2. As long as the Community had not exercised its power to take measures for the conservation of the biological resources of the sea, a management and conservation measure adopted by a Member State during the transitional period which expired on 31 December 1978 and decided upon in accordance with the procedure provided for by the Hague Resolution of the Council of 3 November 1976, which had as its purpose to fix a total catch quota, allocating it amongst certain Member States, cannot be regarded as contrary to the principle prohibiting discrimination, embodied in Article 7 of the EEC Treaty and in Articles 1 and 2 (1) of Regulation No 101/76, if it was a conservation measure taken in response to a need arising in the zone concerned and if the measure was justified by objective considerations relating to the protection of the needs of the coastal population concerned and to the maintenance of a situation temporarily created in the area in question.

In Case 287/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Østre Landsret [Eastern Division of the High Court] for a preliminary ruling in the action pending before that court between

ANKLAGEMYNDIGHEDEN (Public Prosecutor)

and

JACK NOBLE KERR

on the interpretation of Article 7 of the EEC Treaty and Articles 1 and 2 (1) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal 1976, L 20, p. 19),

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. State of Community law when the events in the main proceedings occurred (June 1978)

The fundamental rules governing the fishing industry were laid down, pursuant in particular to Articles 42 and 43 of the EEC Treaty, by Regulation (EEC) No 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry (Official Journal, English Special Edition 1970 (III), p. 703) and by Regulation (EEC) No 2142/70 of the Council of 20 October 1970 on the common organization of the market in fishery products (Official Journal, English Special Edition 1970 (III), p. 707).

Articles 98 to 103 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties [hereinafter referred to as "the Act of Accession"], annexed to the Treaty of Accession of 22 January 1972, contain provisions relating to fisheries.

Articles 100 and 101 of the Act of Accession permit all the Member States to derogate from the principal rule concerning equal conditions of access to and use of fishing grounds situated in the maritime waters of the Member States for all fishermen in the Community. Those articles provide for that possibility for a period of 10 years, that is to say, until 31 December 1982. During that period, the Member States are authorized to restrict fishing in waters under their sovereignty or within a limit of six nautical miles, calculated from the baselines of the coastal Member State, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area. Article 101 provides that the limit of six nautical miles is to be extended to 12 nautical miles for certain listed areas situated in the three new Member States and in France.

The derogations relating to the limits of six and 12 nautical miles may not however prejudice the special fishing rights which the other Member States might have enjoyed on 31 January 1971. In areas in which a Member State extends its fishing limits to 12 nautical miles, the existing fishing activities within 12 nautical miles must be pursued in such a way that there is no regression by comparison with the situation on 31 January 1971.

Article 103 provides that, on the basis of a report presented by the Commission on the economic and social development of the coastal areas of the Member States and the state of stocks, and in the light of the objectives of the common fisheries policy, the Council, acting on a proposal submitted by the Commission before 31 December 1982, is to examine the

provisions which could follow the derogations in force until that date.

Finally, Article 102 provides that the Council, acting on a proposal submitted by the Commission from the sixth year after accession at the latest, is to determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

On 19 January 1976, the Council adopted Regulation (EEC) No 100/76 on the common organization of the market in fishery products (Official Journal 1976, L 20, p. 1) and Regulation (EEC) No 101/76, referred to above. Those regulations repeal Regulation Nos 2141/70 and 2142/70. Regulation No 101/76 contains the following provisions:

Article 1:

"Common rules shall be laid down for fishing in maritime waters and specific measures shall be adopted for appropriate action and the coordination of structural policies of Member States for the fishing industry to promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters."

Article 2:

"1. Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences in treatment in other Member States.

Member States shall ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.

2. Member States shall notify other Member States and the Commission of the existing laws and administrative rules and regulations in the field referred to in the first subparagraph of paragraph (1) together with those arising out of application of the provisions referred to in the second subparagraph of that paragraph.

3. The maritime waters referred to in this article shall be those which are so described by the laws in force in each Member State."

Article 3:

"Member States shall notify other Member States and the Commission of any alterations they intend to make to fishery rules laid down pursuant to Article 2."

Article 4:

"Where there is a risk of over-fishing of certain stocks in the maritime waters referred to in Article 2, of one or other Member State, the Council, acting in accordance with the procedure provided for in Article 43 (2) of the Treaty on a proposal from the Commission may adopt the necessary conservation measures.

In particular, those measures may include restrictions relating to the catching of certain species, to areas, to fishing seasons, to methods of fishing and to fishing gear."

At its meeting on 30 October 1976 at The Hague, the Council passed a resolution, which was formally adopted on 3 November 1976, in which it was agreed that the Member States, by taking concerted action, were to extend as from

1 January 1977, their fishing zones to 200 nautical miles off their North Sea and North Atlantic coasts (and that as from that date, the use by fishing vessels from non-member countries of fishery resources situated in those zones was to be governed by agreements between the Community and the non-member countries concerned).

At the same time, the Council expressed its agreement (Annex VI to the Resolution) to a Commission declaration (hereinafter referred to as "the Hague Resolution") which is worded as follows:

"Pending implementation of the Community measures at present in preparation relating to the conservation of resources, the Member States will not take any unilateral measures in respect of the conservation of resources.

However, if no agreement is reached for 1977 within the International Fisheries Commissions and if subsequently no autonomous Community measures could be adopted immediately, the Member States could then adopt, as an interim measure and in a form which avoids discrimination, appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts.

Before adopting such measures, the Member States concerned will seek the approval of the Commission which must be consulted at all stages of the procedures.

Any such measure shall not prejudice the guidelines to be adopted for the implementation of Community provisions on the conservation of resources."

Although on 20 October 1977 the Commission submitted the Council proposal for a regulation laying down for 1978 measures for the conservation and management of fishery resources involving the establishment of quotas, the Council confined itself to making the following declaration at its meeting on 30 and 31 January 1978:

"The Council approved the Commission communication according to which, in the absence of a common system, national measures could be taken in as far as they were strictly necessary for the conservation and management of fishery resources, were non-discriminatory and in conformity with the Treaty, and if the approval of the Commission had been sought beforehand."

