Fisheries of 1980, replaced the prior international obligations existing between certain Member States and Spain in order to deal with the increasingly urgent need to conserve the living resources of the sea and to take into account the general evolution of international law in the field of sea fishing. Accordingly, Spanish fishermen may not rely on prior international commitments as between France and Spain in order to prevent the application of the interim regulations adopted by the Community in the event of any incompatibility between the two categories of provisions.

2. Within the framework of criminal proceedings against Spanish fishermen charged with fishing in French territorial waters without being in possession of a fishing licence it is for the national court to consider the consequences of the absence of any Community regulations concerning fishing licences applicable to Spanish fishing vessels during the time between the periods when Regulations Nos 3305/80 and 554/81 were in force.

In Joined Cases 138 and 139/81

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Bayonne, for a preliminary ruling in the action pending before that court between

DIRECTEUR DES AFFAIRES MARITIMES DU LITTORAL DU SUD-OUEST [Director of Maritime Affairs for the South-western Seaboard], Bayonne, prosecutor,

and

PROCUREUR DE LA RÉPUBLIQUE [Public Prosecutor], intervening,

and

JAVIER MARTICORENA-OTAZO, San Sebastian, Spain (Case 138/81)

and

MANUEL PREGO PARADA, Pasajes de San Pedro, Spain (Case 139/81)

on the validity of regulations of the Council laying down certain temporary measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: A. W. H. Meij, Legal Secretary

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. Mr Marticorena-Otazo and Mr Prego Parada, the captains of fishing vessels registered in Spain, were prosecuted before the Tribunal de Grande Instance [Regional Court], Bayonne, for unlawfully fishing without holding the fishing licence required by the Community provisions applicable to vessels flying the flag of Spain and of having contravened the Community provisions on the mesh-size of fishing nets.

They were discovered fishing, Mr Marticorena-Otazo on 2 February 1981 and Mr Prego Parada on 9 February 1981, in French territorial waters, off Bayonne within the zone extending between 6 and 12 miles from the coast.

The judgments making the references in the two cases show that the Tribunal de Grande Instance considered that the Community regulations in question, which restrict the fishing right of Spanish nationals by prescribing various conditions, in particular that they should obtain a licence, are capable of modifying prior international obligations — arising in particular from the London Fisheries Convention of 9 March 1964 and the Agreement on Fisheries between France and Spain of 20 March 1967. Furthermore, it found that the Agreement on Fisheries between the European Economic Community and the Government of Spain signed on 15 April 1980, which provides *inter alia* for the grant of licences for fishing vessels, was not yet in force in February 1981. It considered that that agreement did not appear to be provisionally applicable as it was capable of modifying the said prior international obligations.

Consequently the Tribunal de Grande Instance, by judgments of 23 April 1981, decided to stay the proceedings until the Court of Justice delivered a preliminary ruling on whether, having regard to prior international obligations, regulations of the Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain were valid, in so far as they laid down new detailed rules for fishing operations carried out by Spanish vessels in the reserved fishing zone from 6 to 12 nautical miles, and whether, if valid, those regulations were enforceable against Spanish nationals.

2. The provisions of the regulations and of the international agreements involved in the two cases may be summarized as follows:

(a) Community provisions on fishing applicable to vessels flying the flag of Spain

Pursuant to the 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 (Official Journal 1981, C 105, p. 1), the Member States of the Community extended their fishing zones with effect from 1 January 1977 to 200 miles off their North Sea and North Atlantic coasts. Since then the exploitation of fishery resources in those zones by the fishing vessels of non-member countries has been governed by a series of interim Community measures relating to each of the countries involved. The measures were adopted pending the conclusion of outline agreements on fisheries between the Community and those non-member countries.

The provisions applicable from the beginning of 1981 to vessels flying the flag of Spain were fixed initially by Council Regulation No 1719/80 of 30 June 1980 laying down for 1980 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 169, p. 27).

According to the recitals in the preamble to that regulation the Community and Spain consulted each other under the procedure laid down in the framework agreement, namely the Agreement on Fisheries signed by the Community and Spain on 15 April 1980, on the conditions for fishing by the vessels of each of the parties in the fishing zone of the other party during 1980 and, following the consultations, the Community delegation undertook to recommend that the Community authorities adopt for that period certain measures authorizing Spanish vessels to fish in the fishing zones of the Member States covered by Community rules on fisheries.

