

In Case 812/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Circuit Court of the County of Cork for a preliminary ruling in the proceedings pending before that court between

ATTORNEY GENERAL

and

JUAN C. BURGOA

on the interpretation of Article 234 of the EEC Treaty and Article 5 of the Act of 22 January 1972 concerning the conditions of accession and the adjustments to the Treaties and on the interpretation of the London Fisheries Convention of 1964 and of certain provisions of Community legislation relating to fisheries,

THE COURT,

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

Advocate General: F. Capotorti

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

(a) *Facts*

1. On 30 October 1979 Juan C. Burgoa, the master of the fisheries vessel

Itxas Ondo No B*-4-109, registered in Spain, appeared before the Circuit Court, Cork, charged with three offences alleged to have been committed against Irish fisheries legislation. The accused is charged with fishing and attempting to fish illegally, and with having on board nets with undersized mesh within the exclusive Irish fisheries limits. He is charged with having committed these three offences on 10 July 1978 when the *Itxas Ondo* No B*-4-109, of which he was the master, was 51° 55' North and 11° 10' West and 20 miles off the base-line, that is to say 180 miles inside the exclusive fishery limits of the Irish State.

Section 222 (a), of any fish and any fishing gear found on the boat to which the said offence relates.

Under Section 6 of the Maritime Jurisdiction Act 1959, as amended by Section 2 of the Maritime Jurisdiction (Amendment) Act 1964, the Irish Government, by Order of 22 December 1976, which took effect on 1 January 1977, extended the exclusive fishery limits of the Irish State to 200 nautical miles from the nearest point of the base-line save where affected by the proximity of the exclusive fishery limits of another State (Maritime Jurisdiction [Exclusive Fishery Limits] Order 1976).

2. The Irish legislation applicable in this case provides in Section 222 (a) of the Fisheries (Consolidation) Act 1959, as inserted by Section 7 of the Fisheries (Amendment) Act 1978:

“222 (a) (1) A person on board a foreign sea-fishing boat shall not fish or attempt to fish while the boat is within the exclusive fishery limits of the State unless he is authorized by law to do so.

(2) A person who contravenes Subsection (1) of this section shall be guilty of an offence.”

Table III of the Fisheries (Amendment) Act 1978 makes the foregoing offence subject to a fine not exceeding £100 000 together with forfeiture, as a statutory consequence of conviction under the said

The minimum mesh dimensions of fishing nets which a fishing vessel may have on board within the exclusive fishery limits of the State were fixed by the Fishing Nets (Regulation of Mesh) Order 1976, made under Articles 226 and 230 of the Fisheries (Consolidation) Act 1959. That act was moreover amended by Article 2 of the Fisheries (Amendment) Act 1978 and the Fishing Nets (Regulation of Mesh) Order 1976 was replaced with effect from 18 September 1978 by the Fishing Nets (Regulation of Mesh) Order 1978.

3. During the hearing by the Circuit Court the accused submitted, *inter alia*, that the London Fisheries Convention of 9 March 1964 (UN Treaty Series 581, No 8432), created for him antecedent rights which are maintained by Community law, in particular by Article 234 of the EEC Treaty. The Attorney General, for his part, disputed that claim and stated in particular that Article 10 of the London Convention conferred on the Irish State power to adopt the legislative provisions above referred to.

4. By order of 7 December 1979 the Circuit Court stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

“1. Does Article 234 of the Treaty of Rome create rights and obligations:

(a) for the institutions of the European Communities;

(b) for the Member States of the Communities?

2. Does Article 234 of the Treaty of Rome, or any other rule of Community law, maintain or uphold rights of the beneficiaries of treaties to which Article 234 of the Treaty of Rome applies, which national courts of the Member States must uphold?

3. Is the 1964 London Fisheries Convention a treaty of the kind to which Article 234, as adapted in relation to Ireland, the United Kingdom and Denmark by Article 5 of the Act of Accession, of the Treaty of Rome applies?

4. Would a conviction of the defendant under Section 222 (a), Subsection 1 of the Fishery (Consolidation) Act, 1959, as inserted by Section 7 of the Fishery Amendment Act 1978, in the present proceedings before the Circuit Court in Cork, be contrary to EEC law?”

The order containing the reference was registered at the Court on 11 December 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Mr Burgoa, represented by Rory F. Conway,

Solicitor, by the Attorney General of Ireland, represented by Louis Dockery, Chief State Solicitor, by the Government of the French Republic, represented by Thierry le Roy, acting as Agent, by the Government of the United Kingdom, represented by R. D. Munrow, Treasury Solicitor's Department, acting as Agent, and by the Commission of the European Communities, represented by Richard Wainwright, a member of its Legal Department, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

(b) The legal background

1. The London Fisheries Convention (UN Treaty Series 581, No 8432)

The London Fisheries Convention was concluded on 9 March 1964 between Austria, Portugal, Spain, Sweden and the nine States which are now members of the European Economic Community. The Convention defines the common features of a fishery system for the 6-mile zone from the base-line and for the zone situated between 6 and 12 miles from the base-line.

