**European Court of Justice, 6 December 1994, Tatry**

**LITIGATION**

**Related actions**

- **It is sufficient, in order to establish the necessary relationship between different actions, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences**

On a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

**Relationship with the international convention relating to the arrest of seagoing ships**

- **A specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention**

On a proper construction, Article 57 of the Convention, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply.

**Obligation of the second court seised to decline jurisdiction**

- **Same parties, same cause, same action**

On a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties. An action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss. A subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action in personam for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action in rem concerning an arrested ship, and has subsequently continued both in rem and in personam, or solely in personam, according to the distinctions drawn by the national law of that other Contracting State.

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**European Court of Justice, 6 December 1994**
(G.C. Rodríguez Iglesias, R. Joliet, F.A. Schockweiler and P.J.G. Kapteyn, G.F. Mancini, C.N. Kakouris and J.L. Murray)
In Case C-406/92,
REFERENCE to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the Court of Appeal for a preliminary ruling in the proceedings pending before that court between
The owners of the cargo lately laden on board the ship "Tatry"
and
The owners of the ship "Maciej Rataj"
on the interpretation of Articles 21, 22 and 57 of the Brussels Convention of 27 September 1968, cited above, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and ° amended text ° p. 77),
THE COURT,
composed of: G.C. Rodríguez Iglesias, President, R. Joliet, F.A. Schockweiler and P.J.G. Kapteyn (Presidents of Chambers), G.F. Mancini, C.N. Kakouris (Rapporteur) and J.L. Murray, Judges,
Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,
after considering the written observations submitted on behalf of:
° the owners of the cargo lately laden on board the ship Tatry, by Clyde & Co., Solicitors, and Alistair Schaff, Barrister,
° the owners of the ship Maciej Rataj, by Lawrence Graham, Solicitors, and Charles Priday, Barrister,
° the United Kingdom, by John D. Colahan, replacing Susan Cochrane, of the Treasury Solicitor' s Department, acting as Agent, and Lionel Persey, Barrister,

