5. The duty to consult the Commission and to seek its approval, flowing from Annex VI to the Hague Resolution, is general and applies to any measures of conservation emanating from the Member States and not from the Community authorities. Consequently, the measures adopted by a Member State in implementation of a Community regulation are not exempted from that duty or from the duty of notification laid down in Articles 2 and 3 of Regulation No 101/76.

6. In order to safeguard the rights and interests protected by Community law for other Member States and their nationals it is necessary to lay down and publish, in a form binding upon the Member State concerned, all the detailed rules of the system chosen by the authorities of that Member State for the implementation of a Community regulation laying down measures for the conservation and management of fisheries, so as to enable all other Member States and all persons concerned, in the same way as the Community authorities, to see whether the system put into operation fulfils both the particular obligations of the Member State in question under the relevant regulation and the general requirements of non-discrimination and equality as regards the conditions of access to the fishing grounds enshrined in Article 2 of Regulation No 101/76 and Article 7 of the EEC Treaty. This obligation to introduce implementing measures which are effective in law and with which those concerned may readily acquaint themselves is particularly necessary where sea fisheries are concerned, which must be planned and organized in advance; the requirement of legal clarity is indeed imperative in a sector in which any uncertainty may well lead to incidents and the application of particularly serious sanctions.

In Case 32/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Donald W. Allen and John Temple Lang, acting as Agents, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

supported by

KINGDOM OF DENMARK, represented by Per Lachmann, Head of the Secretariat of the Common Market Division at the Ministry for Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Embassy of the Kingdom of Denmark,

FRENCH REPUBLIC, represented, for the purposes of the written procedure, by Guy Ladreit de Lacharrière, Director, and, for the purposes of the oral procedure, by Philippe Moreau Defarges, Adviser at the Directorate for Legal Affairs at the Ministry for Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the French Embassy,

IRELAND, represented, for the purposes of the written procedure, by Louis J. Dockery, Chief State Solicitor, acting as Agent, and, for the purposes of the oral procedure, by D.N.C. Budd, Barrister at the Dublin Bar, with an address for service in Luxembourg at the Irish Embassy,

KINGDOM OF THE NETHERLANDS, represented by A. Bos, Assistant Legal Adviser at the Ministry for Foreign Affairs, acting as Agent, assisted by C. J. Heringa, Legal Adviser at the Ministry for Agriculture and Fisheries, with an address for service in Luxembourg at the Netherlands Embassy,

interveners,

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented, for the purposes of the written procedure, by R. D. Munrow, Assistant Treasury Solicitor, acting as Agent, assisted by T. H. Bingham, QC, Gray's Inn, and P. G. Langdon-Davies, Barrister of the Inner Temple, and, for the purposes of the oral procedure, by the Lord Advocate, Lord Mackay of Clashfern, QC, with an address for service in Luxembourg at the British Embassy,

defendant,

APPLICATION for a declaration that, by applying unilateral sea fisheries measures in certain fisheries off its coasts, the United Kingdom has failed to fulfil its obligations under the Treaty,

THE COURT

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

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, procedure, conclusions and submissions and arguments of the parties may be summarized as follows:

I — Facts

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

Articles 98 to 103 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, annexed to the Treaty of 22 January 1972, known as "the Accession Treaty", contain provisions relating to fisheries. In particular, Article 102 provides that the Council, acting on a proposal from the Commission, shall determine, from the sixth year after accession at the latest, conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

On 19 January 1976, the Council adopted Regulation (EEC) No 100/76 on the common organization of the market in fishery products (Official Journal L 20, p. 1) and Regulation (EEC) No 101/76 laying down a common structural policy for the fishing industry (Official Journal L 20, p. 19). The first of those regulations repeals Regulation (EEC) No 2142/70 and the second regulation repeals Regulation (EEC) No 2141/70.

Article 1 of Regulation (EEC) No 101/76 provides as follows:

"Common rules shall be laid down for fishing in maritime waters and specific measures shall be adopted for appropriate action and the coordination of structural policies of Member States

for the fishing industry to promote harmonious and balanced development of this industry within the general economy and to encourage rational use of the biological resources of the sea and of inland waters".

Under Article 2 (1):

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

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

Article 4 of Regulation No 101/76 provides that:

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

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

At its meeting on 30 October 1976 in The Hague the Council drew up and formally adopted on 3 November 1976 a resolution that the Member States would by concerted action extend as from 1 January 1977 their fisheries jurisdiction to 200 miles off their North Sea and North Atlantic coasts.

On the same occasion, the Council agreed (Annex VI to the Resolution) to a Commission declaration (hereinafter referred to as "the Hague Resolution") worded as follows:

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

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

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

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

On 18 February 1977, the Council adopted Regulation (EEC) No 350/77 laying down certain interim measures for the conservation and management of fishery resources (Official Journal L 48, p. 28).

At its meeting on 30 and 31 January 1978, the Council reached agreement on the following declaration:

"The Council failed to reach agreement at this meeting on the definition of a new common fisheries policy but agreed to resume examination of these matters at a later date. Pending the introduction of a common system for the conservation

and management of fishery resources, all the delegations undertook to apply national measures only where they were strictly necessary, to seek the approval of the Commission for them and to ensure that they were non-discriminatory and in conformity with the Treaty".

In the course of 1978, the Commission was informed of various measures adopted by the Government of the United Kingdom in the sea fisheries sector which did not seem to it to be in conformity with the Community law applicable. These measures related more particularly to a restriction on catches of herring in the Mourne Fishery, the introduction of a licensing system, the temporary closure and the introduction of catch quotas in the Isle of Man and Northern Irish Sea Fishery and the extension of the Norwegian Pout "Box".

A — The Mourne Fishery

The Mourne Herring Fishery is made up of the waters within twelve miles from the baselines off the East coast of Ireland and Northern Ireland between 53° 00′ and 55° 00′ latitude North.

Article 3 of Council Regulation (EEC) No 1672/77 of 25 July 1977 laying down interim measures for the conservation and management of certain herring stocks (Official Journal L 186, p. 27) had prohibited until 31 December 1977 direct fishing for herring in most of that zone (Irish Sea, Division VII (a)) defined by the International Council for the Exploration of the Sea, a zone of twelve miles between 53° 20′ latitude North and 54° 40′ latitude North. [1]

In an amended proposal for a regulation submitted by the Commission to the Council on 20 April 1978 and defining, for 1978, measures for conservation and management of fishery resources by the establishment of quotas (Official Journal C 144, p. 1), the Commission did not provide for any total allowable catch for herring in the Mourne Fishery.

The Commission submitted to the Council on 16 June 1978 a proposal for a regulation laying down, for 1978, measures for the conservation and management of fishery resources including the establishment of catch quotas for herring stocks (Official Journal C 160, p. 3). Article 3 of that proposal provided for the extension of the ban on direct fishing for herring in the zone referred to by Regulation No 1672/77.

By letter of 18 September 1978, the Government of the United Kingdom sought the approval of the Commission for conservation measures in the Mourne Fishery in accordance with the Hague Resolution.

By the Herring (Restriction of Fishing) Regulations (Northern Ireland) 1978, Statutory Rules of Northern Ireland No 277, which were adopted on 18 September and came into force on 20 September 1978, the Government of the United Kingdom prohibited all herring fishing within a zone of twelve miles from the Northern Irish baselines within British fishery limits adjacent to Northern Ireland between 55° 00′ latitude North and a line running due south-east from the Haulbowline Rocks (approximately 54° 00′ latitude North).

However, between 20 September 1978 and 27 October 1978 fishing boats of under 35 feet registered length were authorized to fish up to a total catch of 400 tonnes of herring in an area from half-a-mile from the baselines off the

1 — This prohibition was extended until 31 January 1978 by Council Regulation No 2899/77 of 21 December 1977 (Official Journal L 338, p. 5).

Northern Ireland coast bounded on the east by a line from Roaring Rock (approximately 54° 10′ latitude North) and on the south-east by a line from Haulbowline Rocks (approximately 54° 00′ latitude North).

On 26 September 1978, the Government of the United Kingdom issued the Herring (Restriction of Fishing) (Amendment) Regulations (Northern Ireland) 1978, Statutory Rules of Northern Ireland No 286, which came into force on the same date and which revoked the exception to the prohibition on herring fishing laid down in favour of boats under 35 feet in length. That new enactment was communicated to the Commission on 4 October 1978.

B — The Isle of Man and Northern Irish Sea Fishery

Article 1 of Council Regulation (EEC) No 1779/77 of 2 August 1977 laying down interim conservation and management measures for herring fishing in the Irish Sea (Official Journal L 196, p. 4) prohibited direct fishing for herring for Community fishermen from 1 October to 19 November 1977 in the part of Division VII (a) (as defined by the International Council for the Exploration of the Sea) surrounding the Isle of Man and in that between the Isle of Man and the west coast of the United Kingdom. This area is bounded by a line running from Carmel Head (Anglesey) to the Chicken Rock Lighthouse (Calf of Man), thence running clockwise round the Isle of Man (at a distance of twelve miles from the baselines) as far as Point of Ayre (Isle of Man), then eastward to St Bees Head (United Kingdom).

As regards the other periods, the regulation provided for the allocation of catch quotas for France, Ireland, the Netherlands and the United Kingdom.

The last recital of the preamble to the regulation recalled that Article 227 (5) (c) of the EEC Treaty and Protocol 3 of the Act of Accession lay down the conditions under which the Treaty applies to the Isle of Man in particular.

The Government of the United Kingdom issued on 8 August and brought into force on 12 August 1977 the Herring (Irish Sea) Licensing Order 1977, Statutory Instrument No 1388, and the Herring (Isle of Man) Licensing Order 1977, Statutory Instrument No 1389. The first of those orders prohibits fishing for herring by British fishing boats in the Irish Sea, and the second fishing for herring by British fishing boats and Irish fishing boats in various parts of the fishery around the Isle of Man; however, fishing licences could be granted by the United Kingdom or Isle of Man Ministers for Agriculture, Fisheries and Food.

After asking the Commission on 13 February 1978 for approval of a certain number of conservation measures concerning in particular the Isle of Man and the Irish Sea, the Government of the United Kingdom requested the Commission by telex on 17 August 1978 to give its agreement to measures intended to be applied on 21 August. Those measures provided for the allocation to the United Kingdom and Isle of Man fishing boats of a catch quota of 8 100 tonnes of herring, the issue of 120 licences to British boats to fish in the United Kingdom and Isle of Man waters and the closure of the fishery from 24 September to 31 December 1978.

That closure was the subject-matter of the Irish Sea Herring (Prohibition of Fishing) Order 1978, Statutory Instrument No 1374, of 20 September 1978.

The measures adopted by the Government of the United Kingdom were not approved by the Commission.

C — The Norway Pout Box

The Norway Pout Box is formed by that part of the North Sea bounded by a line joining the following points:

— East coast of the United Kingdom at 56° 00′ latitude North,

— 56° 00′ latitude North to 00° 00′ longitude,

— 60° 00′ latitude North to 00° 00′ longitude,

— 60° 00′ latitude North to 04° 00′ longitude West,

— Coast of the United Kingdom at 04° 00′ longitude West.

Article 5 of Council Regulation (EEC) No 350/77 of 18 February 1977 had prohibited fishing for Norwegian pout in that area from 21 February 1977 to 31 March 1977. Council Regulation (EEC) No 1673/77 of 25 July 1977 amending Regulation (EEC) No 350/77 as regards the prohibition of fishing for Norwegian pout (Official Journal L 186, p. 30) laid down a prohibition on fishing for Norwegian pout in the same area from 1 September to 15 October 1977; that period of prohibition was extended as regards part of the area from 16 to 31 October 1977 by Council Regulation (EEC) No 2243/77 of 11 October 1977 (Official Journal L 260, p. 1).