Each Contracting Party recognizes the right of any other Contracting Party to establish the fishery régime described in the Convention (Article 1 (1)). Articles 2 and 3 of the Convention provide as follows:

“Art. 2

The coastal State has the exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of 6 miles measured from the base-line of its territorial sea.

Art. 3

Within the belt between 6 and 12 miles measured from the base-line of the territorial sea, the right to fish shall be exercised only by the coastal State and by such other Contracting Parties, the fishing vessels of which have habitually fished within that belt between 1 January 1953 and 31 December 1962."

Article 10 declares that no provision of the Convention shall preclude the maintenance or establishment of a special fisheries régime, *inter alia*, between the Member States of the European Economic Community.

2. Community fisheries rules applicable to vessels registered in Spain

Following the parallel extension, as from 1 January 1977, by the Member States of the Community of their exclusive zones to 200 miles, the exploitation of fishing resources in these zones by fishing vessels of non-member countries has been governed by a series of interim Community measures for each of the countries concerned. These measures have been adopted pending the conclusion of outline agreements on fisheries between the Community and the non-member countries in question.

As regards vessels registered in Spain the régime applicable was fixed first by Council Regulation No 373/77 of 24 February 1977 (Official Journal 1977 L 53, p. 1) the application of which has been extended and which has subsequently been amended. The régime applicable during the period in question in this case was the subject-matter of Council Regulation No 341/78 of 20 February 1978 laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain for the period 21 February to 31 May 1978 (Official Journal 1978 L 49, p. 1). That regulation was extended until 31 July 1978, on the last

occasion by Council Regulation No 1376/78 of 21 June 1978 (Official Journal 1978 L 167, p. 9).

Article 2 of Regulation No 341/78 is worded as follows:

"Art. 2 (1) Fishing shall be subject to the granting of a licence, issued by the Commission on behalf of the Community, and to compliance with the conservation and supervisory measures and other provisions governing fishing in the zones referred to in Article 1.

(2) Fishing quotas, the number of licences which may be issued to vessels flying the flag of Spain and the maximum number of vessels in possession of a licence which may fish at the same time within a particular zone are laid down in the annex."

In addition the regulation lays down in particular the conditions for the issue of licences and for their withdrawal in case of irregularities or of the quantities laid down having been fished.

II — Summary of the written observations submitted to the Court

(a) *Article 234 of the EEC Treaty and the London Fisheries Convention of 9 March 1964*

The observations of *Mr Burgoa*, the accused in the main proceedings, are based essentially on two arguments.

First he maintains that the London Convention of 1964 imposes on Ireland, by virtue of Article 234 of the EEC Treaty, obligations with regard to Spain. In particular Article 3 of the Convention gives rights to Spanish fishermen inasmuch as it confers rights on habitual fishermen, explicitly as regards the 6 to 12-mile belt and by implication as regards the 12 to 200-mile belt.

Secondly he claims that the Community in elaborating its fisheries policy must comply with Article 234 of the Treaty of Rome and with the principle of international law which relates to the recognition of rights of traditional fishermen in its fishing waters. Any unilateral national measure which conflicts with this basic principle of the Community's fisheries policy is void.

As regards Article 234 of the Treaty, Mr Burgoa observes first that it is clear from that provision, as it applies to the new Member States by virtue of Article 5 of the Act of Accession, that the rights and obligations resulting from agreements concluded before 1973, in this case between Ireland and Spain, continue in force. In his opinion Article 234 is binding both on the Member States and on the Community institutions.

The accused in the main proceedings refers to the judgment of the Court in Joined Cases 21 to 24/72 (*International Fruit Company v Produktschap voor Groenten en Fruit*, [1972] ECR 1219), according to which the Member States "by concluding a Treaty between them ... could not withdraw from their obligations to third countries" (paragraph 11 of the decision). In this case no steps within the meaning of the second paragraph of Article 234 have

been taken either by Ireland or by the Commission to eliminate any incompatibilities.

Furthermore he emphasizes that the London Convention is certainly covered by Article 234 of the EEC Treaty. In this case the rights of a third State and the obligations of a Member State towards that State are involved (cf. Case 10/61, *Commission of the EEC v Italy*, [1962] ECR 1). The Convention is still in force between Ireland and Spain and the *rebus sic stantibus* rule, which is moreover disputed, cannot be invoked to escape the obligations flowing from it.

On these grounds the first question submitted by the national court must in his opinion receive an affirmative answer.