° the Commission of the European Communities, by Xavier Lewis and Pieter van Nuffel, of the Legal Service, acting as Agents,
having regard to the Report for the Hearing,
after hearing the oral observations of the applicants, represented by Alistair Schaff, of the defendants, represented by Stephen Tomlinson QC, of the United Kingdom, represented by Stephen Braviner of the Treasury Solicitor' s Department, acting as Agent, and by Lionel Persey, and of the Commission, represented by Xavier Lewis, at the hearing on 11 May 1994,
after hearing **the Opinion of the Advocate General** at the sitting on 13 July 1994,
gives the following
**Judgment**
the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter "the Convention" or "the Brussels Convention"), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and ° amended text ° p. 77) (hereinafter "the Accession Convention"), several questions on the interpretation of Articles 21, 22 and 57 of the Convention.
1 Those questions were raised in two actions in which the facts and procedure before the national courts are summarized below.
2 In September 1988 a cargo of soya bean oil belonging to a number of owners (hereinafter "the cargo owners") was carried in bulk aboard the vessel Tatry, belonging to a Polish shipping company, Zegluga Polska Spolka Alceyjna ° referred to in the order for reference as "the shipowners". The voyage was from Brazil to Rotterdam for part of the cargo and to Hamburg for the rest. The cargo owners complained to the shipowners that in the course of the voyage the cargo was contaminated with diesel or other hydrocarbons.
3 There are three groups of cargo owners:
° "Group 1": owners of cargo carried to Rotterdam under separate bills of lading;
° "Group 2": this is not a "group", but simply the company Phillip Brothers Ltd (hereinafter "Phibro"), whose registered office is in the United Kingdom, which owned another part of the cargo also carried to Rotterdam under separate bills of lading;
° "Group 3": four owners of cargo carried to Hamburg under four separate bills of lading; the owners in the group were Phibro (in respect of parcels other than those covered by Group 2) and Bunge & Co. Ltd, whose registered office is likewise in the United Kingdom, Hobum Oele und Fette AG and Handelsgesellschaft Kurt Nitzer GmbH, both of whose registered offices are in Germany.
4 Various actions were commenced in courts in the Netherlands and the United Kingdom by the various cargo owners and the shipowners.
**(a) Actions brought by the shipowners**
5 On 18 November 1988, before any other proceedings had commenced, the shipowners brought an action before the Arrondissementsrechtbank (District Court), Rotterdam against Groups 1 and 3, with the exception of Phibro, seeking a declaration that they were not liable or not fully liable for the alleged contamination.
6 The cargo owners in Group 1 were sued in the Rotterdam District Court on the basis of Article 2 of the Convention, and those in Group 3 on the basis of Article 6(1).
7 In 1988, no action had been brought by the shipowners against Group 2 (Phibro). It was not until 18 September 1989 that the shipowners initiated separate proceedings in the Netherlands for a declaration that they were not liable for the contamination of the cargo delivered to Group 2 in Rotterdam. Those proceedings were brought against Phibro' s agents in Rotterdam, who had presented the bills of lading on behalf of Phibro.
8 On 26 October 1990 the shipowners initiated proceedings in the Netherlands seeking to limit their liability in respect of the entire cargo. Those proceedings were brought under the International Convention of 10 October 1957 relating to the limitation of the liability of owners of sea-going ships [International Transport Treaties, suppl. 1-10 (January 1986), p. I-76].
**(b) Actions brought by the cargo owners**
9 The following actions were brought by the cargo owners in Groups 2 and 3 against the owners of the vessel Tatry seeking damages for their alleged loss.
10 After an unsuccessful attempt to arrest the Tatry in Hamburg, Group 3 brought an action in rem (hereinafter "Folio 2006") before the High Court of Justice, Queens' s Bench Division, Admiralty Court, against the Tatry and another ship, the Maciej Rataj, whose owners are the same as the owners of the Tatry. The writ was served on 15 September 1989 in Liverpool on the Maciej Rataj, which was arrested. Subsequently, the shipowners acknowledged service of the writ and, by providing a guarantee, secured the vessel' s release from arrest. The action continued in accordance with English law. However, doubts exist under that law as to whether the proceedings continue in those circumstances only in personam or both in rem and in personam.
11 Group 2 (Phibro) also commenced an action in rem before the same court (hereinafter "Folio 2007") against the ship Maciej Rataj. The writ was served on 15 September 1989 in Liverpool on the Maciej Rataj, which was likewise arrested. The course of events in Folio 2007 was the same as in Folio 2006.
12 For the arrest of the Maciej Rataj, the Admiralty Court based its jurisdiction on sections 20 to 24 of the Supreme Court Act 1981, which implement the International Convention for the unification of certain rules relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952 [International Transport Treaties, suppl. 14 (March 1990), p. I-64, hereinafter "the Arrest Convention"], to which the Netherlands is also a party.
13 Furthermore, as a precautionary measure in the event that the English courts declined jurisdiction,

