OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 12 March 1987 *

Mr President,
Members of the Court,

A — 1. The reason why I am delivering this afternoon the opinion in the case heard today is first that I believe the facts and the law have been clarified to such an extent that a decision is now possible and secondly in order to take account of the point made by the Netherlands Government to the effect that the observance of the quotas in the Netherlands is not guaranteed so long as the Court of Justice has not given its judgment in this case.

2. Since the Court which made the reference, the Arrondissementsrechtbank, Zwolle, has already itself answered most of the questions raised during the written procedure and the hearing, I consider it appropriate to deal with only those two questions which still give the Arrondissementsrechtbank cause for doubt:

'(1) Is Council Regulation (EEC) No 1/85 of 19 December 1984 fixing, for certain fish stocks and groups of fish stocks, provisional total allowable catches for 1985 and certain conditions under which they may be fished [1] compatible with Article 4 (1) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources [2] if in a changed biological situation the distribution of plaice-catch quotas between the Member States remains unchanged?

(2) Does Regulation No 1/85 in its actual effect (the Netherlands quota is exceeded whilst the Community quota is still not fully exhausted) contain measures which restrict trade within the Community and which are not necessary for the conservation of the biological resources of the sea?'

The first question

3. In accordance with the case-law of the Court [3] the Arrondissementsrechtbank starts from the principle that the placing of restrictions on catches by the fixing of quotas for certain stocks in order to conserve and replenish the fish stocks concerned is necessary and permissible. It also considers that a distribution of the permissible quotas among the Member States is necessary in order to give the individual Member States relative certainty over a period of years as regards their expectations about their catch allocations. The only question as far as the Arrondissementsrechtbank is concerned is whether in view of the change in plaice stocks in the period 1983-85 an unchanged distribution of quotas among the Member States continues to accord with the principle laid down in

* Translated from the German.

1 — Official Journal 1985, L 1, p. 1.

2 — Official Journal 1983, L 24, p. 1.

3 — See the judgment of 14 July 1976 in Joined Cases 3, 4 and 6/76 *Kramer and Others* [1976] ECR 1279 *et seq.*

Article 4 (1) of Regulation No 170/83 that fishing activities must remain relatively stable.

4. It must be pointed out first of all that it is by no means established that the biological situation of plaice stocks in the ICES[4] divisions concerned has in fact improved. On the contrary, the ICES proposals rather suggest that the opposite conclusion should be drawn since they proposed reductions in the total allowable catches, going from 181 000 tonnes in 1983 to 130 000 tonnes in 1985. However, the total allowable catch fixed by the Community increased from 164 000 to 200 000 tonnes.

5. However, as was submitted to the Court, that increase is not necessarily to be attributed to an improvement in the biological situation of plaice stocks; economic considerations also play a part, especially the intention within the Council to increase the actual catches available to Netherlands fishermen without having to alter the quota-distribution formula fixed in 1983.

6. That formula was laid down by the Council after considering the Member States' previous catches. No statement was made which would suggest that in fixing those limits the Council exceeded its discretion in the making of economic policy. The same applies as regards the Council's intention to retain that formula, which was worked out during lengthy negotiations, for 10 years.

7. In so far as the Council still wished to accommodate the needs of the Netherlands fishing industry and increased the total allowable catches in the expectation that the quotas allocated to the other Member States would not be exhausted (which amounted to a *de facto* increase in the Netherlands quota) that step may have been rather unusual but at all events it cannot be regarded as constituting an infringement of the principle of relative stability of fishing activities prejudicial to Netherlands fishermen. That conclusion is confirmed by the rises in the Netherlands plaice quota which rose constantly from 50 000 to 71 000 tonnes in the years 1982 to 1985. It must also be pointed out that the Community rules on the conservation and management of fishery resources are by no means inflexible but in particular enable the Member States to exchange all or part of their quotas, which has indeed been done.

8. Since it is therefore impossible to establish any infringement of Article 4 (3) of Regulation No 170/83, there is no need to examine the further question regarding the extent to which the Council in enacting a later regulation is bound by the terms of a regulation earlier in time but on a par with the later regulation.

The second question

9. As regards the question whether the suspension of plaice-fishing after the Netherlands' plaice quota had been exhausted is to be regarded as a measure restricting trade, reference must again be made to the aforesaid judgment in Joined Cases 3, 4 and 6/76. The principles laid down in that judgment as regards a catch restriction imposed by national law are applicable to catch restrictions imposed by Community law. Consequently, the following statements of the Court apply:

4 — International Council for the Exploration of the Sea.

10. 'Measures for the conservation of the resources of the sea through fixing catch quotas and limiting the fishing method, whilst restricting "production" in the short term, are aimed precisely at preventing such "production" from being marked by a fall which would seriously jeopardize supplies to consumers. Therefore, the fact that such measures have the effect, for a short time, of reducing the quantities that the States concerned are able to exchange between themselves, cannot lead to these measures being classified among those prohibited by the Treaty, the decisive factor being that in the long term these measures are necessary to ensure a steady, optimum yield from fishing.' [5]

B — Conclusion

11. On the basis of those considerations I propose that the question submitted to the Court by the Arrondissementsrechtbank, Zwolle, should be answered as follows:

'Consideration of the question submitted to the Court by the Arrondissementsrechtbank, Zwolle, has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1/85 of 19 December 1984 with regard to the distribution among the Member States of the total allowable catches for plaice in ICES divisions IIa and IV.'

5 — *Kramer* [1976] ECR 1279, paragraph 58 at p. 1313.