With a view to defining the legal position of traditional fishermen in the belt between 12 and 200 miles Mr Burgoa gives a brief summary of the development of the law of the sea. The law of the sea now in force, which is derived principally from the Geneva Pacts of 1958 and the Second United Nations Conference on the Law of the Sea, 1960, recognizes, as an international universal custom, the existence of territorial waters of 6 miles and a fishing zone of the same extent to the maximum limit of 12 miles, adjacent to it, where the exclusive rights of the neighbouring State come together with the rights acquired by other States. This principle has been accepted in the London Convention of 1964.

The special interest of the neighbouring State in the maintenance of the live resources in any part of the high seas adjacent to its territorial waters has been

recognized for the belt between 12 and 50 miles by the Decision of the International Court of Justice in 1974, which, however, at the same time recognized the rights of traditional fishermen from other States in that zone (*United Kingdom v Iceland* (ICJ Reports 1974, p. 3)). Similar criteria may be applied in relation to the zone comprised between 12 and 200 miles and have in fact been recognized in the texts issued by the Third Conference on the Law of the Sea (cf. Article 62 of the Revised Informal Composite Negotiating Text, UN Doc. A/conf. 62/WP10/Rev. I of 28 April 1979).

As regards the applicability of the London Convention of 1964 to the 12 to 200-mile zone, Mr Burgoa submits essentially that the Convention recognizes the rights of traditional fishermen from other States within that band, over which countries claim jurisdiction, extending from the edge of the territorial waters to the outer limits of its fishing zone. This principle holds good for the band from 6 to 200 miles, sovereign rights over which are now being claimed, as much as for the band from 6 to 12 miles, where they already existed. Thus, in theory if not literally, the London Convention is perfectly applicable to the new extension of Community fishery jurisdiction up to 200 miles; an exclusive jurisdiction over 12 miles then being established, the régime laid down for fishermen of the other States exists as regards the remaining 188 miles.

Moreover recognition of the rights of Spanish traditional fishermen in the

200-mile zone in the light of Article 3 of the London Convention of 1964 has been confirmed by a decision of the Cour d'Appel [Court of Appeal], Poitiers, of 23 June 1978.

The accused in the main proceedings next examines the question whether, for beneficiaries of prior agreements within the meaning of Article 234 of the Treaty and particularly of the London Convention of 1964, Community law maintains rights which national courts must uphold.

In his opinion it follows from the case-law of the Court, which he considers to be founded on monist principles, that international treaties to which the Community is a party may be directly applicable in Community law (Joined Cases 21 to 24/72, *International Fruit Company v Produktschap voor Groenten en Fruit*, [1972] ECR 1219 and others). This case-law is applicable by analogy to prior agreements, not solely as a result of Article 234 of the Treaty, but also on the basis of the principle of law common to the Member States, *pacta servanda sunt*, which belongs to the general principles of law which the Court will uphold (Case 4/73, *Nold v Commission*, [1974] ECR 491). This result is all the more necessary because the principle of the recognition of the rights of traditional fishermen is also part of the general principles which must be upheld in Community law. According to the case-law of the Court in the case of *International Fruit Company*, cited above, this principle, as well as the rule *pacta servanda sunt*, must be applied to assess

the validity of national measures in the same way as that of Community measures.

As regards the question whether the Community is bound by the London Convention, Mr Burgoa claims that according to the judgment of the Court in Case 61/77 (*Commission v Ireland*, [1978] ECR 417), power to establish fisheries rules resides with the Community. That power is exclusive and extends to the whole of the maritime waters belonging to the Member States, that is to say, since January 1977, the zone extending up to 200 miles (paragraphs 48 to 51 of the aforementioned judgment). The Community has thus assumed the powers previously exercised by Member States in the area in question (judgment in *International Fruit Company*, cited above, paragraph 18). Consequently the Community is bound by the international conventions concluded between the Member States and non-member countries in the sphere of fisheries, in particular by the London Convention.

The second precondition for a consideration of the compatibility of national or Community measures with the international obligations of the Community, namely that the international convention in question must be of such a kind as to confer rights on the nationals of the signatory States (judgment in *International Fruit Company*, cited above, paragraph 20), is also fulfilled. In fact, in contrast with the provisions of GATT considered in the aforementioned judgment, the London Convention is characterized by the absence of political flexibility and it provides for a legal system, without derogations, primarily for the benefit of individuals, that is to say, the fishermen of the signatory States.

In the light of these observations Mr Burgoa is of the opinion that the answers

to the second and third questions submitted by the Circuit Court must also be in the affirmative.

It follows, according to him, that his conviction on the basis of the applicable Irish legislation, as referred to in Question 4, would indeed be contrary to EEC law.

The *Attorney General of Ireland* first observes that, even if the London Convention of 1964 were still in force and were to have the effects suggested in the questions submitted to the Court, it would not apply to the facts of this case. In fact the alleged offences were committed at a point 20 miles out from the base-lines but Article 3 of the Convention, upon whose provisions the accused relies, granted fishing rights to other Contracting Parties only within the belt between 6 and 12 miles from the base-lines.