Groups 2 and 3 (with the exception of Phibro) brought actions in the Netherlands on 29 September and 3 October 1989 respectively.
14 Group 1 brought no action before the English courts. However, on 29 September 1989 it brought an action for damages in the Netherlands against the shipowners.
15 As regards Folio 2006, the shipowners moved the Admiralty Court to decline jurisdiction in favour of the Netherlands court pursuant to Article 21 of the Brussels Convention relating to lis pendens or, in the alternative, pursuant to Article 22 on related actions. As regards Folio 2007, since they accepted that the Admiralty Court was the first seised, they did not rely on Article 21 of the Convention but none the less requested that the Admiralty Court decline jurisdiction on the basis of Article 22.
16 At first instance, the Admiralty Court decided that it was under no obligation to decline jurisdiction or stay proceedings in accordance with Article 21 of the Convention, since that provision was not applicable for the following reasons:
(a) in Folio 2006, on the ground that that action and the proceedings previously brought in the Netherlands did not have the same cause of action, since the English proceedings sought compensation for the cargo owners while the Netherlands proceedings sought neither to protect nor to enforce a right but sought a declaration that the cargo owners were not entitled to claim damages from the owners of the Tatry;
(b) in Folio 2007, on the ground that Group 2 was not a party to the proceedings commenced in the Netherlands.
17 The Admiralty Court accepted that Folio 2006 and Folio 2007 and the proceedings commenced in the Netherlands were related actions. It decided, however, that it was not appropriate to decline jurisdiction or stay proceedings in the two cases pending before it.
18 The shipowners appealed against that decision to the Court of Appeal.
19 The Court of Appeal, since it did not uphold the decision given at first instance and considered that the outcome of the proceedings depended on the interpretation of Articles 21, 22 and 57 of the Convention, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
"1. For the purposes of the application of Article 21 of the Brussels Convention 1968 (as amended), where proceedings are brought in a Contracting State which involve the same cause of action as prior proceedings brought in another Contracting State, must the courts of the Contracting State second seised decline jurisdiction
(a) only where there is a complete identity of parties between the two sets of proceedings; or
(b) only where all the parties to the proceedings in the courts of the Contracting State second seised are also parties to the proceedings in the courts of the Contracting State first seised; or
(c) whenever at least one of the plaintiffs and one of the defendants to the proceedings before the courts of the Contracting State second seised are also parties to the proceedings in the courts of the Contracting State first seised; or
(d) whenever the parties in the two sets of proceedings are substantially the same?
2. In relation to the carriage of goods by sea in circumstances where goods are discharged in an allegedly damaged condition, does a claim brought by the cargo owners in a Contracting State in respect of such alleged damage in an action which was commenced in rem against either the carrying vessel or a sister ship thereof pursuant to the United Kingdom' s admiralty jurisdiction involve the same parties and the same cause of action for the purposes of Article 21 of the Brussels Convention 1968 (as amended) as in personam proceedings previously brought in another Contracting State by the ship owner against the cargo owners in respect of such alleged damage if the shipowner acknowledges service and procures the release from arrest of the vessel upon provision of security and thereafter
(a) the admiralty action continues both in rem and in personam; or
(b) the admiralty action continues only in personam?
3. Where a Contracting State is party to the Brussels Arrest Convention 1952 and its merits jurisdiction has been invoked by the arrest of a vessel in accordance with the provisions of the Arrest Convention by cargo owners in respect of a claim for loss arising out of the discharge of cargo in an allegedly damaged condition, then in so far as proceedings have previously been brought by the shipowner against the cargo owners in respect of such alleged damage in another Contracting State, are the courts of the Contracting State in which merits jurisdiction has been founded by arrest entitled to retain such jurisdiction by virtue of Article 57 of the Brussels Convention 1968 (as amended by Article 25(2) of the Accession Convention) if
(a) the two actions involve the same cause of action and same parties for the purposes of Article 21 of the Brussels Convention 1968 (as amended); or
(b) the two actions are 'related actions' for the purposes of Article 22 of the Brussels Convention 1968 (as amended) and it would otherwise be appropriate for the court second seised to decline jurisdiction or to stay its proceedings thereunder?
4. For the purposes of Article 22 of the Brussels Convention 1968 (as amended):
(a) Does the third paragraph of Article 22 provide an exclusive definition of 'related proceedings?'
(b) In order for the courts of a Contracting State to decline jurisdiction or to stay their proceedings under Article 22, is it necessary for there to be a risk that if the two sets of proceedings are heard and determined separately, this might lead to legal consequences which are mutually exclusive?
(c) If proceedings are brought in one Contracting State in respect of a claim by one group of cargo owners against a shipowner for damage to their portion of a bulk cargo carried under specified contracts of carriage and if separate proceedings are brought in another Contracting State against the same shipowner based on

essentially similar issues of fact and law but by a different cargo owner for damage to its portion of the same bulk cargo carried under separate contracts of carriage on the same terms, do these proceedings, if heard and determined separately, involve the risk of giving rise to legal consequences which are mutually exclusive or are they otherwise related actions for the purposes of Article 22?

