the Community in carrying out the tasks entrusted to it by Article 102 of the Act of Accession, but also under a duty to proceed by common action within the Fisheries Commission.
Further, as soon as the Community institutions have initiated the procedure for implementing the provisions of the said Article 102, and at the latest within the period laid down by that Article, those institutions and the Member States will be under a duty to use all the political and legal means at their disposal in order to ensure the participation of the Community in the Convention and in other similar agreements.

4. A Member State does not jeopardize the objectives or the proper functioning of the system established by Regulations Nos 2141/70 and 2142/70, respectively laying down a common structural policy for the fishing industry and on the common organization of the market in fishery products, if it adopts measures involving a limitation of fishing activities with a view to conserving the resources of the sea. Neither do such measures constitute measures having an effect equivalent to a quantitative restriction on intra-Community trade which are prohibited under Article 30 *et seq.* of the Treaty.

In Joined Cases 3/76, 4/76 and 6/76

Reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtsbanken (District Courts) of Zwolle (Cases 3/76 and 4/76) and Alkmaar (Case 6/76) respectively for a preliminary ruling in the criminal proceedings pending before these courts against

CORNELIUS KRAMER (Case 3/76)

HENDRIK VAN DEN BERG (Case 4/76)

VENNOOTSCHAP ONDER FIRMA (a partnership) KRAMER EN BAIS (Case 6/76)

on the interpretation of Articles 30, 31, 34, 38 to 47 of the said Treaty, of Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties and, finally, Regulation (EEC) No 2141/70 of 20 October 1970 laying down a common structural policy for the fishing industry and Regulation No 2142/70 of 20 October 1970 on the common organization of the market in fishery products (OJ, English Special Edition 1970 (III), pp. 703 and 707 respectively)

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and F. Capotorti, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of this case, the judgments making the orders for reference, the proceedure and the written 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 procedure

Criminal proceedings have been instituted before the Arrondissements-rechtsbanken of Zwolle and Alkmaar against certain Netherlands fishermen who are accused of having infringed the rules enacted by the Netherlands with a view to limiting the catches of sole and plaice. These rules had been adopted on the basis of the provisions of the North-East Atlantic Fisheries Convention which is hereinafter called 'the NEAFC'. The abovementioned courts have referred to the Court questions relating to the interpretation of Articles 30, 31, 34, 38 to 47 of the EEC Treaty, of Articles 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties — which is part of the Treaty of Accession by virtue of Article 1 thereof and is hereinafter called 'the Act of Accession' — and also Regulation (EEC) No 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry and Regulation (EEC) No 2142/70 also of 20 October 1970 on the common organization of the market in fishery products (OJ, English Special Edition 1970 (III), pp. 703 and 707 respectively). In essence these questions ask whether Member States have retained the power to adopt measures such as the ones at issue, whether such measures are in fact compatible with Community law and whether it is only the Community institutions which have the power to enter into international agreements in this field.

1. Texts to be taken into consideration

A — On 24 January 1959 several European States including the present Member States of the EEC, with the exception of the Grand Duchy of Luxembourg and Italy, and the Union of Soviet Socialist Republics and Poland signed the NEAFC in London (United Nations, Treaty Series, Vol. 486 No 7078). In the preamble to this Convention, which entered into force on 25 June 1963, the States Parties to this Convention state that they desire 'to ensure the conservation of the fish stocks and the national exploitation of the fisheries of the North-East Atlantic Ocean and adjacent waters, which are of common concern to them'. The Convention contains, *inter alia,* the following provisions, it being understood that subparagraphs (g) and (h) of Article 7 (1), adopted in May 1970, in accordance with the procedure laid down in Article 7 (2), did not enter into force until 4 June 1974.

Article 7

(1) The measures relating to the objectives and purposes of this Convention which the Commission — the North-East Atlantic Fisheries Commission established under Article 3 of the NEAFC hereinafter referred to as 'the Fisheries Commission' — and Regional Committees may consider, and on which the Commission may make recommendations are

(a) — (f) .....

(g) any measures for the regulation of the amount of the total catch and its allocation to contracting States in any period; and

(h) any measures for the regulation of the amount of fishing effort and its allocation for any period.

(2) Measures for regulating the amount of total catch, or the amount of fishing effort in any period, or any other kinds of measures for the purpose of the conservation of the fish stocks in the Convention area, may be added to the measures listed in paragraph (1) of this article on a proposal adopted by not less than a two-thirds majority of the Delegations present and voting and subsequently accepted by all Contracting States in accordance with their respective constitutional procedures.

Article 8

(1) Subject to the provisions of this Article, the Contracting States undertake to give effect to any recommendation made by the Commission under Article 7 of this Convention and adopted by not less than a two-thirds majority of the Delegations present and voting.

Article 13

(1) Without prejudice to the sovereign rights of States in regard to their territorial and internal waters, each Contracting State shall take in its territories and in regard to its own nationals and its own vessels appropriate measures to ensure the application of the provisions of this Convention and of the recommendations of the Commission which have become binding on that Contracting State and the punishment of infractions of the said provisions and recommendations.

Pursuant to subparagraphs (g) and (h) of Article 7 (1) the Fisheries Commission adopted various recommendations in November 1974 including the following recommendation which applies to fishing for sole and plaice that

— it should fix the total quotas of fish and *inter alia* of sole and plaice in the North Sea for 1975;

— it should subdivide these quotas into individual quotas for Belgium, Denmark, France, the Federal Republic of Germany, the Netherlands, the United Kingdom respectively and one single quota for the 'others'; in particular the Netherlands were allocated quotas of 9 200 and 47 000 tonnes for sole and plaice respectively;

— it should define the areas to which these rules apply and which cover not only the territorial waters of the States which are Parties to the Convention but also a large area of the high seas;

— it should prevent ships of more than 50 tonnes burden and developing more than 300 hp from trawling in the 'coastal waters' of Belgium, the Netherlands, the Federal Republic of Germany and of the Western part of Denmark, while allowing 10 % of the weight of fish landed as a result of fishing for other kinds of fish to consist on each landing of sole and plaice;

— it defines the expression 'coastal waters' as an area extending up to a distance of 12 miles from the base lines from which territorial waters are measured.

B — On the strength of these recommendations the Netherlands authorities adopted a series of measures the object of which was to restrict the fishing for plaice and sole:

As provided for in Article 2 of the 'Beschikking vangstbeperking tong en schol 1975' (Decree of the Netherlands Minister for Agriculture and Fisheries of 25 February 1975, which is hereinafter referred to as 'the BV' and which entered into force on 2 March 1975),

'during the period commencing at 00.00 hrs on the day when this decree enters into force and ending at 24.00 hrs on 31 December 1975 fishing for sole and plaice shall be prohibited in

(a) The North Sea
(b) The English Channel
(c) The Bristol Channel
(d) The Irish Sea.'

However the first paragraph of Article 3 of the BV provides an exception in that in the North Sea Netherlands fishermen are allowed to catch 9 200 tonnes of sole and 47 000 tonnes of plaice, these quantities being reduced by the quantities already caught in 1975 before the entry into force of the decree. This exception however does not apply to fishing 'in coastal waters from vessels of more than 50 tonnes (third burden with an engine rating exceeding 300 hp.' (the second paragraph of Article 3); under BV 'coastal waters' means the waters which are within 12 nautical miles at the most from the base-line (Article (1)).

On the basis of the BV the 'Produktschap voor Vis en Visprodukte', an organization governed by public law for the fishing industry and fishery products, adopted on 20 March 1975 the 'Verordening beperking visserij op tong en schol 1975' (a regulatory decree hereinafter called 'the VB') Article 3 whereof authorizes the President of this body to adopt implementing measures in this field.

The President made use of this authorization by adopting on 24 April 1975 the 'Uitvoeringsbesluit beperking visserij op tong en schol 1975', an order having the same object as the regulations mentioned above and hereinafter called 'the UB'. The version of this order which was in force at the material time in Case 3/76 contains *inter alia* the following provisions:

Article 8

.....
(3) From 21 July 1975 fishing for sole including the voyage to and from the fishing grounds shall be authorized for each of the first two Saturdays of a four-week period only with a sea-going vessel whose registration number, under which it is registered in accordance with the order relating to the registration of fishing vessels, has a letter followed by an uneven number.
(4) The shipowner or fisherman shall be deemed to have gone to sea to fish for sole if the weight of the soles on board the vessel exceeds 10 % of the weight of the total catch of this boat, or if this weight exceeds 300 kg.

Article 11

(1) Sole may not be landed from a vessel, in respect of which proceedings have been taken for infringement of the provisions of Article 8.
.....'

C — (a) Regulations Nos 2141/70 and 2142/70 of the Council, which were repealed and replaced by Regulations Nos 100/76 and 101/76 (OJ, 1976, L 20 pp. 1-19) after the events giving rise to the present disputes include, *inter alia,* the following recitals and provisions:

Regulation No 2141/70 adopted pursuant to Articles 7, 42, 43 and 235 of the Treaty:
— recites *inter alia:*
  — 'Whereas the establishment of a common organization of the market in fishery products must be supplemented by the establishment of a common structural policy for the fishing industry' (first recital):
  — 'Whereas sea fisheries form the most important part of the fishing industry as a whole; whereas they have their own social structure

and fish under special conditions' (second recital);
  - 'Whereas ... Community fishermen must have equal access to and use of fishing grounds in maritime waters coming under the sovereignty or within the jurisdiction of Member States ...' (third recital);
  - 'Whereas the Community must be able to adopt measures to safeguard the stocks of fish present in the waters in question' (fourth recital);
- states that 'Common rules shall be laid down for fishing in maritime waters' in order, *inter alia,* 'to encourage rational use of the biological resources of the sea and inland waters' (Article 1);
- provides that except in the case of 'certain fishing grounds situated within a limit of three nautical miles' (Article 4) 'Rules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction' that is to say 'those which are so described by the laws in force in each Member State' — 'shall not lead to differences in treatment of other Member States', and that 'Member States shall ensure in particular equal conditions of access to and use of the fishing grounds situated in the waters [referred to above] for all fishing vessels flying the flag of a Member State and registered in Community territory' (Article 3 (1) and (3));
- Where 'there is a risk of over-fishing of certain stocks in the maritime waters [referred to above] of one or other Member State' it empowers the Council to 'adopt the necessary conservation measures' (Article 5), although it has not so far exercised this power;
- provides that Member States shall send to the Commission 'as far as possible, drafts of provisions which have been laid down by law, regulation or administrative action' relating to 'structural improvements for the fishing industry', the Commission being able to 'express its opinion' on such provisions (Article 11);
- sets up a 'Standing Committee for the Fishing Industry' which shall be required *inter alia* 'to ensure that Member States and the Commission are kept mutually informed of structural policies and in particular of measures governing sea fishing' and 'to study structural policies of Member States' (Articles 12 and 13).