On 31 October 1977, the Government of the United Kingdom brought into force the Norway Pout (Prohibition of Fishing) (No 3) Order 1977, Statutory Instrument No 1756, which prohibited all fishing for Norway pout in the area referred to by Regulation (EEC) No 2243/77 from 1 November 1977.

As regards 1978, the Commission submitted to the Council on 14 October 1977 a proposal for a regulation laying down technical measures for the conservation of fishery resources (Official Journal 1977 C 278, p. 8); that proposal fixed at 20% the maximum permitted by-catch for industrial fishery but contained no provisions relating to a Norway pout box. On 1 December 1977 the Commission introduced an amendment to that proposal providing for a Norway pout box which kept the limit of the area at 0° longitude East but provided for a seasonal extension to 1° longitude East for the periods from 1 January to 31 March 1978 and 1 October to 31 December 1978.

On 16 January 1978 the Commission submitted a revised proposal for a regulation laying down technical measures for the conservation of fishery resources. That proposal provided for a Norway pout box at 0° longitude East and a 10% limit on the by-catch authorized for industrial fishery.

After requesting the approval of the Commission by letters of 3 and 20 July 1978, the Government of the United Kingdom issued on 20 September and brought into force on 1 October 1978 the Norway Pout (Prohibition of Fishing) (No 3) (Variation) Order 1978, Statutory Instrument No 1379. That order contains with regard to the period from 1 October of each year to 31 March of the following year an extension of the area within which all fishing for Norway pout is prohibited from the limit of 0° to that of 2° longitude East.

The Commission did not give its approval to that measure adopted by the Government of the United Kingdom.

D — The procedure for a declaration that a Member State has failed to fulfil its obligations under the Treaty

The Commission, by letter of 27 October 1978, initiated against the United Kingdom the procedure provided for in Article 169 of the EEC Treaty. It found therein that the United Kingdom had failed to fulfil its obligations under Community law by applying unilateral measures in the sea fisheries sector in the Mourne Fishery, the Isle of Man and Northern Irish Sea Fishery and the Norway Pout "Box". Consequently, the Government of the United Kingdom was requested to submit its observations to the Commission before 20 November 1978.

The Government of the United Kingdom submitted to the Commission by letter of 8 December 1978 its observations on the measure relating to Norway pout and, by letter of 2 January 1979, its observations concerning the Mourne Fishery. Since these observations did not satisfy it, the Commission delivered on 17 January 1979 and sent to the Government of the United Kingdom on 22 January the reasoned opinion provided for in Article 169 of the EEC Treaty.

II — Written procedure

By application lodged on 27 February 1979, the Commission pursuant to the second paragraph of Article 169 of the EEC Treaty, brought before the Court of Justice the United Kingdom's alleged failure to fulfil its obligations in the sea fisheries sector.

By four orders of 12 April (as regards the first two), 13 June and 23 July 1979, the Court permitted the French Republic, the Kingdom of Denmark, the Kingdom of the Netherlands and Ireland to intervene in support of the Commission's submissions.

The written procedure followed the normal course.

The Court, after hearing the report of the Judge-Rapporteur and the view of the Advocate General, decided to open the oral procedure without any preparatory inquiry. However, it requested the Commission and the Government of the United Kingdom to supply it with some documents and information; that request was complied with within the prescribed periods.

The Commission and the Government of the United Kingdom, at the request of the Court, supplied it with some additional information before the hearing.

III — Conclusions of the parties

The *Commission* claims that the Court should:

— Declare that the United Kingdom has failed to fulfil its obligations under the EEC Treaty in the respects set out in the reasoned opinion;

— Order the United Kingdom to pay the costs.

The *Government of the Kingdom of Denmark*, intervener, claims that the Court should rule that the United Kingdom has failed to fulfil its obligations under Community law.

The *Government of the French Republic*, intervener, claims that the Court should rule that the British Government has failed to fulfil its obligations under Community law by adopting the measures contested by the Commission.

The *Government of Ireland*, intervener, claims that the Court should declare that, in adopting and applying the measures in respect of the Isle of Man and North Irish Sea Herring Fishery for 1978, the United Kingdom has failed to fulfil its obligations under the EEC Treaty.

The *Government of the Kingdom of the Netherlands*, intervener, claims that the Court should:

— Declare that, by introducing the disputed unilateral measures, the United Kingdom has failed to fulfil an obligation imposed on it by the EEC Treaty;

— Order the Government of the United Kingdom to pay the costs.

The *Government of the United Kingdom* requests the Court to rule that it has not been in breach of its obligations under the EEC Treaty.

IV — Submissions and arguments of the parties during the written procedure

A — General considerations

The *Commission* takes the view that its application submits to the Court fundamental questions of principle and that the future of the Community fishery policy depends on the answers given to them.

(a) Under the EEC Treaty, Member States are entitled, during the period indicated in Article 102 of the Act of Accession, to adopt nationally conservation measures in the field of fisheries, within their own jurisdictions; such measures must, however, be consistent with several rules of Community law, both substantive and procedural.

(b) In considering the substantive rules, it is necessary to distinguish between measures taken with a view to conserving the resources of the sea and national fisheries measures which are not conservation measures.

It follows from the case-law of the Court that conservation measures may interfere with the functioning of the common organization of the market provided that these effects are kept to a minimum. Only genuine conservation measures which are strictly necessary, are not discriminatory, and are temporary or interim are lawful.

Measures which are not conservation measures must be judged more strictly: they may be measures having an effect equivalent to a quantitative restriction which are incompatible with Community law, and national fisheries measures are subject to stricter requirements than those affecting other aspects of the common agricultural policy. In any case they must comply with the criteria developed by the Court with regard to other national measures in the agricultural sector; in particular, they must be compatible with the aims and objectives of the common organization of the market and comply with the general principle of proportionality.

Moreover, Article 5 of the EEC Treaty lays down a general duty for Member States to cooperate, implying a prohibition not only on national measures interfering with the operation of a common policy which has already been established but on all national measures which are contrary to or in conflict with general principles of a common policy which is being worked out (the conservation of fishery resources within the context of the common fisheries policy).

(c) As regards procedural rules, Article 3 of Regulation No 101/76, the Hague Resolution of 3 November 1976 and the Council declaration of 30 and 31 January 1978 impose obligations on the Member States. In conjunction with Article 5 of the EEC Treaty, those provisions imply much more than a mere obligation to notify.

The *Government of the Kingdom of Denmark* takes the view that the provisions of Community law to which the Member States were subject in exercising the residual competence to take conservation measures in regard to fisheries which they had until 31 December 1978 are essentially the title of the Treaty concerning agriculture, in particular Articles 40 and 43, and the rules of law applicable to fisheries, Article 102 of the Act of Accession, the general provisions of Articles 5 and 7 of the EEC Treaty and general principles of Community law. Article 5 of the Treaty is of particular importance and extent, specifically in regard to fishery in the situation of the case now prevailing where the EEC fisheries policy has not yet been adopted.

The *Government of the French Republic* recalls that, according to the case-law of the Court, Member States have only a residual and transitional power to regulate fisheries which can be exercised solely in those sectors which have not been regulated by the Community.

Even though the Community may not have made use of its power, States which take certain measures must respect substantive and formal conditions: they are barred from making discriminatory or excessive decisions and they must follow the procedures established within the framework of the Community by the Hague Resolution of 3 November 1976.

The adoption of unilateral measures by the Member States compromises the power of the EEC to conclude international fishery agreements and hampers the elaboration of a joint policy in those matters.

The measures in question adopted by the United Kingdom are contrary to Community law: they were taken in sectors in which the EEC had already exercised its power and was about to do so again; they constituted a breach of the procedure laid down in the Hague Resolution; they are excessive and discriminatory; they impair the strengh of certain agreements concluded between the Community and third countries.

The *Government of the Kingdom of the Netherlands* considers that primary importance in this case must be accorded to Article 5 of the EEC Treaty. This provision imposes on Member States a

general duty, the actual tenor of which depends in each individual case on the rules derived from the general scheme of the Treaty. Under the provisions of the Treaty, notably Article 38, fisheries is an area for a projected Community policy; the Government of the United Kingdom, by preventing the Council from taking a decision on conservation and management of fishery stocks, in spite of numerous attempts, and by adopting subsequently unilateral national measures, failed to fulfil its obligations under Article 5.

The *Government of the United Kingdom* insists that the conservation of fish stocks is a matter of vital importance; the overriding consideration is that, one way or another, the necessary measures to protect those stocks must be taken.

(a) A Member State may be prompted to adopt conservation measures urgently: this is the case where, in the absence of Community measures, scientific advice makes it clear that it is necessary for the Member State concerned to impose an immediate total ban on fishing. Contrary to restrictions on the free movement of goods, conservation measures in the sea fisheries sector are not in themselves prejudicial to the objectives of the Treaty; they are consistent with them if they are implemented in such a way as to keep the effect on the functioning of the Common Market to a minimum. They are only unlawful if they infringe positive requirements of Community law.

(b) The Member States have an inherent power of regulating fishing within their own fishing jurisdiction; that power was, in the case of the Member States of the EEC, at the period relevant to the present case, limited by Articles 2, 3 and 4 of Council Regulation (EEC) No 101/76, the Hague Resolution and the Council declaration of 30/31 January 1978.

It follows from Regulation No 101/76 that it imposes on Member States duties in respect of the exercise of their inherent power to control fishing and that when the Council exercises that power by adopting conservation measures, the powers of Member States are *pro tanto* restricted. The Hague Resolution imposes a further restriction on the exercise by the Member States of their power to adopt national conservation measures. The declaration of the Council of January 1978 adds only one new requirement: national measures should only be taken where they are "strictly necessary". As regards the requirements thus laid down by Community law, it is necessary to bear in mind that Member States should, for the sake of themselves and the Community as a whole, take adequate national measures to conserve the fish stocks in their waters in so far as they are not protected by Community measures.

The requirements thus imposed on the Member States did not, contrary to the view put forward by the Commission, exist by virtue of Article 5 of the EEC Treaty even before they were adopted. Article 5, moreover, of itself adds nothing to the requirements of the texts applicable in that field; those are intended to regulate the duties of Member States and it is by them that the

actions of Member States should be judged.

(c) The argument that the Member States no longer have any power to take conservation measures when the Community has adopted rules for a particular area, even if the Community regulations have expired, is unfounded. The true rule is that national legislation must not conflict with the Community rules or compromise its objectives; where there are no Community rules, the Member State concerned has the power to legislate, subject to the Community rules governing the exercise of that power.

B — The Mourne Fishery

The Commission recalls that it follows from scientific opinion in particular within the North-East Atlantic Fisheries Commission and the International Council for the Exploration of the Sea that since at least the spring of 1977 it is clear that the Mourne herring stock is in danger of extinction and that the only sensible course of action would be to impose a complete ban on fishing for herring in that area.

The measures adopted by the British Government are contestable from three points of view: they do not constitute conservation measures within the powers of the Member State under Community law; they were not adopted in compliance with the procedures laid down by Community law; they discriminate against fishermen of other Member States.

(a) A complete ban on herring fishing on the Mourne grounds would clearly have been a conservation measure and was moreover one which the Commission proposed.