2. Danish national provisions

Greenland Law No 413 of 13 June 1973 concerning commercial fishing and hunting, as amended by Law No 624 of 22 December 1976, provides in particular that sea fishing on a commercial basis off Greenland within the 200 nautical-mile limit from the base-lines as determined by the Minister for Greenland is reserved to persons and undertakings having close and well-defined ties with Greenland (Article 1). However, a general exception to that fundamental rule applies in the case of foreign nationals who enjoy certain rights in Greenland under international agreements (Article 11). Moreover, that fundamental rule may be derogated from where the authorities consider this to be necessary for the development of the fishing industry in Greenland or where it is essential that individuals and corporations already covered by earlier legislation be enabled to pursue their fishing activities and to

use for that purpose vessels registered in other regions of the Kingdom.

Article 4 of that Law provides that the Minister for Greenland or the local authorities specifically authorized by him may adopt measures for the protection of certain species of animals and fish. That provision contains examples of such conservation measures, including the limitation and allocation of catches and in particular allocation of national quotas and fishing activities.

Pursuant to that article, Order No 88 of 10 March 1978 on the limitation of catches for the fishing zone off Greenland for 1978 (Danish Official Gazette, p. 313) laid down the total allowable catch quotas for certain species of fish. Article 5 in fact provides that catches of shrimps in open waters surrounding the coast in sub-areas 0 + 1, defined by the International Convention for the North-West Atlantic Fisheries [hereinafter referred to as "the Convention"], may not exceed 43 000 tonnes and that catches in the fishing zone off West Greenland may not exceed 35 000 tonnes. Article 8 provides that the quotas are to be allocated in accordance with Annex II to the Order and that only vessels from those countries and regions named in the annex or vessels engaged in fishing under a Community regulation are entitled to catch listed species in the zones referred to in the annex. As regards shrimps, Annex II allocates quotas to Greenland, Denmark, France and the Faeroe Islands. Under Article 7 of the Law of 1973 and Article 10 of Order No 88, a breach of the aforesaid provisions may entail a warning or a fine in addition to the forfeiture of fishing gear and catches.

The total allowable catches and national quotas fixed by Order No 88 had as their purpose to ensure the implementation of an "arrangement concluded between the Community and Canada on the basis of a report drawn up by the scientific committee established by the commission set up under the Convention" and in the light of the Commission's proposal concerning the allocation of fishery resources for 1978. Order No 88 was notified to the Commission on 1 March 1978 in accordance with the procedure laid down by Annex VI to the Hague Resolution. On 20 November 1978, the Commission formally approved the said Danish measures, subject to certain reservations which have no bearing on the present case ("... the Commission understands that the Danish Government will amend the provisions concerning shrimp fishing contained in Article 5 of, and in Annex II to, the Order of 10 March 1978, in view of a reallocation of quotas resulting from negotiations conducted with non-member countries and from fresh Commission proposals ...").

3. *The facts in the main proceedings and the questions submitted for a preliminary ruling*

At the beginning of June 1978, the British trawler "Goth", owned by British United Trawlers (Grimsby) Ltd and under the command of its Captain Jack Noble Kerr, sailed from a British port to fish for shrimps in regions 1A to 1F established by the commission set up under the Convention off Greenland. On 14 April 1978 the British Minister for Agriculture, Fisheries and Food had issued a licence permitting the boat to catch 475 tonnes of shrimps after 6 June 1978 in the sub-area 0 — 1 delimited in the Convention.

By a telegram of 9 June 1978 to the Landshøvding over Grønland [Chief Administrative Officer of the Danish State in Greenland] the "Goth" notified the latter of its intention to fish for shrimps off West Greenland; on 12 June 1978 it began fishing in Greenland territorial waters at a position west of Holsteinsborg, between 12 and 200

nautical miles from the Greenland baselines. By a telegram of 14 June 1978 from the Greenland command, Captain Kerr was ordered to cease fishing immediately since, in the view of the Danish authorities, such fishing was unlawful as it was contrary to Order No 88.

A Danish fishery protection vessel was sent to the area but the "Goth" continued to fish there, as Captain Kerr initially refused to cease fishing in reliance on the licence from the British authorities and on the orders of the shipowners according to which the British Government did not consider the Danish measures to be compatible with Community law. The trawler was arrested and the captain was charged with breach of the said Order and agreed to pay a fine of DKR 80 000 in addition to the forfeiture of the catch of shrimps.

At Captain Kerr's request, the matter was heard at first instance by the Grønlands Landsret [Provincial Court, Greenland]; during the proceedings the Anklagenmyndighed [Public Prosecutor] asked for a fine to be imposed on the defendant and for the forfeiture of a sum of money, both at least equal to the amounts which had already been paid. Counsel for the defendant asked for the matter to be referred to the Court of Justice in order to seek a preliminary ruling on the question whether national measures of the kind referred to in the Order may be considered compatible with Community law. That request was refused by the Landsret by Order of 6 June 1979 and, in its judgment of 14 November 1979, the national court found proven the charge that the defendant had infringed the rules laid down by the Order concerning the limitation of shrimp fishing and ordered him to pay a fine of DKR 100 000 and to forfeit DKR 41 150 since in the court's view the provisions of the Order were not contrary to Community law.

Captain Kerr appealed against that judgment to the Østre Landsret [Eastern Division of the High Court] and his Counsel again asked for a question to be referred to the Court of Justice for a preliminary ruling. Despite the objections raised by the Public Prosecutor, the Østre Landsret, by Order of 18 June 1981, upheld the request to the extent specified in the questions set out below which were referred to the Court by letter of 29 October 1981 for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Is it compatible with the provisions of the EEC Treaty, in particular Article 7 thereof, for a Member State to have enacted in 1978 national measures on fisheries dividing the total allowable catch of a specified kind of fish in a specified, limited area of the State's fishing zone on the basis of previous fishing of the same nature in the area so that the Member States which carried out such fishing before the entry into force of the measures were allocated a catch-quota whilst the vessels of other Member States were excluded from such fishing?