5. In relation to the carriage of goods by sea in circumstances where goods are discharged in an allegedly damaged condition, if

(i) the shipowner commences proceedings in a Contracting State which involve a claim for a declaration of non-liability to cargo interests in respect of such alleged damage; and

(ii) the cargo claimants subsequently commence the proceedings in another Contracting State in which they claim damages against the shipowner for negligence and/or breach of contract and/or duty in respect of such alleged damage to their cargo,

do the latter proceedings involve the same cause of action as the former proceedings for the purposes of Article 21 of the 1968 Brussels Convention (as amended) so that the courts of the latter Contracting State must decline jurisdiction pursuant to Article 21?"

20 In the light of the interrelationship between the various questions referred, it is appropriate first to consider the third question, which concerns the scope of the Brussels Convention and of the special conventions. The first, fifth and second questions, all three of which seek an interpretation of Article 21 of the Convention, concerned with lis pendens, will be considered thereafter. Finally, the fourth question, which seeks an interpretation of Article 22 of the Convention, concerned with related actions, will be considered.

**The third question**

21 The national court' s third question is essentially whether, on a proper construction, Article 57 of the Convention, as amended by the Accession Convention, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention always, subject to express exceptions, precludes the application of the Brussels Convention, or that the specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by it and not in those to which it does not apply.

22 Article 57 of the Convention, as amended by Article 25(1) of the Accession Convention, provides:

"This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts."

23 Article 57 introduces an exception to the general rule that the Convention takes precedence over other conventions signed by the Contracting States on jurisdiction and the recognition and enforcement of judgments. The purpose of that exception is to ensure compliance with the rules on jurisdiction laid down by specialized conventions, since in enacting those rules account was taken of the specific features of the matters to which they relate.

24 That being its purpose, Article 57 must be understood as precluding the application of the provisions of the Brussels Convention solely in relation to questions governed by a specialized convention. A contrary interpretation would be incompatible with the objective of the Convention which, according to its preamble, is to strengthen in the Community the legal protection of persons therein established and to facilitate recognition of judgments in order to secure their enforcement. In those circumstances, when a specialized convention contains certain rules of jurisdiction but no provision as to lis pendens or related actions, Articles 21 and 22 of the Brussels Convention apply.

25 The cargo owners argue that the Arrest Convention contains provisions relating to lis pendens in Article 3(3), which provides: "A ship shall not be arrested ... more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant".

26 The cargo owners' argument cannot be accepted. Where an arrest has already been made in the jurisdiction of a Contracting State, Article 3(3) of the Arrest Convention prohibits a second arrest by the same claimant in respect of the same claim in the jurisdiction, in particular, of another Contracting State. Such a prohibition has nothing to do with the concept of lis pendens within the meaning of Article 21 of the Brussels Convention. That provision is concerned with the situation where proceedings are brought before two courts both of which have jurisdiction and it governs only the question which of those two courts is to decline jurisdiction in the case.

27 The answer to the third question therefore is that, on a proper construction, Article 57 of the Convention, as amended by the Accession Convention, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply.

**The first question**

28 The national court' s first question is essentially whether, on a proper construction, Article 21 of the Convention is applicable in the case of two sets of proceedings involving the same cause of action where some but not all of the parties are the same, at least one of the plaintiffs and one of the defendants to the proceedings first commenced also being among the plaintiffs and defendants in the second proceedings, or vice versa.