Member States have power under Community law to adopt measures for conservation of fish stocks based on scientific assessment of biological needs; they cannot however adopt measures which are clearly inconsistent with conservation needs, even if they are based on social or economic considerations, however deserving. In particular, Member States have no power to exempt their own fishermen from the effects of necessary conservation measures.

The 400-tonne catch authorized after 19 September 1978 represents 6% of the estimated entire stock in the area in question at the beginning of the year; its exemption from the fishing ban was totally incompatible with apparent conservation needs. This measure is therefore contrary to the obligations of the United Kingdom under the EEC Treaty.

The subsequent revocation of that exception was due only to the fact that the 400-tonne quota had been filled.

A measure which exempts certain fishermen from a ban on fishing is not a transitional provision.

(b) Less than 36 hours' notice of this measure was given to the Commission before it came into force; that period was insufficient and contrary to Article 5 of the Treaty, the Hague Resolution and the declaration of January 1978.

Moreover, the letter of 18 September 1978 from the Government of the United Kingdom by which the approval of the Commission was sought gave no reason

of any kind for the 400-tonne exemption; the failure of the United Kingdom to suspend that exemption immediately as the Commission suggested was also an infringement of the United Kingdom's obligations under Article 5 of the Treaty.

(c) Since the Mourne Fishery occupies both United Kingdom and Irish waters, the failure of the United Kingdom to close the fishery in United Kingdom waters damaged the interests of fishermen who fished the stock in Irish waters, where the fishery had been closed by an Irish Government measure since 6 February 1978.

Irish fishermen also traditionally fish the Mourne Fishery in both United Kingdom and Irish waters. The effect of the United Kingdom measure has been discriminatory: the 400-tonne exemption was not stated to be open to Irish fishermen also; in any case it would have been impractical for small boats to travel far from their Irish home ports to fish in accordance with that exemption.

The *Government of the French Republic* considers that the measure adopted by the United Kingdom is illegal under Community law from a threefold point of view.

(a) The British Government no longer had power to take such a measure since Community regulations had already been made (Regulations Nos 350/77, 1417/77, 1672/77 and 1779/77) and the Commission had already submitted proposals to the Council for 1978. Community powers had already been exercised in this matter and were going to be exercised again when the British Government intervened unilaterally.

(b) The procedure set out in the Hague Resolution was not followed in good faith since the Commission was simply notified of the measure but not asked to give its approval thereof on the day before its coming into force.

(c) The measure in question is unlawful considering the line of decisions made by the Court of Justice because it does not constitute a true conservation measure and is moreover discriminatory.

The International Council for the Exploration of the Sea recommended a total ban on herring fishery within a twelve-mile limit between 53° and 55° 00′ latitude North; the British measure, however, permitted a catch of 400 tonnes and the prohibition covered a smaller area between 54° and 55° latitude North.

The British measure is also discriminatory. Whereas the prohibition affects a twelve-mile zone to which British and Irish vessels are already the sole ones which have access, the 400-tonne catch quota expressly applies only to ships under 35 feet registered in County Down; thus the exception to the ban benefits British fishermen alone.

The concern of a social nature which would seem to have motivated the British Government is assuredly praiseworthy but could have been evaluated in the context of the Community which would have made it possible to ensure the non-discriminatory character of such concern.

The fact that the measure took effect harshly in the middle of the year is also discriminatory: although the fishing quotas have been set on an annual basis, fishing seasons vary considerably from one State to another; a prohibition ordered in the middle of a year produces different effects when the fishermen of one Member State may have already partly or totally filled their quotas while those of another State have not even begun their season.

The *Government of the United Kingdom* observes that the Herring (Restriction of Fishing) Regulations (Northern Ireland) 1978, amended by the Herring (Restriction of Fishing) (Amendment) Regulations (Northern Ireland) 1978, totally prohibit from 26 September 1978 fishing for herring in the part of the Mourne Fishery coming within the jurisdiction of the United Kingdom. This measure is compatible with Community law.

(a) The mere fact that a conservation measure — which this undoubtedly is — contains a transitional provision to mitigate in some degree the special hardship which it will inevitably cause to coastal fishermen does not prevent that measure from being an appropriate measure to ensure the protection of resources situated in the fishing zones off the coasts of Member States, within the Hague Resolution.

The Mourne Fishery has traditionally been a relatively small coastal fishery carried on by small vessels and mainly taking place during the spawning season. In view of the political and social situation in Northern Ireland and the fact that fishing for human consumption and industrial fishery continued in 1978 in the waters of the Republic of Ireland, it was difficult to impose a total ban on the small local fishermen. The best solution was a very limited exception for those fishermen; the Government of the United Kingdom judged that 400 tonnes of herring would be sufficient to be of genuine economic help to those fishermen who had no alternative source of income, whilst its effects would be very small in relation to what was likely to be caught in total and would be particularly small in relation to the effect of the catch of immature fish in the industrial fishery. The exemption was removed as from 26 September 1978.

(b) The ban on fishing and the conditions under which a limited exception was granted applied equally to all fishermen. Nothing in the British statutory instruments implied that Irish fishermen would on this occasion be treated any differently from usual.

In any event, the exception was *de minimis*, especially having regard to its temporary and transitional nature.

(c) The period of notice of 36 hours was in fact very short. It is explained by the difficulties faced by the United Kingdom in reaching a conclusion on the necessary measures in the Mourne Fishery. The presence of several large boats in the fishery created the danger that there would be a very large catch; it was essential to stop fishing by those trawlers immediately.

The fact that immediate action was taken and short notice given to the Commission does not constitute an infringement of the Hague Resolution since the circumstances made urgent action unavoidable.

C — The Isle of Man and Northern Irish Sea Fishery

The *Commission* considers that the measures adopted unilaterally by the Government of the United Kingdom are contrary to Community law.

(a) Over the period when the 1978 system was planned, the United Kingdom failed to give the Commission clear and worthwhile information as to what was proposed; this was a violation of its obligations under Article 5 of the Treaty, the Hague Resolution, the Council declaration of January 1978 and Article 3 of Regulation No 101/76.

The approval of the Commission was never sought for the 1977 arrangements.

(b) The licensing system practised by the United Kingdom had several effects contrary to Community law.

Irish fishing boats were subject in 1977 to a licensing system in waters to which Community fisheries policies unquestionably applied, whereas French and Dutch boats were not. This was therefore discriminatory.

The Government of the United Kingdom gave and carried on giving the impression that Irish boats obtaining licences to fish in Isle of Man waters would be subject to quotas applicable in United Kingdom waters (as well as Isle of Man waters) in 1978. It was quite improper not to correct immediately any impression that Irish boats would be subject to restrictions which, if they had been imposed, would have been contrary to Community law.

If Irish fishermen had applied for licences they would not have been allowed to land their catches in Irish ports since the Irish Government was not participating in the 1978 licensing arrangements.

Allowing Irish fishermen to land fish on the Isle of Man only if they had both fishing licences and landing licences is contrary to the Community rules on free movement of goods, which undoubtedly apply to the Isle of Man.

The licensing system had the result of excluding Irish fishermen from Isle of Man waters and depriving them of their historic right there or of compelling them, in order to get a licence to exercise their historic rights, to accept the imposition of a quota which their government did not accept and to which French and Dutch fishermen were not subjected. Since Irish boats were entitled to both historic rights and equal treatment it is contrary to Community law to force them to choose between them.

(c) The closure of the Isle of Man and Northern Irish Sea Fishery for a period of the year during which fishermen from other Member States, in particular

France, have traditionally caught most of their catch is unnecessary on biological grounds; it is discriminatory in that it allowed United Kingdom boats to fish their quota and prevented French boats from fishing theirs.

(d) The quotas suggested by the United Kingdom for 1978 were not based on the Commission's proposal for 1978, nor were they agreed by the other Member States concerned. Even if the Government of the United Kingdom was entitled to base itself on the recommendation of the International Council for the Exploration of the Sea it did not have the right to impose quotas on other Member States according to its own ideas.

(e) Annex VII to the Hague Resolution, on the Irish fishing industry, is binding on Member States when they adopt national measures in so far as they may have power to do so; it is binding by virtue of Article 5 of the Treaty. Since the Irish fleet is composed of relatively small boats, quotas must be so fixed that the objectives laid down in Annex VII to the Hague Resolution may be achieved in the fisheries which are accessible to them. The United Kingdom has a special obligation under Article 5 of the Treaty and the Hague Resolution to consult the Commission before deciding a quota for Irish boats in 1978 and an obligation to allow Irish boats a greater quota than in 1977 and earlier years; the United Kingdom consulted nobody and imposed a quota lower than Irish catches in 1974 to 1976 and lower than the Irish quota in 1977.

(f) The present rules of Community law on fisheries apply to the Isle of Man and its waters under Protocol No 3 to the Act of Accession.

The purpose of Regulation (EEC) No 706/73 of the Council of 12 March 1973 concernig the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products (Official Journal L 68, p. 1) was merely to clarify some technical administrative matters and not to specify exhaustively which provisions of Community law are applicable to the Isle of Man.

The United Kingdom cannot evade its obligations under the Treaties by allowing the Isle of Man to adopt measures and then claiming that it did not itself adopt the measures and cannot be held responsible for them.

The argument that Community fishery policy does not apply in Isle of Man waters is in any case irrelevant to this point. Licensing in Isle of Man waters cannot be lawfully used to impose discriminatory treatment or to end the exercise of historic rights which are protected by Community law, in particular Article 100 of the Act of Accession.

The *Government of the French Republic* points out three reasons why the measure in question is unlawful under Community law.

(a) The decision of the British Government was taken in a matter which the Council had already regulated and for which further proposals were to be introduced by the Commission.

(b) The procedure laid down in the Hague Resolution was not respected: the Commission was informed by telex on 17 August 1978 that the measure in question was being put into effect on 21 August, which was the day after the weekend of 19 and 20 August.

(c) The British measure is discriminatory and does not constitute a real conservation measure.

The Government of the United Kingdom allots to itself 90% of the total allowable catch whereas in 1976 the take of its nationals represented only 64% of the entire Community catch; moreover, the period of closure of the fishing season was set in such a way as to prevent French fishermen from fishing in that area.

The measure in question goes beyond conservation needs: it advances the prohibited season laid down by the Community rules and establishes a maximum catch of 9 000 tonnes, whereas the Commission's proposals, incorporated in the internal regulations of eight of the Member States, set the total at 12 500 tonnes.

The *Government of Ireland* considers that the measures adopted by the Government ot the United Kingdom with regard to the Isle of Man and North Irish Sea Fishery in 1978 are contrary to Community law.

(a) There are substantial doubts as to whether the United Kingdom had any competence to take measures for the conservation of the North Irish Sea Herring Fishery in 1978, in view of the fact that the competence of the Council had already been engaged the previous year in the form of Regulation No 1779/77, and in view of the Commission's proposals for 1978.

(b) The United Kingdom failed to observe its substantive obligations under Article 5 of the EEC Treaty and its procedural obligations under the Hague Resolution and the Council declaration of January 1978.

(c) These considerations apply irrespective of whether the waters within 12 miles of the Isle of Man are subject to the common fisheries policy or not, since the quota and licensing measures taken by the United Kingdom apply to sea areas outside those waters. The United Kingdom made it clear that Irish boats would be excluded from fishing in waters adjacent to the Isle of Man in which they had traditional rights unless they accepted a restrictive quota for fishing for herring in a much more extensive sea area which included those waters.

