

OPINION OF ADVOCATE GENERAL  
FENNELLY

delivered on 9 March 2000 \*

1. This Brussels Convention reference raises two questions: the first is whether the Convention applies where the plaintiff is domiciled in a third country; the second is whether the special rules concerning 'jurisdiction in matters relating to insurance' apply to disputes concerning reinsurance.<sup>1</sup>

eral rule of jurisdiction, whereby 'persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State'. This general domiciliary rule of jurisdiction is subject to the rules of 'special jurisdiction' set out in section 2 of Title II. They include Article 5 which, *inter alia*, provides that:

I — The legal and factual background

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

A — *The relevant provisions of the Brussels Convention*

2. Section 1 of Title II of the Convention contains Article 2 which sets out the gen-

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
...'

\* Original language: English.

1 — The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36). At the time of the events giving rise to the main proceedings, the relevant provisions of the Brussels Convention, Title II, namely section 3 concerning 'jurisdiction in matters relating to insurance', had been amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, 'the 1978 Accession Convention'). No relevant amendments were effected by either the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) or the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1).

3. Section 2 is also subject to the rules of section 3, comprising Articles 7 to 12a,

concerning 'jurisdiction in matters relating to insurance'. Article 8 provides that:

tracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.'

'An insurer domiciled in a Contracting State may be sued:

B — *The main proceedings and reference*

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policyholder is domiciled, or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

4. Universal General Insurance Company ('UGIC'), now in liquidation, is domiciled in British Columbia, Canada. It had instructed its broker, Euromepa, a French-domiciled company, to enter into a reinsurance contract with effect from 1 April 1990 in relation to a portfolio of Canadian home-occupiers' insurance policies. Acting on these instructions, Euromepa contacted Group Josi Reinsurance Company (hereinafter 'Group Josi'), a Belgian-domiciled company, by a fax dated 27 March 1990 and offered a share in the reinsurance contract, stating that 'the main reinsurers are Union Ruck with 24% and Agrippina Ruck with 20% ...'. By a faxed reply of 6 April 1990, Group Josi agreed to acquire a 7.5% share.

5. In the meantime, on 28 March 1990, Union Ruck told Euromepa that it did not intend to retain its share after 31 May 1990, and, by letter of 30 March 1990, Agrippina Ruck said it would reduce its share from 20 to 10% as of 1 June 1990. It is common case that Euromepa did not

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Con-

inform Group Josi of these communications.

6. On 25 February 1991, Euromepa sent Group Josi a statement of account showing that CAD 54 679.34 was owing in respect of the latter's share of the risk. Group Josi refused to pay, claiming that it had been induced to enter into the reinsurance contract on foot of information which 'subsequently transpired to be false'.

7. On 6 July 1994, UGIC brought proceedings against Group Josi before the Tribunal de Commerce (Commercial Court), Nanterre. Group Josi submitted that the French courts lacked jurisdiction because the Tribunal de Commerce, Brussels, within whose territorial jurisdiction it had its registered office, had jurisdiction. Group Josi relied both on the Brussels Convention and on Article 1247 of the French Code Civil (Civil Code).

8. On 27 July 1995, the Tribunal de Commerce, Nanterre, held that it had jurisdiction under French law on the basis that the Brussels Convention did not apply in respect of a Canadian company. It found against Group Josi and ordered it to pay to UGIC the sum of CAD 54 679.34 plus interest.

9. Group Josi appealed against that decision to the French Cour d'Appel (Court of Appeal), Versailles (hereinafter 'the referring court'). It contended that the Brussels Convention applied since it, as the defendant, was domiciled in a Contracting State.<sup>2</sup> UGIC contended that the jurisdictional rules established by the Convention could only apply if both the plaintiff and the defendant were domiciled in a Contracting State. Since it was a company incorporated under Canadian law with no subsidiary establishment within the European Community, it concluded that the Convention could not apply and the dispute as to jurisdiction fell to be resolved according to national rules of private international law, pursuant to which the French courts had jurisdiction.