2. Did the provisions of Articles 1 and 2 (1) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry preclude a Member State from enacting in 1978 national measures on fisheries dividing the total allowable catch of a specified kind of fish in a specified, limited area of the State's fishing zone on the basis

of previous fishing of the same nature in the area so that the Member States which carried out such fishing before the entry into force of the measures were allocated a catch-quota whilst the vessels of other Member States were excluded from such fishing?"

The Østre Landsret makes it clear that those questions presuppose that the national measures do not adversely effect either the total catch-quotas fixed by, or the fishing rights allotted to fishermen from non-member countries under agreements concluded between the Community and non-member countries and that the measures were notified to the Commission in accordance with the rules contained in Annex VI to the Hague Resolution of 30 October 1976.

The Order of the Østre Landsret was lodged at the Court Registry on 5 November 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by: the Government of the Kingdom of Denmark, represented by its Agent, L. Mikaelsen, on 3 February; the Government of the French Republic, represented by its Agent, Mrs M. Aulagnon, on 1 February 1982; the United Kingdom, represented by its Agent, R. N. Ricks, on 3 February 1982; and by the Commission of the European Communities, represented by its Agents R. Wainwright and H. P. Hartvig, on 11 January 1982.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. Observations submitted by the Danish Government

The Danish Government observes, first of all, as far as the facts of the case are concerned, that shrimp fishing off the west coast of Greenland grew rapidly between 1972 and 1976 (from less than 10 000 tonnes to 50 000 tonnes) *inter alia* because extensive fishing grounds had been newly discovered beyond the 12 nautical mile limit. Since that increase over such a short period was beyond the level acceptable for the conservation of stocks, a total allowable catch (TAC) of 36 000 tonnes was fixed under the Convention as from 1977. Between 1970 and 1977, the fishing was carried out in particular by the following countries or regions: Greenland, Canada, the Faeroe Islands, Denmark, France and Norway. United Kingdom vessels had never fished for shrimps off the west coast of Greenland.

Following the extension of fishing zones as from 1 January 1977, detailed negotiations were conducted concerning the adoption of legislation on fisheries. The Commission's proposal for the adoption of rules on the size of catches for 1978 is based partly on a proposed total allowable shrimp catch off West Greenland corresponding to the 35 000 tonnes recommended by the Convention. At the same time, the Commission proposed to allocate catch-quotas amongst Greenland, Denmark and France, taking into account the need to reserve quotas for the Faeroe Islands and Norway. After lengthy and difficult negotiations, in the course of which, moreover, the United Kingdom did not

claim a catch quota for shrimps, in January 1978 all the Member States, with the exception of the United Kingdom, were able to accept the Commission's proposal as a comprehensive solution. However, the United Kingdom objected to the adoption of the Commission proposal in its entirety in accordance with the voting procedure provided for by Article 43. Following the breakdown of the negotiations, the Member States, with the exception of the United Kingdom, stated that they intended to adopt national measures corresponding to the provisions contained in the Commission proposal; accordingly, the Danish Government implemented a series of measures corresponding to that proposal as regards both the technical conditions for fishing and the rules on the size of catches.

As far as the questions submitted are concerned, the Danish Government contends in the first place that Community law contains a general principle of equal treatment according to which similar situations may not be treated differently unless a difference in treatment is based on objective grounds. Article 7 of the Treaty and Article 2 (1) of Regulation No 101/76 express that general principle in different ways. It is clear from Article 7 that the prohibition of discrimination applies without prejudice to any special provisions contained in the Treaty. That means that where special rules apply, the function of Article 7 is mainly interpretative and complementary with the result that the provision may not be applied unless consideration is given at the same time to the special Community provisions which are also relevant to the area in question, in this case the fisheries sector.

The second subparagraph of Article 2 (1) of Regulation No 101/76 requires the Member States to ensure equal conditions of access to and use of the fishing grounds, which implies that fishermen from the Member States are equally entitled to engage in fishing stocks which are not subject to quotas. If a species of fish does not require protection in the form of rules on the size of catches, or as long as the requirement of protection may be satisfied merely by the fixing of a total allowable catch, all the fishermen of the Member States are equally entitled to engage in fishing.

However, the Danish Government considers that if it is necessary in the interests of conservation to impose quantitative restrictions and to allocate the quantities by way of quotas, it should be possible to do so in a manner which does not constitute an infringement of the principles of equality. Moreover, the quotas should be fixed by reference to objective reasons. Thus, for example, it would be possible to take account of the degree of protection required by the fish stock and, in particular, whether it is necessary to fix total catches. If need be, the rules for the allocation of catches could be drafted in such a way as to make possible the effective supervision of fishing as well as — in the fishermen's own interests — rational fishing and the maintenance of order in the fishing grounds.

In its judgment of 3 July 1979 in Joined Cases 185 to 204/78 *Van Dam en Zonen* [1979] ECR 2345, the Court held that "national provisions such as those in the Netherlands regulations concerning fishing quotas to which the national court has referred, cannot be considered as discriminatory as long as they are applied uniformly to all the fishermen under the jurisdiction of the Member

State concerned". In the Danish Government's opinion, the meaning of that judgment is that the Court approved a quota fixed at national level, established by reference to the nationality of the fishermen, and that, accordingly, it is permissible to impose quantitative restrictions involving the allocation, within total catches, of quotas amongst the various Member States, which would not constitute as such an infringement of the prohibition of discrimination on grounds of nationality. Frequently, moreover, the system of quotas is also used as a means of regulating access to a market; an instance of this may be found in the Community legislation on international road, transport and on sugar.