Regulation No 2142/70 adopted on the basis of Articles 42 and 43 of the Treaty:
- recites *inter alia* that:
  - 'the operation and development of the common market in agricultural products must be accompanied by the establishment of a common agricultural policy; and the latter must include in particular a common organization of agricultural markets, which may take various forms depending on the products concerned' (first recital);
  - 'the fishing industry is of special importance to the agricultural economy of certain coastal regions of the Community; that industry provides a major part of the income of fishermen in these regions; that it is therefore advisable to encourage rational marketing of fishery products and to ensure market stability by appropriate measures' (second recital);
  - 'implementation of the common organization must also take account of the fact that it is in the Community interest to preserve fishing grounds as far as possible' (twenty-fourth recital);
- lays down a price system (Articles 1 and 7 to 16);
- prohibits in trade with third countries *inter alia* 'the application of any quantitative restrictions' (Article 17) but does not mention the measures having equivalent effect to such a restriction or include a similar

provision relating to intra-Community trade;
— provides that 'this Regulation shall be so applied that appropriate account is taken, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty' (Article 32).

(b) Chapter 3 of Title II ('Agriculture') of Part Four, headed Transitional Measures, of the Act of Accession contains 'Provisions relating to fishing'. It is divided into two sections headed respectively 'Common Organization of the Market' (Articles 98 and 99) and 'Fishing Rights' (Articles 100 to 103).

Article 102 provides that 'From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea'. As yet the Council has not determined these conditions.

(c) At its meeting on 20 January 1976 the Council adopted a 'statement' in the following terms:

'The Council, while accepting the principle of a temporary authorization for the 1976 quotas which have been subscribed to or which will be subscribed to by Member States within the NEAFC, the Council requests the Commission to submit suitable proposals so that it can examine during 1976 a Community system for the administration of these fishing quotas.'

It entered in the minutes of this meeting the following sentence:

'In adopting this statement the Council stresses that the first part of it can in no way prejudice the validity of national measures taken on the recommendation of the NEAFC'.

After the Commission had submitted the beforementioned proposal the Council adopted on 6 April 1976, that is to say, after the references to the Court in these proceedings, Regulation No 811/76 'temporarily authorizing certain systems of catch quotas in the fisheries sector' (OJ, No L 94, p. 1) which applies until 31 December 1976. This regulation which was made pursuant to Article 43 of the Treaty recites:
— 'Whereas the fishery resources of the sea would be considerably endangered if catches were not controlled, whereas the rational development of the production of fishery products might be disturbed if no limit was placed on the the size of the landings' (first recital);
— 'Whereas to this end several Member States have contracted certain international undertakings aiming at restricting the catches of their fishing fleets' (second recital);
— 'Whereas, in order to avoid any doubts as to the legality of national measures, while awaiting definitive regulations to limit production in this sector at Community level, for the period of time necessary for the preparation of such rules Member States should be authorized to retain, on a temporary basis, the national catch systems arising out of international undertakings' (third recital);
— provides that 'Member States are hereby authorized to limit the catches of their fishing fleets in accordance with international undertakings contracted or to be contracted' (Article 1).

2. History and procedure

A — The Prosecutors (Officieren van Justitie) at the national courts concerned instituted criminal proceedings against certain persons or firms charging them with the following offences:
— Case 3/76: On or about 4 August 1975 Mr Kramer is alleged to have infringed Articles 8 (3) and 11 (1) of the UB in that he landed a quantity of sole exceeding 300 kg from a vessel bearing the registration

number UK 86, that is to say, an even number.

— Case 4/76: On or about 13 May 1975 Mr Van Den Berg is alleged to have infringed Article 2 of BV in that he fished for plaice and sole in the coastal waters of the North Sea using a vessel of a registered gross tonnage of more than 50 tonnes and with an engine rating exceeding 300 hp.

— Case 6/76: On or about 12 May 1975 the Kramer en Bais company is alleged to have committed an offence similar to the one committed by Mr Van den Berg.

B — As all the accused in the main proceedings pleaded that the Netherlands regulations were incompatible with Community law, the Arrondissementsrechtbanken by judgments of 24 December 1975 (Zwolle: Cases 3/76 and 4/76) and of 2 January 1976 (Alkmaar: Case 6/76) which reached the Court Registry on 12 and 23 January 1976 respectively decided to refer to the Court the following questions:

1. Having regard in particular to Articles 38 to 47 of the EEC Treaty, Regulations Nos 2141/70 and 2142/70 and Articles 102 of the Act of Accession, are the Member States still empowered to fix quotas such as those for which the BV and the VB and UB provide?
2. Do the institutions of the EEC have exclusive power to conclude agreements concerning measures for maintaining as far as possible stocks of fish such as those contained in Article 7 (1) (g) (h) of NEAFC?
3. Are quotas such as those laid down ... in the BV, the VB and UB ... compatible with Community law and in particular with Articles 30, 31 and 34 of the EEC Treaty, with Article 102 of the Act of Accession and with Regulations Nos 2141/70 and 2142/70?
4. Are Articles 30, 31 and 34 of the EEC Treaty, having regard to their nature, directly applicable within the legal systems of the Member States of the EEC?

Written observations were submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC:

— In Cases 3 and 4/76 by the Officier van Justitie at the Arrondissementsrechtbank, Zwolle, and the accused in the main proceedings;

— in Case 6/76 by the accused in the main proceedings and the Italian Government;

— in Case 3, 4 and 6/76 by the British, Danish and Netherlands Governments and by the Council and the Commission.

By order of 5 May 1976 the Court joined the cases for the purpose of the oral procedure and judgment.

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 observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The Officier van Justitie at the Arrondissementsrechtbank of Zwolle states that, on the question whether national restrictions on fishing contravene Regulation No 2142/70, it is first of all necessary to refer to the judgment given by the Court on 30 October 1974 in the *Van Haaster* case ('Cultivation of hyacinths', Case 190/73, [1974] ECR 1123). This judgment held that a national measure designed to restrict production is incompatible with a regulation relating to the establishment of a common organization of the market and expressly prohibiting in trade between Member States any quantitative restrictions or measures having equivalent effect. Regulation No 2142/70 does not contain any such prohibition. Article 17 of that regulation has no

relevance to these proceedings, since the third countries concerned have themselves to comply with the system of quotas provided for by the NEAFC. The *British Government* also puts forward this argument.

In these circumstances it is appropriate to consider whether those systems are incompatible with the aim and principles of the Community rules. For this purpose reference must be made to Regulation No 2141/70 which like the NEAFC aims at conserving fishing grounds, rather than to Regulation No 2142/70. Moreover the subdivision in the chapter in the Act of Accession dealing with fisheries provides some support for this view.

The Court has ruled that 'each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules' (ground 17 of judgment of 31 March 1971, 'The European Agreement concerning the work of crews of vehicles engaged in international road transport' *AETR,* Case 22/70, [1971] ECR). It follows that the Member States' powers to introduce systems of fishing quotas and to enter into international agreements relating to the preservation of fishing stocks only cease to exist when the Council adopts measures pursuant to Article 5 of Regulation No 2141/70 and Article 102 of the Act of Accession. The disputed rules are therefore compatible with Community law.

The accused in the main proceedings in Cases 3 and 4/76, on the one hand, and in Case 6/76, on the other hand, submit identical written statements.

(a) They submit a statement of the facts from which they infer that the disputed national measures disturb or are likely to disturb trade between Member States.

All the accused reproduce the text of a number of provisions of the BV, the VB and UB and call attention to the successive amendments of some of them during 1975.

Sole and plaice are flat fish and are for the Netherlands the most important species of deep-sea fish, an expression which must be understood as contrasted with the pelagic species of fish, that is to say, fish which swim at a certain distance from the sea-bed. Deep-sea fishing is carried out mainly by undertakings engaged in coastal fishing with trawlers which are specially built for this purpose and cannot fish profitably for the pelagic species of fish. The disadvantage of fixing quotas for particular species of deep-sea fish is that, when the quota has been exhausted, deep-sea fishing must stop since it is impossible to avoid catching fish belonging to the said species as well. There is no point in throwing back into the sea the excess fish caught, because only about 15 % of them have any chance of surviving.

The accused produce figures relating *inter alia* to the development of the Netherlands fleet of deep-sea fishing trawlers, the relative and absolute quantities of flat fishing caught by this fleet, the quantities of fish exported and imported by the Netherlands and to the operational financial results obtained by Netherlands undertakings engaged in sea fishing. In this context they point out *inter alia* that:

- the abovementioned fleet is especially dependent on fishing for flat fish and in particular for sole;
- 90 % of the sole and plaice caught are exported, mainly to other Member States;
- the quotas fixed for 1975 amounted to a reduction in the case of sole and plaice of 47 % and 9 % respectively compared with the average catches from 1971 to 1973; because of these

disastrous consequences the public authorities had to take remedial measures which, however, proved to be inadequate;

— if fishermen had kept within the limits of the said quotas many of them would have become bankrupt and this explains why in 1975 the Minister initiated criminal proceedings in approximately 600 cases.