Articles 1 and 2 of Regulation No 1719/80 are worded as follows:

"Article 1

The only catches which vessels flying the flag of Spain are authorized to make during the period 1 January to 31 December 1980 in the 200-mile fishing zone of the Member States covered by Community rules on fisheries shall be those set out in Annex I, within the quantitative limits laid down therein and caught under the conditions laid down by this regulation.

Article 2

(1) Fishing shall be subject to the holding on board of a licence, issued by the Commission on behalf of the

Community, and to compliance with the conservation and supervisory measures and other provisions governing fishing in the zone referred to in Article 1.

(2) The number of licences which may be issued to vessels flying the flag of Spain shall be as laid down in point 3 of Annex I."

By Council Regulation No 3305/80 of 17 December 1980 (Official Journal L 344, p. 33) the validity of fishing licences valid on 31 December 1980 in accordance with Regulation No 1719/80 for vessels flying the flag of Spain was extended until 31 January 1981.

Subsequently the Council laid down, in Regulation No 554/81 of 27 February 1981 (Official Journal 57, p. 1) similar interim measures for the period 4 March to 31 May 1981 since it considered, on the one hand, that fishing by Spanish vessels in the fishing zones of Member States had been interrupted since 1 February 1981 (fifth recital in the preamble) and, on the other, that under the terms of Article 12 of the Agreement on Fisheries signed on 15 April 1980 by the Community and Spain, that agreement was applicable from the date of signature (first recital in the preamble).

The final rules for the year 1981 are given in Council Regulation No 1569/81 of 1 June 1981 laying down for 1981 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 154, p. 1).

Article 10 (3) of that regulation reads as follows:

"No licence shall be valid for the period 1 February to 3 March 1981. All fishing by vessels flying the flag of Spain in the area referred to in Article 1 shall be prohibited during that period."

Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources (Official Journal L 258, p. 1), whose validity was extended until 28 February 1981 by Council Regulation (EEC) No 272/81 of 27 January 1981 (Official Journal L 27, p. 72), lays down the Community rules on the mesh-size of nets.

(b) Provisions of the international agreements

Following the extension by the Member States of the Community of their fishing limits to 200 miles on 1 January 1977, the Commission of the European Communities embarked upon a series of negotiations on fisheries agreements to be concluded between the Community and non-member countries, including Spain. Thus, a framework agreement with Spain was initialled on 23 September 1978 and signed on 15 April 1980. That agreement was approved on behalf of the Community by Council Regulation (EEC) No 3062/80 of 25 November 1980 on the conclusion of the Agreement on Fisheries between the European Economic Community and the Government of Spain (Official Journal 1980, L 322, p. 3). On completion of the ratification procedure in Spain, the Agreement entered into force on 22 May 1981 (Official Journal 1981, L 204, p. 34).

It was provided in Article 12 of the Agreement that, pending its entry into force, the Agreement should apply provisionally from the date of its signature, namely 15 April 1980.

Articles 1 (1), 2, 3 and 4 of the Agreement are worded as follows:

"Article 1

(1) The purpose of this Agreement is to establish the principles and rules which will govern, in all respects, the fishing

activities of vessels of either party within the fishing zones falling under the jurisdiction of the other party.

. . .

Article 2

Each party shall grant access to the fishing zone falling under its jurisdiction to the fishing vessels of the other party under the conditions laid down by the following articles.

Article 3

(1) Each party shall determine each year, for the fishing zone falling under its jurisdiction, subject to adjustments necessitated by unforeseen circumstances, and on the basis of the need for rational management of the biological resources:

(a) the total allowable catch for individual stocks or complexes of stocks, taking into account the most reliable scientific information available to it, the interdependence of stocks, the work of appropriate international organizations and other relevant factors;

(b) after appropriate reciprocal consultations, the catch allotted to the fishing vessels of the other party and the zones in which these catches may be made. The two parties shall have as their objective the attainment of a satisfactory balance between their respective fishing possibilities in the fishing zones falling under the jurisdiction of the other party.