29 The question refers to the term "the same parties" mentioned in Article 21, which requires as a condition for its application that the two sets of proceedings be between the same parties. As the Court held in Case 144/86 Gubisch Maschinenfabrik v Palumbo [1987] ECR 4861, the terms used in Article 21 in order to determine whether a situation of lis pendens arises must be regarded as independent (paragraph 11 of the judgment).
30 Moreover, as the Advocate General noted in his Opinion (paragraph 14), it follows by implication from that judgment that the question whether the parties are the same cannot depend on the procedural position of each of them in the two actions, and that the plaintiff in the first action may be the defendant in the second.
31 The Court stressed in that judgment (paragraph 8) that Article 21, together with Article 22 on related actions, is contained in Section 8 of Title II of the Convention, a section intended, in the interests of the proper administration of justice within the Community, to prevent parallel proceedings before the courts of different Contracting States and to avoid conflicts between decisions which might result therefrom. Those rules are therefore designed to preclude, in so far as is possible and from the outset, the possibility of a situation arising such as that referred to in Article 27(3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in a dispute between the same parties in the State in which recognition is sought.
32 In the light of the wording of Article 21 of the Convention and the objective set out above, that article must be understood as requiring, as a condition of the obligation of the second court seised to decline jurisdiction, that the parties to the two actions be identical.
33 Consequently, where some of the parties are the same as the parties to an action which has already been started, Article 21 requires the second court seised to decline jurisdiction only to the extent to which the parties to the proceedings pending before it are also parties to the action previously started before the court of another Contracting State; it does not prevent the proceedings from continuing between the other parties.
34 Admittedly, that interpretation of Article 21 involves fragmenting the proceedings. However, Article 22 mitigates that disadvantage. That article allows the second court seised to stay proceedings or to decline jurisdiction on the ground that the actions are related, if the conditions there set out are satisfied.
35 Accordingly, the answer to the first question is that, on a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.

**The fifth question**

36 The national court' s fifth question is essentially whether, on a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.
37 It should be noted at the outset that the English version of Article 21 does not expressly distinguish between the concepts of "object" and "cause" of action. That language version must however be construed in the same manner as the majority of the other language versions in which that distinction is made (see the judgment in Gubisch Maschinenfabrik v Palumbo, cited above, paragraph 14).
38 For the purposes of Article 21 of the Convention, the "cause of action" comprises the facts and the rule of law relied on as the basis of the action.
39 Consequently, an action for a declaration of non-liability, such as that brought in the main proceedings in this case by the shipowners, and another action, such as that brought subsequently by the cargo owners on the basis of shipping contracts which are separate but in identical terms, concerning the same cargo transported in bulk and damaged in the same circumstances, have the same cause of action.
40 The "object of the action" for the purposes of Article 21 means the end the action has in view.
41 The question accordingly arises whether two actions have the same object when the first seeks a declaration that the plaintiff is not liable for damage as claimed by the defendants, while the second, commenced subsequently by those defendants, seeks on the contrary to have the plaintiff in the first action held liable for causing loss and ordered to pay damages.
42 As to liability, the second action has the same object as the first, since the issue of liability is central to both actions. The fact that the plaintiff' s pleadings are couched in negative terms in the first action whereas in the second action they are couched in positive terms by the defendant, who has become plaintiff, does not make the object of the dispute different.
43 As to damages, the pleas in the second action are the natural consequence of those relating to the finding of liability and thus do not alter the principal object of the action. Furthermore, the fact that a party seeks a declaration that he is not liable for loss implies that he disputes any obligation to pay damages.
44 In those circumstances, the answer to the fifth question is that, on a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

**The second question**

45 The national court' s second question is whether a subsequent action has the same cause of action and the same object and is between the same parties as a previous action where the first action, brought by the owner of a ship before a court of a Contracting State, is an ac-

tion in personam for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action in rem concerning an arrested ship, and has subsequently continued both in rem and in personam, or solely in personam, according to the distinctions drawn by the national law of that other Contracting State.

46 In Article 21 of the Convention, the terms "same cause of action" and "between the same parties" have an independent meaning (see Gubisch Maschinenfabrik v Palumbo, cited above, paragraph 11). They must therefore be interpreted independently of the specific features of the law in force in each Contracting State. It follows that the distinction drawn by the law of a Contracting State between an action in personam and an action in rem is not material for the interpretation of Article 21.