(d) Special provision would have been made for Irish fishermen pursuant to Annex VII to the Hague Resolution; this should have meant an increase in the three years from 1977 in the Irish fishing quotas. That annex is an established part of the common fisheries policy of which Member States are obliged, like the Community institutions, to take due account. The conduct of the British Government amounts to an implicit rejection of the whole policy of Annex VII and is thus a specific breach of Community law.

(e) The restrictions on the landing by fishing boats of Member States of herring in the Isle of Man are incompatible with the provisions of Protocol No 3 to the Act of Accession concerning free movement of goods; furthermore, they are discriminatory and in themselves contrary to Community law.

(f) Because of the prices paid for herring on the Isle of Man market, access to that market is of particular economic importance to Irish fishermen.

(g) The status in Community law of the Isle of Man is the subject-matter of Article 227 (5) (c) of the EEC Treaty added by Article 26 (3) of the Act of Accession in the version resulting from Article 15 (2) of the Adaptation Decision and from Protocol No 3. The question arising in this context is what is meant by the Isle of Man within the meaning of the Treaty; in particular, in so far as the Isle of Man has territorial waters, these only extend out to three miles from the baselines of the island. The waters situated between 3 and 12 miles from Isle of Man baselines are within the sovereignty or jurisdiction of the United Kingdom. This position seems to be confirmed by Section 1 of the Fishery Limits Act, 1976, and the Herring (Isle of Man) Licensing Order, 1977. In these circumstances, the common fisheries policy, in particular Article 2 of Council Regulation No 101/76, applies to those waters, and the measures taken in respect of the waters outside Isle of Man territorial waters are discriminatory and contrary to Community law.

The *Government of the Kingdom of the Netherlands* also considers that the measures concerning the Isle of Man are contrary to the applicable Community law.

(a) Their effect is discriminatory: closing the season from 24 September primarily affects the fishermen traditionally fishing after that date and not British and Isle of Man fishermen who traditionally fish before that date.

(b) They are not strictly necessary: the recommendation of the Consultative Committee of the International Council for the Exploration of the Sea that the total allowable catch be reduced to 9 000 tonnes had not been approved and the necessity for such a measure had been called in question; neither this recommendation nor any scientific advice had called for the season to be closed earlier and longer than in 1977.

(c) The British measures encroached on an area in which the Community had acted in 1977 and in which the Commission had submitted proposals to the Council in 1978 on the continuation of the Community policy.

(d) The Commission's approval prior to the adoption of the measures in question had not been sought by the United Kingdom and there had not been any real consultation with the Commission during the procedures.

(e) The breakdown in the Council of negotiations for Community measures shortly before the main fishing season was due to begin cannot in these particular circumstances enable a plea of urgency to be made to justify action

taken in contravention of Article 5 of the Treaty.

The *Government of the United Kingdom* contests the complaints which have been made against it.

(a) The Herring (Irish Sea) Licensing Order, 1977 applied only to British vessels and was enacted solely to enable the United Kingdom Government to comply with its duties under Article 4 of Regulation No 1779/77; it involved no approval on the part of the Commission.

The Herring (Isle of Man) Licensing Order, 1977 also required Irish fishing boats to have licences to fish in those Isle of Man coastal waters in which the Irish Republic enjoys fishing rights by virtue of the London Convention of 1964; that requirement applied exclusively, however, to waters within the Isle of Man 12-mile limit which is outside Community fisheries jurisdiction.

(b) The intention and effect of Article 227 (5) of the EEC Treaty and of Protocol 3 to the Act of Accession is that the Community rules on fisheries do not apply to Isle of Man waters.

Under Article 227 (5) (c), the EEC Treaty applies to the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for that island set out in the Treaty of Accession.

Protocol No 3 to the Act of Accession deals with the limited application of the EEC Treaty to the Isle of Man.

It follows from all these provisions that the treatment granted to the Isle of Man looks like a general regime of exclusion except in respect of the Community rules concerning the exchange of products and the application of the agricultural policy, in so far as it affects the movement of products. Rules regarding the restriction of fishing in order to conserve fish stocks are not part of the rules of Community law applicable to the Isle of Man.

At the time of the signature of the Act of Accession, the Isle of Man had its own fishery limits extending to 12 miles from baselines. This situation has not been altered; in spite of the extension of the British fishery limits to 200 miles, the powers of the Isle of Man authorities to control fishing within the 12-mile fishery limits of that island remain unimpaired.

The constitutional position of the Isle of Man is unusual; it is subject to the Crown but not part of the United Kingdom. The United Kingdom Parliament has legislative powers over the island, but by long-established constitutional convention does not exercise those powers in domestic matters without the consent of the island authorities.

(c) The Community conservation measure for the Isle of Man and Northern Irish Sea Fishery laid down by Regulation No 1779/77, extended in time by Regulation No 2898/77, expired on 31 January 1978. Since then until the closure of the area from 24 September 1978 to the end of the year, the United Kingdom did nothing to interfere with fishing by other Member States in that part of the Irish Sea which lies within the United Kingdom fishery limits; the

United Kingdom did not adopt any measures for which the approval of the Commission was required and there was no further information for the United Kingdom to give to the Commission.

The Commission's complaints are based solely on the "hint" alleged to have been given by British officials that Irish vessels would be arrested if they fished in United Kingdom waters without a licence. However, no evidence of such a "hint" has been brought.

(d) Since the beginning of 1978, the Government of the United Kingdom has attempted to contribute to the implementation of a satisfactory arrangement concerning fishing in the area under consideration. Since the Council did not succeed in reaching an agreement at its meetings on 24 and 25 July 1978 the United Kingdom and Isle of Man authorities decided that it was necessary to take appropriate measures to protect the herring stock, as permitted by the Hague Resolution. That stock is of vital importance to the fishermen of the Isle of Man and the north of the United Kingdom. It is in danger: the International Council for the Exploration of the Sea reported that the need for a reduction in the exploitation rate was becoming acute and recommended for 1978 a total allowable catch of 9 000 tonnes. Since the Council had failed to adopt any conservation measures for 1978 and the main fishing season was due to commence on about 21 August, the Government of the United Kingdom reached the conclusion that in the absence of any quotas or any licensing system applicable to vessels other than those from the United Kingdom and the Isle of Man the only course open was to shorten the fishing season for all vessels.

The proposed measure was submitted to the Commission on 17 August 1978 with a formal request for approval under the Hague Resolution; the matter was far to urgent to wait until the next Council meeting on 26 September. In those circumstances, the United Kingdom adopted on 20 September the measure prohibiting all fishing for herring in the area from 24 September to 31 December 1978.

(e) The licensing system did not discriminate against Irish boats in favour of French and Dutch boats; the latter, having no historic Treaty rights in those waters, were not allowed to fish there at all.

Irish fishermen did not require licences in 1978 except for Isle of Man waters.

The reason for the limitation of landing ports in the licences was to ensure control; only United Kingdom and Isle of Man fishermen required licences so that only United Kingdom and Isle of Man ports were proscribed.

A restriction on the ports at which fish may be landed is not contrary to the Community rules on the free movement of goods.

(f) There was no discrimination against French fishermen: there was no quota for French fishing boats and the closure of the main fishery one week earlier than

previous years because of the particularly precarious state of the stock applied to all fishermen.

(g) The quotas suggested by the United Kingdom in 1978 were, it is true, not based on the Commission's proposals or agreed by the other Member States. They were, however, never imposed on other Member States which were unrestricted in their fishing up to the date on which the fishery, so far as it lies within United Kingdom fishery limits, was closed to all fishermen.

(h) As regards Annex VII to the Hague Resolution, it is necessary to state that it is only a declaration of intent on the part of the Council; it cannot affect the legality of provisional measures adopted by Member States.

Moreover, no quota was in fact imposed by the United Kingdom on the Republic of Ireland and the special position of the fishing industry of certain regions, including among others north Britain, referred to in the Hague Resolution is just as relevant as that of the fishing industry of the Irish Republic.

D — The Norway Pout Box

The *Commission* recalls that industrial fishing with small-mesh nets for Norway pout in the north-western part of the North Sea has resulted in large by-catches of juvenile haddock and whiting, significantly reducing the availability of mature haddock and whiting in the fisheries exploited for human consumption. In the present circumstances it is necessary, in order to increase the availability of mature haddock and whiting, to control industrial fishing for Norway pout by measures including the establishment of a "box" in which such fishing is prohibited and a strict by-catch rule. A relevant question in this context is the extent of the box, specifically its eastern limit, at different times of the year.

The British measure establishing a Norway pout box to 2° longitude East is contrary to Community law.

(a) The problem raised by the Norway pout is not a conservation problem since none of the species in question is in any danger; the problem is in fact how to reconcile the economic interests of two groups of fishermen fishing different species of fish and of the two groups of consumers who buy different kinds of products. This is a question of fisheries economic policy; a national measure in this context is a measure of economic policy.

Member States are not free to adopt measures of fisheries economic policy if the immediate and necessary effect of those measures is seriously to damage the fisheries industries of other Member States. In so far as they are necessary, such measures may be taken only at Community level where the interests of all Member States can be taken into account and balanced.

By adopting a national measure seriously damaging the economic interests of the industrial fishery of another Member State, the United Kingdom unilaterally pre-empted an important decision which should have been taken on the basis of a Commission proposal at Community level.

(b) Article 5 of the EEC Treaty imposes stricter duties on Member States when the measures they are contemplating adopting have greater and more serious effects on other States. The United Kingdom has failed to fulfil that obligation and that contained in the Hague Resolution.

(c) The British measure seriously upset the balance of the agreements made with Norway and the Faeroes. As a result of the British measure the Community was obliged to re-negotiate those agreements and was placed in the position as if it had broken its obligation to consult the Norwegian Government as provided in a framework agreement with that government.

(d) A national measure which is expressed to apply "each year" is incompatible with Community law, at least when it is of considerable economic importance; it is not a temporary measure and applies irrespective of whether it is still "necessary" under Community law criteria in changed circumstances.

(e) Even assuming that the British measure was a conservation measure which had been adopted after the consultation procedures required by Article 5 of the Treaty and the Hague Resolution, it goes further than is "necessary" for its purposes, in time and geographically, because by the time the United Kingdom measure was to come into force national measures taken by the interested Member States and Norway had already had positive effects.

The *Government of the Kingdom of Denmark,* after a brief description of fishing for human consumption and fishing for industrial purposes in the North Sea, states as follows as regards the central factual questions: the stocks of haddock and whiting are not endangered; measures against Norway pout fishery were taken with a view to increasing the catches of haddock and whiting in fisheries for human consumption; the measures referred to have caused considerable reduction of the by-catches of haddock and whiting in connexion with Norway pout fishing; there are no biological scientific reasons for the establishment of Norway pout boxes; the long-term gains of haddock and whiting fisheries for human consumption obtained through the extension of the Norway Pout Box will only be approximately 10 000 tonnes in respect of haddock and whiting respectively; the losses suffered by the Danish fisheries for industrial purposes total 300 000 to 350 000 tonnes.

As regards the legal appraisal of the measures in question, it is necessary to state that the extension of the Norway Pout Box does not constitute a conservation measure and that in any case it does not satisfy any one of the requirements under Community law in regard to unilateral measures.

(a) The very establishment of a Norway pout box is not justified by any

major problems of stock conservation; it is rather an economic measure.

The extension of the Norway Pout Box to 2° longitude East cannot in any case be considered as a conservation measure: neither according to its antecedents nor in its effects does it aim at increasing or maximizing the combined yield of the three stocks concerned; its purpose is solely to improve the yields of haddock and whiting, irrespective of the total result being a gain or otherwise for the three stocks.