In determining these possibilities, each party shall take into account:

(i) the advantage of preserving the traditional characteristics of fishery activities in the frontier coastal areas;

(ii) the need to minimize the difficulties encountered by the party whose fishing possibilities may be reduced in the course of achieving the above-mentioned balance;

(iii) all other relevant factors.

(2) Each party shall be able to take any other measures to ensure the conservation and rational management of resources in the fishing zones falling under its jurisdiction. Such measures when taken following the annual fixing of the other party's fishing possibilities, should not be such as to compromise the effective operation of fishing.

Article 4

Each party may require that in the fishing zone falling under its jurisdiction fishing by vessels of the other party shall be subject to licence.

The competent authorities of each party shall communicate to the other party the name, registration number and other relevant particulars of vessels requesting authorization to fish in the fishing zone of the other party. This povision shall also apply to any vessel intended to aid or assist a fishing vessel in carrying out tasks directly related to the latter's fishing activity. The second party shall issue licences commensurate with the possibilities for fishing granted under Article 3 (1) (b)."

The London Fisheries Convention of 9 March 1964 (United Nations Treaty

Series Vol. 581, No 8432) defines the common aspects of a fisheries régime for the 6-mile zone measured from the baseline and for the zone between 6 and 12 miles from that line.

Each of the contracting parties recognizes the right of the other contracting parties to establish the fishery régime described in the Convention (Article 1 (1)). Articles 2, 3 and 5 of the Convention provide as follows:

"Article 2

The coastal State has the exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of 6 miles measured from the baseline of its territorial sea.

Article 3

Within the belt between 6 and 12 miles measured from the baseline of the territorial sea, the right to fish shall be exercised only by the coastal State and by such other contracting parties, the fishing vessels of which have habitually fished in that belt between 1 January 1953 and 31 December 1962.

...

Article 5

1. Within the belt mentioned in Article 3 the coastal State has the power to regulate the fisheries and to enforce such regulations, including regulations to give effect to internationally agreed measures of conservation, provided that there shall be no discrimination in form or in fact against fishing vessels of other contracting parties fishing in conformity with Articles 3 and 4.

2. Before issuing regulations, the coastal State shall inform the other contracting parties concerned and consult those contracting parties, if they so wish."

Article 10 provides that nothing in the Convention is to prevent the maintenance or establishment of a special régime in matters of fisheries between *inter alia* the Member States of the European Economic Community.

France and Spain ratified the Convention in 1965.

Within the framework of the *voisinage* arrangements provided for in Article 9 (2) of the London Convention, France and Spain, by an exchange of notes of 20 March 1967, concluded a general agreement on fishing. With regard to the rights of Spanish fishermen to fish in the waters under French jurisdiction, Article 1 (b) of the agreement provides as follows:

"In the 6 to 12-mile zone off the French coasts, Spanish nationals shall have a permanent right to fish:

for all species on the Atlantic coast from the mouth of Bidassoa as far as the parallel which passes through the northernmost point of Belle-Ile."

(c) French legislation

The French legislation applicable to the cases is embodied in the Law of 1 March 1888 prohibiting foreigners from fishing in French territorial waters, as amended by Decree No 67-451 of 7 June 1967 and by Law No 67-1086 of 15 December 1967.

Following the entry into force of the London Fisheries Convention of 9 March 1964, a reserved fishing zone was created by virtue of the fact that Decree No 67-451 of 7 June 1967 above-mentioned extended the prohibition to 12 nautical miles measured from the baselines of the French territorial sea. The same decree provides that pursuant to the London Convention exceptions to that prohibition are to be laid down by decree. Law No 67-1086 of 15 December 1967 prescribes the penal sanctions to be applied.

Decree No 68-209 of 23 February 1968 lays down the conditions on which Spanish fishing vessels are allowed to engage in fishing within the reserved 6 to 12-mile zone and, for a transitional period, in the 3 to 6-mile zone, in accordance with the London Convention and the Agreement between France and Spain of 20 March 1967.

By Law No 71-1060 of 24 December 1971 the limit of French territorial waters was extended to 12 miles.

The infringements of the Community provisions on the mesh-size of nets come within the purview of the Decree-Law of 9 January 1852 on seafishing which also lays down the applicable penalties.