47 Consequently, the answer to the second question is that a subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action in personam for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action in rem concerning an arrested ship, and has subsequently continued both in rem and in personam, or solely in personam, according to the distinctions drawn by the national law of that other Contracting State.

**The fourth question**

48 The national court' s fourth question is essentially whether, on a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

49 It is clear that that question arises only if the conditions for the application of Article 21 of the Convention are not satisfied.

50 The third paragraph of Article 22 provides that "actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

51 The purpose of that provision is to avoid the risk of conflicting judgments and thus to facilitate the proper administration of justice in the Community (see the Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1979 C 59, p. 1, and in particular at p. 41). Furthermore, since the expression "related actions" does not have the same meaning in all the Member States, the third paragraph of Article 22 sets out the elements of a definition (same report, p. 42). It follows that the concept of related actions there defined must be given an independent interpretation.

52 In order to achieve proper administration of justice, that interpretation must be broad and cover all cases where there is a risk of conflicting decisions, even if the judgments can be separately enforced and their legal consequences are not mutually exclusive.

53 The cargo owners and the Commission contend that the adjective "irreconcilable", which is used both in the third paragraph of Article 22 and in Article 27(3) of the Convention, must be used in the same sense in both provisions, meaning that the decisions must have mutually exclusive legal consequences, as was held in **Case 145/86 Hoffmann v Krieg [1987] ECR 645 (paragraph 22)**. They point out that the Court there held that a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable, within the meaning of Article 27(3) of the Convention, with a national judgment pronouncing the divorce of the spouses (paragraph 25).

54 That argument cannot be accepted. The objectives of the two provisions are different. Article 27(3) of the Convention enables a court, by way of derogation from the principles and objectives of the Convention, to refuse to recognize a foreign judgment. Consequently the term "irreconcilable ... judgment" there referred to must be interpreted by reference to that objective. The objective of the third paragraph of Article 22 of the Convention, however, is, as the Advocate General noted in his Opinion (paragraph 28), to improve coordination of the exercise of judicial functions within the Community and to avoid conflicting and contradictory decisions, even where the separate enforcement of each of them is not precluded.

55 That interpretation is supported by the fact that the German and Italian versions of the Convention use different terms in the third paragraph of Article 22 and in Article 27(3).

56 The conclusion is therefore inescapable that the term "irreconcilable" used in the third paragraph of Article 22 of the Convention has a different meaning from the same term used by Article 27(3) of the Convention.

57 Consequently the answer to the fourth question is that, on a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an

action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

**Costs**

58 The costs incurred by the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 referred to it by the Court of Appeal by order of 5 June 1992, hereby rules:

1. On a proper construction, Article 57 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply.

2. On a proper construction of Article 21 of the Convention, where two actions involve the same cause of action and some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, the second court seised is required to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.

3. On a proper construction of Article 21 of the Convention, an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss.

4. A subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action in personam for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action in rem concerning an arrested ship, and has subsequently continued both in rem and in personam, or solely in personam, according to the distinctions drawn by the national law of that other Contracting State.

5. On a proper construction of Article 22 of the Convention, it is sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under

the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

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**Opinion of the Advocate-General**

Mr President,

Members of the Court,

1. In the order for reference in the present case, the English Court of Appeal has submitted a number of questions on the interpretation of Articles 21, 22 and 57 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the 1978 Accession Convention ("the Brussels Convention").

2. To apprehend the precise scope of the questions, it is appropriate to summarize the ° somewhat complex ° facts of the main proceedings. (1)

In September 1988 the Polish shipping company Zegluga Polska Spolka Akceyjna ("the shipowners") carried from Brazil to Rotterdam and Hamburg a cargo of soya bean oil in bulk aboard its vessel, the Tatry. The cargo belonged to various principals, and was carried under separate bills of lading in identical terms. On delivery of the cargo, both the part discharged in Rotterdam and the part discharged in Hamburg were found by its owners to have been contaminated by diesel oil and other hydrocarbons.