Furthermore, the 1964 Convention has been effectively overtaken by events and has been deprived of its effect by the general extension of fishing limits to 200 miles.

However, in view of possible opinions to the contrary in this respect the Attorney General thinks it would not be appropriate for the Court of Justice to express an opinion on this point.

If the Convention continues to have effect, which is disputed, the Attorney General draws attention to Article 29.6 of the Constitution of Ireland according to which:

"No international agreement shall be part of the domestic law of the State save

as may be determined by the Oireachtas” (the Parliament of Ireland).

to create fresh obligations for the Member States.

The London Convention has never had direct effect and has never been integrated into the domestic law of Ireland by decision of the Oireachtas. Instead, the fishing rights which the Convention was intended to secure in the case of Spain were provided for by means of autonomous orders of the government, making no reference to the Convention.

From another point of view a clear distinction must be made between the obligations of a Member State in Community law on the one hand and international law on the other hand. Whilst Community law, including Article 234 of the EEC Treaty, is part of domestic Irish law and overrides any contrary provision of the Constitution of Ireland, accession to the Community did not have the effect of overriding the above-mentioned rule of the Irish Constitution in the case of agreements previously contracted. An international agreement which was not part of the domestic law of Ireland when it was contracted does not become part of that law — against non-member countries — except by virtue of an explicit provision of the Treaty or of subordinate Community legislation.

Article 234 of the EEC Treaty, as it has been interpreted by the Court of Justice in its judgment in Case 10/61 (*Commission v Italy*, [1962] ECR 1) is restricted to ensuring passively that the due observance of the obligations of Member States arising from agreements concluded before the entry into force of the EEC Treaty shall not be interfered with. The object of the provision was not

Furthermore, at least for a State in which, like Ireland, international agreements do not as such form part of domestic law failing national legislation to that effect, the “rights and obligations arising from” agreements to which Article 234 applies are only rights and obligations between the States which are parties to such agreements. As regards the rights of individuals in relation to Article 234, the Attorney General takes the view that an individual might question before the courts of a Member State only the legality of a Community measure which was considered to be contrary to an agreement to which Article 234 applied.

Moreover, the Attorney General takes the view that there is no other rule of Community law which has the effect of binding the Community to apply the London Convention.

The circumstances under which the Court reached the conclusion that the provisions of GATT bind the Community were special to the individual case (Joined Cases 21 to 24/72, *International Fruit Company v Produktschap voor Groenten en Fruit*, [1972] ECR 1219, paragraphs 10 to 18).

That judgment does not make it possible to state that the Community has assumed the obligations of the Member States under the London Convention or that it is bound by the Convention.

That was certainly not the case on the day on which the alleged offence was committed since at that date the period

fixed by Article 102 of the Act of Accession as interpreted by the Court of Justice in Joined Cases 185 to 204/78 (*Van Dam*, [1979] ECR 2345), had not yet expired.

The *Government of the French Republic* has no doubt that, by virtue of Article 5 of the Act of Accession, Article 234 of the Treaty of Rome applies to the London Convention of 1964 as far as Ireland is concerned.

It too, however, takes the view that the facts in this case are outside the geographical scope of the Convention.

Next the French Government wonders whether the questions put to the Court may usefully contribute to the resolution of the disputes before the Cork Circuit Court.

If the Court nevertheless thinks it appropriate to reply, the French Government points out that Article 10(a) of the London Convention entitles the Member States of the Community to establish a "special régime". Such a régime may even differ from a general conservation régime applicable to the habitual fishers of non-member countries laid down in pursuance of Article 5 of the Convention. The licensing system laid down by the Community legislature in pursuance of its powers in this matter for the purpose of enforcing the quotas which it has laid down has the same purpose and comes within the actual scope of the power conferred upon it by Article 5 of the Convention.

Finally the French Government takes the view that the Court of Justice has no

jurisdiction to interpret the disputed provisions of the London Convention. Under Article 177 of the Treaty the Court indeed has power to interpret the provisions of the Treaty as well as secondary Community law including the provisions of international law which bind the Community as such (cf. Joined Cases 21 to 24/72, *International Fruit Company v Produktschap voor Groenten en Fruit* [1972] ECR 1219). On the other hand the Court has no jurisdiction under the said Article 177 to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of the Community (cf. Case 130/73 *Vandeweghe and Others v Berufsgenossenschaft* [1973] ECR 1329).

The London Convention, to which the Member States and non-member countries, but not the Community as such, are parties, may only be interpreted, should the need arise, in accordance with the procedures which the Convention itself has laid down to that end.

The *Government of the United Kingdom* also takes the view that the London Convention has no application to the facts of the case.

If it were to be proved that the fishing had taken place within the 6 to 12-mile coastal belt the effect of Article 234 of the Treaty would be that Community rules can neither take away rights granted by the London Convention nor conversely render the Convention directly effective when it is clear from the terms of the Convention that it confers no rights on individuals. By virtue of Articles 5 and 10 of the Convention Ireland and the Community

have the power to regulate fishing activities within the 6 to 12-mile belt.