3. The judgments of the Tribunal de Grande Instance, Bayonne, of 23 April 1981 whereby that court made the references for a preliminary ruling were received at the Registry of the Court of Justice on 5 June 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the defendant in the main proceedings in Case 138/81, Mr Marticorena-Otazo, and by the defendant in the main proceedings in Case 139/81, Mr Prego Parada, represented by J. Tournaire, of the Bayonne Bar, and in both cases by the Government of the French Republic, represented by Gilbert Guillaume, Director of Legal Matters at the Ministry of Foreign Affairs, acting as Agent; by the Council of the European Communities, represented by Daniel Vignes, Director in its Legal Department, acting as Agent, assisted by Aidan Larkin, an administrator in that department, and by the Commission of the European Communities, represented by its Legal Adviser Jacques Bourgeois, assisted by François Lamoureux, a member of its Legal Department.

By order of 20 January 1982, the Court decided to join Cases 138/81 and 139/81 for the purposes of the oral procedure and the judgment.

By order of 20 January 1982 the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure, decided to refer the joined cases to the First Chamber.

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

II — Summary of the written observations submitted to the Court

The defendants in the main proceedings, Mr Marticorena-Otazo and Mr Prego Parada, remark first of all that the Community provisions on the mesh-size of nets, which apply without discrimination to Spanish fishermen, are not at

issue in the proceedings before the Court.

With regard to the interim arrangements applicable in particular to Spanish fishermen they point out that no provision of Community law referring in particular to Spanish fishermen was in force in the period between 1 February and 4 March 1981 when the facts concerned in the main actions occurred. Since it was therefore unnecessary for vessels flying the flag of Spain to hold a licence in order to fish penalties under the criminal law may not be imposed for failure to hold such a licence.

The fifth recital in the preamble to Regulation No 554/81, in which it is stated that fishing by Spanish vessels in the fishing zones of the Member States was interrupted since 1 February 1981, creates the false impression that there is a general prohibition mitigated by the grant of authorizations in particular cases, under interim regulations. Such a view negates the prior rights which Spanish fishermen are acknowledged as having, in particular off the French coasts. It implies the complete abolition of such prior rights, which is also incompatible with the idea, sometimes put forward, that the system of licences imposed unilaterally on Spanish nationals merely constitutes a non-discriminatory restriction justified by the need for *a priori* control of fishing by nationals of non-member countries. Article 10 (3) of Regulation No 1569/81 of 1 June 1981, which expressly confirms the prohibition of fishing for the earlier period from 1 February to 3 March 1981, is thus unlawful, at least in so far as it is retroactive.

The defendants in the main proceedings then claim that the unilateral imposition of a discriminatory régime only upon Spanish nationals is incompatible with the historical fishing rights of Spanish fishermen which are protected by the London Convention of 9 March 1964 and by the Agreement between France and Spain of 20 March 1967. In this connection they refer to Article 5 of the London Convention which prohibits in particular, in the belt between 6 and 12 miles, any discrimination in form or in fact against fishing vessels of other contracting parties fishing there in accordance with Articles 3 and 4 of that Convention. Moreover, they refer to the permanent right conferred on Spanish fishermen by Article I (b) of the Agreement between France and Spain to fish for all species in the belt between 6 and 12 miles off the French coasts.

Article 11 of that Convention, which provides that under certain conditions a coastal State may exclude particular areas from the full application of Articles 3 and 4 for the benefit of the local population, constitutes the sole exception to the prohibition in principle of discrimination which is laid down by Article 5. Article 10 of the Convention, which enables a special régime to be established between the Member States of the Community, constitutes a derogation from the most-favoured-nation clause embodied in Article 8 (2) of that Convention since its sole objective is to avoid any impediment to the establishment of a common fisheries

policy between the Member States and the Associated States of the Communities and thereby to provide access to the reserved zones for their nationals even though the latter had no claim to exercise historical rights for the purposes of Article 3 of the Convention. That provision may not have the affect of displacing the nationals of another contracting party, in this case Spain, from a zone to which they are guaranteed access on a equal footing with the nationals of the coastal State. In this connection the defendants in the main proceedings refer to the judgment of the Court of 16 February 1978 *(Commission* v *Ireland* Case 61/77, [1978] ECR 417) which establishes that "the rules regarding equality of treatment enshrined in Community law forbid not only overt discrimination by reason of nationality but also covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result".