Belgian and German fishermen have derived a considerable advantage from the fact that the closing of the area covered by the 12-mile limit to large vessels was announced much later in Belgium and the Federal Republic of Germany than in the Netherlands. Furthermore, the system of quotas brings about an unfair restriction of Netherlands production compared with that of the other Member States; as the quotas were fixed on the basis of the catches in the sixties this allocation does not take into account the fact that the capacity to catch fish increased in the Netherlands at the beginning of the seventies. The fact that the closure applies to large vessels places Netherlands fishermen at a further disadvantage, because the other Member States have trawlers of a lower tonnage and engine rating. Finally the fact that each Member State may place an absolute embargo on unloading encourages importation from other Member States; this is why the Netherlands recently imported large quantities of sole from Belgium, although traditionally the trade flows in the opposite direction.

(b) Moving on to the legal issues the accused define their position as follows:

1. The first question referred by the national courts, looked at broadly, is to what extent do Member States still have the power to adopt provisions in a field governed by a common organization of the markets.

This question has been dealt with in a now well-established line of decisions of the Court from which the rule emerges that Member States must avoid any measures likely to derogate from or affect adversely the organization in question; such an adverse effect may also result from a conflict with the aims and objectives of the regulation establishing this organization.

In the present proceedings it is well to bear in mind that Regulation No 2141/70 constitutes a supplement to Regulation No 2142/70.

The quotas fixed by the Netherlands authorities are incompatible with these regulations.

(aa) Member States cannot adopt measures in this field over which only the Community has jurisdiction:

With regard to coastal (sic) waters this jurisdiction is conferred by Article 5 of Regulation No 2141/70.

With regard to fishing on the high seas, it is well to bear in mind that although Articles 2 to 5 of this regulation transfer to the Community some of the sovereign powers of Member States over maritime waters, such a transfer is unnecessary in order to succeed in establishing a common system for fishing on the high seas. The Community therefore has *a fortiori* the power to make regulations relating to maritime waters. This is confirmed

— by Article 1 of the regulation;

— by Regulation No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (OJ, English Special Edition 1968 (I), p. 165), Article 4 (2) (f) of which defines the expression 'goods wholly obtained or produced in one country' as meaning 'products of sea-fishing and other products taken from the sea by vessels registered or recorded in that country and flying its flag'.

(bb) Regulation No 2142/70 aims *inter alia* at limiting the supply of fish and fishery products by introducing a system of common marketing standards and ensuring that there is no reduction in the demand for fish and fishery products by applying support prices. Such a system does not operate smoothly if Member States by fixing quotas unilaterally and without any coordination affect the supply of fish. The accused refer in support of their argument to the judgment in the *Van Haaster* case and call attention to the fact that the organization of the markets in the fishing industry, which includes a price system, goes even further than the regulation in question in that case. They also rely on the judgment of 23 January 1975 in *Galli* (Case 31/74, [1975] ECR 47) and the judgment of 26 February 1976 in *Tasca* (Case 65/75 [1976] ECR 291) in which it was held that 'in sectors covered by a common organization of the market — even more so when this organization is based on a common price system — Member States can no longer interfere through national provisions taken unilaterally in the machinery of price formation as established under the common organization.'

That national quotas can seriously disturb price trends is shown by the prices curve recorded in the Netherlands in 1975 for the various species of fish for which quotas had been fixed. The disputed measures are particularly disturbing since they can affect the conditions of production enjoyed by fishermen of other Member States.

The objection cannot be raised that, since quotas come within the structural policy, they play no part in the organization of the market but owe their existence to biological considerations. There is a close link between structural policy and the organization of the markets. Taking into account the fact that fishing is very important to the Netherlands and that most of the fishery products are exported a structural policy applied unilaterally has a great influence on the common market.

2. For reasons akin to those given above the third question must also be answered in the negative. Any restriction of production automatically entails a restriction of exports as the present proceedings have shown. Furthermore the Netherlands system, which is in dispute, deals with trade in fish as well as production since its rules also cover the landing of the product. The grounds of the *Van Haaster* judgment apply therefore by analogy.

3. With regard to the second question, it follows from the concept developed by the Court in its AETR judgment that the Community alone has power to enter into agreements with third countries relating to the fishing industry. It is true that Regulations Nos 2141/70 and 2142/70, unlike Regulation No 543/59 which was at issue in the AETR case, do not expressly confer external powers on the Community. This difference however has no relevance, since these regulations establish a more advanced organization of the market than Regulation No 543/59. On the other hand in the present cases and unlike the situation in the AETR case the Member States have not yet entered into any commitment with third countries. The Fishing Convention signed in London on 9 March 1964 cannot, having regard to Article 10 thereof, adversely affect any rules which the Community may adopt.

This argument is confirmed by Opinion 1/75 of the Court given on 11 November 1975 ([1975] ECR 1355) and by the *Galli* judgment.

Member States could and should have authorized the Commission to negotiate within the framework of the NEAFC in order to obtain Community quotas. On the other hand it is difficult to defend a solution which consists of the Council's authorizing each Member State to negotiate quotas individually and to apply them independently.

4. The fourth question referred by the national courts has been answered by implication in the affirmative in the *Tasca* and *Galli* judgments.

It is true that these judgments simply found that provisions which prohibit measures having an effect equivalent to quantitative restrictions and which are contained in Community regulations, are directly applicable. But there is no doubt that this finding must also apply to Article 30 of the Treaty. In the present proceedings the prohibition stems directly from this Article, Regulations Nos 2141/70 and 2142/70 being silent on this point. This silence is due to the fact that these regulations were adopted after the end of the transitional period, whereas the regulations at issue in the *Galli* and *Tasca* cases were adopted during this period, that is to say, at a time when Article 44 of the Treaty provided for possible derogations from Article 30 *et seq.*

The *British Government* submits that the North Sea coastal States exercise a certain measure of jurisdiction within the 12-mile limit or more restricted limits with the result that the greater part of the North Sea has the status of high seas and is consequently governed by the principle of the freedom of fishing.

Under international law there is a solemn duty to conserve fish stocks:

— 'In the judgment of the International Court of Justice in the Fisheries Jurisdiction Cases (ICJ Reports, 1974, pp. 3 *et seq.* and 175 *et seq.*), it was found that Iceland, the United Kingdom and the Federal Republic of Germany are under the obligation to keep under review (fish) resources and to examine together, in the light of scientific and other available information such measures as may be required for the conservation ... of those resources'.

— In accordance with the first Article of the Geneva Convention on Fishing and the Conservation of the Living Resources of the High Seas (1958) and to which the United Kingdom and other Member States are parties, the right to fish the high seas is subject to the duty to adopt measures necessary for conservation.

— The purpose of the NEAFC is also the conservation of fish stocks.

The Community institutions must have regard to these obligations, just as Article 11 of Regulation No 2141/70 does to a certain extent. Article 234 of the Treaty and Article 5 of the Act of Accession protect the obligations entered into by each Member State before the date when the Treaty entered into force for that State. As far as the United Kingdom is concerned this principle applies to the NEAFC.

The Netherlands legislation which is at issue and the similar provisions adopted by other Member States, including the United Kingdom, gives effect to Articles 7 and 8 of the NEAFC. The quotas fixed pursuant to NEAFC are generally for a period of one year; those with which these cases are concerned remain in force until the end of 1976.

Before and after the meetings of the Fisheries Commission the Member States and the Commission of the EEC conferred together with a view to adopting a common line.

The first question

It emerges from the case-law of the Court that, where Community rules cover a particular subject-matter only partially, Member States retain the power to regulate the remaining area, provided that they do not impair Community rules.

This is the position in these proceedings. As the first and second recitals of Regulation No 2142/70 indicate the provisions of that regulation apply to the marketing of landed fish but do not regulate fisheries as such. Although the

penultimate recital of this regulation refers the need to preserve fishing grounds, none of its provisions however with the possible exception of Article 32 takes up this idea let alone regulates catch levels. On the other hand although Regulation No 2141/70 refers more specifically to the conservation of resources, Article 5 thereof does not establish a concrete system for this purpose and does not apply to the high seas; furthermore the Council has not so far adopted the implementing measures provided for this Article or those referred to in Article 102 of the Act of Accession. At the present time Member States therefore enjoy full power to take autonomous action, as Articles 2, 11 and 13 of Regulation No 2141/70 in particular acknowledge. It is not now possible to anticipate from the general terms of Articles 38 to 47 of the Treaty and of Regulations Nos 2141/70 and 2142/70, the action which the Council may take in the future, especially as these provisions do not apply to sea areas other than those under the sovereignty or the jurisdiction of the Member States.

All things considered, this question must be answered in the affirmative.

The second question

The Court's judgment in the AETR case gives rise to difficulties of interpretation particularly with regard to ground 17 of the judgment which states that when the Community 'adopts provisions laying down common rules' Member States are no longer entitled to enter into obligations with third countries which affect those rules: In the opinion of the British Government this doctrine does not apply if, as is the case in those proceedings, the subject-matter of the 'common rules' and the agreement entered into with third countries are not identical.

The arguments developed by the Court in Opinion 1/75 also do not apply. This opinion refers to the rules relating to the common commercial policy, which *ipso jure* give the Community exclusive competence to enter into international agreements in the field in question. In the present proceedings Article 17 of Regulation No 2142/70 refers implicitly to the rules relating to the common commercial policy. This provision, however, is not concerned with the rules applicable to domestic producers. Similarly Articles 30, 31 and 34 of the Treaty would govern landed fish and fish products only.

This question must therefore be answered in the negative.

The third question

It follows from the submissions put forward in connexion with the first two questions that this question must be answered in the affirmative.