10. Having consulted the Ministère Public (Advocate General), the referring court decided to refer the following questions to the Court under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Brussels Convention:

'1. Does the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters apply not only to "intra-Community" disputes but also to disputes which are "integrated into the Community"? More particularly,

<sup>2</sup> — It also relied on Article 5(1), which specifically covers jurisdiction in matters relating to contract.

can a defendant established in a Contracting State rely on the specific rules on jurisdiction set out in that Convention against a plaintiff domiciled in Canada?

tion is applicable in circumstances such as those involved in the main proceedings.<sup>3</sup>

2. Do the rules on jurisdiction specific to matters relating to insurance set out in Article 7 et seq. of the Convention apply to matters relating to reinsurance?

13. The Commission, the United Kingdom and France submit that, once the subject-matter of a dispute falls within the material scope of the Brussels Convention and, in particular, where the defendant is domiciled in a Contracting State, the domicile of the plaintiff is irrelevant.<sup>4</sup>

## II — Analysis

11. Written observations have been submitted by UGIC, Group Josi, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Commission. Only France and the Commission submitted oral observations.

14. There is nothing in the Jenard Report on the Brussels Convention which would indicate that any general restriction on the application of the basic rule is predicated upon the plaintiff's domicile being within the territory of a Contracting State.<sup>5</sup> Moreover, only exceptionally is the place of domicile of the plaintiff significant under the Convention.<sup>6</sup> The explicit references made in those exceptional cases to that place indicate that in all other cases it is irrelevant.

### A — *The applicability of the Brussels Convention*

12. All of the observations submitted to the Court, with the exception of those from UGIC, contend that the Brussels Conven-

15. Group Josi agrees but adds that disputes which are connected with the Community fall within its scope. A dispute will be 'integrated' ('intégré') into the Commu-

3 — UGIC defers to the consideration of the Court the question whether a defendant may invoke the Brussels Convention against a plaintiff domiciled in Canada.

4 — See Case C-190/89 *Rich* [1991] ECR I-3855 and Case C-406/92 *The Tatry* [1994] ECR I-5439.

5 — OJ 1979 C 59, p. 1.

6 — The United Kingdom refers to Articles 5(2), 8(2), 14(1) and 17.

nity if it is covered by one of the Convention's jurisdictional rules. France contends that, as UGIC may be regarded as being domiciled in France through the medium of its French agent, the first question does not arise.<sup>7</sup> Moreover, the application of Article 2, notwithstanding a plaintiff's place of domicile, would increase legal certainty for non-Contracting-State domiciliaries, who would then not have to face the uncertainty of the vagaries of application of national rules of private international law.

16. I agree with the United Kingdom and France that it would be inappropriate, for the purposes of determining the personal scope of a Brussels Convention that was designed to promote legal certainty, to resort to such an indefinite concept as that of whether disputes are integrated into the Community. 'Legal certainty', as the Jenard Report noted, 'is most effectively secured by conventions based on direct jurisdiction' — i.e. where the jurisdictional rules established are applicable in the State of the original legal proceedings rather than merely in the courts of the place where it is sought to have a judgment recognised and enforced — 'since, under them, judgments are given by courts deriving their jurisdiction from the conventions themselves'.<sup>8</sup> This is precisely what the Brussels Convention does; it establishes 'common rules of jurisdiction ... to achieve ... in the field which it was required to cover, a

genuine legal systematisation which will ensure the greatest possible degree of legal certainty'.<sup>9</sup> In a Convention whose central jurisdictional tenet is that a defendant must normally be sued in the courts for the place where he is domiciled, it would be odd if the place of domicile of the plaintiff were relevant.<sup>10</sup>

17. It is sufficient to recall the scheme of the Brussels Convention to conclude that the domicile of the plaintiff is irrelevant. The scope of the Convention is defined in Article 1 so as to 'apply in civil and commercial matters whatever the nature of the court or tribunal'. The Court has confirmed that the Convention contains rules of jurisdiction which enumerate *exhaustively* the cases in which a person may be sued outside the State in which he is domiciled.<sup>11</sup> Article 26 on the recognition of judgments and Article 31 on their enforcement, the key provisions in Title III of the Convention on 'Recognition and Enforcement' of judgments, are drafted in similarly general terms.<sup>12</sup> In short, the language of all the principal provisions presumes that the material scope of the Convention is defined by reference to the actions which

9 — *Ibid.*, p. 15.