In the absence of conflicting EEC rules the Irish rules on net mesh sizes must apply in waters under its jurisdiction. If the Convention were relevant such rules would be permissible under Article 5.

Consequently the Government of the United Kingdom is of the opinion that there are no provisions of Community law which would prevent conviction in a case of the kind which is the subject of this reference.

The Commission sets out first of all on the one hand the rules of international law regarding fishing zones, in particular the London Convention of 1964, and on the other hand certain external aspects of the Community's fisheries policy.

As regards Article 234 of the Treaty the Commission takes the view that in some cases it merely restates the rule of international law now enshrined in Article 30 of the Vienna Convention on the Law of Treaties, whereby each State which is a party to a treaty remains bound by the obligations previously assumed by it towards non-member countries, even if such obligations conflict with those which arise from a new treaty (cf. Case 10/61 *Commission v Italy*, [1962] ECR 1).

In other cases however the Commission takes the view that Article 234 must be interpreted as introducing a variant of the concept of international law of "State succession" whereby the

Community succeeds its Member States, assuming both their rights and obligations under previously concluded agreements. The judgment of the Court in Joined Cases 21 to 24/72 (*International Fruit Company v Produktschap voor Groenten en Fruit*, [1972] ECR 1219) is an example of such interpretation.

The Commission takes the view that the Community has succeeded to obligations originally assumed by Member States, including Ireland, towards non-member countries under the London Convention. It is clear from the case-law of the Court that the Community is competent to take measures for the management of fishery resources (cf. Joined Cases 3, 4 and 6/76, *Kramer and Others*, ECR 1279; Case 61/77, *Commission v Ireland*, [1978] ECR 417, and Case 88/77, *Minister for Fisheries v Schonenberg and Others*, [1978] ECR 473). Moreover, since early 1977 the Community has been negotiating and concluding agreements with non-member countries and determining the catch to be allotted to vessels of non-member countries. The nine Member States were parties to the Convention but have since transferred to the Community their power of management over the resources in their fishing zones.

From another point of view the Commission thinks that the London Convention, which is based on the principle of 12-mile zones, is obsolete since there has been a fundamental change of circumstances brought about by the general recognition of 200-mile fishery zones. However, as the negotiations on the agreement between Spain and the Community have shown, it is difficult to maintain that Spain has acquiesced in the termination of the London Convention. For this reason the Commission feels that it would be

undesirable for the Court to give a decision on this problem.

Having regard to the very clear terms of the Convention it cannot be maintained either that it applies beyond the 12-mile zone. No rule of interpretation of treaties could lead a court to extend the application of the Convention to the additional 188-mile zone. Similarly, neither the reference period for the establishment of "historic rights" nor the subsequent practice of the parties to the Convention would permit such an interpretation.

As regards the question whether the provisions of the London Convention are such as to produce direct effect in the Community legal system the Commission observes first that the constitutional State system from which the Community has inherited the obligation to observe the Convention, cannot be used as an argument against the incorporation of the Convention into Community law.

On the other hand the Commission takes the view that the Convention does not confer on individuals rights which they may invoke before the courts. In this respect it refers in particular to the specific procedure provided for the resolution of disputes and to the imperfect nature of certain provisions which, for example, leave it to the Contracting Parties to define the concept of "habitual fishing".

(b) The Community rules applicable

The *Attorney General of Ireland* observes that Council Regulations Nos 341/78 and 1376/78 might be regarded as containing, in effect, a prohibition on

fishing by Spanish vessels in waters within the 200-mile fishing zones of the Member States except under Community licence.

In his view however the prosecution in question is based not on an infringement of Community rules but on a breach of Article 222 (a) of the Fisheries (Consolidation) Act 1959, as amended by the Fisheries (Amendment) Act 1978.

The only lawful authority for fishing such as that which is the subject of the prosecution would be either the possession of a Community licence or else fishing in accordance with the independent orders of the Irish Government.

Consequently, even if it were to be established that any of the provisions of Regulation No 341/78, as extended by Regulation No 1376/78, were such as to interfere with the exercise of fishing rights which the London Convention was intended to secure to Spain, in contravention of Article 234 of the Treaty, the prosecution of the accused would be unaffected and could still be maintained on the strength of the relevant Irish legislation.

Moreover the Attorney General submits that having regard to Articles 5 and 10 of the London Convention, the Council regulations in question are not contrary either to that Convention or to Article 234 of the Treaty.

As concerns the facts of this case the *Commission* states first that in pursuance of Article 2 of Regulation No 341/78, as extended by Regulation No 1376/78 until 31 July 1978, it issued through the Spanish authorities licences for vessels whose names and other particulars had

been communicated to it by those authorities. After their expiry the licences granted were returned to it.

The Commission has no record that any licence was issued for the vessel *Itxas Ondo* No B*-4-109, the prosecution of whose master is at the origin of this case.