They consider that the enforceability of the international instruments follows directly from Article 55 of the French Constitution and has been confirmed by a series of national implementing decrees.

Furthermore, although it is true that the extension of the fishing zones of the Member States of the Community to 200 miles and the need to conserve resources have given rise to a new international custom which has been superimposed on the previous situation the international agreements in force are not thereby superseded. In addition, the agreements relied upon have not expired and they have not been denounced.

That view is confirmed by the Agreement on Fisheries concluded on 15 April 1980 between the Community and Spain. According to Article 1 thereof the sole purpose of the Agreement is to govern the conditions for fishing. Only to that extent did Spain, in a declaration which it made at the time of the initialling of the Agreement, recognize that the provisions of the Agreement should be substituted for those of the previous agreements. The historical fishing rights as such and the rule of non-discrimination laid down by the London Convention are accordingly not affected by the Agreement. In fact the measures to be applied in the reserved zones and to particular species must be the same for foreign fishermen as for fishermen subject to the domestic jurisdiction of the State in question (cf. J. L. Meseguer, *"Accord de Pêche entre l'Espagne et la CEE"*, Revue du Marché Commun 1980, pp. 527 to 534 and 589 to 594, at p. 594).

Finally, the acts alleged against the defendants were performed during the period when the Agreement was provisionally applicable. Provisional measures which have not been ratified cannot abrogate international treaties in force.

The Community régime at issue is thus incompatible with the London Convention, the Agreement between France and Spain and Article 1 of the Agreement between the EEC and Spain. It follows in particular from the general principle of the law of treaties set out in Article 40 (4) (b) of the Vienna Convention on the Law of Treaties of 1969 and adopted in Article 234 of the EEC Treaty that prior agreements take precedence. In accordance with the judgment of the Court of 14 October 1980 (*Attorney General* v *Burgoa*, Case 812/79 [1980] ECR 2787) the institutions of the

Community are under a duty not to impede the performance of the prior obligations of the Member State concerned. That principle also applies to provisions of secondary law.

In so far as the Community regulations may nevertheless be declared valid, the Court of Justice lacks jurisdiction to decide whether they are enforceable against Spanish nationals, since such a question involves interpretation by the Court of provisions of international law which bind Member States outside the framework of Community law (cf. judgment of 27 November 1973 in Case 130/73 *Vandeweghe* [1973] ECR 1329).

The *French Government* considers that the Court may confine itself to informing the Tribunal de Grande Instance, Bayonne, that at the material times in the cases in point no Community regulation laid down measures for the conservation and management of fishery resources applicable to Spanish fishermen and leave that court to apply the ruling in the context of French municipal law.

The result of the proceedings is determined by the French legislation applicable in the matter according to which fishing is prohibited to foreigners in the territorial waters extending to 12 miles from the coast unless they hold a licence granted under the Decree. Since the time when the Community exercised its powers in this field, that is, after the adoption of The Hague Resolutions of 3 November 1976, such licences have been granted only in accordance with Community law as the powers of the Community extend to all maritime waters falling under the jurisdiction of the Member States. Since no Community regulation made provision for the granting of licences for the period between 1 February and 3 March 1981 and consequently no licence was issued, the defendants have committed the offence of unauthorized fishing. The Court of Justice may not, however, substitute its own determination for that of the national court.

In so far as it is necessary to clarify the state of Community law in relation to the prior international obligations relied upon the French Government observes that the London Convention and the Agreement between France and Spain were superseded at the time of the facts in question, in particular as a consequence of the signature on 15 April 1980 of the Agreement on Fisheries between the EEC and Spain. Although the Agreement on Fisheries did not in fact enter into force until 22 May 1980 nevertheless it has been provisionally applicable, pursuant to Article 12 thereof, since the date of signature and thus has bound the EEC and Spain since 15 April 1980. The French Government considers that the Agreement on Fisheries eliminates all rights of access which Spanish fishermen might enjoy under prior international instruments.

Finally the validity of the Community rules concerning the mesh-size of nets, which were applicable in the Community waters at the material time, cannot be affected by the provisions of the London Convention of 1964 and the Agreement between France and Spain of 1967 which were relied upon.