The Danish Government is of the opinion that "previous fishing" constitutes an objective basis justifying a difference in treatment in so far as the existence and the absence of previous fishing gives rise to different situations. That criterion had and still has an important function as is shown by the proposal submitted to the Council by the Commission and by the negotiations conducted on that basis within the Council and as is confirmed by the Council Declaration of 30 May 1980 on the common fisheries policy (Official Journal 1980, C 158, p. 2). In the Danish Government's view, that criterion must moreover be accepted as a matter of simple necessity if it is desired to promote the harmonious and balanced development of the fishing industry and to encourage the rational use of the biological resources of the sea in a situation in which the total catch capacity exceeds the total catches. The Court also recognized the importance of that criterion, especially in Case 61/77 *Commission* v *Ireland* [1978] ECR 417 in which it considered an Irish measure to be in breach of the prohibition of discrimination contained in Article 7 of the Treaty and in Article 2 (1) of Regulation No 101/76 precisely because it kept out "a substantial proportion of the fishing fleets of other Member States which have traditionally fished in those areas". In Case 812/79 *Burgoa* [1980] ECR 2787, the Court refused to adopt a position on the problem because it had no bearing on the case in point and, even if it had been relevant, the rights concerned were vested in non-member countries, were not governed by the provisions of the Treaty relating to fisheries and, therefore, were not subject to the prohibition of discrimination or to the rights connected with traditional fishing patterns.

The Danish Government recalls that the order in question laid down rules in respect of fishing for 1978, that is to say before the expiry of the transitional period provided for by Article 102 of the Act of Accession. In its view, it is clear from the case-law of the Court that, in those circumstances, the Member States are under a duty to ensure, in the general interest, the necessary conservation of stocks and at the same time to exercise restraint. That duty arises under Article 5 of the Treaty and is embodied in Annex VI to the Hague Resolution as well as in the so-called transitional regulations adopted by the Council for 1979 and 1980. The Danish Government did not take that obligation to mean that it was necessary to establish new policy during the transitional period but it assumed, rather, that the Member States were to try to maintain the *status quo* so as to avoid upsetting the foundations of the future fisheries policy. In its opinion, that supports the view that it was

legitimate in the present case to maintain the earlier detailed rules on fishing. The Danish Government adds that the provisions on fishing must be drafted in such a way as to provide those who earn their livelihood from fishing with a stable basis for their economic activity. That is why, particularly at a time when total catches are limited and even diminishing, it is justifiable to take account of the interests of fishermen who through their investment, training and so forth, have based their livelihood on a certain type of fishing. Reductions are already making it increasingly difficult to make a profit from fishing. In those circumstances, account should be taken of the legitimate expectation of the fishing fleets which are already concerned that they will be able to carry on fishing, before other fishermen are authorized to engage in that activity.

2. *Observations submitted by the French Government*

The French Government adheres to those decisions of the Court in which the latter accepted that the Member States, in the absence of common rules adopted by the Council, were entitled to enact national conservation measures, subject to prior notification of the Commission and provided that its approval had been sought in accordance with the provisions of Annex VI to the Hague Resolution.

In its view the Danish order is not incompatible with the principle of non-discrimination defined in Article 7 of the EEC Treaty. The position of a British fisherman is not, in this case, comparable to that of a fisherman who is a national of one of the States to which a catch-quota had been allocated. Fishermen who had already fished in Greenland waters are not in the same position as those who had never fished there and, accordingly, the principle of equal treatment has not been infringed. On the other hand, to accord equal treatment to both categories and thus to permit access to that area to all Community fishing vessels would, in view of the general decrease in the total allowable catch, result in a negligible share of the catch for each vessel. Accordingly, fishing would be adversely affected in that area; those fishermen who fished there before 1978 would be deprived of traditional and therefore important activity whilst other fishermen would lose the opportunity to fish there occasionally.

Furthermore, the Danish Order did not arbitrarily establish a difference in treatment since the criterion adopted by the Danish authority was that of past catches — established, what is more, by an international body, the fisheries commission set up under the Convention, whose impartiality is beyond dispute. Since the criterion adopted is strictly objective, no objection based on arbitrary conduct can be raised against the allocation itself and the fact that the latter is based on nationality seems, all things considered, to be secondary. Finally, under a policy on fisheries which concerns, in the first place, numerous species of fish and, secondly, a large number of fishing zones, entailing in each case the establishment of a total allowable catch and, subsequently, the allocation of that total catch amongst the

parties, it is possible to determine whether the apportionment is equitable only if account is taken of all the management units. In other words, in the case of the Community, account must be taken of the totality of the allocation in the waters within the jurisdiction of the Member States and in the waters of non-member countries in which the Community has obtained certain fishing rights.

The French Government also considers that the Danish Order does not infringe the relevant provisions of Regulation No 101/76. That regulation and the Hague Resolution constituted in 1978 the sole instances of the application of Community secondary legislation based on Article 102 of the Act of Accession which is concerned with "conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea". That is the background against which Articles 1 and 2 of the contested regulation — which prohibits the incorporation of any differences in treatment in the measures of conservation and protection already enacted or to be adopted by the Member States — should be interpreted. Moreover, that is the basis adopted by the Danish authority which, with a view to conserving stocks of various species of fish which were being depleted with disconcerting rapidity, fixed, in accordance with scientific recommendations, a total allowable catch for shrimps in the areas in question. In its judgment of 14 July 1976 in Joined Cases 3, 4 and 6/76 *Kramer* [1976] ECR 1279, the Court held that such restrictions on production were in conformity with Community law. The Danish authorities found themselves obliged to allocate, in the same order, the total allowable catch amongst the various Member States. That provision is quite distinct from the provision fixing the total volume of allowable catches. The fixing of a total allowable catch for a given fish stock is a conservation measure based on relevant and comprehensive scientific recommendations. Those recommendations are assessed by the competent authorities by reference both to the degree of compulsion attaching thereto and to the requirements relating to the short, medium and long-term satisfaction of the needs of the populations concerned. On the other hand, the allocation of the total allowable catch amongst the various parties potentially involved should be assimilated only to a management measure which is sufficiently effective to enable each party to organize its fishing as it sees fit and to enable catches made to be rigorously verified.

The criterion relating to the vital needs of, and to prospects of economic development for, populations which are particularly dependent upon fishing and the industries allied thereto, which was accepted by the Commission in its proposal for the allocation of fishery resources for 1978 and derives from the deliberations at The Hague in 1976, complements the criterion of traditional fishing in a manner which is less favourable to the interests of fishermen from other Member States who are accustomed to fish in the waters of the regions in question (which include Greenland, a region particularly dependent on fishing and the industries allied thereto).

