council's political will to take account, in applying the future common fisheries policy, of the special needs of regions in which the populations are particularly dependent on fishing and related activities, cannot produce legal effects capable of limiting the Council's legislative powers.

32 Annex VII, moreover, differs in nature from Annex VI to the Hague Resolution, which, in the particular field to which it applies, makes specific the duties of cooperation which the Member States assumed under Article 5 of the Treaty when they acceded to the Community (see Case 141/78 *France* v *United Kingdom* [1979] ECR 2923, paragraph 8). Annex VI relates to the introduction of conservation measures by the Member States and the procedure to be followed in that regard and specifies, in that context, the obligations of Member States flowing from Article 5 of the Treaty.

33 Pursuant to its commitment at the political level, the Council subsequently adopted Regulations No 170/83 and No 3760/92, which are binding legal measures giving effect to the guidelines contained in Annex VII to the Hague Resolution. Thus, Article 4 of Regulation No 170/83, and subsequently Article 8(4) of Regulation No 3760/92, set out the principle of relative stability of activities as a criterion for the distribution among Member States of the volume of catches available to the Community, construing the notion of relative stability as relating in particular to the safeguarding of the special needs of regions in which the local populations are especially dependent on fishing and related industries.

34 Regulation No 3362/94 was not adopted pursuant to any binding commitments such as are claimed to have arisen under Annex VII to the Hague Resolution but on the basis of Article 8(4) of Regulation No 3760/92, which, it is not denied, was validly adopted by the Council under Article 43 of the EC Treaty.

35 It follows that the question whether Annex VII to the Hague Resolution was properly adopted or not is irrelevant in assessing the validity of Regulation No 3362/94.

36 The fact that it was not published or made available to the parties cannot invalidate that finding.

37 The answer to the first question and the first part of the third question must therefore be that the validity of the allocation of cod and whiting quotas in Area VIIa by Regulation No 3362/94 is not dependent on whether Annex VII to the Hague Resolution was properly adopted.

The second question and the second part of the third question

38 In light of the reply to the first question, it is unnecessary to rule on the second question and the second part of the third question.

The fourth question

39 By this question, the national court asks whether Regulation No 3362/94, in so far as it allocates cod and whiting quotas in Area VIIa to the United Kingdom, is not contrary to the rules governing the common fisheries policy, in particular Regulation No 3760/92, and whether Regulation No 3362/94 is compatible with the principle of proportionality. In order to give a reply that will assist the national

court in deciding whether Regulation No 3362/94 is compatible with the principle of proportionality, it is also necessary to consider whether the fixing of those quotas by Regulation No 3362/94 does not run counter to the principle of non-discrimination set out in Article 40(3) of the EC Treaty.

The common fisheries policy

40 The applicants challenge the validity of the allocation of the quotas in issue pursuant to Regulation No 3362/94, on the ground that the effects of the Hague Preferences, which form the basis for fixing those quotas, are contrary to the provisions of the common fisheries policy.

41 As a preliminary point, it should be noted that when the Council, pursuant to Article 8(4) of Regulation No 3760/92, fixes TACs and distributes fishing opportunities among Member States, it has to evaluate a complex economic situation.

42 When implementation by the Council of the Community's agricultural policy necessitates the evaluation of a complex economic situation, its discretion is not limited solely to the nature and scope of the measures to be taken but also, to some extent, to the finding of basic facts inasmuch as, in particular, it is open to the Council to rely if necessary on general findings. In reviewing the exercise of such a power the Court must confine itself to examining whether there has been a manifest error or misuse of power or whether the authority in question has clearly exceeded the bounds of its discretion (Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 18).

43 In support of their argument, the applicants first contend that to grant guaranteed minimum quotas under the Hague Preference system without regard to scientific data concerning the situation of the fish stocks in question would jeopardise the objective of conserving and rationally exploiting marine aquatic resources set out in Article 2(1) of Regulation No 3760/92.

44 It must be noted in that regard that application of the Hague Preference system by Regulation No 3362/94 affects only the allocation among the Member States of the share of TACs available to the Community but does not operate at the preceding stage, at which the Council determines the level of those TACs and the share available to the Community in the light of the needs of conservation and rational exploitation of marine aquatic resources.

45 The applicants also take the view that operation of the Hague Preference system adversely affects the fishing opportunities of the Northern Irish fishing fleet in Area VIIa and cannot therefore, pursuant to Article 8(4)(ii) of Regulation No 3760/92, assure relative stability of their fishing activities in that area.