The *Council of the European Communities* recalls first of all that, in its opinion, pursuant to Article 10 of the London Convention, which confers a *jus quaesitum tertio* on the Community, all

Community provisions on fisheries take precedence over that convention and the agreement between France and Spain which is directly connected with it. Since that has been the position since the beginning of the Community fisheries régime so far as the Spanish fishermen are concerned the Agreement on Fisheries between the Community and Spain has replaced these earlier agreements since the Community has succeeded to rights of the Member States to conclude treaties with non-member countries concerning fishing in waters coming under the jurisdiction of such States. That interpretation is confirmed by the declaration made on 23 September 1978, when the Agreement between the Community and Spain was initialled, to the effect that "with regard to Article 1 the Spanish delegation recognizes that the provisions of the agreements relating to fisheries to which the Member States of the EEC and Spain are parties are superseded by the provisions of the Agreement [initialled on 23 September 1978]; if that agreement is denounced Spain reserves the right to invoke against the Community the provisions of the agreements on fisheries which formerly governed its relations with the Member States of the Community concerning fisheries".

The Council accordingly considers that the London Convention and the Agreement between France and Spain of 1967 have thus been frozen and have ceased to produce effects following the signature of the Agreement on 15 April 1980 and during its provisional application. Since the entry into force of the Agreement on 22 May 1981 the prior agreements were superseded although they may, perhaps, become applicable again if the Agreement of 15 April 1980 is denounced.

With regard to the period between 1 February and 3 March 1981 the Council claims that the Community rules did not provide any possibility for Spanish fishermen to obtain a licence since relations concerning fishing were interrupted between the Community and Spain. That interruption nevertheless did not entail freedom to fish since French legislation expressly prohibits fishing in territorial waters and the economic zone except with an authorization granted in accordance with Community law. The Council states that because of a disagreement between the Community and Spain on the number of licences and on the volume of quotas it was impossible to determine the arrangements for 1981 either in December 1980 or in January 1981. When the consultations finally resulted in agreement on 17 February 1981 Regulation No 554/81 was quickly adopted.

Having regard to the fact that, according to the judgment making the reference, the national court was by no means unaware that fishing by Spanish vessels was interrupted the *Commission of the European Communities* considers that the preliminary question concerns the very principle of the restriction on the access of Spanish vessels to the fishing zone of the Community and that that restriction entails as a general rule the requirement that a licence should be obtained or, exceptionally, a prohibition of all fishing, as was the case at the material time in these cases. In the opinion of the Commission the requirements that a licence should be obtained or that fishing should be suspended constitutes a means of exercising the general powers of the

Community for the purposes of adopting measures to protect resources within its exclusive fishing zone.

The Commission next recalls the context, following the extension to 200 miles, of the restriction on the access of Spanish fishing vessels to the fishing zones of the Member States covered by the Community rules. In this connection it emphasizes that the Community régime in fishery matters covers all of the fishing zones falling under the jurisdiction of the Member States.

Pending the conclusion of the agreement on fisheries which was being negotiated the conditions of access for Spanish fishermen were first of all fixed unilaterally by the Community within the framework of a temporary system, in the operation of which Spain collaborated, for the issue of licences. Subsequently these conditions were fixed under the Agreement on Fisheries between the Community and Spain which provides arrangements for consultation on this matter. From the provisional application of the Agreement on Fisheries the Council, after consultation with the Spanish authorities in accordance with the Agreement, established the measures applicable to Spanish vessels for the whole of each year by Regulation No 1719/80 of 30 June 1980 for the year 1980 and by Regulation No 1569/81 of 1 June 1981 for the year 1981. The Commission states that the latter regulation, which authorizes the interruption of fishing for the period from 1 February to 3 March 1981, pursuant to Article 10 (3) thereof, ascribes only the catches made under the interim Regulations Nos 3305/80 and 554/81, to the quotas fixed for the year 1981.

It considers that since the Spanish authorities failed to agree with the proposed conditions the Community was entitled to suspend fishing by Spanish vessels. The Commission pointed out to the Spanish delegation that it was necessary to complete the consultations on the arrangements for fishing for 1981 in good time and that when consultations were suspended by the Spanish delegation it also informed the latter that fishing by Spanish vessels would be interrupted from 31 January 1981. Spain is thus responsible for the delay which occurred in the consultations.