(b) Even if the fresh delimitation of the Norway Pout Box could be considered as a conservation measure, it could not legally be the subject-matter of a unilateral British measure.

It is apt to jeopardize the realization of the Treaty's objective of a common fishery policy and is thus contrary to Article 5 of the Treaty.

The extension of the box is not strictly necessary: it was not considered necessary by the Commission or the Council; it was not urgent and similar advantages could have been attained through other less radical measures.

The extension of the Norway Pout Box is not a temporary measure: the fact that the measure in question will be superseded by a Community regulation, if issued, does not make that measure temporary; it was not applicable solely in 1978 nor limited to the winter half 1978/79.

Approval by the Commission was in reality not applied for: the Commission was simply notified of the unilateral British measure.

The extension of the Norway Pout Box is a discriminatory measure: it involves barring from the most important part of the British waters of an essential part of the Danish fishing fleet which has traditionally been fishing in these areas, whereas it has not the same effect in regard to the subjects of the United Kingdom.

The measure in question is contrary to the principle of proportionality: the gain obtained from it is in every respect out of proportion to the injury caused to Danish industrial fishing as a whole.

The *Government of the French Republic* has two basic complaints against the measure in question.

(a) The United Kingdom decision was taken in a field that had been the subject of Community decisions and a proposal put forward by the Commission.

(b) The measure in question constitutes a direct threat to the Community's power to negotiate international agreements, in particular with the Faeroe Islands.

The *Government of the United Kingdom* justifies the extension of the Norway Pout Box essentially by the following considerations:

(a) The effect of the restriction of industrial fishing for pout is to prevent juvenile whiting and haddock from being destroyed in order to allow them to grow to maturity so that they can be

caught and used as food for human consumption. It is a typical conservation measure.

The fact that a restriction on fishing may affect one group of fishermen more than another does not mean that it ceases to be a conservation measure. The aim of the United Kingdom measures is to provide for the necessary conservation of a stock, not to promote the interests of particular fishermen.

It is not only when a species is in danger of extinction that conservation measures should be taken; the aim of conservation measures is to maintain the stock at its maximum sustainable yield.

The measure in question is based on scientific advice for the protection of the fish stocks in question, in particular the reports drawn up by the International Council for the Exploration of the Sea.

In 1977 the Commission gave its approval under the Hague Resolution to a unilateral United Kingdom measure restricting fishing in the Norway Pout Box; the Commission could only have approved that measure as a necessary conservation measure.

(b) The complaint that the discussions held by the United Kingdom before adopting its measures were inadequate must be viewed in the light of the very full discussions of the whole of the question which have taken place since 1976 in particular within the North-East Atlantic Fisheries Commission, the International Council for the Exploration of the Sea and the Community itself.

(c) No real evidence that the adoption of the British order caused any appreciable difficulty with Norway or the Faeroes is put forward; moreover, the agreements relating thereto have not yet been formally adopted by the Council.

(d) The measure in question is in fact an "interim measure" within the meaning of the Hague Resolution since it is only applicable until the necessary Community legislation is implemented. Since a national measure is automatically superseded by a Community regulation which is inconsistent with it, any conservation measure now taken by the United Kingdom is an interim measure.

(e) The necessity for the control of industrial fishing for pout in the north-western North Sea is not contested.

The United Kingdom considers that the Commission's proposals are inadequate; in any event, until there are autonomous Community measures the protection of fish stocks remains the responsibility of the coastal State.

(f) As regards the Hague Resolution, it is necessary to state that there is no Community measure in force and that if the United Kingdom did not impose interim measures the juvenile haddock and whiting in the north-western North Sea would remain unprotected, which would be contrary to the recommendations of the International Council for the Exploration of the Sea and to the interests of Community fishermen as a whole.

(g) Several of the findings of fact put forward by the Danish Government are incorrect or contestable; in particular, the British measures in the long term procure a gain to human consumption fishery of the order of 35 000 tonnes per annum and cause a loss of only 78 000 tonnes to Danish industrial fishery.

V — Oral procedure

The Commission, represented by Donald W. Allen and John Temple Lang, the Government of the United Kingdom, represented by Lord Mackay of Clashfern, QC, the Lord Advocate, and Peter Langdon-Davies, the Government of the Kingdom of Denmark, represented by Per Lachmann, the Government of the French Republic, represented by Philippe Moreau Defarges, and the Government of Ireland, represented by D.N.C. Budd, presented oral argument and answered questions put by the Court at the hearing on 22 April 1980.

The Advocate General delivered his opinion at the sitting on 21 May 1980.

Decision

1 By application of 27 February 1979 the Commission brought an action under Article 169 of the EEC Treaty for a declaration that the United Kingdom has failed to fulfil its obligations under the EEC Treaty by applying unilateral sea fisheries measures regarding:

— Herring fishing in the Mourne Fishery situated off the east coast of Ireland and Northern Ireland;

— Herring fishing in the Isle of Man and Northern Irish Sea Fishery;

— Fishing for Norway pout in the zone known as "the Norway Pout Box" adjoining the east and north coasts of Scotland.

The background to the disputes

2 It should be recalled that during 1977 the three fishing zones in question were governed by regulations adopted by the Council as indicated below with regard to each of the three heads of the dispute. The Commission had duly submitted to the Council proposals to extend the period of validity of those measures, with certain amendments, to 1978. However, because of the continued differences of opinion within the Council, it became evident that it was impossible to bring into force Community conservation measures for 1978. During the meeting on 30 and 31 January 1978 it became clear that attempts to reach a solution within the Council had finally failed.

3 In view of this situation, the Council, on 31 January 1978, issued the following statement:

"The Council failed to reach agreement at this meeting on the definition of a new common fisheries policy but agreed to resume examination of these matters at a later date. Pending the introduction of a common system for the conservation and management of fishery resources, all the delegations undertook to apply national measures only where they were strictly necessary, to seek the approval of the Commission for them and to ensure that they were non-discriminatory and in conformity with the Treaty".

4 By letter of 2 February 1978, the Government of the United Kingdom informed the Commission that in the light of the outcome of the Council meeting on 30 and 31 January 1978 it proposed to maintain on a national basis the conservation measures in force on 31 January 1978 in waters within the United Kingdom's fishery limits. At the request of the Commission, the Government of the United Kingdom sent a list of those measures on 13 February 1978. In that list two measures relating to the Isle of Man and Northern Irish Sea Fishery and a measure relating to the Norway Pout Box are mentioned; the list contains no measures relating to the Mourne Fishery.

5 In July 1978, the Government of the United Kingdom gave notice to the Commission that it intended to amend the measure relating to the Norway Pout Box; in August, it sought the Commission's approval for an amendment to the arrangements applicable in the Irish Sea; finally, in September, it informed the Commission of the draft conservation measures for the Mourne Fishery. The measures announced by the British Government were in fact brought into force in September 1978. The details of those provisions are set out below with regard to each of the zones in question.

6 By letter of 27 October 1978, the Commission informed the Government of the United Kingdom that it considered that the measures adopted in respect of the three areas were in breach of Community law in various respects. After receiving the observations of the United Kingdom, it delivered on 17 January 1979 the reasoned opinion provided for in Article 169 of the Treaty.

7 The complaints put forward by the Commission may be summarized as follows:

(a) With regard to the *Mourne Fishery,* the Commission complains that the United Kingdom left unprotected for most of 1978 a herring stock in danger of extinction, failed in its duties of consultation laid down by Community law in respect of the protective measures adopted, belatedly, in September 1978, and coupled those measures with an exception for coastal fishing in a zone of Northern Ireland which was directly contrary to conservation needs and was, moreover, granted in conditions discriminating against the fishermen of the other Member States;

(b) With regard to the *Isle of Man and Northern Irish Sea Fishery,* the Commission complains that the United Kingdom applied unilaterally, both in 1977 and 1978, a system of fishing licences with regard to which there was no appropriate consultation and the detailed rules for the application of which were such as to exclude from the fishing zone in question fishermen from the other Member States and, more particularly, Irish fishermen who traditionally fished in those waters;

(c) With regard to the *Norway Pout Box,* the Commission complains that the United Kingdom unilaterally extended the eastern limits of that box by 2° longitude without having shown the justification for that measure as a necessary and urgent conservation measure, thus causing considerable damage to the industrial fishery traditionally carried on in that zone by the Danish fishing fleet.

The applicable law and the distribution of powers

8 The Court has had occasion to indicate in detail the rules of Community law applicable in this respect in its judgements of 14 July 1976 in Joined Cases 3, 4 and 6/76, *Cornelis Kramer and Others* [1976] ECR 1279 and 16 February 1978 in Case 61/77, *Commission of the European Communities* v *Ireland* [1978] ECR 417. At the time of the facts which have given rise to this dispute, the constituent elements of the legal situation were in essence the same.

9 It is sufficient to recall in this context that the common fisheries policy is based on Articles 3 (d) and 38 of the EEC Treaty. Article 102 of the Act of Accession recognized that protection of the fishing grounds and conservation of the biological resources of the sea formed part of that policy by instructing the Council to adopt, within a specific period and on a proposal from the Commission, appropriate measures for this purpose. The essential guidelines in this respect were established by Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal L 20, p. 19), Articles 2, 3 and 4 of which are of particular importance for this case.

10 In the above-mentioned judgments, the Court emphasized in addition that the Community has the power to take conservation measures and that in so far as this power has been exercised by the Community the provisions adopted by it preclude any conflicting provisions by the Member States; on the other hand, so long as the transitional period laid down in Article 102 of the Act of Accession has not expired and the Community has not yet fully exercised its power in the matter, the Member States are entitled, within their own jurisdiction, to take appropriate conservation measures without prejudice, however, to the obligation to co-operate imposed upon them by the Treaty, in particular Article 5 thereof.

11 In view of the difficulties preventing the implementation within the prescribed period of a common policy for the conservation of fishery resources, the Council adopted on 3 November 1976, on a proposal by the Commission, a resolution known as "Annex VI to the Hague Resolution" according to which if no Community measures were brought into force within the prescribed period, "the Member States could then adopt, as an interim measure and in a form which avoids discrimination, appropriate measures to ensure the protection of resources situated in the fishing zones off their coasts". The resolution adds that "before adopting such measures the Member States concerned will seek the approval of the Commission, which must be consulted at all stages of the procedures". It is not contested that this resolution is binding on the Member States. In view of the failure of its negotiations at the beginning of 1978, the Council confirmed once more the provisions of the Hague Resolution by the above-mentioned resolution of 31 January 1978.

12 Although the right of Member States to take conservation measures is therefore not contested with regard to the period in question, a fundamental difference of opinion between the parties as to the nature and the extent of that power has emerged. According to the United Kingdom, the Member States have an inherent power of regulating fishing within their own fishing jurisdiction, the extent of which at any given time depends on the rules of international law. It admits that that power can of course be limited by treaty. In the case of the Member States of the EEC it was in fact limited by the provisions of Regulation No 101/76, Annex VI to the Hague Resolution and the declaration of 31 January 1978. In particular, Article 2 (2) and Article 3 of Regulation No 101/76 imposed duties on Member States in respect of the exercise of their powers in this matter. Article 4 of the same regulation confers on the Council power to take conservation measures. However, the effect of this power of the Council is said to restrict the powers of the Member States only if the Council has exercised its power by adopting conservation measures.