46 It must be borne in mind in that regard that, under Article 8(4) of Regulation No 3760/92, the Council distributes the fishing opportunities among the Member States in such a way as to assure each Member State relative stability of fishing activities for each of the stocks concerned. The 13th recital in the preamble to that regulation adds that such stability must safeguard the particular needs of regions where local populations are especially dependent on fisheries and related activities, as decided by the Council in the Hague Resolution, and in particular Annex VII thereto. It should also be recalled that, as the Council indicated in its declaration of 30 May 1980, cited above, in making a fair distribution of catches regard must be had, most particularly, to traditional fishing activities, to the special needs of regions where the local populations are particularly dependent upon fishing and related industries, and to the loss of catch potential in the waters of non-member countries.

47 It follows that the aim of the quotas is to ensure for each Member State a share of the Community's TACs, determined essentially on the basis of the catches from which traditional fishing activities, the local populations dependent on fisheries and related industries of that Member State benefited before the quota system was established (see, regarding Regulation No 170/83, Case C-3/87 *The Queen* v *Ministry of Agriculture, Fisheries and Food,* ex parte *Agegate* [1989] ECR 4459, paragraph 24, and Case C-216/87 *The Queen* v *Ministry of Agriculture, Fisheries and Food,* ex parte *Jaderow* [1989] ECR 4509, paragraph 23).

48 It is accordingly for the Council, when allocating fishing opportunities among the Member States, to reconcile, for each of the stocks concerned, the interests represented by each Member State with particular regard to its traditional fishing activities and, where relevant, its local populations and industries dependent on fishing.

49 It is clear from the documents in this case that when the Council, by Regulation No 3362/94, allocated the cod and whiting quotas for 1995, it intended to give effect to the principle of relative stability by balancing those interests through application of the 1983 allocation keys and the operation of the Hague Preference system, which, for its part, seeks to address the special needs of Ireland and the northern parts of the United Kingdom.

50 Even if this balancing of interests leads to a reduction in catch opportunities for fishermen from Northern Ireland, the Council cannot on that ground be regarded as having committed a manifest error of assessment or as having manifestly exceeded the limits which the requirement of relative stability imposes on its discretion.

51 The applicants then go on to argue that it is clear from the 13th recital in the preamble to Regulation No 3760/92 that it was only because of the temporary situation of fish stocks that the Hague Preference system, which derogates from the normal allocation rules, was allowed to operate. Over the years, it is argued, that system has become a permanent measure.

52 That argument rests on a misconstruction of the 13th recital in the preamble to Regulation No 3760/92. As the United Kingdom Government has correctly pointed out, the reference to the temporary biological situation of stocks is intended solely to highlight the fluctuations in fishery resources and the resultant quota reductions against which the Hague Preference system is intended to protect fishermen from Ireland and the United Kingdom. In contrast, nothing in the wording of Regulation No 3760/92 justifies the assumption that the policy giving effect to the Hague Preferences must be limited in time.

53 Finally, the applicants contend that the Hague Preference system was already taken into account when the 1983 allocation keys were fixed and that its operation when Regulation No 3362/94 was adopted amounts to double counting.

54 Suffice it to note that, even if the special needs of fishing communities in Ireland and the northern parts of the United Kingdom were taken into account when the 1983 allocation keys were being applied, it does not follow that the Council is precluded from taking account of the Hague Preference system once again if a reduction in TACs affects the vital interests of those communities. By using that method of taking account of special needs in the balancing of interests which it is required to carry out in order to allocate the quotas among the Member States, the Council cannot be regarded as having committed a manifest error or manifestly exceeded the bounds of its discretion.

The principles of proportionality and non-discrimination

55 The applicants contend that the Hague Preference system is contrary to the principle of proportionality. First, they argue that it has the effect of reducing the cod and whiting quotas for fishermen from Northern Ireland operating in Area VIIa to

a much greater extent than the individual TACs for those stocks, thereby resulting, contrary to the system's own objectives, in an appreciable loss of fishing opportunities in that area for those fishermen. Second, they claim that fishermen from Ireland, unlike those from the United Kingdom, use only a very small part of the quotas which Ireland has obtained under the Hague Preference system for Area VIIa and which it then uses for the purpose of exchanges with other Member States, thereby benefiting operators not affected by the system.

56 The applicants further argue that the Hague Preferences, which form the basis of the quota allocation under Regulation No 3362/94, breach the prohibition of discrimination set out in Article 40(3) of the Treaty in so far as the fleets of the northern parts of the United Kingdom, which include that of Northern Ireland, are entitled only to the catches made in 1975 by vessels under 24 metres, whereas the Irish fleet is entitled to twice its 1975 catch.