Clearly, the bases adopted by the Danish authority and by the Commission demonstrate that the allocation of catch-

quotas amongst the Member States cannot constitute a conservation measure. Moreover, the machinery for allocation may operate freely within the limits of the total allowable catch without at any time jeopardizing the objective of the conservation of resources and the protection of the sea bed. In the light of the foregoing considerations, the French Government considers that the provisions of Regulation No 101/76 laying down certain general rules relating to measures for the protection of the sea bed and for the conservation of resources are conservation measures and may not therefore be applied to measures concerning the allocation of quotas. However, if the allocation of quotas were to be classified as a conservation measure, the French Government takes the view, in the alternative, that reference to the contested regulation would add nothing to the comparison made with Article 7 of the EEC Treaty.

3. Observations submitted by the United Kingdom

The United Kingdom maintains that although the measures contained in the contested Order were eventually approved by the Commission in November 1978, the Commission's approval had not been granted at the time of the arrest and conviction of Captain Kerr. The United Kingdom also observes that, contrary to the suggestion of the Danish Public Prosecutor, it requested a share in the catch-quotas for shrimps in the area in question in the summer of 1977.

The United Kingdom accepts that in March 1978 the power to adopt fisheries conservation measures was vested in the Member States. However, in its opinion, it does not follow that the power of the Member States was an unfettered one. It was, like any other power exercisable by the Member States in relation to matters affecting the common market, subject to the general principles of Community law.

Annex VI to the Hague Resolution of 3 November 1976 and the declaration made by the Council at its meeting on 30 and 31 January 1978 further reinforced the prohibition of discrimination on grounds of nationality, contained in Article 7 of the Treaty and reiterated in the fisheries sector by Article 2 (1) of Regulation No 101/76, and further limited the freedom of Member States in that field by providing that national measures must be necessary, adopted on an interim basis and only after full consultation with the Commission.

Even though Order No 77 was "an interim measure" and had been adopted following consultation with the Commission, it did not constitute a conservation measure within the contemplation of Annex VI to the Hague Resolution but an allocation of national quotas within a total catch limit. Even if Order No 88 could be regarded as a conservation measure, it was outside the contemplation of Annex VI because it was not necessary in order to achieve the aim of protecting the shrimp stocks in question. The adoption of a total catch limit may be a valid conservation measure and there can be no doubt that the adoption of a total catch limit for shrimps in the area in question in 1978, based as it was on the best available scientific evidence, amounted to a necessary conservation measure.

However, there is no need for such a total catch limit to be enforced on the basis of quotas imposed by the coastal State on other Member States, whether or not those quotas are determined by reference to the coastal State's assessment of previous fishing patterns. Such a total catch could be enforced with equal effectiveness on the basis of free fishing for all up to the limit imposed or by means of a licensing system open to the fishermen of all the Member States. Moreover, the process of allocating national quotas involves consideration of the situation in the Community as a whole (see Case 32/79 *Commission* v *United Kingdom* [1980] ECR 2403). Thus, in considering the allocation of national quotas the Council has had regard to a number of factors other than traditional fishing patterns, and it has been particularly concerned over a number of years with endeavouring to ensure that Member States' quotas should to some extent reflect losses sustained by them in the waters of non-member countries. That principle was reaffirmed in the Council's Declaration of 30 May 1980.

The United Kingdom further submits that the Danish Government contravened a more fundamental principle of Community law by discriminating on grounds of nationality. It cannot be inferred from the order made by the Court in Case 61/7, referred to above, that the prohibition of discrimination on grounds of nationality is in some way removed where the coastal State relies on traditional fishing patterns in support of its measures. In the United Kingdom's view the Court, on the contrary, made it plain that measures introduced under Annex VI to the Hague Resolution must be in a form which avoids discrimination.

The United Kingdom maintains that the incompatibility with Community law of Order No 88 and of the prosecution of Captain Kerr is in no way affected by the Commission's approval of the order of 22 November 1978 since such approval cannot validate a national order where the relevant provisions of that order are incompatible with, or contrary to, Community law. That principle clearly emerges from the Court's judgment in Joined Cases 142 and 143/80 *Essevi and Salengo* [1981] ECR 1413 according to which in the absence of any express provision in the Treaty empowering the Commission to authorize certain conduct on the part of Member States which would otherwise be in breach of the Treaty, the Commission has no power to exempt a State from compliance with its obligations under the Treaty.

The United Kingdom therefore proposes that the first question should be answered in the negative and the second question in the affirmative.

4. Observations submitted by the Commission

The Commission observes at the outset that the question raised in this case, namely whether the national measures involve discrimination against fishermen who are nationals of certain Member States and who before or at least outside the reference period did not engage in fishing in a specific area by comparison

with fishermen who are nationals of other Member States and who actually fished in that area during the period in question, has not been expressly resolved by the case-law of the Court. The answer to that question is important not only as regards the application by the Member States of measures adopted for the conservation of fishery resources but also as regards the adoption of such provisions by the Council. Moreover, in order to reply to the decisive question whether, from the point of view of Article 7 of the Treaty, the difference in treatment is based on objective grounds, it is necessary to appraise the system of catch-quotas by reference both to the objective pursued by the provisions of Community law concerning the use of fishery resources and to the context of those provisions.

The fixing of an annual total allowable catch by stock or group of stocks for most species of fish constitutes one of the most effective means of ensuring both optimum use of the biological resources of the sea and their conservation. It automatically raises three problems: verification of compliance with such a restriction on catches, equitable distribution amongst fishermen of the burden of such a restriction on catches and rational use of the total allowable catch. So far, the fisheries commissions for the Atlantic Ocean, the Commission and the Council have taken the view that an allocation of quotas amongst the Member States on the basis of an objective and equitable criterion is the only way to resolve those problems. At Community level, the Court also considered that the application of a total allowable catch and its division into national quotas are in conformity with Community law (see Joined Cases 3, 4 and 6/76, referred to above).