With regard to the validity of the Community regulations in question in relation to the prior international agreements the Commission considers that the solution adopted in the judgment of 14 October 1980 in Case 812/79 *(Attorney General* v *Burgoa)* is general in scope irrespective of whether the events at issue took place within or beyond the 12-mile limit. It states that according to that judgment it is not necessary, in order to assess the validity of the interim measures adopted by the Community, to have regard to the régime applicable before the entry into force of the Community provisions. In fact those provisions are based on the new relations between Spain and the Community established following the extension of the fishing zones to 200 miles.

According to the Commission, the developments in the international law of the sea which led to the establishment of those new relations concern not only the fishing zones between 12 and 200 miles but also the zones between 6 and 12 miles. In fact, as may be seen from the

decision of the International Court of Justice of 25 July 1974 *(United Kingdom* v *Iceland,* ICJ Reports 1974, p. 23), the change in the international law of the sea marked by the appearance of new customary rules first became apparent with regard to the waters adjacent to the territorial sea, that is to say in the 6 to 12-mile zone.

With regard to the technical measures provided for by Regulation No 2527/80 the Commission finally states that it duly informed the Mission of Spain to the European Communities that that regulation was applicable to all vessels fishing in Community waters.

III — Oral procedure

At the sitting on 29 April 1982 oral argument was presented by the following: J. Tournaire of the Bayonne Bar for the defendants in the main proceedings in both cases, Mr Marticorena-Otazo and Mr Prego Parada; Bernard Botte, Attaché at the Ministry of Foreign Affairs, acting as Agent, for the Government of the French Republic; B. Schloh, Legal Adviser to the Council, acting as Agent, for the Council of the European Communities and by F. Lamoureux, a member of the Legal Department of the Commission, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 27 May 1982.

Decision

1 By judgments of 23 April 1981, which were received at the Court on 5 June 1981, the Tribunal de Grande Instance [Regional Court], Bayonne, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to whether, having regard to prior international obligations, regulations of the Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain are valid, in so far as they lay down new detailed rules for fishing operations carried out by Spanish vessels in the reserved fishing zone from 6 to 12 nautical miles, and whether, if valid, those regulations are enforceable against Spanish nationals.

2 The question was raised in criminal proceedings against the masters of two fishing vessels registered in Spain, who were charged with fishing in French territorial waters without being in possession of a fishing licence and with nets whose mesh-size did not comply with the regulations.

3 The two defendants in the main proceedings were discovered fishing on 2 and 9 February 1981 respectively off Bayonne in the waters in the area between 6 and 12 miles from the baselines, some 10 miles from the French coast.

4 The national court considered that the defendants were unable to produce the licence required by Council Regulations No 1719/80, No 3305/80 and No 554/81 and that in those circumstances the fishing in which the defendants had engaged constituted an offence created and punished by French criminal legislation. It was also considered that the defendats had committed an offence created and punished by that legislation by fishing with nets whose mesh-size did not comply with the requirements of Council Regulations No 2527/80 and No 272/81.

5 In both cases the defendants in the main proceedings maintain that the Community regulations are invalid or in any event inapplicable as against them, being incompatible with the rights upon which they may rely in consequence of international commitments previously entered into between France and Spain. For that purpose they rely in particular upon the London Fisheries Convention of 9 March 1964 (United Nations Treaty Series, Vol. 581, No 8432) and upon the Agreement on Fisheries between France and Spain of 1967 (Journal Officiel de la République Française of 4 August 1967, p. 7807).

6 Council Regulation (EEC) No 1719/80 of 30 June 1980 laying down for 1980 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 168, p. 27) was, according to the second paragraph of Article 12 thereof, applicable from 1 January to 31 December 1980. Council Regulation (EEC) No 3305/80 of 17 December 1980 extending the period of validity of fishing licences for vessels flying the flag of Spain (Official Journal L 344, p. 33) provides that fishing licences valid on 31 December 1980 in accordance with Regulation No 1719/80 remain valid until 31 January 1981. Council Regulation (EEC) No 554/81 of 27 February 1981 fixing certain interim measures for the conservation and management of fisheries resources applicable to vessels flying the flag of Spain (Official Journal L 57, p. 1), which entered into force on 4 March 1981, provides in the second paragraph of Article 11 thereof, that it is applicable until 31 May 1981.

