OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 19 April 1988 *

Mr President,
Members of the Court,

1. This reference for a preliminary ruling is concerned with the interpretation of Article 16 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention) which provides: 'The following courts shall have exclusive jurisdiction, regardless of domicile: (1) in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the contracting State in which the property is situated; . . . '.

The facts are as follows. The court making the reference — the Pachtkamer (Chamber dealing with agricultural leases) of the Gerechtshof (Regional Court of Appeal), Arnhem — was called upon to settle a dispute as to the existence of a lease which Mr Raphaël O. E. Scherrens claims to have concluded orally in the winter of 1972/73, as tenant-farmer, with the landlords, who later became his parents-in-law, Mr B. P. J. van Poucke, who died on 8 November 1973, and Maria G. Maenhout. The particularity of the holding to which the alleged leasing agreement relates is that it consists of a building with about five hectares of land situated at Maldegem (Belgium) and four plots of land totalling 12 hectares, lying seven kilometres away in the commune of Sluis (Netherlands). The dispute arose in 1982 from an event which soured relations between Mr Scherrens and his mother-in-law. She gave the land situated in the Netherlands to another daughter, Rita A. M. van Poucke, and the donee did not recognize Scherrens' right to lease them as he had done for the previous seven years.

In accordance with Article 11 of the Pachtwet (Agricultural Holdings Law) of 23 January 1958 (*Staatsblad* 1958, No 37), Scherrens then brought proceedings against his mother-in-law, sister-in-law and wife, Lucie M. L. van Poucke, before the Pachtkamer of the Kantongerecht (Cantonal Court), Oostburg, asking that the lease agreement be set down in writing (9 December 1982); however, since he failed to prove that the transaction had ever taken place, his application was dismissed by a judgment of 2 May 1985.

The tenant, however, did not give up. In parallel with an action brought in Belgium for the refund of part of the rent paid in respect of the land there, he lodged an appeal with the Pachtkamer of the Gerechtshof, Arnhem. There then arose the question on which this Court is requested to rule. In Scherrens' view, the combined provisions of Article 16 (1) of the Brussels Convention and the second sentence of Article 137 (1) of the Pachtwet require that the ruling on the entire holding, the main part of which is on Netherlands territory, be given by the Netherlands court. However, in the opinion of Maria G. Maenhout and Rita A. M. van Poucke, the Gerechtshof,

* Translated from the Italian.

Arnhem, has jurisdiction only with regard to the land in the Netherlands, whereas that part of the holding which lies in Belgium is subject to the jurisdiction of the Belgian courts.

By a judgment of 23 March 1987 the Gerechtshof stayed the proceedings and asked the Court of Justice, under Article 2 (2) of the Protocol of 3 June 1971, 'how Article 16 (1) of the Convention should be interpreted with regard to the lease of a farm of which the buildings (with some of the land) are situated in one contracting State (Belgium) and (most of) the land in another (the Netherlands)'.

In the proceedings before this Court, written observations were submitted by Maria G. Maenhout, Rita A. M. van Poucke and the Commission of the European Communities. Only the Commission took part in the hearing.

2. As observed above, the judgment of the national court and the documents laid before it show that the question is whether there is a single lease concluded in respect of agricultural lands which are not adjacent, are of varying sizes and are situated in the territory of different States.

In a situation of this kind, jurisdiction is guided by the age-old principle of the *forum rei sitae* ('ne contra situs legem in immobilibus quidquam decerni possit privato consensu et par est sic judicari', as D'Argentré wrote in *De Statutis personalibus et realibus, Commentarii ad patrias Britonum leges, seu Consuetudines generales antiquissimi Ducatus Britanniae*, Article CCXVIII, Gl. 6, Nos 2 and 3, Paris 1614, Col. 676). That rule was embodied in Article 16 (1) of the Convention, and its adoption was rightly perceived by Batiffol and Lagarde as 'une manifestation nouvelle de la "puissance d'attraction" de la situation de l'immeuble qui, débordant les terrains des conflits de lois, où elle s'était conquise déjà une situation privilegiée, s'annexe celui des conflits de compétence judiciaire' ['a further manifestation of the "power of attraction" of the situation of real property which, having expanded beyond the field of the conflict of laws, in which it had already secured a privileged position, is annexing the domain of conflicts of jurisdiction'] (*Droit international privé*, VII, Paris 1983, Vol. II, p. 492).