Articles 38 to 47 of the Treaty and Regulations Nos 2141/70 and 2142/70 must be read in the light of Article 102 of the Act of Accession. Articles 30, 31 and 34 of the Treaty of Rome cannot be interpreted as applying to national regulation of catch levels. Article 2 of Regulation No 2141/70 does not make it obligatory for Member States to ensure free access. The obligation imposed under international law upon Member States to conserve fish stocks cannot be avoided by claiming that the Community has competence beyond that which presently exists.

Although in the Court's judgment in the *Van Haaster* case it was held, in the context of that case, that a measure intended to limit production can have an effect equivalent to a quantitative restriction, it seems to be based on considerations which have their origin in specific aspects of the Community regulations at issue in the said case and which are not in any way connected with Articles 30, 31 and 34 of the Treaty. The conservation measures at issue in these proceedings cannot be equated with the

national measures in question in the *Van Haaster* case.

The fourth question

Having regard to the arguments put forward earlier it is unnecessary to answer this question.

The *Danish Government* points out that the provisions of the NEAFC which are at issue were adopted on the basis of scientific research and the original protective provisions proved to be inadequate. From 1966 to 1974 the total catch of sole in the North Sea dropped from 31 000 to 17 000 tonnes and the plaice catch did not increase at all in spite of intensified fishing activity. Fixing quotas is in principle the same as prohibiting fishing for certain periods and in certain areas.

It is not true that all the principles applicable in the agricultural sector properly so-called also apply to the fishing sector, as there are fundamental differences between each of them. In particular the 'production' of fish could not be increased or decreased according to market requirements with the result that in the fishing sector conservation measures are of cardinal importance. These measures, far from restricting production, guarantee on the contrary over the long term the largest possible production.

As emerges from the recitals and Article 5 of Regulation No 2142/70 this regulation provides for a genuine regulation of production in that it aims at adjusting the supply to market requirements. Such an objective is fundamentally different from the aim of conserving resources.

There is no Community provision precluding Member States from fixing quotas for catches:

— Under Article 39 of the Treaty the objectives of the common agricultural policy are *inter alia,* to stabilize markets and to assure the availability of supplies and, in the fishing sector, as the twenty-fourth recital of Regulation No 2142/70 moreover admits, it is precisely the adoption of conservation measures which is necessary for attainment of these objectives.

— This regulation does not contain any provisions relating to the said measures whereas the recitals and Articles 2 and 5 of Regulation No 2141/70 assume that such measures can be taken at a national as well as a Community level. The power which Member States have stems also from Article 100 (1) of the Treaty of Accession.

The grounds of judgment in the *Van Haaster* case do not apply in the present proceedings since the system at issue has no effect on the free movement of goods. There is not the slightest reason to suppose that the quotas would have been larger if the Community, instead of the Member States, had conducted the negotiations within the Fisheries Commission. The quotas in question, as opposed to the quotas which can be fixed for agricultural sectors properly so-called, and for the reasons given above, cannot be regarded as a means of regulating production.

Article 102 of the Act of Accession and Regulation No 2141/70 only relate to a sea area which at the present time covers at most twelve nautical miles. However, the quotas fixed under the NEAFC are mainly concerned with catches on the high seas. Even if the said Article 102 also refers to measures which apply outside the twelve-mile limit, the fact remains that, as this provision has not been implemented by the Community, the Members had to adopt conservation measures.

The situation would be entirely different if the abovementioned twelve-mile limit were extended to 200 miles, as there are grounds for expecting will happen. If this

does happen the territorial scope of the Community provisions under consideration would include the greater part of the North Sea; the Community would then find that it could and had to take effective conservation measures. In the meantime, however, the grounds of the Court's judgment in the AETR case do not apply in the absence of a real basis for any such intervention by the Community. Be that as it may, at the present time political difficulties preclude the amendment of the NEAFC so that the Community, which is not a State, can be a party thereto.

To sum up, the first and third questions should be answered in the affirmative and the second question in the negative.

The *Italian Government* restricts itself to defining its position on the first and third questions:

The problem raised by the first question of the possible inconsistency between the national and the Community regulations is not one of lack of competence but of incompatibility. The Court has repeatedly held that Member States have retained the power to intervene in sectors governed by common organizations of the market, provided that they do not adversely affect attainment of the objectives or the operation of these organizations. The first question should therefore be answered in the affirmative.

With regard to the third question the system of quotas which is in dispute does not contravene the provisions governing the free movement of goods because it restricts production and not marketing. On the other hand, having regard to the Court's reasoning in the *Van Haaster* judgment such a system is incompatible with the essential matters with which Regulations Nos 2141/70 and 2142/70 are concerned: the guarantee of equal treatment of Member States when fishing in territorial waters, the assignment to the Council of the power to adopt the necessary measures for the conservation of resources, the coordination of national structural policies and finally the establishment of producers' organizations, fix prices and develop trade with third countries. This argument cannot be challenged on the ground that the national system at issue also arises at protecting the measures in question. Under Article 5 of Regulation No 2141/70 the Council alone has power to adopt the necessary measures for this purpose. Viewed in this light the problem of a possible inconsistency between the said system and the Community regulation is in fact one of lack of powers rather than of actual incompatibility.

The *Netherlands Government* submits that the purpose of fixing the quotas which are at issue is biological and not commerical.

The question referred by the national courts should be understood above all in the light of the judgment of the Court in the *Van Haaster* case. However, unlike the national rules in question in that case, the object of fixing catch quotas is to secure future production. The quotas therefore have a beneficial, long-term effect on intra-Comunity trade and comply with the objectives specified in Article 39 of the Treaty, in particular because they assure the availability of supplies.

The fixing of these kinds of quotas is in harmony with the objectives of Regulation No 2142/70 (cf. the twenty-fourth recital). But is must above all be considered in the context of the structural policy, which differs from the market and pricing policy in that the Member States have a greater responsibility. Thus Article 2 of Regulation No 2141/70 takes as its point of departure the provisions existing in this field in the Member States. It appears from Article 5 thereof that the Community institutions are not obliged to enact measures for the conservation of resources and that, until they do so,

Member States retain responsibility in this field. This view is confirmed by Article 102 of the Act of Accession, which, taking into account the time-limit which it lays down for the adoption of implementing measures, has more finality than the other transitional measures provided for by this Act.

Article 30 *et seq.* of the Treaty are not concerned with national regulations relating only to the production stage. Even if they were, they would not preclude the introduction of the catch quotas at issue. Their effect cannot be to impede imports or exports since they apply whatever the destination of the fish may be and do not make it impossible or more difficult to export them than to sell them on the domestic market.

It follows *a contrario* from the AETR judgment that in the present state of Community legislation Member States have retained the power to enter into international agreements for the conservation of fishing grounds, it being understood that, having regard to Article 5 of Regulation No 2141/70 and Article 102 of the Act of Accession, this power is neither exclusive nor definitive. It is no doubt undesirable that in this particular field Member States should enter into obligations with third countries which are long-term and unconnected with the Community. This has not been the case, however, since the disputed quotas were fixed each time for one year only and adopted after coordination within the Community.

The *Council* states that in Case 3/76 the offence was committed both on the high seas and in the coastal area (twelve nautical miles), whereas in the other two cases the offences were committed in the coastal area.

As soon as the Fisheries Commission recommended that the catch should be determined by quotas the Community took an interest in the work of this Commission which took the form, not of joining the NEAFC but of coordinating the positions taken up by Member States before and during the meetings of the said Commission.

In order to consider the question whether the system of quotas adopted under the NEAFC is compatible with Community law it is well to have in mind the nature of the special features of the exploitation of the sea. Maritime resources differ from all other natural resources and particularly from agricultural products properly so-called because they 'do not respect the frontiers fixed by man, that is to say, the boundaries of fishing areas and territorial waters' and because as yet man has not been so successful in controlling their production, let alone their renewal. For this reason the ownership of maritime resources has always been based on a different system from the one applicable to other natural resources and its main feature is the principle that everyone is free to acquire them. More particularly, so far as the resources of the high seas are concerned, no State may lawfully claim sovereignty over any part thereof. It is clear from all these factors that the regulation of catches must of necessity be international.

(a) Articles 30 to 34 of the Treaty and Regulation No 2142/70

The NEAFC system is not concerned with marketing but is designed to secure the supply of fishery products. 'Its distinguishing feature is rather a system of qualitative restrictions at the production level or, more precisely, when the fish are caught, which is intended to ensure that at the next stage, the marketing stage, the introduction of quantitative restrictions is avoided.' A ship flying the flag of a Contracting State, which exceeds the quotas allocated to this State and sells its catches in another State, puts the first State in the position of failing to comply with its obligations under the NEAFC. In all these circumstances the principle of

quotas 'is something entirely different from the operations covered by the Community rules prohibiting quantitative restrictions' whether they appear in the Treaty or in a regulation on the common organization of the markets:

- With regard to the prohibitions specified in Article 30 *et seq.* quotas cannot be even remotely compared with even a partial prohibition of imports or exports, or with rules of commerce which impede intra-Community trade, even if only indirectly and potentially.
- With regard to the prohibitions in the basic agricultural regulations the same reasoning must be applied. The Court's judgment in the *Van Haaster* case cannot be transposed to fish products. In particular, the reason why the Court held that national measures designed to restrict quantitatively the cultivation of the products in question are incompatible with Article 10 of Regulation No 234/68 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, was because such measures interfere with the common quality standards imposed by the said organizations. However, under Regulation No 2142/70 which applies to the fishing industry common quality standards only play a subordinate role compared with the system of withdrawal prices based on intervention by producers' organizations (cf. Article 7 of the regulation). This system means that the market in fishery products is controlled whereas the sector of the market in question in the *Van Haaster* case is based upon 'the freedom of commerical transactions' (cf. ground 15 of the said judgment). Finally Regulation No 2142/70 does not contain a provision identical to Article 10 of Regulation No 234/68 prohibiting, in intra-Community trade, quantiative restrictions and measures having equivalent effect.

To sum up, a system of quotas such as the one which is at issue is not incompatible with Articles 30 to 34 of the Treaty or with Regulation No 2142/70.