Next the Commission explains that the text of an agreement on fisheries between Spain and the Community was agreed and initialed on 23 September 1978 (Annex III to the Commission's observations), but that the agreement has not yet been concluded. Pending its conclusion the Community has continued to adopt interim measures based on the agreed text and following consultation with the Spanish authorities. The latter have continued, as at the time of the alleged offence, to act as a channel of communication between the Commission and Spanish fishing vessels for the issue of licences.

The Commission takes the view that the Irish legislation referred to in Question 4 can only be considered as complementing Community rules. Only a licence issued by the Commission in pursuance of Regulation No 1376/78 would have constituted an authorization within the meaning of Article 222 (a) of the Fisheries (Consolidation) Act.

For that reason it states that the fourth question from the national court has the effect of calling in question by implication the validity of the Community régime. The accused in the main proceedings has in fact claimed that the licence requirement and other

restrictions imposed by Community rules are incompatible with international obligations originally assumed by Ireland under the London Fisheries Convention and now claimed to be binding on the Community by virtue of Article 234 of the Treaty and Article 5 of the Act of Accession.

As regards the compatibility of the licence system with the London Convention the Commission shares the view that such a system corresponds to what is laid down by Article 5 of the Convention for the zone comprised between 6 and 12 miles. Moreover the Community rules constitute a "special régime" within the meaning of Article 10 (a) of the Convention. Finally there are no reasons for doubting the validity of the Community system on grounds of incompatibility with other rules of international law.

III — Oral procedure

At the sitting on 18 June 1980 Mr Burgoa, represented for the purpose of the oral procedure by Rory F. Conway, Solicitor, the Attorney General of Ireland, represented for the purpose of the oral procedure by Hugh O'Flaherty, Senior Counsel, and the Commission of the European Communities, represented for the purpose of the oral procedure by Richard Wainwright, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 10 July 1980.

Decision

- 1 By order of 7 December 1979, which was received at the Court on 11 December 1979, the Circuit Court of the County of Cork submitted under Article 177 of the EEC Treaty four questions on the interpretation of Article 234 of the Treaty and the régime applicable to the fishery limits of Ireland.
- 2 Those questions have arisen in the course of criminal proceedings against the master of a Spanish-registered fishing vessel who is charged with fishing and attempting to fish without authority in Irish fishery limits and with having on board nets having a size of mesh which is prohibited in those fishery limits.
- 3 The charges against the accused allege that he committed those acts on 10 July 1978 when the vessel which he commanded was positioned 51° 55' North and 11° 10' West, that is, 20 nautical miles off the base-line, whereas the Irish State had extended its fishery limits to 200 nautical miles from the base-lines as from 1 January 1977.
- 4 The accused submitted before the Circuit Court that the London Fisheries Convention of 9 March 1964 (UN Treaty Series 581, No 8432), to which Spain and Ireland are parties, created for him antecedent rights which are maintained or preserved by the rules of Community law in general and by Article 234 of the Treaty in particular and the national court referred to the Court of Justice four questions on the interpretation of Community law.

Article 234 (Questions 1, 2 and 3)

- 5 The first three questions are worded as follows:

“1. Does Article 234 of the Treaty of Rome create rights and obligations:
 (a) for the institutions of the European Communities;
 (b) for the Member States of the Communities?

2. Does Article 234 of the Treaty of Rome, or any other rule of Community law, maintain or uphold rights of the beneficiaries of treaties to which Article 234 of the Treaty of Rome applies, which national courts of the Member States must uphold?
3. Is the 1964 London Fisheries Convention a treaty of the kind to which Article 234, as adapted in relation to Ireland, the United Kingdom and Denmark by Article 5 of the Act of Accession, of the Treaty of Rome applies?"
- 6 The first paragraph of Article 234 of the Treaty provides that the rights and obligations arising from agreements concluded before the entry into force of the Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaty. That is without prejudice to the obligation on the Member State concerned to take, in accordance with the second paragraph of that article, all appropriate steps to eliminate any incompatibilities between such agreements and the Treaty. Article 234 is of general scope and it applies to any international agreement, irrespective of subject-matter, which is capable of affecting the application of the Treaty.
- 7 Under Article 5 of the Act of Accession Article 234 of the Treaty is to apply, for Ireland, to agreements or conventions concluded before accession. In so far as Ireland and Spain are concerned, the London Fisheries Convention came into force on 15 March 1966. It had been signed and ratified by both States on dates prior to that of Ireland's accession to the Community. Since Ireland is thus bound by obligations towards Spain under a convention concluded before its accession, the provisions of the first paragraph of Article 234 apply.
- 8 As the Court has already held in its judgment of 27 February 1962 in Case 10/61 *Commission v Italy* [1962] ECR 1, the purpose of that provision is to lay down, in accordance with the principles of international law, that the application of the Treaty does not affect the duty of the Member State concerned to respect the rights of non-member countries under a prior agreement and to perform its obligations thereunder.