As regards the criteria to be adopted for the allocation of quotas amongst the Member States, the Commission does not intend to rule out any of the several existing possibilities which are compatible with Community law. Thus, since 1976, the Commission's proposals for the adoption of conservation measures have been based on three criteria which have also been accepted by the Council. Those three criteria were expressly laid down, in particular, in the Council's Declaration of 30 May 1980 and in the Commission's proposal concerning catch-quotas for 1981 (Official Journal 1981, C 224, p. 11). It follows from those considerations that a Member State which, in implementing its own conservation measures for 1976 complied with the Commission's proposals concerning quotas for that year, in fact applied the three above-mentioned criteria and therefore did not take into account solely the level of previous fishing activity. As regards the later criterion, the Commission considers that it is in conformity with Community law and probably the most appropriate criterion to be applied in the present situation. Its application is also justified by the fact that it takes account of economic realities and contributes to the attainment of the objectives pursued by the Community provisions adopted for the fishing industry. In fact, a restriction on catches in specific areas constitutes above all a burden, at times a very onerous one, for fishermen who have often fished in the area in question for so long that it has become their principal source of income. Fishermen who, even in the relatively recent past, failed to show any interest in fishing in that area do not have to support any burden and the prohibition placed on their fishing in

the area in question has no serious implications for them. If the quotas were allocated amongst the fishermen of all the Member States, especially those whose fishing fleets have not so far fished in an area in which it is considered necessary to restrict catches, it would be necessary either to refrain, at any rate to some extent, from imposing that essential restriction or to reduce still further the quotas allocated to fishermen who have traditionally fished in the area concerned, the sole effect of which would be to aggravate their situation. In that regard, the Commission emphasizes that the Community provisions adopted in relation to the fishing industry in accordance with Article 39 of the EEC Treaty also have as their purpose to ensure a fair standard of living for the population which lives by fishing.

The Commission also recalls that the common system governing fishing in maritime waters must, in particular, seek to ensure rational use of the biological resources of the sea in conformity with Article 1 of Regulation No 101/76. However, if quotas are also allocated to Member States whose fishermen have not in the past shown any interest in fishing in the area in question, there would be a risk that the quotas might not be used up in full which would scarcely be compatible with the rational use of resources. The Commission also points out that the fisheries commissions for the Atlantic Ocean have always regarded the fact of having hitherto engaged in fishing as a valid objective criterion. The recommendations made by those organizations as regards the allocation of quotas amongst their member States have corresponded in scope to an allocation within the Community. In practice those recommendations relate in particular to waters situated outside territorial waters which are governed by the principle of freedom of access which also applies within the Community. Finally, the Commission observes that, even if the Court has not yet expressly adopted a position on the question whether the traditional fishing patterns of the Member States constitute a criterion for the allocation of quotas which is compatible with Community law, it none the less declared on several occasions that it was important to take account of the fishing fleets of Member States which have traditionally fished in the region in question.

III — Oral procedure

At the sitting on 29 June 1982 oral argument was presented by the following: J. Korsø-Jensen, for Mr Noble Kerr; L. Mikaelsen, for the Danish Government; A. Carnelutti, for the French Government; A. Bos, for the Netherlands Government; A. Moses, Barrister-at-law, for the United Kingdom; and H. P. Hartvig and R. Wainwright, for the Commission of the European Communities.

At the hearing, the Court asked the Commission which period of reference it took into account for the purpose of treating, in its proposals for the allocation of quotas, the catches of a Member State as a traditional fishing pattern. By letter of 13 July 1982, the Commission replied that when it drew up its proposals for the allocation of quotas for 1978, it found that it was impossible to devise a statistical method to determine a period of reference which would be acceptable to all the Member

States. It therefore took as a basis the quota scale for 1976 used by the North-East Atlantic Fisheries Commission, adjusted in certain instances, in particular in the case of Ireland and the north of Great Britain, in order to take account of the Hague Resolution. Where no such quotas existed, the Commission took as a basis the volume of catches of the various Member States in 1976. That was the most recent year for which the necessary information was available and the various fleets had already to some extent drawn up their catch forecasts on that basis. The fishing zone off Greenland, which is at issue in the present case, falls within that category. Accordingly, the allocation of a quota to France in 1978 was based on the fact that the fleet of that Member State fished in that zone in 1976. Subsequently, the extension of the fishing zones to 200 nautical miles, as from 1 January 1977, led to the abandonment of those quotas. Moreover, methods of compiling statistics had been improved. Since 1979, therefore, the Commission adopted as a criterion the Member States' average catches over a reference period of several years. Thus, for example, the reference period adopted for the proposed allocation of quotas for 1981 and 1982 was the period from 1973 to 1978.

The Advocate General delivered his opinion at the sitting on 29 September 1982.

Decision

1 By letter of 29 October 1981, which was received at the Court on 5 November 1981, the President of the 16th Chamber of the Østre Landsret [Eastern Division of the High Court], giving effect to an order made by that Chamber on 16 June 1981, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 7 of the EEC Treaty and Articles 1 and 2 (1) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal 1976, L 20, p. 19).

2 Those questions were raised in criminal proceedings against the captain of a British trawler, Mr Kerr, for breach of Danish Ministerial Order No 88 of 10 March 1978 on the limitation of catches for the fishing zone off Greenland for 1978. That Order lays down catch-quotas for certain species of fish in certain areas of the Greenland fishing zone.

3 The Order was adopted pursuant to Greenland Law No 413 of 13 June 1973 concerning commercial fishing and hunting, as amended by Law No 624 of 22 December 1976, which provides in particular that sea fishing on a commercial basis off Greenland within the 200 nautical mile limit from the base-lines as determined by the Minister for Greenland is to be reserved to individuals and corporations having close and well-defined ties with Greenland (Article 1). However, a general exception to that rule applies in the case of foreign nationals who enjoy certain rights in Greenland under international agreements (Article 11). Moreover, that rule may be derogated from where the authorities consider this to be necessary for the development of the fishing industry in Greenland or where it is essential that individuals and corporations already covered by earlier legislation be enabled to pursue their fishing operations and to use for that purpose vessels registered in other regions of the kingdom.