10 — Save in non-international cases where the plaintiff is domiciled in the same Contracting State as the defendant, in which case the rules of jurisdiction in force in that State alone apply; see the Jenard Report, *op. cit.*, p. 9.

11 — Case C-26/91 *Handte v Traitements Mécano-chimiques des Surfaces* [1992] ECR I-3967, paragraph 13.

12 — The Jenard Report, *op. cit.*, p. 43, states that the Convention 'applies to any judgment given by a court or tribunal of a Contracting State in those civil and commercial matters which fall within the scope of the Convention, *whether or not the parties are domiciled within the Community and whatever their nationality*' (emphasis added).

7 — The Commission's agent pointed out at the hearing that, in accordance with Article 52, this was a matter for the *lex fori* of the court seised of the case, namely the French courts in the main proceedings, which, however, had not considered this question.

8 — *Op. cit.*, p. 7.

are brought before the courts of the Contracting States regardless of the parties.

18. The Brussels Convention takes the domicile of the defendant consistently as its primary point of reference for the exercise of jurisdiction. The basic rule in Article 2 and the special rules in, *inter alia*, Articles 5 and 6 invariably refer to where a 'person domiciled in a Contracting State' may be *sued*. Neither in those provisions nor in any of the special provisions such as Article 13 (consumer contracts) or Article 16 (exclusive jurisdiction) is any reference made to the domicile of the plaintiff. Indeed, such indications as appear from the text suggest that the Convention is presumed to apply to litigation involving domiciliaries of non-Contracting States. The second paragraph of Article 13 provides that where 'a consumer enters a contract with a party who is not domiciled in a Contracting State', the latter is 'deemed to be domiciled' in a Contracting State when it has a branch or agency there and the dispute arises out of its operations. The latter provision is merely designed to identify the Contracting State which may, in proceedings brought by a consumer, exercise jurisdiction.<sup>13</sup> Article 17 confers exclusive jurisdiction on the courts of a Contracting State nominated for that purpose in a contract between parties 'one or more of whom is domiciled in a Member State'.

19. The jurisdictional provisions of the Brussels Convention comprise two distinct sets of provisions which establish the framework for the operation of Title III. Firstly, Article 2 confers jurisdiction based on the defendant's domicile, subject to a number of special provisions such as Articles 5, 6, 7 to 12a, 13 to 15, 16 and 17. Article 4 provides for the cases where '*the defendant* is not domiciled in a Contracting State', in which case the jurisdiction of each Contracting State is to be determined 'by the law of that State', viz. by the private international law of the respective Contracting States. Thus, the Convention establishes a comprehensive scheme covering all defendants whether or not they are domiciled in a Contracting State.

20. The exclusion of the plaintiffs domiciled in non-Contracting States from Article 2, as argued by UGIC, would create a major and illogical gap in the scheme of the Brussels Convention. Firstly, it would make no sense to exclude cases where *plaintiffs* are domiciled in non-Contracting States from the scope of the Convention when cases involving *defendants* from such States are included. In particular, actions covered by Article 4 would be regulated, where necessary, by the provisions of Articles 21 and 22 regarding *lis alibi pendens* and related actions, whereas actions by non-domiciled plaintiffs even against persons domiciled within a Contracting State would not necessarily be so regulated.

13 — See Case C-318/93 *Brenner and Noller v Dean Witter Reynolds* [1994] ECR I-4275.

While the latter provisions do not confer jurisdiction, their language presumes, like that of Articles 26 and 31, that the Convention applies comprehensively to all cases brought before the courts of the various Contracting States.

certain cargo carried on board one of their ships from Brazil to Rotterdam, it was not suggested that the courts in the subsequently commenced English actions could ignore the *lis alibi pendens* requirements of Article 21 of the Convention on the basis that the Convention was inapplicable in respect of the first-in-time Netherlands action.<sup>16</sup>