(b) The general provisions of the Treaty relating to agriculture

It may be asked whether fixing a maximum quota for each Member State which is a party to the NEAFC and also the prohibition on using large-sized vessels are measures which could be said to disregard the prohibition of discrimination between producers within the Community contained in Article 40 (3) of the Treaty. The answer is, however, in the negative. The quotas were fixed on a scientific basis (cf. Article 11 of the NEAFC) — that is to say, taking into account the maximum number of fish which can be caught without exhausting stocks — and with reference to the previous catches of the States concerned. The said prohibition is a measure which could constitute one of the 'special methods' for the application of the common agricultural policy, in the working out of which account shall be taken (under subparagraph (a) of Article 39 (2)) of '... the social structure of agriculture and ... the structural and natural disparities between the various agricultural regions'.

(c) Regulation No 2141/70

Only Articles 2 and 5 of this regulation are relevant to these proceedings.

The geographical areas to which the NEAFC and Regulation No 2141/70 apply are so very different that for this reason alone they cannot be incompatible with each other. The NEAFC applies mainly to the high seas and its application to coastal waters and inland maritime water is only of ancillary importance. On the other hand Regulation No 2140/70 only applies to coastal waters, or to put it more precisely, to the maritime waters 'coming under

the sovereignty or within the jurisdiction [of Member States]' (Article 2). This expression covers inland maritime waters and territorial waters — which are waters coming under the sovereignty of States — and waters over which the State in question has fishing jurisdiction on a territorial basis, that is to say, in the case of the Netherlands and most of the other Member States the waters within a limit of twelve miles calculated from the base lines of the State in question which are reserved for fishing by the nationals of that State.

The NEAFC is concerned with a policy of conservation and national exploitation. On the other hand the main purpose of Regulation No 2141/70 is to ensure that there is no discrimination between fishermen of the Member States (cf. Article 2 thereof) and the prevention of overfishing in coastal waters (cf. Article 5) is only a subsidiary objective at least at the present time. However, this latter provision is at present only of minor importance: since it only applies *de facto* within a twelve-mile limit, it cannot form the basis of a real conservation policy. This situation could change if Member States had one day to extend their territorial waters to 200 miles.

Nevertheless it may be asked whether the recommendation of the Fisheries Commission is not incompatible with the rule of non-discrimination in Article 2 of Regulation No 2141/70 in that it prohibits the use of large-sized vessels in a sea area to which the regulation also applies. The answer to this question is, however, in the negative since this prohibition applies no matter what flag under which the fisherman sails. Moreover, Article 5 of this regulation itself makes it possible to adopt such restrictive measures.

(d) Article 102 of the Act of Accession

The NEAFC system cannot be incompatible with this article because it has not yet been implemented.

(e) The sharing of powers between the Community and Member States

1. The first question under this head is whether the Community could and indeed should have become a party to the NEAFC pursuant to Article 113 of the Treaty. The answer to this question is in the negative. The provision can only be invoked if the purpose of the action undertaken is to alter the volume or the pattern of Community trade. The NEAFC is not in essence a commercial convention, so that in the light of Opinion 1/75 of the Court it appears doubtful whether the Community can become a party to it under Article 113.

2. It follows that it must be ascertained whether, having regard to the judgment of the Court in the AETR case, which has already been mentioned, the participation of Member States in the NEAFC has become impossible in law.

It is true that the NEAFC was signed after the entry into force of the Treaty, but this was at a time when the Community had not yet adopted any measures in the fisheries sector. Although this was no longer the situation when subparagraphs (g) and (h) of Article 7 (1) of the NEAFC entered into force, the fact remains that at that time the Council did not always make use of the power conferred upon it by Article 5 of Regulation No 2141/70.

According to Article 15 (4) of the NEAFC only States can be parties to it. Therefore an application by the Community to become a party to the NEAFC could only have been granted with the unanimous agreement of all the signatory States. However it is doubtful whether the States of the East would have been willing to agree.

Furthermore, in connexion with the same point, it is well to stress the fact that until now the Community has only exercised jurisdiction over the fishing industry within the twelve-mile limit, an

area to which the authors of the NEAFC, as has been shown, only attached secondary importance.

3. Under Article 116 of the Treaty 'From the end of the transitional period onwards, Member States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organizations of an economic character only by common action,' the Commission being invited to submit 'proposals concerning the scope and implementation of such common action'. The matters dealt with by the NEAFC within its field of application are no doubt of such particular interest but it may be questioned whether the NEAFC set up an organization of an 'economic character'.

Assuming that this is what the NEAFC has done the view can certainly be taken that the Community institutions are called upon to adopt general provisions prescribing the conditions of the 'common action' referred to in Article 116. But it cannot be said that failing the adoption of such measures the practices employed were defective.

4. There is finally the question whether it would not in any case be better if the Community and not each individual Member State were to administer the quotas allocated under the NEAFC.

This is both a delicate and topical question. It is delicate because it can be anticipated that the future Law of the Sea will deal more extensively with restrictions on catches, a problem which the Conference on the Law of the Sea is studying. It is topical because, as these proceedings show, the fishermen from the Member States are more and more inclined to challenge the right of the latter to lay down such restrictions.

In order to 'clear up' the situation 'politically' the Council took steps which culminated in its Regulation No 811/76.

In short the Council submits that:

- Questions 1 and 3 should be answered in the affirmative and question 2 in the negative;
- No answer should be given to the fourth question since it has no purpose if the first three questions are answered as indicated above.

The *Commission* gives an account of the principal elements of the NEAFC and other international conventions relating to the fishing industry. These conventions are of the highest interest for the fisheries of the Community since 87 % of the fish produced by the Community in 1973 came from fishing areas to which the NEAFC applies. The Commission produces detailed figures relating to Member States' catches in 1973 and 1974 and also to the quotas allocated to Member States for 1975 and 1976. It then analyses the disputed Netherlands rules.

The first and third questions

These two questions must be considered together since the legal analysis required is substantially the same both as regards whether Member States have power to fix catch quotas and as regards whether fixing such quotas is substantively compatible with Community law.

In general there are grounds for the view that, although determining a fixed quota for a specific fishing area amounts to a conservation measure, allocating this quota among the contracting States is however an economic and political measure.

Articles 38 to 47 of the EEC Treaty

A policy which aims at conserving fish stocks falls within the objectives set out in Article 39 of the Treaty and, in particular, in subparagraphs (a) and (d) of paragraph (1) thereof. Consequently the common agricultural policy may and, where appropriate, must contain a system of measures for this purpose and the

Community institutions must undertake the administration of such a system.

Notwithstanding the rules relating to the power to enter into agreements in this field (cf. below with reference to the second question) Member States retain the power to take measures in the agricultural sector so long as the Community has taken no initiative. Consequently whether these States are empowered or not to adopt rules in a specific sector does not depend upon the wording of Article 37 *et seq.* taken in the abstract, but on the question whether the rules adopted under the common policy for this sector are such that no room is left for national rules.

Regulations Nos 2141/70 and 2142/70 and the Act of Accession

The judgment of the Court in the *Van Haaster* case — which in fact turns on the scope of the principle of establishing common organizations of the market and not on the definition of measures having an effect equivalent to a quantitative restriction — strengthens the presumption already supported by Article 40 of the Treaty that the mere fact that such an organization exists is sufficient to give the Community exclusive jurisdiction in the field in question. There are other decisions of the Court on the same lines.

The Commission analyses in detail the regulations referred to above which established an even more comprehensive common organization than the one set up by Regulation No 234/68 which was at issue in the *Van Haaster* case. The Commission emphasizes, in particular, that these regulations when read together

- contain a price system and trade arrangements with third countries;
- provide for the adoption of quality standards which the Court held to be decisive in the abovementioned case;
- lay down rules relating to producers' organizations;
- state that Articles 92 to 94 of the Treaty shall apply;
- include a structural policy, one of the objectives whereof is to safeguard resources and which is centred on common rules for fishing in maritime waters, on certain specific measures and on the coordination of the structural policies of the Member States;
- do not, it is true, contain any provisions expressly prohibiting obstacles to intra-Community trade, although this fact is not important, since the regulations were adopted after the end of the transitional period, from which date the prohibition relating to the Treaty applies automatically (cf. the twentieth recital of Regulation No 2142/70);
- in all these circumstances constitute integral parts of the common policy in the sector in question.

The jurisdiction of the Community is not automatically limited to the territories, including the territorial waters, of the Member States and this is due to the fact that, for the purpose of defining the field of application of the Treaty *ratione loci,* Article 227 (1) thereof does not use the expression 'territory' but merely names the Member States. In so far as the latter have powers which can be used outside their territories such powers accrue to the Community which has already exercised them, as is shown in particular by Regulation No 802/68 which was quoted by the accused in the main proceedings. It follows from this regulation that fish caught by a vessel belonging to a Member State are subject to the provisions of the Treaty and of the regulations under consideration, even if the fishing was carried out on the high seas or indeed in the waters of third countries.

It would be impossible to pursue the objectives laid down for the common structural policy for the fishing industry if this policy cannot be applied outside the maritime waters of the Member States. The fact that Articles 2 and 5 of

Regulation No 2141/70 refer specifically only to those waters does not invalidate this argument:

- The discrimination prohibited by Article 2 is inconceivable outside the waters coming under the sovereignty or within the jurisdiction of the Member States.
- Although Article 5 authorizes the Council to adopt the necessary measures for the conservation of stocks in the maritime waters of Member States, it cannot, however, be interpreted as meaning that the Community has no power to take conservation measures which apply outside this area. In particular such an interpretation would prevent the effective attainment of the objective set out in Article 1, 'to encourage rational use of the biological resources of the sea and of inland waters.' Article 5 has not, however, created either a new power or a new procedure for the exercise of an existing power; it simply refers to 'the procedure provided for in Article 43 (2) of the Treaty' which authorizes the Community to adopt in relation to the particular matter regulatory measures which apply even outside the coastal waters of the Member States.