13 In contrast to this viewpoint, the Commission claims that the Council had exercised its powers with regard to the three fishing zones in question by bringing into force Community regulations and that it had itself taken the initiative of submitting to the Council proposals for defining the fisheries arrangements applicable in 1978. This point of view is developed by the French Government which claims that if, during the transitional period laid down in Article 102 of the Act of Accession, Member States of the Community retain any power to regulate fisheries, such power is residual and transitional. The unilateral British measures which form the subject-matter of the dispute were taken in sectors in which Community regulations had been adopted and in which the Council was considering proposals put forward by the Commission for the adoption of further measures. The assertion of a Community presence in this sector was therefore very clear and the expiry of the Community rules cannot have the effect of removing the sector covered by those rules from the Community's jurisdiction and does not therefore bring that competence to an end.

14 In this connexion the Court recalls, what it has already said in the judgments mentioned above, namely that pursuant to the obligations arising both from the EEC Treaty and from the Act of Accession, the Community has power

to introduce fishery conservation measures in the waters within the jurisdiction of the Member States. The purpose of Article 102 of the Act of Accession, which is based on the recognition of the legal situation described above, is to open, following the considerable increase in the maritime sector as a result of the enlargement of the Community, a new transitional period within which the Council was required to introduce the necessary conservation measures.

15 However, it is necessary to emphasize that as early as 1977 the Council had exercised its powers with regard to all the maritime zones affected by the application. The effect of the Council's inability to reach a decision to extend the validity of these measures in 1978 has not been to deprive the Community of its powers in this respect and thus to restore to the Member States freedom to act at will in the field in question. In such a situation, it was for the Member States, as regards the maritime zones coming within their jurisdiction, to take the necessary conservation measures in the common interest and in accordance with both the substantive and the procedural rules arising from Community law, the essentials of which have been recalled above.

16 It is against this background that one must examine the three heads of the application lodged by the Commission.

The Mourne Fishery

17 The Mourne Fishery is situated in a zone 12 miles off the east coast of Ireland and Northern Ireland. It is divided into the United Kingdom fishing zone and the Irish fishing zone and has traditionally been an area to which fishermen of both Member States had access. It is not in dispute that the herring stocks in that zone are in direct danger of extinction. This situation has been ascertained by the International Council for the Exploration of the Sea and is recognized by all parties.

18 In view of this situation, the Council, by Article 3 of Regulation No 1672/77 of 25 July 1977 laying down interim measures for the conservation and management of certain herring stocks (Official Journal L 186, p. 27), had prohibited direct fishing for herring in that zone. This prohibition had been

extended until 31 January 1978 by Regulation No 2899/77 of 21 December 1977 (Official Journal L 338, p. 5). In the proposals which it had submitted to the Council for 1978, the Commission had proposed to extend that prohibition throughout 1978. It is an established fact that immediately after the failure of the negotiations within the Council Ireland adopted, with the approval of the Commission, provisions prohibiting all fishing for herring in the part of the Mourne Fishery coming within its jurisdiction; this prohibition was effective as from 6 February 1978.

19 For its part, the United Kingdom did not adopt measures concerning the part of the Mourne Fishery coming within its jurisdiction until September 1978. On 18 September 1978 the British Government notified the Commission pursuant to Annex VI to the Hague Resolution in order to obtain the Commission's approval for the immediate closure of the part of the Mourne Fishery off the coast of Northern Ireland for the remainder of 1978. A draft order was annexed to that notification.

20 In terms of this draft the measure was to take effect at midnight on 19 September but the fishing ban included an exemption for boats of under 35 feet registered length, applicable within a half-mile off the coast of County Down in Northern Ireland for a catch of 400 tonnes of herring during a period from 20 September to the date of exhaustion of the quota of 400 tonnes, or, at the latest, 27 October 1978. It should be observed that it has been impossible to clarify whether that quota was intended to be caught during the period thus defined, as seems to follow from the British Government's notification, or whether it is the total quota for the whole fishing season, as explained at the hearing by the United Kingdom.

21 The Commission did not give its approval to the measure notified by the United Kingdom. That measure was brought into force by the Herring (Restriction of Fishing) Regulations (Northern Ireland) 1978 S.R. 1978 No 277, in accordance with the text notified to the Commission. The exception provided for in those rules was revoked by the Herring (Restriction of Fishing) (Amendment) Regulations (Northern Ireland) 1978, S.R. 1978 No 286, which came into operation on 26 September 1978. It follows from the explanations of the United Kingdom Government that at that date the 400-tonne catch quota had been exhausted.

22 The Commission's complaints, as set out in the reasoned opinion and the application, essentially concern the procedure followed by the United Kingdom for the purpose of introducing the measure described above and the provisions of that measure. The Commission considers that by notifying on 18 September a measure intended to come into operation the following day the Government of the United Kingdom cannot be considered seriously to have sought the Commission's approval in accordance with Annex VI to the Hague Resolution. It claims that this conduct is all the more unacceptable since it is common knowledge that on 7 July 1978 the Minister for Fisheries made a statement to the House of Commons from which it emerges that at that date the measure notified on 18 September 1978 was already in preparation. With regard to the details of the measure adopted, the Commission considers that an exemption for a specific region of the coast of Northern Ireland, even if limited to a total catch of 400 tonnes, was directly contrary to conservation needs and that, moreover, the reference in the Herring (Restriction of Fishing) Regulations (Northern Ireland) 1978, S.R. 1978 No 277, to the maximum length of the fishing boats was manifestly discriminatory in that that exemption was deliberately defined so as to benefit exclusively the small boats characteristic of coastal fishing.

23 As regards the intermediate period between the expiry of the Community conservation measure on 31 January 1978 and the measure adopted in September 1978 by the United Kingdom, the Commission states that, according to the findings of the International Council for the Exploration of the Sea, of a stock estimated at 6 900 tonnes of herring at the beginning of 1978, a total of 2 350 tonnes, in other words, more than one-third of the stock, had been caught besides the additional catch of 400 tonnes permitted by the United Kingdom Government. In view of these statements, the Court asked the Commission to indicate on exactly what date in 1978 a fishing ban in that zone should have been introduced. In reply to that question, the Commission stated that the zone should have been closed as soon as possible after the expiry of the Community regulation and the difference of opinion which became clear within the Council, on 31 January 1978. The fact that another Member State concerned was able to take such a measure as early as 6 February with the agreement of the Commission shows that the United Kingdom could have acted in the same way during the month of February. The Commission considers, as a result, that the United Kingdom had a legal duty under Community law to prohibit all direct fishing for herring in the Mourne Fishery on 6 February 1978 at the latest.

24 The Government of the United Kingdom does not contest the actual existence of the catches in the Mourne Fishery during 1978 but claims that the figures given by the Commission relate to the whole fishery so that only part of the tonnage given was caught in the part along the coast of the United Kingdom, the remainder having been caught off the coast of Ireland and in the north part of the Irish Sea. As regards the measure introduced in September 1978, the United Kingdom explains that urgent action was necessary because at that time the British authorities had established that trawlers had entered the fishing zone in question. The British Government claims, with regard to the exemption for a quota of 400 tonnes for fishing boats under 35 feet registered length, that this was merely an interim measure intended to protect the interests of small coastal fishermen affected by the consequences of the total closure of the fishery. It claims that interim measures of this kind are moreover to be found in the Community regulations themselves.

25 The Court considers that there are several factors which, when taken together, lead to the conclusion that the United Kingdom was under a duty to take conservation measures in the zone in question. So far as the facts are concerned it is not in dispute that according to the available scientific opinions recognized by all parties a total ban on fishing was required for the conservation of the Mourne stock. From the point of view of law the duty of Member States having jurisdiction in this fishing zone may be deduced from the legal provisions mentioned above when read together. Thus both Article 102 of the Act of Accession and Council Regulation (EEC) No 101/76, in particular Article 4 thereof, in the same way as Annex VI to the Hague Resolution and the Council declaration of 31 January 1978, are based on the twofold assumption that measures must be adopted in the maritime waters for which the Community is responsible so as to meet established conservation needs and that if those measures cannot be introduced in good time on a Community basis the Member States not only have the right but are also under a duty to act in the interests of the Community. Although the two Council resolutions mentioned above emphasize above all the requirement that national conservation measures should not go beyond what is strictly necessary, at the same time they imply, having regard to the rules in force until 31 January 1978, to the objectives of those rules and to the general duties laid down in Article 5 of the Treaty, recognition of the need for and the lawfulness of conservation measures justified from the biological point of

view and designed so as to be not only to the particular advantage of the Member State concerned but in the collective interests of the Community.

26 As the Commission has not submitted any formal conclusions on the question from what date in 1978 the closure of the fishing zone in question should have taken effect, the Court will merely examine the compatibility with the requirements of Community law of the measure introduced by the United Kingdom as from 20 September 1978. The principle underlying this measure cannot be criticized since it acknowledges, albeit belatedly, the United Kingdom's duty to introduce in this fishing zone a conservation measure appropriate to the seriousness of the danger to the existence of the fish stocks in question.

27 On the other hand, the fact that coastal fishermen from Northern Ireland were permitted to take from that stock an additional catch of 400 tonnes, irrespective of the period at which this was done, compromises a conservation need the actual existence and seriousness of which are beyond all question. Since the measure closing the fishery adopted in September 1978 was already belated, in view of the situation which had been ascertained, this additional concession cannot be justified either as an "interim measure". As the Commission has correctly observed in the reasoned opinion, it would have been possible to adopt interim measures in favour of the fishermen in question, as for other fishermen in the Community, if the United Kingdom had raised this question in due time within a Community procedure and in accordance with the principles recalled above. In this instance, it is clear that the purpose and effect of reserving that concession to fishing boats of under 35 feet registered length was to reserve to the coastal fishery of the Member State in question a measure which was in itself incompatible with recognized conservation needs. The Court would refer in this connexion to the considerations set out in paragraphs 69 to 80 of its decision in the judgment of 16 February 1978 *(Commission of the European Communities* v *Ireland), supra,* which relate to a similar measure.

28 Finally, it is necessary to observe that the procedure used in this instance by the United Kingdom was not in accordance with the requirements laid down

in Annex VI to the Hague Resolution. The fact that a draft measure, the details of which clearly raised problems from the point of view of Community law, was submitted to the Commission at a day's notice after a long period during which the United Kingdom had failed to act cannot be considered as being in accordance with the duties laid down in Annex VI to the Hague Resolution which requires that the Commission should be consulted at all stages of the drawing-up of proposed measures allowing for the necessary time to study those measures and to give its opinion in good time. In the circumstances, the methods adopted by the British Government amount to a *fait accompli* and cannot therefore be considered to be in accordance with the requirements of Community law.

29 For all these reasons, it is therefore necessary to declare that both because of the procedure used and because of the exemption attached to the prohibition introduced on 20 September 1978 the United Kingdom has failed to fulfil its obligations under the Treaty.

The Isle of Man and Northern Irish Sea Fishery

30 The fishing zone in question, which corresponds to Division VII (a) defined by the International Council for the Exploration of the Sea, the exact boundaries of which are irrelevant for the solution of the dispute, is situated in the Irish Sea midway between Great Britain and Ireland; the Isle of Man fishery, which is subject to special rules, is formed by a 12-mile belt around the island in the Irish Sea.