On 18 November 1988, the shipowners brought an action before the Arrondissmentsrechtbank (District Court), Rotterdam, for a declaration that they were not liable for the alleged contamination. The defendants in those proceedings are the Netherlands company Igeb International BV, which took delivery of the soya bean oil discharged in Rotterdam on behalf of several owners (hereinafter "Group 1") and some of the owners of the oil discharged in Hamburg, namely the German companies Handelsgesellschaft Kurt Nitzer GmbH and Hobum Oele und Fette AG, and the English company Bunge & Co Ltd, as well as Daehn & Hamann GmbH, which took delivery of the cargo in question in Hamburg. The other owners of the cargo, the English company Phillip Brothers Ltd ("Phibro"), were not defendants in the proceedings (from here on I shall refer collectively to the owners of the cargo discharged in Hamburg as "Group 3"). Nor was Phibro a defendant in

the proceedings in respect of the parts of the cargo discharged in Rotterdam, of which it was also the owner and of which delivery was taken, on its behalf, by the Netherlands company ICM BV ("Group 2").

3. About ten months later, on 14 September 1989, Group 3 commenced an action in rem (hereinafter "Action 2006") before the High Court of Justice, Queens' s Bench Division, Admiralty Court, against the Tatry and the Maciej Rataj, the latter also belonging to the owners of the Tatry. The writ was served on 15 September 1989 and on the same date the arrest was authorized of the Maciej Rataj, which at that time was berthed in Liverpool. The shipowners subsequently secured its release by providing a guarantee; the proceedings then continued in the English court, in relation also to the merits of the dispute which gave rise to the application for arrest, namely compensation for the damage arising from the discharge of the soya bean oil in Hamburg in an allegedly contaminated state. The Admiralty Court based its merits jurisdiction on the legislation which gave effect in the United Kingdom to the International Convention relating to the arrest of seagoing ships signed in Brussels on 10 May 1952. (2) Doubts exist under English law as to whether the proceedings continue in such cases both in rem and in personam or only in personam.

On the same day, 14 September 1989, Group 2 also commenced an action in rem before the same court (hereinafter "Action 2007"); the course of events was the same as in Action 2006.

Finally, on 29 September 1989, Group 1, which had not instituted any proceedings before the English courts, brought proceedings in the Arrondissementsrechtbank, Rotterdam, for compensation for damage to the goods discharged in the Netherlands. (3)

4. In Action 2006, the shipowners objected that the English court should have declined jurisdiction in favour of the Netherlands court, pursuant to Article 21 of the Brussels Convention, since proceedings involving the same cause of action were pending between the same parties in the Netherlands. In the alternative, if the lis pendens rule were not considered applicable, the Admiralty Court should, in the shipowners' view, have stayed the proceedings and, possibly, have declared, by virtue of Article 22 of the Convention, that it lacked jurisdiction in view of the connection which certainly existed between the action pending before the English courts and those pending before the Netherlands courts. Group 3 denied that there was a situation of lis pendens, considering that the two actions did not have the same parties or the same subject-matter; however, it conceded that the actions were related.

In Action 2007, on the other hand, recognizing that in fact the English court had been first seised, the shipowners asked it to stay the proceedings and, if appropriate, declare that it lacked jurisdiction under Article 22 of the Brussels Convention, concerning related actions ° a view which was contested by Group 2.

5. The Admiralty Court rejected, at first instance, the shipowners' objection of lis pendens and, whilst admitting that the English and Netherlands actions were related, did not consider that it was obliged, under Article 22 of the Brussels Convention, to stay the proceedings. The shipowners appealed against that decision to the Court of Appeal.

In those proceedings, Group 3 claimed that Articles 21 and 22 of the Brussels Convention were not applicable to the case in any event, since the English court' s jurisdiction was based on the Arrest Convention, the application of which, in so far as it related to "particular matters", was assured by Article 57 of the Brussels Convention.