In particular, for the reasons given in detail hereafter by the Commission, a system of quotas such as the one at issue in the present proceedings could impede, actually or potentially the functioning of the common organization of the market in the fishery products sector and is also incompatible with the principles of the common policy enshrined in Regulation No 2141/70, so that it is unnecessary to know whether the said system is reasonable (cf. the judgment of the Court of 11 July 1974 in the *Dassonville* Case, 8/74 [1974] ECR 837):

- Such a system has an effect on the normal formation of prices. There is a large increase in prices when the quotas have been exhausted; on the other hand if certain kinds of fish are in short supply the normal price differentials between the different qualities of the same species tend to narrow.
- A shortage on the domestic market is manifested in an increase of imports from third countries.
- A decrease in the catches by the fishing fleet of a Member State cannot fail to have an effect on the volume of intra-Community trade.
- Although it is true that, leaving aside Article 100 (1) of the Act of Accession, the provision which preserves the 'status quo', the Community has not yet adopted measures to conserve stocks of fish, the fact remains that national rules such as the ones at issue in the present proceedings may prevent the adoption of future Community rules which pursue the said objective. Furthermore the fixing of quotas by the Member States has an effect on the measures which the Community can take pursuant to Article 10 of Regulation No 2141/70, 'To promote the rational development of the fishing industry and to ensure an equitable standard of living for the population which depends on fishing for its livelihood'.
- Regulation No 2142/70 does not contain any provision specifically authorizing Member States to adopt measures aimed at limiting catches or the amount of fishing (cf. the *Van Haaster* judgment). Nor may such an authorization be inferred from the reference made by Article 2 of Regulation No 2141/70 to 'Rules applied by each Member State in respect of fishing'. Moreover the prohibition on discrimination in this provision makes the systems of national quotas meaningless where coastal areas are concerned. So far as the other areas are concerned Articles (1) and (5) of the regulation and also Article 102 of the Act of Accession give the Commission the exclusive power to enact conservation measures. The reason why the Com-

mission has such exclusive power is that the regulations for the conservation of fishing grounds cannot be adopted unless negotiations are carried out with the third countries which are affected.

Having said that, the Commission does not fail to recognize the need for a dynamic conservation policy or the fact that the introduction of catch quotas can further the attainment of this objective. For this reason as far back as 1971 the Commission recommended participation in the NEAFC to the Council with the result that the quotas negotiated under that convention and affecting the Member States would be allocated and administered by the Community.

Articles 30, 31 and 34 of the Treaty

The disputed quotas restrict production and not trade. There is no doubt that they also produce effects at the marketing stage since they are likely to cause imports to increase and exports to decrease. However that does not mean that they are measures having an effect equivalent to a quantitative restriction. There are a number of systems which, in spite of their restrictive effect on trade, are compatible with Articles 30 et seq. of the Treaty because they come within the measures which, under the Treaty, can be adopted by Member States. As the Commission indicated in its Directive No 70/50 of 22 December 1969 (OJ L 13 of 19. 1. 1970, p. 29) such systems only contravene the said articles if they are unnecessary for the attainment of the desired objective. However, the limitation of catches is absolutely necessary for the conservation of maritime resources. If the measures in question are nevertheless incompatible with Community law, this is explained by the reasons given earlier. The *Dassonville* and *Van Haaster* judgments confirm this view.

The restrictions on production might even have a stimulating effect on imports. On the other hand they are likely to reduce exports, but, although the system of quotas does not distinguish between sales on the domestic market and those made outside it, there is no ground for claiming that it has a specifically restrictive effect on exports.

In its judgment in the *Dassonville* case the Court accepted certain restrictive measures provided that they were reasonable. Fixing global quotas may be covered by this exception: it is however doubtful whether this was true of the allocation of such quotas between the States concerned.

The second question

The right to enter into agreements pursuant to Article 43 of the Treaty

Article 43 empowers the Community to take any measures necessary for the conservation of fish stocks. This power includes entering into international agreements relating to such measures.

The Community does not have to adopt its own rules on conservation before opening negotiations with third countries. If the Community were to take such a line it could be blamed for impeding international cooperation which is essential in this particular field. In addition it would run the risk of being put in the wrong by third countries and its own Member States. The Commission refers again to Opinion 1/75 of the Court according to which the common commercial policy can be worked out by means of unilateral regulations and also with the help of international agreements without either of them taking precedence over the other.

Nevertheless, so long as the Community has not exercised the power to enter into agreements with third countries relating to the conservation of fish stocks, Member States are themselves competent to enter into such agreements. When doing so, having regard to the obligation

imposed upon them by Article 5 of the Treaty, they must however:

— make way for the Community to negotiate and enter into such agreements;
— if that proves to be impossible, include in the agreements in question provisions enabling the Community to accede to the agreements in place of or in addition to Member States and making it possible for the latter to fulfil at any time their obligations to the Community and in particular to be able to give reasonable notice of the agreements, in so far as the Community does not wish to or cannot take them over.

In the field of commercial policy such obligations have been specified by a certain number of the Council's decisions. The 'solidarité communautaire' pronounced by Article 5 also imposes upon Member States similar obligations in other fields.

The power to enter into agreements under the policy for the fishing industry

Since 1 February 1971, the date when the common structural and markets policies for the fishing industry entered into force — and possibly, having regard to Articles 5 and 40 (1) of the Treaty, even since the end of the transitional period — the Community alone has power to negotiate and enter into agreements relating to measures which have as their object the conservation and rational use of the resources of the fishing industry and consist in limiting catches or fishing.

It is well to consider in addition the question whether this exclusive power also extends to other measures designed to protect the resources of the fishing industry, although the national courts have not raised this question. The answer is in the affirmative as the Community has used the power conferred upon it by Article 43 of the Treaty to take protective measures in this field (cf. Articles 1 and 5 of Regulation No 2141/70 and Article 102 of the Act of Accession).

It is true that the transitional provision in the second paragraph of Article 100 (1) of the Act of Accession provides an exception to this exclusive power by granting Member States on a provisional basis the right to adopt measures restricting fishing in a limited area of the waters under their sovereignty or within their jurisdiction. Furthermore some people take the view, wrongly according to the Commission, that Articles 2 to 5 of Regulation No 2141/70 and Article 102 of the Act of Accession authorize Member States to take further conservation measures. But however that may be, Member States are not entitled to adopt rules restricting the size of catches or the amount of fishing, since such restrictions are incompatible with the common organization of the market.

Furthermore it does not follow from the provisions which have been quoted that Member States have retained the freedom to negotiate and enter into agreements with third countries for protecting the resources of the fishing industry.

There is no doubt that Member States cannot be required simply to abolish the measures which they have taken while waiting for rules and regulations to be drawn up by the Community. But when they apply or possibly modify them they must take care not to impede the implementation of a set of Community rules and endanger the interest which the Community has in the conservation and rational use of the resources of the fishing industry (cf. the judgment of the Court of 13 December 1973 in the *Diamantarbeiders* cases, 'National charges having an effect equivalent to customs duties' Joined Cases 37 and 38/73 [1973] ECR 1609). This applies applies *a fortiori* if they enter into agreements. Although the Community is not legally bound by these agreements, they would hinder it in the fulfilment of

its task since it would be difficult for it to disregard them in its relations with third countries. Furthermore, during the negotiations with those countries Member States inevitably give priority to their own interests over those of the Community. Only negotiations conducted by the Community or, on a transitional basis by a Member State acting under an authority given by the Community and in accordance with the latter's general directions, would ensure that all the interests involved are reconciled.

The power to conclude agreements under the commercial policy

Articles 113 (3) and 114 provide that only the Community is entitled, after the end of the transitional period, to negotiate and conclude agreements with third countries dealing with matters which come within the scope of the common commercial policy.

The measures for the conservation of the resources of the fishing industry provided for by subparagraphs (g) and (h) of Article 7 (1) of the NEAFC are included among these matters. They directly determine the Community's share in the total production and in the entire demand for and supply of the species of fish referred to on the world market and consequently have an effect on trade between third countries and the Community. They also affect the amount of the Community fishing fleets' participation in all the operations of the fishing industry in the sea area covered by the NEAFC. In this connexion the fact that the catch quotas also further biological objectives has little relevance once it is shown that they also have an economic and commercial aspect, particularly as regards the allocation of the global quotas among the States concerned. Having regard to all these considerations the Commission based the recommendation, which it sent to the Council on 20 March 1973 with a view to obtaining permission to negotiate the accession of the Community to the NEAFC, on Article 43 as well as Article 113 of the Treaty.

Conclusions

Having regard to all these circumstances the second question should be answered in the affirmative. It should also be said that this reply must not be limited to measures such as those provided for in Article 7 (1) (g) and (h) of the NEAFC but can be given in respect of all measures which aim at the conservation and rational use of the resources of the fishing industry.

Nevertheless the question must be asked whether this reply is sufficient to settle the dispute. The question raised by the national courts implies another one namely whether, having regard to the binding nature of the disputed Netherlands rules, the fact that they were adopted for the purpose of implementing the provisions of the NEAFC can be regarded as determinative.

The Community is not bound by the NEAFC to which it has not yet acceded. On 20 March 1973 the Commission submitted to the Council two recommendations based on Articles 43 and 113 of the Treaty authorizing the Commission *inter alia* to negotiate respectively the accession of the Community to the NEAFC and, within the Fisheries Commission, the allocation of Community catch quotas. As yet the Council has not given a decision on these recommendations.

So far as relations between the Community and the NEAFC is concerned the only results which have been obtained so far are that the Community has acquired the status of an observer at the Fisheries Commission and that it has been agreed that the Commission and the Member States shall coordinate beforehand and on the spot the line to be taken during the negotiations within the Fisheries Commission, with a view to agreeing a common approach and that as

a general rule the Commission is the Community spokesman on questions falling within the competence of the Community which were the subject of a common approach. This last arrangement, however, largely remained a dead letter since on several occasions it either proved impossible to agree on a common approach on the matters which in the opinion of the Commission were the responsibility of the Community or the common approach which had previously been agreed was abandoned during the discussions.