31 By Regulation No 1779/77 of 2 August 1977 laying down interim conservation and management measures for herring fishing in the Irish Sea (Official Journal L 196, p. 4), the Council had laid down for 1977 certain conservation and management measures for the herring stocks in the zone in question. These measures included a seasonal prohibition on fishing, from 1 October to 19 November 1977, in Isle of Man waters and in those waters between the Isle of Man and the west coast of the United Kingdom (Article 1), the fixing of a total fishing quota of 13 200 tonnes for the whole of the Irish Sea, divided between France, Ireland, the Netherlands and the United Kingdom (Article 2), and a provision relating to by-catches of herring (Article 3). Under Article 4, the Member States were to take "as far as

possible, all necessary steps to ensure compliance with the provisions of this regulation". The recitals of the preamble to that regulation recall the special conditions under which the Treaty applies to the Isle of Man under Article 227 (5) (c) of the Treaty and Protocol 3 of the Act of Accession.

32 On 8 August 1977, the United Kingdom introduced two orders, the Herring (Irish Sea) Licensing Order 1977, S.I. 1977 No 1388, and the Herring (Isle of Man) Licensing Order 1977, S.I. 1977 No 1389. These two orders may be considered as implementing Regulation No 1779/77 in the United Kingdom. It should be observed that the two orders mentioned are listed among the measures in force on 31 January 1978 and maintained during 1978 which were notified to the Commission after the failure of the Council negotiations on 30 and 31 January 1978, as indicated above.

33 The purpose of the two orders is to prohibit fishing for herring in the maritime zones in question, except for fishermen with a licence issued, as regards the Irish Sea, by the Government of the United Kingdom, and, as regards Isle of Man waters, by the Board of Agriculture and Fisheries of that island. The two orders do not contain any other indications as to the conditions in which those licences are issued, the rights which they confer and the duties linked to their issue. They thus leave complete discretion to the competent authorities as regards the issue of the licences and their scope. It follows from specimen applications for a licence and licences issued under the orders mentioned above which have been submitted by the Commission and whose authenticity is not in dispute that those licences contained restrictions as to the period of the fishing seasons and indicated a certain number of ports in which the catches were to be landed. Those licences were in addition made subject to any other conditions which might be notified verbally or in writing by the competent authorities.

34 The application of this licensing system was the subject-matter of negotiations between the Irish authorities, on the one hand, and the United Kingdom and Isle of Man authorities, on the other, according to information communicated by the Commission and Ireland. These negotiations, which

were largely verbal, did not result in an arrangement satisfactory to the Irish authorities. The result of this was, and this fact does not seem to be contested, that no licences were issued in 1977 or 1978 to Irish fishermen.

35 In its proposals for 1978, the Commission had provided with regard to this zone for a total catch somewhat reduced by comparison with that allowed in 1977, whilst proposing a slight increase in the French, Irish and Netherlands quotas compensated for by an equivalent reduction in the United Kingdom quota.

36 It is clear from the file that in 1977 the United Kingdom had not given any information to the Commission on the measures adopted for the implementation of the Community rules then in force. Discussions took place between the Commission and the British Government during the first half of 1978, mainly on the subject of a possible reduction in the total catch quota in relation to the proposals introduced by the Commission, as the result of a recommendation made by the International Council for the Exploration of the Sea. On 17 August 1978, the Government of the United Kingdom submitted to the Commission, pursuant to Annex VI to the Hague Resolution, a draft measure intended to come into operation on 21 August 1978. According to that notification the British Government intended to reduce the total allowable catch to 9 000 tonnes, 8 100 tonnes of which would be reserved to United Kingdom and Isle of Man fishermen. The application of this restriction was to be controlled by licences, it being understood that 120 licences would be granted to United Kingdom fishing boats. The British Government announced in addition its intention of closing the fishery from 24 September to 31 December 1978, or even before 24 September if the 9 000-tonne limit had been reached before that date. The notification did not contain any information as to the rights of fishermen of other Member States; the only information given in this connexion related to the fact that the British Government had already contacted the Governments of Ireland, the Netherlands and France on this matter with a view to obtaining their cooperation. The Commission replied immediately to the United Kingdom that it was impossible for it to adopt a viewpoint in such a short time and that it requested additional information. In a subsequent communication, it requested that the fishery should not be closed before 1 October

37 On 20 September 1978, the United Kingdom introduced the Irish Sea Herring (Prohibition of Fishing) Order 1978, S.I. 1978 No 1374, prohibiting fishing for herring as from 24 September 1978 throughout the Irish Sea.

38 The Commission's complaints, in the last stage of the procedure, relate primarily to the fact that the Commission and the Member States concerned were not duly informed, either in 1977 or in 1978, of the true extent of the system of restriction and management of fishing as resulted from the application of the licensing system brought into force from 1977. More particularly, the Commission claims that the licensing system has been applied so that Irish fishermen wishing to exercise their historic rights in Isle of Man waters were subject to a restriction on their fishing activities in United Kingdom waters by conditions attached to the issue of the licences. The practical result of this system was to oust Irish fishermen from a fishing zone in which they had traditionally carried on their activities. The Commission complains in addition that the United Kingdom has, by bringing forward the closure of the fishing season, caused damage to the fishermen of other Member States, in particular French and Netherlands fishermen, by shortening the period during which they traditionally fished in the waters in question, and has thus benefited its own fishing industry in respect of the quota in question. Finally, the Commission points out the fact that by making it practically impossible, by the licensing system, to land fish in the Isle of Man, the United Kingdom has blocked off from Irish fishermen a market which is particularly remunerative and has thus violated the rule of the free movement of goods which undoubtedly applies also to the Isle of Man.

39 The Commission's arguments have been supported by the French, Irish and Netherlands Governments. The French Government emphasizes the discriminatory nature of the measures adopted by the United Kingdom in that it gave its own fishermen an excessive proportion of the total catches by bringing forward the period of the ban from 1 October to 24 September; this measure affected more particularly non-British fishermen. The Irish Government agrees with the Commission's analysis of the effects of the licensing system on Irish fishermen who were obliged, if they wished to

exercise their historic rights in Isle of Man waters, to accept licences the effect of which was to reduce to a minimum the amount of their catches throughout the Irish Sea. The threat of sanctions which might be applied by the United Kingdom against fishermen without a licence prevented them from fishing at all in the fishing zone in question. Finally, the Government of the Netherlands claims that the interests of Netherlands fishermen were adversely affected by the British measures in two ways, on the one hand because the fishing quotas applied unilaterally by the United Kingdom considerably reduced the proportion reserved to Member States other than the United Kingdom, and on the other because bringing forward the date of closure of the fishing season adversely affected primarily Netherlands fishermen whose fishing is concentrated precisely in that season.

40 In its defence, the United Kingdom claims that the licensing system cannot be contested in itself since it constitutes a particularly effective means of ensuring that the fishing restrictions existing in the region in question are being observed. Since the licensing orders were adopted in implementation of Regulation No 1779/77, the United Kingdom was under no obligation to notify them under Articles 2 and 3 of Regulation No 101/76 or to seek the Commission's approval of them under Annex VI to the Hague Resolution, since the two national measures in question were only applicable to United Kingdom and Isle of Man fishing boats. As for the measures laid down by the Commission for 1978, the effect of which was to fix a total catch higher than that recommended by the International Council for the Exploration of the Sea and to reduce relatively, as compared with the previous year, the quota reserved to the United Kingdom, the British Government was unable to give its agreement. The British Government contests the existence of any threat to Irish fishermen who fished in United Kingdom waters without licences since those licences were only required for United Kingdom and Isle of Man fishing boats. Proceedings could not be brought against the United Kingdom only because of an intention attributed to it. Finally, with regard to the bringing forward of the date of closure of the fishing season to 24 September 1978, the British Government claims that it was an appropriate conservation measure which was strictly necessary and applied without any discrimination, and that it had been duly notified to the Commission whose approval had been sought.

41 The Government of the United Kingdom also draws attention to the special constitutional position of the Isle of Man, which does not form part of the United Kingdom properly speaking. Under Article 227 (c) of the EEC Treaty, as amended upon the accession of the United Kingdom, the provisions of the Treaty apply to the Isle of Man only to the extent necessary to ensure the implementation of the arrangements set out in the Accession Treaty. The special relationship between that island and the Community has been defined in Protocol No 3 annexed to the Act of Accession. It is clear from that protocol that only the provisions relating to the free movement of goods are applicable in relations with the Isle of Man so that the measures adopted by the Community relating to the protection of fish stocks do not extend to that territory and to the waters under its jurisdiction.

42 The Commission does not accept this point of view. In view of the close link as regards fisheries between the organization of the market and structural measures, it considers that Protocol No 3 must be interpreted as meaning that the conservation measures adopted by the Community are also applicable to Isle of Man waters.

43 It does not seem necesssary to consider the constitutional position of the Isle of Man and the relationship of that territory to the Community. In fact, it is clear from the very wording of the order in question that it was adopted under the legislation of the United Kingdom by the British Government, so that the United Kingdom must take responsibility for that measure *vis-à-vis* the Community. Having made this preliminary remark, the Court will examine separately below the situation in 1977, in which Community conservation measures existed, and the situation in 1978, in which there were no such measures.

The arrangements applying in 1977

44 During 1977, the maritime zone in question was governed by Regulation No 1779/77 which, as recalled above, involved the fixing of catch quotas and a seasonal fishing ban from 1 October to 19 November 1977 in a limited zone covering the Isle of Man waters and the waters between that island and the coast of Great Britain.

45 Under Article 4 of that regulation, Member States were under a duty to take the measures necessary to ensure that those provisions were complied with. The United Kingdom has raised the question whether the duty to consult the Commission and to seek its approval applies to measures of that kind. As the Court has stated in paragraph 11 of the decision in its judgment of 4 October 1979 in Case 141/78, *French Republic* v *United Kingdom of Great Britain and Northern Ireland*, that duty is general and applies to any measures of conservation emanating from the Member States and not from the Community authorities. Consequently, the measures adopted by a Member State in implementation of a Community regulation are not exempted from the duty of consultation laid down in Annex VI to the Hague Resolution as well as from the duty of notification laid down in Articles 2 and 3 of Regulation No 101/76. The reason for this twofold duty is particularly evident in view of the measures adopted by the United Kingdom, which consisted in bringing into force a licensing system the application of which was entirely at the discretion of the United Kingdom and Isle of Man authorities.

46 It appears therefore that the United Kingdom has not, by bringing into force that licensing system, entirely fulfilled its obligations under the above-mentioned provisions in conjunction with Article 4 of Regulation No 1779/77. In order to safeguard the rights and interests protected by Community law for other Member States and their nationals it was necessary to lay down and publish all the detailed rules for the implementation of the system chosen by the British authorities for the implementation of Regulation No 1779/77 so as to enable all Member States and all persons concerned, in the same way as the Community authorities, to see whether the system put into operation fulfilled both the United Kingdom's obligations under the relevant regulation, Regulation No 1799/77, and the general requirements of non-discrimination and equality as regards the conditions of access to the fishing grounds enshrined in Article 2 of Regulation No 101/76 and Article 7 of the EEC Treaty. This obligation to introduce implementing measures which are effective in law and with which those concerned may readily acquaint themselves is particularly necessary where sea fisheries are concerned, which must be planned and organized in advance; the requirement of legal clarity is indeed imperative in a sector in which any uncertainty may well lead to incidents and the application of particularly serious sanctions.

47 It follows from the foregoing that the United Kingdom was in breach of the rules of Community law as long ago as the 1977 season by not securing the implementation of Regulation No 1779/77 by means of measures legally determined and published and by failing to communicate any information or, at least, sufficiently precise information on its actions in this respect both to the Commission and to other Member States directly concerned.