It follows that the jurisdiction to entertain a dispute concerning the lease of an agricultural holding divided between two contracting States vests exclusively, in respect of each part, in the courts of the State in whose territory that part lies; and even if the concomitant risk is that the same instrument (the lease) will be subject to the appraisal of different national courts, the terms and effects of the judgments cannot extend to those parts of the land which fall within another jurisdiction.

That solution accords fully with the purpose of the Convention and the rationale of Article 16 (1). Indeed, this Court has recently held that to confer jurisdiction on the courts of the State in which the land is situated fulfils, better than any other rule, the requirement of 'providing for a clear and certain attribution of jurisdiction' and is due to at least three factors: 'the fact that tenancies are closely bound up with the law of immovable property', 'the provisions, generally of a mandatory character, governing [the] use' of such property and the 'first-hand knowledge [of the courts concerned] of the facts relating to the creation of tenancies and to the performance of the terms thereof' (judgment of 15 January 1985 in Case

241/83 *Rösler* v *Rottwinkel* [1985] ECR 109, at paragraphs 23, 19 and 20; see also the judgment of 14 December 1977 in Case 73/77 *Sanders* v *Van der Putte* [1977] ECR 2383, at paragraphs 12, 13 and 14).

As the defendants and the Commission point out, preference for the *forum rei sitae* is also in keeping with the principle of the sound administration of justice. Besides the reasons recited above, that preference is justified by (a) practical necessities, since it is clear that judgments concerning rights *in rem* in immovable property are enforced at the place where that property is situated; (b) the often special nature of the national laws on the letting of immovable property and of the courts applying them; and (c) the fact that agreements whereby ownership is transferred or a right over immovable property is granted are registered at the place where that property is situated (to this effect, see the Jenard Report, Official Journal 1979, C 59, p. 35, and in legal literature: Droz, *Compétence judiciaire et effets des jugements dans le Marché commun*, Paris, 1972, p. 101, and Bischoff's note on the judgment of the Court of 14 December 1977 in Case 73/77, published in the *Journal du droit international* 1978, p. 388 *et seq.*, especially at p. 392).

3. Endorsing the opinion of certain authors (Droz, op. cit., p. 193; Gothot and Holleaux, *La convention de Bruxelles du 27 septembre 1968, compétence judiciaire et effets des jugements de la CEE*, Paris, 1985, p. 126), the Commission maintains that, in special circumstances, the rule under Article 16 must be relinquished in favour of an exclusive jurisdiction which is undivided but concurrent and in practice governed, by virtue of Article 23, by the criterion of the court first seised. The hypothesis envisaged is one in which the land forms a single unit, either because it is regarded as such by the parties concerned in their contractual dealings or because its component parts cannot profitably be exploited as separate entities.

That view cannot be accepted. It must first be observed that Article 16 (1) is to be interpreted strictly. That is shown by several arguments based on the text itself: first, by the imperative nature of exclusive jurisdiction, which cannot be overridden either by an agreement attributing jurisdiction to the courts of another contracting State or by way of tacit prorogation (Articles 17 and 18); secondly, by the obligation on the court of a contracting State other than that whose courts are recognized as having exclusive jurisdiction to declare that it has no jurisdiction (Article 19); lastly, by the fact that breach of those rules is authority for refusing to recognize or enforce the judgments concerned (Articles 28 and 34).

Furthermore, although in the case described by the Commission the application of Article 16 (1) may indeed, by involving duplication of the courts concerned and the laws applicable, give rise to certain disadvantages, the extent of those disadvantages does not appear to justify exceptions to the principle of exclusive jurisdiction. It may be added that the economic unity of land does not necessarily preclude its being divisible into separate parts for legal purposes and thus capable of falling under the jurisdiction of different national courts (see Niboyet, 'Les conflits de lois relatifs aux immeubles situés aux frontières des états', published in *Revue de droit international et de législation comparée*, 1933, p. 468 *et seq.*).

4. In the light of the foregoing considerations, I propose that the Court should give the following answer to the question referred to it by the Gerechtshof, Arnhem, by judgment of 23 March 1987 in the proceedings pending before it between Raphaël O. E. Scherrens on the one hand and Maria G. Maenhout and Rita A. M. van Poucke on the other:

'Article 16 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that jurisdiction over disputes concerning the lease of a farm situated partly in one contracting State and partly in another vests exclusively, with regard to each of the two parts and irrespective of their size, in the courts of the State in which that part lies.'