57 The Court has consistently held (see, in particular, Case C-256/90 *Mignini* v *ALMA* [1992] ECR I-2651, paragraph 16) that in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it. Furthermore, whilst a measure's patent unsuitability for achieving the objective which the competent institution seeks to pursue may affect its legality, the Community institutions must nonetheless be recognised as having a broad discretion in regard to agricultural policy which reflects the responsibilities which the Treaty imposes on them.

58 The Court has also held that the prohibition of discrimination laid down in Article 40(3) of the Treaty requires that comparable situations should not be treated in a different manner unless the difference in treatment is objectively justified (see, in particular, Case C-280/93 *Germany* v *Commission* [1994] ECR I-4973, paragraph 67).

59 The need for different treatment, in appropriate cases, of various classes of the agricultural community is acknowledged in Article 39(2) of the EC Treaty, which provides that 'in working out the common agricultural policy ... account shall be taken of: (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions' (Case 139/77 *Denkavit Futtermittel* v *Finanzamt Warendorf* [1978] ECR 1317, point 15).

60 In the present case, it is common ground that the Council, by introducing the Hague Preferences, sought to take account, when elaborating the common fisheries policy, of the special needs of those regions whose local populations are particularly dependent on fishing and related industries. In particular, the Council expressed its intention in Annex VII to the Hague Resolution so to apply the provisions of the common fisheries policy as to secure the continued and progressive development of the Irish fishing industry and also to take account of the vital needs of the populations of other regions, such as the northern parts of the United Kingdom.

61 By deciding, in light of the special needs of the regions concerned, to allocate higher fishing quotas to Ireland than to the United Kingdom, the Council consequently made an agricultural policy choice that lay within the scope of its discretion and which is consistent with the objectives of that common policy, as defined by Article 39 of the Treaty.

62 The applicants have not established that this distinction is arbitrary or manifestly inappropriate in relation to the objective of safeguarding the respective needs of the communities dependent on fishing in Ireland and the northern parts of the United Kingdom.

63 The United Kingdom Government has pointed out in that regard, without being contradicted by the applicants, that, while the United Kingdom's 1995 quotas for cod and whiting were lower than what it would have been entitled to catch under the 1983 allocation keys, those quotas were, prior to exchanges under Article 9 of Regulation No 3760/92, still significantly above Hague Preference tonnages. Furthermore, as that Government correctly notes, the United Kingdom has, by invoking its own Hague Preference and exchanging quotas, been able to increase, in the case of cod, and almost maintain, in the case of whiting, its share of the TACs in Area VIIa, despite a substantial reduction in those TACs since 1990.

64 As regards the criterion of vessel length, which must not exceed 24 metres, it appears from the documents before the Court that, for the northern parts of the United Kingdom, landings by such vessels are regarded as constituting the norm on the basis of which those regions' vital needs are satisfied.

65 Finally, so far as concerns the applicants' argument that, by reason of Ireland's quota exchanges with other Member States, the advantages accruing from the Hague Preference system have unjustifiably been extended to categories of operators other than those originally protected, it should be noted, as the Advocate General has stated in point 76 of his Opinion, that those exchanges benefit Irish fishermen, who can thereby fish for stocks other than cod and whiting, while the other Member States making the exchanges with Ireland are obliged to relinquish, wholly or in part, their quotas for those stocks.

66 It follows that the objective of the Hague Preferences, which is to safeguard the special needs of the populations of communities dependent on fishing, is met in the case of such quota exchanges.

67 The allocation by Regulation No 3362/94 of quotas to the United Kingdom is therefore not contrary either to the principle of proportionality or to that of non-discrimination set out in Article 40(3) of the Treaty.

68 The answer to the fourth question must consequently be that consideration of Regulation No 3362/94 has revealed no factor of such a kind as to affect its validity.

The fifth question

69 In light of the reply to the fourth question, it is unnecessary to rule on the fifth question.

Costs

70 The costs incurred by the United Kingdom, Danish and Irish Governments, and by the Council of the European Union 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 High Court of Justice in Northern Ireland, Queen's Bench Division, by order of 13 October 1995, hereby rules:

1. **The validity of the allocation of cod and whiting quotas in Area VIIa by Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished is not dependent on whether Annex VII to the Resolution of 3 November 1976 adopted by the Council at The Hague was properly adopted.**

2. **Consideration of Regulation No 3362/94 has revealed no factor of such a kind as to affect its validity.**

Rodríguez Iglesias Gulmann Ragnemalm Schintgen

Mancini Kapteyn Murray Edward

Puissochet Hirsch Jann

Delivered in open court in Luxembourg on 19 February 1998.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President