The arrangements applicable in 1978

48 As regards the provisions in force during 1978, it is necessary to point out first of all that the United Kingdom has allowed complete uncertainty to continue to exist as to the system of conservation measures applied in the zone in question, in spite of repeated requests by the Commission for precise information binding upon the United Kingdom. In particular, the notification of 17 August 1978 before bringing in force the Irish Sea Herring (Prohibition of Fishing) Order 1978, S.I. 1978 No 1374 on 20 September 1978 did not fulfil the requirements laid down in Annex VI to the Hague Resolution. In fact, in view of the long period of inactivity before that notification, the fact that the Commission was suddenly consulted on 17 August about measures intended to be brought into force, according to the communication, four days later, cannot be considered to be a procedure complying with that resolution. This is all the more so since the United Kingdom's communication contains only incomplete information as to the scope of the measure envisaged: its contains no express justification for that measure in view of conservation needs and gives no indications regarding the safeguard of the interests of the other Member States concerned. In these circumstances, the Commission was entitled to withhold its approval for a measure whose scope and justification it was unable to assess.

49 The measure which was in fact brought into force on 20 September 1978 merely orders the closure of all fishing grounds in the Irish Sea from 24 September 1978. It concerns a geographical area different from that to which the seasonal closure provided for in Article 1 of Regulation No 1779/77 applied. Moreover, the measure adopted contains no indications as to the quantity of catches authorized or as to the distribution of those catches between the fishermen of the various Member States concerned. The measure introduced unilaterally by the United Kingdom therefore appreciably amended the Community conservation measures in force during

1977. It is therefore clear that the United Kingdom unilaterally prejudiced the situation established by Community means for 1977 in the zone in question when it had undertaken to maintain them in its communications of 2 and 13 February 1978, *supra,* without being able either to give reliable information as to the effects of the measures adopted or to justify conservation needs which might warrant the changes introduced. It is therefore also necessary to declare that the United Kingdom has failed to fulfil its obligations under the Treaty as regards the arrangements applied in 1978.

The Norway Pout Box

50 During 1977, the Council had thrice adopted measures prohibiting fishing for Norway pout: by Article 5 of Regulation No 350/77 of 18 February 1977 laying down certain interim measures for the conservation and management of fishery resources (Official Journal L 48, p. 28), for the period from 21 February to 31 March 1977, by Regulation No 1673/77 of 25 July 1977 on the prohibition on fishing for Norway pout (Official Journal L 186, p. 30), for the period from 1 September to 15 October 1977 and, finally, by Regulation No 2243/77 of 11 October 1977 prohibiting fishing for Norway pout (Official Journal L 260, p. 1), for an additional period from 16 to 31 October 1977. The zone to which that prohibition applied adjoins the east and north coasts of Scotland; these limits, as laid down in the regulations mentioned above, are not wholly identical but the common feature of the measures adopted was that they did not extend further east than a line represented by 00° 00′ longitude (or the Greenwich meridian).

51 On 31 October 1977, the British Government adopted the Norway Pout (Prohibition of Fishing) (No 3) Order 1977, S.I. 1977 No 1756, prohibiting fishing for Norway pout from 1 November 1977 in the same zone bounded to the east by the Greenwich meridian. For its part, the Commission submitted to the Council at the same time a proposal which, after certain amendments and in its final state, aimed at maintaining the Norway Pout Box according to its former definition, in other words bounded to the east by 00° 00′ longitude. This proposal suffered the same fate as all the measures of fishing policy pending before the Council at its meeting on 30 and 31 January 1978, so that there were no Community conservation measures for the zone in question during 1978.

52 On 3 and 20 July 1978, the Government of the United Kingdom submitted to the Commission, referring to the procedure laid down in Annex VI to the Hague Resolution, several draft conservation measures, including a proposal for the seasonal extension, during the period every year from 1 October to 31 March of the following year, of the Norway Pout Box, extending the eastern limit of that zone to the dividing line between the United Kingdom fishing zone and the Norwegian fishing zone and, from the points of intersection of that dividing line with 2° longitude East, along that meridian. This information was accompanied by the draft measure proposed. The file does not show whether Denmark, whose fishing industry was directly affected by the proposed measure, was informed pursuant to Regulation No 101/76.

53 The Commission did not give its approval to the proposed measure. That measure was nevertheless brought into force in accordance with the terms of the draft notified to the Commission by the Norway Pout (Prohibition of Fishing) (No 3) (Variation) Order 1978, S.I. No 1379, introduced on 20 September 1978 and brought into force on 1 October 1978, the effect of which is to extend the area to which the prohibition on fishing for Norway pout applies eastwards to the line described above for a period from 1 October in each year to 31 March of the following year.

54 The Commission considers that this measure is incompatible with Community law because it is not a true conservation measure but in reality a measure of economic policy whose object is to improve the catches of United Kingdom fishermen, who fish for haddock and whiting in that region, to the detriment of Danish fishermen who traditionally fish for Norway pout for industrial purposes in the extended zone in question. The Danish Government, intervening in the case, has drawn attention to the serious damage caused to a considerable proportion of its fishing fleet whose existence is endangered by the measure adopted unilaterally by the United Kingdom.

55 The United Kingdom contends that the measure adopted is a genuine conservation measure since fishing for Norway pout with small-mesh nets results in large by-catches of juvenile haddock and whiting, reducing sub-

sequent catches of those fish when mature for human consumption whilst prejudicing the reproduction capacity of the stocks.

56 It follows from the Community provisions mentioned above, especially Annex VI to the Hague Resolution and the Council declaration of 31 January 1978 that unilateral conservation measures may only be adopted by the Member States where there is an established need. In this respect, it is necessary to point out first of all that the United Kingdom has not complied with the procedural requirements laid down by the Hague Resolution. The letters addressed to the Commission by the Government of the United Kingdom when it was seeking approval for the measure envisaged contain no indications as to the objective and justification thereof; the Government merely notified the text of the proposed measure and announced its intention of introducing it shortly.

57 The question whether the extension of the Norway Pout Box eastwards meets a genuine and urgent conservation need and whether, assuming that such a need has been established, the geographical extension of an absolute prohibition on fishing for Norway pout is the most appropriate means to that end remains controversial. It is necessary to recall in this respect that during 1977 the Council was able to reach a solution as regards the arrangements applying to fishing for Norway pout which was considered to be satisfactory on an interim basis by the Member States concerned. The recitals to the preambles to Regulations Nos 1673/77 and 2243/77 state that the Pout Box is determined on the basis of the available scientific estimates, pending a re-examination of the situation. Although those provisions ceased to be effective on 31 October 1977, the establishment of the extent of the Norway Pout Box in 1977 may be considered to be a fair compromise between the interests of the fishermen of the various Member States fishing in the zone in question. By the measure adopted on 31 October 1977 and by the notifications addressed to the Commission on 2 and 13 February 1978, the Government of the United Kingdom gave to understand that it accepted the established situation. In these circumstances, it is impossible to accept that a Member State may suddenly amend the existing situation by adversely affecting the interests of another Member State if it is not in a position to

show, on the basis of appropriate scientific estimates, that there is a need for fresh conservation measures and that the means used are appropriate. As regards those means in particular the Commission considers that a seasonal prohibition on fishing in the enlarged zone is excessive since the United Kingdom's objective could have been attained by way of more flexible measures relating in particular to a restriction on by-catches. Having introduced the measure complained of unilaterally, without supplying any explanations, the United Kingdom has not been able to show during this procedure the justification for the measure adopted as a strictly necessary conservation measure.

58 It is therefore clear that the United Kingdom has failed to fulfil its obligations under the Treaty by having unilaterally altered a situation established by measures previously agreed within a Community procedure and by thus having adversely affected the interests for another Member State, without having shown the need for and urgency of its action in accordance with the requirements laid down in Annex VI to the Hague Resolution and Article 3 of Regulation No 101/76.

Costs

59 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party should be ordered to pay the costs. As the defendant has failed in its submissions, it is necessary to order it to pay the costs including the costs of the interveners.

On those grounds,

THE COURT

hereby:

1. **Declares that the United Kingdom has failed to fulfil its obligations under the EEC Treaty:**

(a) *As regards the Mourne Fishery,* by failing to fulfil the duties of consultation laid down by Community law in respect of the conservation measures adopted in September 1978 by the Herring (Restriction of Fishing) Regulations (Northern Ireland) 1978, S.R. 1978 No 277, by coupling those measures with an exception contrary to a recognized conservation need and, moreover, granting that exception in conditions solely favourable to certain United Kingdom fishermen;

(b) *As regards the Isle of Man and Northern Irish Sea Fishery,* by applying in 1977, for the purpose of implementing Council Regulation No 1779/77 of 2 August 1977 and pursuant to the Herring (Irish Sea) Licensing Order 1977, S.I. 1977 No 1388, and the Herring (Isle of Man) Licensing Order 1977, S.I. 1977 No 1389, a system of fishing licences which had not formed the subject-matter of an appropriate consultation and the detailed rules for the implementation of which were reserved wholly to the discretion of the United Kingdom authorities, without its being possible for the Community authorities, the other Member States and those concerned to be certain how the system would actually be applied in law; by maintaining in 1978 that state of uncertainty in relation to fishermen of other Member States and by, during the same year, unilaterally amending the existing protective measures to the detriment of fishermen of other Member States by the Irish Sea Herring (Prohibition of Fishing) Order 1978, S.I. 1978 No 1374, without consulting the Commission in accordance with the rules of Community law and without showing that the detailed rules for the implementation of the measure adopted meet a genuine and urgent conservation need in that form;

(c) *As regards the Norway Pout Box,* by extending eastwards to 2° longitude East, or to the boundaries of the United Kingdom fishing zone, the scope of a seasonal prohibition on fishing for Norway pout by the Norway Pout (Prohibition of Fishing) (No 3) (Variation) Order 1978, S.I. 1978 No 1379, thus causing considerable damage to the fishing of another Member State, without seeking the Commission's approval for this in satisfactory circumstances and without showing the justification for the measure adopted as a strictly necessary conservation measure;

2. Orders the United Kingdom to pay the costs of the action including those of the interveners.

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 10 July 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 21 MAY 1980 [1]

Mr President,
Members of the Court,

The procedure for a declaration that a Member State has failed to fulfil its obligations under the Treaty on which I am giving my opinion today concerns serveral fisheries measures unilaterally adopted by the Government of the United Kingdom. I shall, therefore, before describing the measures in detail, briefly recall once more the relevant provisions of Community law on fishery products, the scope of which has already been defined in some instances by the Court of Justice in Joined Cases 3, 4 and 6/76 (*Cornelis Kramer and Others*, judgment of 14 July 1976 [1976] ECR 1279), Case 61/77 (*Commission of the European Communities* v *Ireland*, judgment of 16 February 1978 [1978] ECR 417), Joined Cases 185 to 204/78 (Criminal proceedings against *Firma J. van Dam en Zonen and Others*, judgment of 3 July 1979 [1979] ECR 2345) and Case 141/78 (*French Republic* v *United Kingdom of Great Britain and Northern Ireland*, judgment of 4 October 1979).

The powers of the Community to adopt Community rules on the conservation and management of fishery resources are based on Articles 3 and 38 *et seq.* including Annex II to the EEC Treaty.

Articles 98 to 103 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties annexed to the Accession Treaty of 22 January 1972 contain additional provisions on fishery products. In particular, Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties provides that, from the sixth

1 — Translated from the German