- 9 Although the first paragraph of Article 234 makes mention only of the obligations of the Member States, it would not achieve its purpose if it did not imply a duty on the part of the institutions of the Community not to impede the performance of the obligations of Member States which stem from a prior agreement. However, that duty of the Community institutions is directed only to permitting the Member State concerned to perform its obligations under the prior agreement and does not bind the Community as regards the non-member country in question.
- 10 Since the purpose of the first paragraph of Article 234 is to remove any obstacle to the performance of agreements previously concluded with non-member countries which the accession of a Member State to the Community may present, it cannot have the effect of altering the nature of the rights which may flow from such agreements. From that it follows that that provision does not have the effect of conferring upon individuals who rely upon an agreement concluded prior to the entry into force of the Treaty or, as the case may be, the accession of the Member State concerned, rights which the national courts of the Member States must uphold. Nor does it adversely affect the rights which individuals may derive from such an agreement.
- 11 The following answers should accordingly be given:
 - (a) *To the first question:* Article 234 of the Treaty must be interpreted as meaning that the application of the Treaty does not affect either the duty to observe the rights of non-member countries under an agreement concluded with a Member State prior to the entry into force of the Treaty or, as the case may be, the accession of a Member State, or the observance by that Member State of its obligations under the agreement and that, consequently, the institutions of the Community are bound not to impede the performance of those obligations by the Member State concerned;
 - (b) *To the second question:* By itself, Article 234 of the Treaty does not have the effect either of conferring upon individuals who rely upon one of the agreements to which the answer to the first question refers rights which the national courts of the Member States must protect or of adversely affecting the rights which individuals may derive from such an agreement;

- (c) *To the third question:* The first paragraph of Article 234 of the Treaty applies to the rights and obligations created between Ireland and Spain by the 1964 London Fisheries Convention.

The fisheries régime applicable to the exclusive fishery limits of Ireland (fourth question)

- 12 In its fourth question the national court asks whether a conviction of the accused under Irish legislation in the criminal proceedings pending before it would be contrary to Community law.
- 13 Although it is not open to the Court to pass judgment in the context of Article 177 of the Treaty on the validity or the interpretation of a national law, none the less, for the purpose of assisting national courts, it is within its powers to extract the matters of Community law the interpretation of which is necessary to enable the national court to give judgment on the dispute before it in accordance with Community rules.
- 14 It appears from the file on the case and from the discussion before the Court that the doubts felt by the Circuit Court of Cork are concerned with the question whether Spanish-registered fishing vessels may be made subject to a régime requiring them to obtain an authorization for the Irish fishery zone lying between 12 and 200 nautical miles from the base-lines, it being accepted that the text of the London Convention refers only to the zone extending up to 12 miles.
- 15 Before the national court the Attorney General contended that such an authorization was required on the basis of Section 222 (a) of the Irish Fisheries (Consolidation) Act 1959, as amended in 1978, which prohibits a person on board a foreign sea-fishing boat from fishing or attempting to fish while the boat is within exclusive Irish fishery limits unless he is authorized by law to do so.

- 16 Such a requirement is not in conflict with Community law. In fact, as the Commission correctly submitted, the fishery zones of the Member States which extend to 200 nautical miles off the North Sea and Atlantic coasts are the subject of Community fishery rules. At the time of the events in this case, 10 July 1978, the rights of Spanish fishing vessels to fish in the 200-mile zone off the west coast of Ireland were governed by Council Regulation No 1376/78 of 21 June 1978 extending certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain to 31 July 1978 (Official Journal, L 167, p. 9).
- 17 The aforementioned Regulation No 1376/78 in particular extended certain provisions of Council Regulation No 341/78 of 20 February 1978 laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain for the period of 21 February to 31 May 1978 (Official Journal L 49, p. 1). Amongst the provisions thus extended was that which provides that fishing shall be subject to the grant of a licence, issued by the Commission on behalf of the Community, and to compliance with other conservation and supervisory measures such as the prohibition on using certain kinds of net for fishing for hake and the restriction of by-catches.
- 18 From all of those provisions it appears that, at the time in question, the prohibition preventing Spanish-registered vessels from fishing without authorization in the Irish fishery limits bordering the west coast of that country stemmed from Community legislation, in particular, Regulation No 1376/78. Since that regulation did not provide for any penalties for contravening that prohibition the Irish authorities were bound to take all appropriate measures to ensure its implementation and this they did by inserting Section 222 (a) in the Fisheries Consolidation Act.
- 19 The accused in the main proceedings submitted that the Community fishery measures were adopted unilaterally and were accordingly unlawful. It was said that, on the one hand, they were in breach of the principle of inter-

national law whereby each State must recognize traditional fishing rights in its fishery waters. On the other hand they were contrary to the spirit of the London Convention which, since it recognized traditional fishing rights in the 6 to 12-mile zone, must be understood as meaning that, after the extension of fishery limits, the same régime extends up to 200 miles.