21. Furthermore, no support for non-application of the Brussels Convention may be derived from the fact that it does not apply to proceedings concerning the recognition and enforcement of judgments given in non-Contracting States.<sup>14</sup> The proceedings at the origin of such application, unlike an action brought against a defendant domiciled in one Contracting State before the courts of another, have manifestly no connection with the Community. Moreover, as the Commission observes, some support for dismissing the relevance of the plaintiff's domicile may be derived from certain case-law which has concerned actions brought by non-Contracting-State-domiciled plaintiffs but in which that domicile was not viewed as being pertinent. Thus, in *Rich*, the Court did not comment on the fact that the main proceedings involved a Swiss plaintiff who had brought an application before the English courts for the appointment of an arbitrator against an Italian domiciliary.<sup>15</sup> While, in *The Tatry*, although one of the various series of actions involved in that case comprised proceedings brought in the Netherlands by Polish shipowners for a declaration that they were not liable for the alleged contamination of

22. Accordingly, I recommend that the Court confirm that the non-Contracting-State domicile of the plaintiff is irrelevant for the purposes of the application of the Brussels Convention. In my opinion, it may only have a bearing in those cases where it is stated explicitly, whether directly or indirectly, by the Convention to constitute a relevant factor.<sup>17</sup>

#### B — *The Brussels Convention and reinsurance*

23. Only UGIC favours treating reinsurance as falling within the scope of section 3 of Title II of the Brussels Convention. It refers particularly to the potentially very weak position of the insurer in certain 'fronting' situations, and submits that rein-

14 — This was confirmed by the Court in Case C-129/92 *Owens Bank v Fulvio Bracco and Bracco Industria Chimica* [1994] ECR I-117, paragraph 37.

15 — Loc. cit., footnote 4 above.

16 — Loc. cit., footnote 4 above.

17 — See Articles 5(2), 8(2), 14(1) and 17 of the Convention.

insurance should be subject to the special insurance rules.<sup>18</sup>

24. Group Josi, supported on this point by France and the United Kingdom, submits that the special rules regarding insurance (especially Article 8(2) of the Brussels Convention, which allows the policy-holder to sue in the courts for the place where it is domiciled) do not apply. They are designed to protect insured persons as the presumptively weaker contracting parties. This is not the case with reinsurance. Group Josi, along with France and the United Kingdom, draws support from the Schlosser Report on the 1978 Accession Convention, which states that '[r]einsurance contracts cannot be equated with insurance contracts. Accordingly, Articles 7 to 12 do not apply to reinsurance contracts'.<sup>19</sup> France notes that, although reinsurance has arisen in the context of certain Article 21 cases, the Court did not consider that the special rules concerning insurance applied. It also contends that, even if reinsurance were covered, Article 8(2) of the Convention could only apply where the insured is the weaker party and where it is

domiciled in a Contracting State, neither of which conditions is satisfied by UGIC.

25. The Commission observes that the relationship between the reinsured and the reinsurer does not affect that between the insurer and the original insured person and that the relevant provisions of the Convention are ambiguous. However, it has decided to reconsider the view it expressed in its observations in *Overseas Union Insurance and Others*.<sup>20</sup> Accordingly, it now submits that the insurance rules are designed to protect the 'weaker' party, which would tend to exclude reinsurance contracts. The rules on insurance should be viewed as being inspired by the same philosophy as that underlying the rules concerning consumer contracts in section 4 of Title II (Articles 13 to 15) of the Brussels Convention.

26. There are two possible bases upon which reinsurance may be regarded as falling within the scope of the special insurance rules. The first is that there is no fundamental difference between insurance and reinsurance that would justify excluding the latter from the scope of section 3 of Title II of the Brussels Convention. The second is the textual argument that, while certain large risks are expressly excluded by Article 12a, which was

18 — 'Fronting' refers to the situation where insurer B, usually in return for a commission, acts as a 'front' for insurer A, who may be unlicensed or otherwise unacceptable to the insured. Ordinarily insurer B will, under the contract of insurance, be fully liable to the insured, but entitled to an indemnity from insurer A under the contract of reinsurance; see *MacGillivray on Insurance Law* (Leigh-Jones, general editor), 9th ed. (London, 1997), at paragraph 33-21.

19 — OJ 1979 C 59, p. 117, paragraph 151.

20 — Case C-351/89 [1991] ECR I-3317.

inserted by the 1978 Accession Convention, reinsurance is not among them. Some indirect support for this view could be drawn, as suggested by UGIC, from the French legislature's decision, so as to exclude reinsurance from the scope of the French Code des Assurances (Insurance Code), to insert an express provision (Article L.111-1) into the Code to that effect.