The NEAFC was concluded after the entry into force of the Treaty and consequently does not fall within Article 234. Nevertheless the Member States did not contravene the provisions of Article 5 of the Treaty when they ratified the Convention, which they did before 1970. It is true that the Convention does not contain an EEC clause or a provision permitting the Community to accede to it but it can be terminated after the expiration of a period of one year. Furthermore any State may object to any binding recommendation of the Fisheries Commission. The Community, applying Article 234 by analogy, must give Member States a reasonable period of time to adapt their obligations under the Convention to those arising under the Treaty.

The situation is different as regards the fact that all the Member States which are parties to the NEAFC accepted the proposal made by the Fisheries Commission that subparagraphs (g) and (h) be added to Article 7 of the Convention.

This proposal, in the working out of which the Member States collaborated in the course of the same period during which they discussed within the Council the implementation of the common fisheries policy, was accepted by them in accordance with the procedures prescribed by their constitutions, although in the meantime Regulations Nos 2141/70 and 2142/70 entered into force. Before accepting this proposal these Member States had to make certain that the modification of their obligations was compatible with Community law. If it was not they had to cooperate with the Community institutions with the object of finding an acceptable solution. In addition to the accession of the Community to the NEAFC such a solution had also to allow negotiations within the Community to take place concerning the administration of the quotas allocated to different Member States as the Commission had already recommended on 20 March 1973 (cf. above), that is to say, before 4 June 1974, the date when the beforementioned subparagraphs (g) and (h) entered into force.

From 1974 onwards the Member States took part, within the Fisheries Commission, in negotiations relating to the fixing and allocation of the national catch quotas under the new powers conferred on this Commission. Further they adopted without any modification the recommendations drawn up in this connexion without even adding to them the reservation that Member States' national quotas would be administered by the Community. By doing so they exceeded their powers and were in breach of their Community obligations. They cannot rely on the said recommendations for the purposes of adopting provisions contravening the rules of the common fisheries policy. The courts of the Member States must hold that such provisions are not binding and applicable. These considerations must be borne in mind independently of the validity under international law of the obligations which the Member States intended to fulfil by means of the said provisions.

The Community is not legally bound by these obligations either in relation to the third countries concerned or the Member States concerned.

The Member States cannot invoke the attitude of the Community institutions in order to justify the legality of their rules relating to quotas. The illegality of the disputed national rules and the rights which individuals can derive from this situation do not cease to exist by reason of the default or actual conduct of Community institutions. They can only disappear if the national or the Community provisions are amended. The Commission has always upheld the view put forward in its submissions in this case. The fact that in the absence of any decision by the Council on the proposals concerning the accession of the Community to the NEAFC the Commission has endeavoured, in accordance moreover with the wish expressed by the Council, to coordinate as far as possible the views of Member States cannot make up for the Member States' lack of competence.

The Commission's view has not been supported by the Council. The very cool reception given by the Council to the Commission's recommendations in 1971 and 1973 caused the Commission to behave with some restraint. The case-law of the Court (the *van Haaster* and *Galli* judgments; Opinion 1/75) has, however, led the Commission to restate its position clearly before Parliament.

The Council however approved in principle the Commission's argument at the meeting on 20 January 1976 (cf. I (1) C (c) above). By adopting the principle of a provisional authorization granted by the Community it admitted that the national quotas fixed pursuant to international obligations were illegal.

The fourth question

Of the provisions which have been quoted Article 31 no longer applies as the transitional period is over. The prohibition in Article 31 on new quantitative restrictions and measures having equivalent effect has been replaced by the absolute prohibition in Article 30.

Article 30 — which is not in issue in the present proceedings (cf. in the case of the first and third questions the last section above) — and Article 34 are directly applicable. Although the Court has not yet directly ruled on this point its case-law declaring that other provisions of the Treaty are directly applicable may be transposed to the said articles.

General conclusions

To sum up the Commission submits that the following answers be given to the national courts:

On the first and third questions:

The provisions of Regulations Nos 2141/70 and 2142/70 preclude any rules designed to limit quantitatively catches or fishing by the fishing fleets of Member States

On the second question:

The Community has exclusive power to conduct negotiations and conclude agreements in connexion with measures intended to conserve the resources of the fishing industry and designed to limit quantitatively the catches or fishing.

On the fourth question:

Articles 30, 31 and 34 of the Treaty are directly applicable — from the end of the transitional period, at the latest from the expiry of the period for giving notice laid down in the second paragraph of Article 31, and from the end of the first stage of the transitional period respectively — and they create, for the benefit of individuals, in the case of all quantitative restrictions and measures having equivalent effect, rights which national courts must protect.

During the oral proceedings which took place on 25 May 1976 the accused in the main proceedings, represented by Mr H. H. Kroneberg and Mr W. L. Nouwen of the Rotterdam bar, the Netherlands

Government, represented by Mr Bos and Mr Kugpers, the Council of the European Communities, represented by Mr P. Baumann and Mr R. C. Fischer, legal advisers, developed the arguments which they submitted during the written procedure.

The Advocate-General delivered his opinion at the hearing on 22 June 1976.

Law

1 By judgments of 24 December 1975 (Cases 3/76 and 4/76) and 2 January 1976 (Case 6/76), received at the Court Registry on 12 and 23 January 1976, the Arrondissementsrechtbanken (District Courts) of Zwolle and of Almaar respectively asked the Court, pursuant to Article 177 of the EEC Treaty, a series of questions concerning the interpretation of Articles 30, 31, 34 and 38 to 47 to that Treaty, of Article 102 of the Act Concerning the Conditions of Accession and the Adjustments to the Treaties — hereinafter referred to as 'the Act of Accession' — as well as of Regulations Nos 2141/70 and 2142/70 of the Council of 20 October 1970, laying down respectively a common structural policy for the fishing industry and on the common organization of the market in fishery products (OJ, English Special Edition 1970 (III), pp. 703 and 707).

2 These questions were raised within the framework of criminal prosecutions brought against certain Netherlands fishermen who are accused of having infringed, either in May or in August 1975, depending on the case, certain provisions enacted during that year by the authorities of their State, which provisions were aimed at ensuring the conservation of the stocks of sole and plaice in the North-East Atlantic.

3 These provisions were adopted in performance of commitments which had been entered into by the Netherlands within the framework of the North-East Atlantic Fisheries Convention, signed at London on 24 January 1959, to 'ensure the conservation of the fish stocks and the rational exploitation of the fisheries of the North-East Atlantic Ocean and adjacent waters, which are of common concern'. All the present Member States of the EEC except Italy and the Grand Duchy of Luxembourg, as well as seven non-member countries, are parties to this Convention.

4 Article 7 (1) (a)—(f) of the Convention provides that the North-East Atlantic Fisheries Commission, established by the Convention as a common body of the Contracting States, may make recommendations to the Contracting States on a series of measures coming within the purposes of the Convention.

5 By a decision adopted in May 1970 and which entered into force on 4 June 1974 in accordance with the procedure laid down in Article 7 (2), there were added to these provisions subparagraphs (g) and (h) authorizing the said Commission to recommend measures for regulating in any period, first, the amount of total catch and the amount of fishing effort and, secondly, the allocation of those amounts to Contracting States.

6 Under Article 8 of the Convention, the Contracting States are obliged to give effect to such recommendations when they have been adopted by not less than a two-thirds majority of the Delegations present and voting, subject however to the right of any Contracting State to release itself from this obligation by objecting to the recommendation within a set period.

7 Pursuant to Article 7 (1) (g) and (h) the said Commission issued a recommendation concerning fishing for sole and plaice in the maritime waters covered by the Convention. This recommendation became obligatory in November 1974 in accordance with the said Article 8. First, it fixed the total catch quotas for 1975 and the allocation thereof between the different Contracting States and, secondly, it prohibited fishing with vessels over a certain tonnage and a certain power within a twelve-mile 'coastal' area.

8 The fishermen, the accused in the main proceedings, are charged with having contravened the Netherlands rules, adopted in implementation of this recommendation, which prohibit for certain periods:

— either landing more than a certain maximum amount of sole using vessels bearing certain registration numbers;

— or fishing for sole or plaice in the abovementioned twelve-mile area, using vessels over a certain tonnage and a certain engine rating.

9 By their first three questions, the national courts ask the Court to rule, essentially:

— on the international level, whether the Community alone has authority to enter into commitments such as have just been described;

— on the internal Community level, whether national measures such as those adopted by the Netherlands, which measures will hereinafter be referred to as 'fixing of catch quotas', are compatible with Community law either as regards the allocation of authority between the Community and its Member States, or as regards the prohibition on jeopardizing the objectives or the functioning of the Community rules on the fishing industry, or finally as regards the prohibition on measures having an effect equivalent to that of a quantitative restriction in trade between Member states.

10 The fourth question asks whether Articles 30, 31 and 34 of the Treaty, laying down the latter prohibition, are directly applicable in the Member States.

11 These different questions should be approached in the order indicated above.

I — The external authority of the Community and of the Member States respectively

12 The second question asked by the national courts relates to 'the power to conclude agreements'.

13 It should however be made clear that the national measures in dispute were adopted with the aim of carrying out obligations arising from a binding recommendation of the Fisheries Commission, thus from an instrument enacted by an international body.

14 Hence, this question must be understood as relating to the authority of the Community and of the Member States, in the area of the fixing of catch quotas, to participate in the working out of decisions by such a body and to assume international commitments within such a framework.

15 (1) For the purposes of the answer to be given to the national courts, it should first be considered whether the Community has authority to enter into such international commitments.

16 In the absence of specific provisions of the Treaty authorizing the Community to enter into international commitments in the sphere of

conservation of the biological resources of the sea, one must turn to the general system of Community law in the sphere of the external relations of the Community.