- 20 It is not necessary to consider the soundness of either of those propositions and to determine what was the régime which applied in the fishing zones between 12 and 200 miles before the coming into force of the Community rules. Although it is for the Court to rule upon the validity of acts of institutions of the Community where that validity has been called in question, an examination of the validity of Regulations Nos 341/78 and 1376/78, which are involved in the present case, does not require an appreciation of the situation which existed before the introduction of the Community measures for the conservation and management of fishery resources.
- 21 In this regard it must be stressed at the outset that Article 102 of the Act of Accession requires the Council, acting on a proposal from the Commission, to determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea. The recitals in the preambles to Regulations Nos 341/78 and 1376/78 indicate that control of fishing may be achieved by a system of fishing licences which may be withdrawn in the event of irregularities or of the quotas fixed becoming exhausted. That is particularly the case where control of the catch cannot be carried out in adjacent coastal ports since fishing vessels from non-member countries normally return to their ports of origin in order to land their catches.
- 22 Recognition of the ever more pressing need for conservation of the resources of the sea, which had already prompted Article 5 of the 1964 London Fisheries Convention and which found expression in Article 102 of the Act of Accession, led the Community, at the time when fishing zones were extended to 200 miles, to start negotiations with non-member countries, including Spain, in order to reach long-term agreements based upon reciprocity.

In order to reconcile the needs of conservation with the interests of fishermen who traditionally fished in the waters in question, those agreements provide that each of the parties shall grant access to its 200-mile zone to fishing vessels of the other party in order to catch specific quotas. In order to implement that régime, the agreements provide that each of the parties may require vessels of the other party fishing in its waters to hold a licence.

- 23 Regulations Nos 341/78 were put into force before the final conclusion of the negotiations between the Community and Spain. The recitals in the preambles state that, pending the conclusion in the near future of a framework agreement between the Community and Spain, interim measures should be laid down. It appears from information given to the Court by the Commission that the Spanish authorities cooperated with the Commission in order to ensure the implementation of this interim régime and, in particular, in order to organize the issue of the Community licences.
- 24 From the foregoing it follows that the interim régime which the Community set up under its own rules falls within the framework of the relations established between the Community and Spain in order to resolve the problems inherent in conservation measures and the extension of exclusive fishery limits and in order to ensure reciprocal access by fishermen to the waters subject to such measures. Those relations were superimposed on the régime which previously applied in those zones in order to take account of the general development of international law in the field of fishing on the high seas.
- 25 From that it follows that consideration of Regulation No 1376/78 has disclosed no factor of such a kind as to affect its validity and that consequently national legislation which imposes penalties for contravention of the prohibitions prescribed therein is not incompatible with Community law.

Costs

- ²⁶ The costs incurred by the Government of the French Republic, the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Circuit Court of the County of Cork by order of 7 December 1979, hereby rules:

1. Article 234 of the Treaty must be interpreted as meaning that the application of the Treaty does not affect either the duty to observe the rights of non-member countries under an agreement concluded with a Member State prior to the entry into force of the Treaty or, as the case may be, the accession of a Member State, or the observance by that Member State of its obligations under the agreement and that, consequently, the institutions of the Community are bound not to impede the performance of those obligations by the Member State concerned.
2. By itself, Article 234 does not have the effect either of conferring upon individuals who rely upon one of the agreements to which the answer to the first question refers rights which the national courts of the Member States must protect or of adversely affecting the rights which individuals may derive from such an agreement.
3. The first paragraph of Article 234 of the Treaty applies to the rights and obligations created between Ireland and Spain by the London Fisheries Convention of 9 March 1964.

4. Legislation of a Member State which prescribes penalties for a contravention of the prohibition against fishing without authorization in its fishery limits, which is imposed on Spanish-registered fishing vessels by Council Regulation No 1376/78 of 21 June 1978 extending certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain to 31 July 1978, is not incompatible with Community law.

Kutscher Pescatore Koopmans Mertens de Wilmars Mackenzie Stuart
O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 14 October 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 10 JULY 1980¹

*Mr President,
Members of the Court,*

1. The questions which have given rise to the present case have been submitted for a preliminary ruling by the Circuit Court, County of Cork, Ireland, in the context of criminal proceedings pending against the master of a Spanish fishing vessel, Mr Burgoa. The principal charge against him is that of having contravened

provisions of Irish law which prohibit any person on board a foreign sea-fishing boat from fishing or attempting to fish while the ship is within the exclusive fishery limits of the State. The acts alleged against Mr Burgoa took place on 10 July 1978 when his vessel was 20 miles off the west coast of Ireland and thus within the 200-mile zone which, under the Maritime Jurisdiction (Exclusive Fishery Limits)

¹ — Translated from the Italian.