27. However, I do not find these arguments convincing. In the first place, insurance and reinsurance, though related, 'are conceptually distinct'.<sup>21</sup> Thus, while there is no generally accepted broad definition of reinsurance, it may, in substance, be distinguished from ordinary insurance contracts, because '[i]t is neither an assignment nor transfer of the original insurance business from one insurer to another, nor is it a relationship of partnership or agency between insurers', but, rather, it constitutes 'an independent contract of insurance whereby the reinsurer engages to indemnify the reinsured wholly or partially against losses for which the latter is liable to the insured under the primary contract of insurance'.<sup>22</sup>

28. The decisive consideration, however, is to be found in the policy behind the special

rules on jurisdiction in respect of insurance. It is clear from the Jenard Report that 'social considerations for the protection of certain categories of person, such as insured persons ...' necessitated certain exceptions from the general domiciliary jurisdiction rule, 'aimed in particular at preventing abuses which could result from the terms of contracts in standard form'.<sup>23</sup> The notion of protecting the insured, jurisdictionally, against the (usually) economically more powerful insurer would seem to have inspired even the original text of section 3 of Title II of the Brussels Convention. Indeed, the Court had taken the view in *Bertrand v Ott*, several months before even the signature of the 1978 Accession Convention, that protection of the weaker private (final-consumer) party formed the basis for the rules of the original section 4 of Title II, notwithstanding that its provisions made no reference to 'consumers'.<sup>24</sup> This view was expressly confirmed in 1983, as regards section 3 of Title II of the original Brussels Convention, in *Gerling v Amministrazione del Tesoro dello Stato*, where the Court held that it was 'apparent from a consideration of the provisions of that section in the light of the documents leading to their enactment that, in affording the insured a wider range of jurisdiction than that available to the insurer and in excluding any possibility of a clause conferring jurisdiction for the benefit of the insurer, their purpose was to protect the insured who is most frequently faced with a predetermined contract the clauses of which are no longer negotiable and who is in a *weaker economic position*'.<sup>25</sup>

21 — See the judgment of Evans L.J. in the Court of Appeal of England and Wales in *Agnew and Others v Lansförsäkringsbolagens* [1997] 4 All ER 937, p. 944.

22 — See *MacGillivray on Insurance*, op. cit., paragraph 33-2, where various English case-law authorities are cited.

23 — Op. cit., pp. 28 and 29.

24 — Case 150/77 [1978] ECR 1431, paragraph 18.

25 — Case 201/82 [1983] ECR 2503, paragraph 17 (emphasis added).

29. It is in this context that the unequivocal view regarding reinsurance expressed in paragraph 151 of the Schlosser Report must be considered. Since it categorically rejects the equation of reinsurance contracts with insurance contracts and since Article 9 of the 1978 Accession Convention inserted a new Article 12a into the Brussels Convention so as explicitly to exclude certain (but not all) business-risk insurance contracts, the authors of the 1978 Accession Convention must be regarded as having accepted the Schlosser Report's view that there was no need to remove any types of reinsurance contracts because reinsurance had never been covered in the first place.

30. Moreover, the Court has consistently held that all exceptions to the general rule that a defendant be sued in the courts for the place of his domicile are to be narrowly construed.<sup>26</sup> Since it is, at the very least, doubtful that it was originally intended to include reinsurance within the scope of section 3 of Title II of the Brussels Convention or, even if it were so originally included, to maintain that inclusion following the adoption of the 1978 Accession Convention, the Court should now confirm that the general jurisdictional rules of the

Brussels Convention apply. Indeed, the whole thrust of section 3 of Title II is to prescribe a series of alternative rules of jurisdiction intended to benefit those suing 'an insurer domiciled in a Contracting State' (see Article 8). Only Article 11 addresses the right of an insurer to 'bring proceedings'. Yet it provides, apart from counterclaims which may always be made in the court in which the original claim is pending, that insurer-initiated proceedings must be brought 'in the courts of the Contracting State in which the defendant is domiciled'. In effect, therefore, as France points out, in so far as the right of action of insurers is concerned section 3 of Title II merely confirms the general rule of Article 2. If those provisions also extended to reinsurance, it might, not unreasonably, be contended that the reassured could only sue the 'reinsurer' at the latter's place of domicile because, after all, it would remain an 'insurer', while the reinsurer, since it would fall to be equated with an 'insurer', could also only sue the reinsured 'insurer' at the reassured's place of domicile. It seems to me highly unlikely that the authors of the Brussels Convention intended to deprive either insurers or reinsurers of the right, in disputes between themselves, to bring proceedings in particular pursuant to Article 5.