4 Article 4 of the law provides that the Minister for Greenland or the local authorities specifically authorized by him may adopt measures for the protection of certain species of animals and fish. That provision contains examples of such conservation measures, including the limitation and allocation of catches, in particular the allocation of national quotas and fishing activities.

5 Article 5 of Order No 88 provides that catches of shrimps in open waters surrounding the coast in sub-areas 0 + 1, defined by the International Convention for the North-West Atlantic Fisheries [hereinafter referred to as "the Convention"] may not exceed 40 000 tonnes and that catches in the fishing zone off West Greenland may not exceed 35 000 tonnes.

6 It is clear from the provisions of Article 8 of the Order taken in conjunction with Annex II thereto, that the quantity of shrimps which it was permissible to catch in the fishing zone off Greenland was divided into catch-quotas allocated to Greenland, Denmark, France and the Faeroe Islands. Article 10 provides, in the event of a breach of those provisions, for the administration of a warning or the imposition of a fine as well as for the forfeiture of fishing gear and catches.

7 After his ship was arrested on 16 June 1978 in Greenland maritime waters between 12 and 200 nautical miles from the Greenland base-lines, Mr Kerr was ordered by the Grønlands Landsret [Provincial Court, Greenland] for breach of the said Danish legislation to pay a fine of DKR 100 000 and to forfeit DKR 41 150 corresponding to the value of the catch of shrimps. Both the defendant and the Public Prosecutor appealed against that judgment to the Østre Landsret.

8 It should be pointed out that Captain Kerr was the holder of a licence issued on 14 April 1978 by the British Minister for Agriculture, Fisheries and Food authorizing the boat to catch 475 tonnes of shrimps after 6 June 1978 in the aforementioned sub-area 0—1.

9 Taking the view that it needed a preliminary ruling from the Court of Justice in order to determine the compatibility with Community law of Danish Order No 88, the Østre Landsret referred to the Court the following questions:

"1. Is it compatible with the provisions of the EEC Treaty, in particular Article 7 thereof, for a Member State to have enacted in 1978 national measures on fisheries dividing the total allowable catch of a specified kind of fish in a specified, limited area of the State's fishing zone on the basis of previous fishing of the same nature in the area so that the Member States which carried out such fishing before the entry into force of the measures were allocated a catch-quota whilst the vessels of other Member States were excluded from such fishing?

2. Did the provisions of Articles 1 and 2 (1) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry preclude a Member State from enacting in 1978 national measures on fisheries dividing the total allowable catch of a specified kind of fish in a specified, limited area of the State's fishing zone on the basis of previous fishing of the same nature in the area so that the Member States which carried out such fishing before the entry into force of the measures were allocated a catch-quota whilst the vessels of other Member States were excluded from such fishing?"

10 Article 7 of the Treaty provides that within the scope of application of the Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality is prohibited.

11 Article 2 (1) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal 1976, L 20, p. 19) provides that the rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction must not lead to differences in treatment of other Member States. Member States are to ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters referred to for all fishing vessels flying the flag of a Member State and registered in Community territory.

12 The defendant, supported by the United Kingdom and by the Government of the Netherlands, considers that the measures adopted by the Kingdom of Denmark are in breach of the aforesaid provisions and are therefore incompatible with Community law. He does not contest that at the time when the events in question occurred, namely before the expiry of the period prescribed by Article 102 of the Act of Accession, a Member State was entitled to adopt fisheries conservation measures but he considers that the adoption of measures such as those at issue exceeds the scope of the power vested in the Member States. In his view, even if the fixing of a total allowable catch (TAC) for certain species of fish constitutes a necessary conservation measure, there is no need for such a total catch limit to be applied in the form of quotas imposed by the coastal State.

13 The United Kingdom argues that such a measure is unlawful when the adoption of measures not giving rise to discrimination would be sufficient to bring about the same result, namely the restriction of total catches to a specific figure. For example, free fishing for the trawlers of all the Member States could be allowed up to the total allowable catch limit or a licensing system open to the fishermen of all the Member States could be introduced.

14 The Netherlands Government considers that the allocation of quotas by a coastal State may not be regarded as a necessary protective measure. In its

view, it is a duty incumbent on the Member State of registration which is also responsible for enforcing supervision of and compliance with such measures.

15 Article 102 of the Act of Accession of 1972 provides that from the sixth year after accession at the latest, that is to say 31 December 1978, the Council, acting on a proposal from the Commission, is to determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

16 On 3 November 1976, at The Hague, the Council adopted a resolution in which it was agreed that the Member States, by taking concerted action, were to extend as from 1 January 1977 their fishing zones to 200 nautical miles off their North Sea and North Atlantic coasts and that as from that date, the use by fishing vessels from non-member countries of fishery resources situated in those zones was to be governed by agreements between the Community and the non-member countries concerned. In the light of that resolution, the Kingdom of Denmark extended its fishing zone accordingly.

17 The Court has on several occasions recognized that the purpose of Article 102 of the Act of Accession was to introduce a new transitional period by the end of which the Council was to have adopted the conservation measures required. During that period and in so far as the Council had not exercised that power, it was for the Member States to adopt as regards the maritime waters within their jurisdiction the necessary conservation measures in the common interest and in compliance with the substantive and procedural rules of Community law, in particular those contained in the Hague Resolution of 3 November 1976.

18 In that Resolution, the Council expressed its agreement (Annex VI to the Resolution) with a Commission Declaration which is worded as follows:

"Pending the implementation of the Community measures at present in preparation relating to the conservation resources, the Member States will not take any unilateral measures in respect of the conservation of resources.

However, if no agreement is reached for 1977 within the international fisheries commissions and if subsequently no autonomous Community measures could be adopted immediately, the Member States could then adopt, as an interim measure and in a form which avoids discrimination, appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts.

Before adopting such measures, the Member State concerned will seek the approval of the Commission which must be consulted at all stages of the procedures.

Any such measures adopted shall not prejudice the guidelines to be adopted for the implementation of Community provisions on the conservation of resources."

19 Furthermore, at its meeting on 30 and 31 January 1978, the Council made the following declaration:

"The Council approved the Commission communication according to which, in the absence of a common system, national measures could only be taken in as far as they were strictly necessary for the conservation and management of fishery resources, were non-discriminatory and in conformity with the Treaty, and if the approval of the Commission had been sought beforehand."