7 The three regulations cited above form part of a series of Council regulations which, pending the entry into force of the Agreement on Fisheries between the European Economic Community and the Government of Spain of 15 April 1980 (Official Journal L 263, p. 1), established for short periods interim provisions prescribing catch quotas for Spanish fishermen.

8 The Court has already stated in its judgment of 8 December 1981 *(Arbelaiz-Emazabel)* Case 181/80, [1981] ECR 2961) that the interim régime established by the Community falls within the framework of the relations established between the Community and Spain in order to resolve the problems inherent in the conservation measures and the extension of fishery zones and in order to ensure reciprocal access by fishermen to the waters subject to such measures and that those relations, which were confirmed by the Agreement on Fisheries of 1980, replaced the prior international obligations existing between certain Member States and Spain in order to deal with the increasingly urgent need to conserve the living resources of the sea and to take into account the general evolution of international law in the field of sea fishing.

9 Accordingly, Spanish fishermen may not rely on prior international commitments as between France and Spain in order to prevent the application of the interim regulations adopted by the Community in the event of any incompatibility between the two categories of provisions.

10 Consideration of the question raised has thus disclosed no factor of such a kind as to affect the validity of Regulations No 1719/80, No 3305/80 and No 554/81. Those regulations are enforceable against Spanish nationals.

11 The defendants in the main proceedings, the French Government, the Council and the Commission have drawn the attention of the Court to the fact that at the material times in the two cases namely 2 and 9 February 1981, no Community regulation concerning the system of licences was applicable to vessels flying the flag of Spain. The recitals in the preamble to

Regulation No 554/81 state in this connection that the consultations between the Community and Spain which are provided for by the Agreement on Fisheries of 1980, which was provisionally applied from the date of signature, were not concluded until 17 February 1981, that fishing by Spanish vessels in the fishing zones of Member States which were subject to Community fisheries regulations was authorized during the period from 1 to 31 January 1981 by Regulation No 3305/80 and that such fishing had been interrupted since 1 February 1981.

12 The defendants in the main proceedings have claimed that under the Agreement on Fisheries Spanish fishermen were entitled to fish in the fishing zones in question during the periods when no Community regulation established a system of licences for them.

13 It is nevertheless for the national court to consider the consequences of the absence of any Community regulations concerning fishing licences applicable to Spanish fishing vessels during the period from 1 February 1981 to 4 March 1981.

14 The Community rules on the mesh-size of nets are the subject-matter of Council Regulation (EEC) No 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources (Official Journal L 258, p. 1) the application of which was extended until 28 February 1981 by Council Regulation (EEC) No 272/81 27 January 1981 (Official Journal L 27 p. 72).

15 The validity of those regulations, which apply without distinction to all persons fishing in certain maritime waters under the sovereignty or jurisdiction of the Member States, has not been contested by the parties to the proceedings and the Court has not found any factor of such a kind as to affect the validity of those regulations.

Costs

16 The costs incurred by the French Government and by the Council and the Commission of the European Communities, which 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 (First chamber),

in answer to the question submitted to it by the Tribunal de Grande Instance, Bayonne, by judgments of 23 April 1981, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Council Regulations No 1719/80 of 30 June 1980 (Official Journal L 168, p. 27), No 2527/80 of 30 September 1980 (Official Journal L 258, p. 1) No 3305/80 of 17 December 1980 (Official Journal L 344, p. 33), No 272/81 of 27 January 1981 (Official Journal L 27, p. 72) and No 554/81 of 27 February 1981 (Official Journal L 57, p. 1). The provisions of those regulations are enforceable against Spanish nationals.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. O'Keeffe

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 27 MAY 1982 [1]

Mr President,
Members of the Court,

1. The Tribunal de Grande Instance [Regional Court], Bayonne, by judgments of 23 April and of 21 May 1981 has referred to the Court of Justice four requests for preliminary rulings which are almost literally identical to those to which the Court has already replied in its judgments of 8 December 1981, the first of which was delivered in Joined Cases 180 and 266/80 *(Crujeiras*

1 — Translated from the Italian.