17/18 Article 210 provides that 'the Community shall have legal personality'. This provision, placed at the head of Part Six of the Treaty, devoted to 'General and Final Provisions', means that in its external relations the Community enjoys the capacity to enter into international commitments over the whole field of objectives defined in Part One of the Treaty, which Part Six supplements.

19/20 To establish in a particular case whether the Community has authority to enter into international commitments, regard must be had to the whole scheme of Community law no less than to its substantive provisions. Such authority arises not only from an express conferment by the Treaty, but may equally flow implicitly from other provisions of the Treaty, from the Act of Accession and from measures adopted, within the framework of those provisions, by the Community institutions.

21/25 Under Article 3 (d), the adoption of a common policy in the sphere of agriculture is specially mentioned amongst the objectives of the Community. Under the combined provisions of Article 38 (3) and Annex II to the Treaty, fishery products are subject to the provisions of Articles 39 to 46 concerning agriculture. Article 39 specifies, among the objectives laid down for the common agricultural policy, those of ensuring the rational development of production and of assuring the availability of supplies. Under the combined provisions of the first three paragraphs of Article 40, the Community must establish, by the end of the transitional period at the latest, a common organization of agricultural markets, able to include all measures required to attain the objectives set out in Article 39. To that end, Article 43 (2) confers on the Council the power, and imposes on it the duty, to make regulations, issue directives or take decisions.

26 Pursuant, *inter alia,* to Article 43 of the Treaty, the Council adopted the Regulations Nos 2141/70 and 2142/70 referred to above.

27 As stated in Article 1 of Regulation No 2141/70, the common structural policy laid down by that regulation pursues, *inter alia,* the aim of

'encouraging rational use of the biological resources of the sea and of inland waters'.

28 Pursuant to the fourth recital of the Regulation, according to which 'the Community must be able to adopt measures to safeguard the stocks of fish present in the waters in question' — an interest which is also noted in the penultimate recital of Regulation No 2142/70 — the Council is authorized in cases 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', — that is to say, the waters coming under the sovereignty or within the jurisdiction of one or other Member State — to 'adopt the necessary conservation measures'.

29 Finally, Article 102 of the Act of Accession provides that from the sixth year after Accession at the latest, the Council 'shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea'.

30/33 It follows from these provisions taken as a whole that the Community has at its disposal, on the internal level, the power to take any measures for the conservation of the biological resources of the sea, measures which include the fixing of catch quotas and their allocation between the different Member States. It should be made clear that, although Article 5 of Regulation No 2141/70 is applicable only to a geographically limited fishing area, it none the less follows Article 102 of the Act of Accession, from Article 1 of the said regulation and moreover from the very nature of things that the rule-making authority of the Community *ratione materiae* also extends — in so far as the Member States have similar authority under public international law — to fishing on the high seas. The only way to ensure the conservation of the biological resources of the sea both effectively and equitably is through a system of rules binding on all the States concerned, including non-member countries. In these circumstances it follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea.

34 (2) Given that the authority of the Community in the matter is established, it should now be considered whether the Community institutions in fact assumed the functions and obligations arising from the Convention and from the decisions taken thereunder.

35/38 In this connexion, it should be observed, first, that nothing decisive was done within the framework of the Convention itself, concluded as it was at a time when the Community had not yet made any regulations relating to the sea-fishing industry. Any adjustments to the decision-making machinery instituted by the Convention are, except for action by the Community itself and by its Member States, a matter for negotiation with the other contracting parties. Secondly, the texts of the regulations brought into force within the Community limit themselves to providing the Community institutions with the power to take measures similar to those which the Member States concerned committed themselves to taking — and did take — within the framework of the Convention; and so far the institutions have not made use of that power. This state of affairs is at the origin of Article 102 of the Act of Accession, which takes up again the problem of protection of the fishing grounds and of conservation of the biological resources of the sea, from the point of view of its overall solution, with the participation of the new Member States which, by reason of their geographical situation, have a major interest in the fishing industry.

39 This being so, and the Community not yet having fully exercised its functions in the matter, the answer which should be given to the questions asked is that at the time when the matters before the national courts arose, the Member States had the power to assume commitments, within the framework of the North-East Atlantic Fisheries Convention, in respect of the conservation of the biological resources of the sea, and that consequently they had the right to ensure the application of those commitments within the area of their jurisdiction.

40 However, it should be stated first that this authority which the Member States have is only of a transitional nature and secondly that the Member States concerned are now bound by Community obligations in their negotiations within the framework of the Convention and of other comparable agreements.

41 As to the transitional nature of the abovementioned authority, it follows from the foregoing considerations that this authority will come to an end 'from the sixth year after Accession at the latest', since the Council must by then have adopted, in accordance with the obligation imposed on it by Article 102 of the Act of Accession, measures for the conservation of the resources of the sea.

42/43 As to the obligations now incumbent on the Member States concerned, it should be stressed first that under Article 5 of the Treaty, 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community', and 'shall facilitate the achievement of the Community's tasks'. Under Article 116 of the Treaty, 'from the end of the transitional period onwards, Member States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organizations of an economic character only by common action', the Commission being under a duty to submit proposals in this connexion to the Council and the Council being under a duty to act on these proposals.

44/45 It follows from all these factors that Member States participating in the Convention and in other similar agreements are now not only under a duty not to enter into any commitment within the framework of those conventions which could hinder the Community in carrying out the tasks entrusted to it by Article 102 of the Act of Accession, but also under a duty to proceed by common action within the Fisheries Commission. It further follows therefrom that as soon as the Community institutions have initiated the procedure for implementing the provisions of the said Article 102, and at the latest within the period laid down by that Article, those institutions and the Member States will be under a duty to use all the political and legal means at their disposal in order to ensure the participation of the Community in the Convention and in other similar agreements.

II — The internal power of Member States to fix catch quotas

46 On the issue whether measures such as those adopted by the Netherlands are incompatible with Community law, it should be considered first whether they jeopardize the objectives or the functioning of the system established by Regulations Nos 2141/70 and 2142/70 and secondly whether they constitute a measure having an effect equivalent to a quantitative restriction on intra-Community trade.

47/49 (1) As to the first of these questions, it should first be pointed out that the said regulations, as well as Article 102 of the Act of Accession, themselves provide for the adoption of comparable measures.

Next, under its Regulation No 811/76, adopted after the questions had been referred to the Court, the Council has expressly authorized the Member States 'to limit the catches of their fishing fleets'. In so doing it did not consider it necessary to modify the rules relating to the structural policy and to the organization of the market, established by Regulations Nos 2141/70 and 2142/70. This being so, measures for the limitation of catches of fish, and the possibility of taking such measures, form an integral part of the general system established by the said regulations.

50 Although such measures may affect the functioning of other parts of this system, and in particular of its price system, such an effect, having been accepted from the outset by the Community regulations themselves, cannot be equated with the disruptive effects, prohibited by Community law, of national measures unrelated to the aim of Community rules.

51 None the less the existence of the common organization of the market involves an obligation on the part of the Member States to ensure that catches should be limited in such a way as to keep the effects on the functioning of that organization to a minimum.

52 Thus the reply to the national courts should be that a Member State does not jeopardize the objectives or the proper functioning of the system established by Regulations Nos 2141/70 and 2142/70 if it adopts measures involving a limitation of fishing activities with a view to conserving the resources of the sea.

53/54 (2) Finally, on the issue whether measures such as those adopted by the Netherlands are prohibited as being measures having an effect equivalent to that of a quantitative restriction, the provisions of Regulation No 2142/70 do not expressly lay down such a prohibition in regard to intra-Community trade. However, it follows from the combined provisions of Articles 38 to 46 and 8 (7) of the Treaty that this prohibition arises out of the Treaty provisions automatically, from the expiry of the transitional period at the latest, as was stressed moreover in the twentieth recital of Regulation No 2142/70.

55 National regulations such as those forming the subject-matter of the present proceedings on the one hand and the prohibition laid down in Article 30 *et*

seq. of the Treaty on the other hand relate to different stages of the economic process, that is to say, to production and to marketing respectively.

56/59 The answer to the question whether a measure limiting agricultural production impedes trade between Member States depends on the global system established by the basic Community rules in the sector concerned and on the objectives of those rules. In this connexion, the nature and the circumstances of 'production' of the product in question, fish in the present case, should also be taken into consideration. Measures for the conservation of the resources of the sea through fixing catch quotas and limiting the fishing effort, 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.

60 Thus the answer to be given to the Arrondissementsrechtbanken of Zwolle and of Alkmaar is that national measures involving limitation of fishing activities with a view to conserving the resources of the sea, do not constitute measures having an effect equivalent to a quantitative restriction on intra-Community trade which are prohibited under Article 30 *et seq.* of the Treaty.

61 The fourth question no longer calls for an answer.

Costs

62/63 The costs incurred by the British, Danish, Italian and Netherlands Governments as well as by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the actions before the national courts, the decision as to costs is a matter for those courts.

On those grounds,

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbanken of Zwolle and of Alkmaar by judgments of 24 December 1975 and 2 January 1976 hereby rules:

1. **At the time when the matters before the national courts arose, the Member States had the power to assume commitments, within the framework of the North-East Atlantic Fisheries Convention, in respect of the conservation of the biological resources of the sea, and consequently had the right to ensure the application of those commitments within the area of their jurisdiction.**
2. **A Member State does not jeopardize the objectives or the proper functioning of the system established by Regulations Nos 2141/70 and 2142/70 if it adopts measures involving a limitation of fishing activities with a view to conserving the resources of the sea.**
3. **Such measures do not constitute measures having an effect equivalent to a quantitative restriction on intra-Community trade which are prohibited under Article 30 *et seq.* of the Treaty.**

Lecourt Kutscher O'Keeffe

Mertens de Wilmars Pescatore Sørensen Capotorti

Delivered in open court in Luxembourg on 14 July 1976.

A. Van Houtte
Registrar

R. Lecourt
President