31. I would draw additional support for this conclusion from both the academic and judicial reaction to the provisions of sec-

26 — See, for example, *Handte*, op. cit., paragraphs 13 and 14 and Case C-51/97 *Réunion Européenne and Others* [1998] ECR I-6511, paragraph 16.

tion 3 of Title II of the Brussels Convention, as amended by the 1978 Accession Convention. In 1990, one commentator, '[i]n anticipation of a request being made for ... a ruling from the Court at some future date, ... submitted that reinsurance should most certainly be excluded from section 3'.<sup>27</sup> It is noteworthy that the English courts — which, since much of the international reinsurance business is placed on the London market,<sup>28</sup> have a particular familiarity with reinsurance — have taken a consistent position against the inclusion of reinsurance within the special rules.<sup>29</sup>

reinsurer, do not fall to be considered as 'matters relating to insurance' for the purpose of the Brussels Convention. This conclusion is unaffected by the Commission's submission that reinsurance should be so considered where the original policyholder(s) is placed, whether as a result of national legislation or otherwise, in a direct relationship with the reinsurer.<sup>30</sup> In those circumstances, the reinsurer would effectively act as an insurer and would, therefore, be subject to the special jurisdictional rules of section 3 of Title II. In other words, it would, *vis-à-vis* such a policyholder, fall to be considered as subrogated to the position of the insurer for the purpose of section 3.<sup>31</sup>

32. Consequently, I am satisfied that reinsurance contracts, i.e. those which create relationships between a reinsured and his

27 — Kaye, 'Business insurance and reinsurance under the European Judgments Convention: application of protective provisions' (1990) *Journal of Business Law* 517, p. 522. See also: Hunter, 'Reinsurance Litigation and the Civil Jurisdiction and Judgments Act 1982' (1987) *JBL* 344; O'Malley and Layton, *European Civil Practice* (1989), paragraph 18.07; *MacGillivray on Insurance Law*, op. cit., paragraph 33-84; *Colinvaux's Law of Insurance* (Merkin editor), 7th ed., London, 1997, p. 39.

28 — See *Colinvaux's Law of Insurance*, op. cit., p. 29. The significant role of United Kingdom courts flowing from the importance of the London market was also cited by the Tribunal de Commerce, Nanterre, in its judgment in the main proceedings and, indeed, was recognised in the Schlosser Report, op. cit., paragraph 136.

29 — See Kerr L.J. in the Court of Appeal of England and Wales in *Citadel Insurance v Atlantic Union Insurance* [1982] 2 Lloyd's Rep. 543, p. 549, Rix J. in the High Court of England and Wales in *Trade Indemnity and Others v Forsäkringsaktiebolaget Njord (in liq)* [1995] 1 All ER 796, p. 804 and Evans L.J. in *Agnew and Others*, op. cit., footnote 21 above, pp. 943 and 944.

30 — At the hearing, the Commission referred, in this respect, to certain provisions in Spanish law. Contrary to UGIC's submission, no such considerations apply in respect of the relationship between a reinsurer and an insurer in fronting situations.

31 — The notion of subrogation has recently been considered by the Court in Case C-8/98 *Dansommer v Andreas Götz* [2000] ECR I-393, paragraph 37.

### III — Conclusion

33. In the light of the foregoing, I recommend that the Court answer the questions referred by the Cour d'Appel, Versailles as follows:

- (1) The Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended, applies to any civil or commercial action brought in a Contracting State to that Convention, against a defendant who is domiciled in that or another Contracting State to the Convention, regardless of the place of domicile of the plaintiff;
- (2) The rules on jurisdiction specific to matters relating to insurance set out in section 3 of Title II, as amended, of the Brussels Convention do not apply in matters relating to reinsurance.