20 The question which arises in this case is whether, during the transitional period, in the exercise of their power relating to "conservation and management", the Member States were entitled not only to fix total allowable catches for certain species of fish in the areas within their jurisdiction but also to allocate such catches amongst the Member States, restricting such allocation to certain Member States.

21 In its judgment of 14 July 1976 in Joined Cases 3, 4 and 6/76 *Kramer* [1976] ECR 1279, the Court recognized that the Community has the power in its internal relations to adopt any measures for the conservation of the biological resources of the sea, including the fixing of catch-quotas and their allocation amongst the various Member States.

22 It must also be recognized that, during the transitional period which expired on 31 December 1978, the Member States were similarly empowered to fix and to allocate quotas, as long as that power had not been exercised by the Council. In the absence of measures adopted on a common basis which could have made it possible to lay responsibility on the Member State of registration, the coastal State was in the best position to evaluate the data enabling a total catch-quota to be fixed for the different species of fish and to be allocated amongst the various Member States.

23 As regards the fixing of the total allowable catch, it is not disputed that the total allowable catch actually fixed was in conformity with the recommendation made by the commission established by the Convention and that it constituted an appropriate conservation measure.

24 As regards the allocation of the total allowable catch, it must in the first place be borne in mind that the catch-quota allocated to the Faeroe Islands was, as is apparent from Council Regulation (EEC) No 1848/78 of 25 July 1978 (Official Journal 1978, L 211, p. 6) the result of a framework agreement on fisheries signed by the Community on the one hand and by the Government of Denmark and the local administration of the Faeroe Islands on the other, and of consultations which took place between the parties.

25 The advantages accorded to the fishermen of the Faeroe Islands were granted in return for the right which was conferred on Community fishermen to catch other species of fish in the maritime waters within the jurisdiction of those islands; the resultant quotas were allocated by the Council amongst certain Member States under the common fisheries policy, in particular to compensate for the loss of catch potential in the waters of non-member countries, as is clear from Council Regulation (EEC) No 1846/78 of 25 July 1978 (Official Journal 1978, L 211, p. 1).

26 The quantity of shrimps available which was included in the recommended catch-quota was not, after deduction of the share reserved for the Faeroe Islands, sufficient to permit the allocation to each of the Member States concerned of a quota capable of being exploited on a profitable basis. In those circumstances, Denmark decided to divide the quota available between only two Member States. Accordingly, it allocated the highest quota (15 245 tonnes) to Greenland, where the local population is particularly dependent on fishing in the waters in question, and divided the rest between France (692 tonnes) and Denmark (2 900 tonnes). It complied with the proposed allocation for 1978 which the Commission of the European Communities had submitted to the Council in October 1977. Denmark thus allocated a catch-quota only to Member States which had fished for shrimps in the area in question before the end of 1976.

27 It must be observed, finally, that the Danish Government submitted the proposed measures to the Commission in good time and sought its approval in accordance with the requirements which at the time resulted from the Hague Resolution.

28 The answer to the questions submitted by the Østre Landsret must enable that court to decide whether the Danish measure, introduced in the aforesaid circumstances, is compatible with the rule prohibiting discrimination laid down by Article 7 of the EEC Treaty and defined by Articles 1 and 2 (1) of Regulation No 101/76.

29 For the purposes of that answer, it must be borne in mind that the Danish Government was confronted with the need to adopt a protective measure, which was both effective and workable, in a limited zone of its maritime waters within its direct jurisdiction. In determining that measure, it took account of the proposals made at the time by the Commission for all waters within the jurisdiction of the Member States and based on the maintenance of a comprehensive balance between the interests of all the fishermen of the Member States. It complied with the procedure for prior consultation provided for by the Hague Resolution.

30 Examination of the method applied demonstrates that the Danish authorities allocated the quotas in accordance with objective criteria, taking into account, in the first place, the needs of the coastal population, and secondly,

the need to maintain a situation temporarily created in the region in question, even though the fishing zone in question had only recently been discovered and exploited.

31 In those circumstances, regard being had to the legal position during the transitional period, the division of the fishing quota under the measure adopted by the Danish authority cannot be regarded as amounting to discrimination on grounds of nationality contrary to Article 7 of the Treaty and to the provisions of Articles 1 and 2 (1) of Regulation No 101/76.

32 The answer to the question referred to the Court must therefore be that as long as the Community had not exercised its power to take measures for the conservation of the biological resources of the sea, a management and conservation measure adopted by a Member State during the transitional period which expired on 31 December 1978 and decided upon in accordance with the procedure provided for by the Hague Resolution of the Council of 3 November 1976, which had as its purpose to fix a total catch-quota, allocating it amongst certain Member States, cannot be regarded as contrary to the principle prohibiting discrimination, embodied in Article 7 of the EEC Treaty and in Articles 1 and 2 (1) of Regulation No 101/76, if it was a conservation measure taken in response to a need arising in the zone concerned and if the measure was justified by objective considerations relating to the protection of the needs of the coastal population concerned and to the maintenance of a situation temporarily created in the area in question.

Costs

33 The costs incurred by the Government of the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 Østre Landsret of 29 October 1981, hereby rules:

"As long as the Community had not exercised its power to take measures for the conservation of the biological resources of the sea, a management and conservation measure adopted by a Member State during the transitional period which expired on 31 December 1978 and decided upon in accordance with the procedure provided for by the Hague Resolution of the Council of 3 November 1976, which had as its purpose to fix a total catch-quota, allocating it amongst certain Member States, cannot be regarded as contrary to the principle prohibiting discrimination, embodied in Article 7 of the EEC Treaty and in Articles 1 and 2 (1) of Regulation No 101/76, if it was a conservation measure taken in response to a need arising in the zone concerned and if the measure was justified by objective considerations relating to the protection of the needs of the coastal population concerned and to the maintenance of a situation temporarily created in the area in question."

Mertens de Wilmars Pescatore O'Keeffe

Everling Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 30 November 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President