In those circumstances, the Court of Appeal, considering that the decision to be given in the proceedings depended on the interpretation of Articles 21, 22 and 57 of the Brussels Convention, stayed the proceedings and referred to the Court of Justice for a preliminary ruling several questions relating essentially to the following points:

(a) how, for the purposes of applying Article 21, the requirement of identity of parties in proceedings brought in different contracting States and having the same subject-matter and the same cause of action should be construed;

(b) whether, in relation to the carriage of goods by sea, a claim for compensation for damage allegedly caused to goods in transit brought by the cargo owners as an action in rem against the carrying vessel has the same parties and the same subject-matter and cause of action, for the purposes of Article 21, as an action in personam previously brought by the shipowner in relation to that damage; the national court asks, in particular, whether the answer to the question might differ according to whether the action in rem is proceeding, after acknowledgment of service by the shipowners, both in rem and in personam or only in personam;

(c) whether the derogation in favour of special conventions laid down in Article 57 means that, where the jurisdiction of a court is based on the provisions of such a convention, Articles 21 and 22 concerning lis pendens and related actions are inapplicable;

(d) what the term "related actions" used in the third paragraph of Article 22 of the Brussels Convention actually means;

(e) whether, in relation to the carriage of goods by sea, a case of lis pendens arises for the purposes of Article 21 where the shipowner brings proceedings in a Contracting State for a declaration that he is not liable to the owners of goods discharged in an allegedly damaged state and, subsequently, the owners of the goods commence another action in a different Contracting State in order to obtain compensation for the damage from the shipowner. (4)

**The relationship between the Brussels Convention and conventions on particular matters**

6. I shall examine first the third issue raised by the national court ° namely the relationship between the Brussels Convention and conventions on particular matters, as provided for by Article 57 of the former ° since a negative answer to that question could in fact render the other questions wholly academic.

7. Article 57 lays down an important exception, concerning present and future conventions on particular matters, to the general rule that the Brussels Convention is intended to take precedence over other conventions concluded between the Contracting States concerning jurisdiction and the recognition and enforcement of judgments. The exception is justified by the need to uphold the specific choices made in this field and reflected in special conventions by virtue of the special features of the matters which they regulate. It follows that if such conventions lay down provisions concerning direct or exclusive jurisdiction, they must be complied with. (5) Since, therefore, the Arrest Convention certainly falls within the category of special agreements, in any conflict between that convention and the Brussels Convention, in principle it is inevitable that the provisions of the Arrest Convention should prevail.

8. That said, there can in my view be no question of Article 57 being interpreted merely as a subordinating provision, that is to say one which purely and simply affirms the primacy of the provisions of a particular convention, whether already in existence or yet to be concluded ° a provision by virtue of which, therefore, the existence of the connecting factors contemplated in the special convention means that the provisions of the Brussels Convention cannot be applied at all. I do not consider that to be the correct construction of the exception in favour of special conventions created by Article 57; on the contrary, a systematic reading of that provision shows that it is more in the nature of a coordinating provision, designed to allow the respective provisions to be applied in combination. (6)

That follows in particular from the implementing provisions in Article 57(1), which were introduced into the Brussels Convention following the accession of the United Kingdom, Denmark and Ireland, and are now contained in paragraph 2. As is apparent from the text set out earlier, the first of those provisions stresses that precedence is to be given to the special convention, containing rules on direct jurisdiction, in any case where its rules conflict with those of the Brussels Convention; and where, by virtue of that convention, jurisdiction is given to a court other than that of the defendant' s residence, which would normally have jurisdiction under the Brussels Convention, it requires that Article 20 thereof be applied in order to ensure observance of the rights of the defence. The other implementing provision provides for the applicability of the provisions of the convention regarding the recognition and enforcement of judgments delivered on the basis of the jurisdictional rules contained in a special convention; where, therefore, the special convention itself contains rules for the recognition and enforcement of judgments, the possibility exists of relying on the rules of that convention in the alternative.

9. The correctness of that interpretation of the relationship between the Brussels Convention and conventions on particular matters is also confirmed by the Schlosser report, drawn up in connection with the accession of the United Kingdom, Denmark and Ireland, (7) in which it is stated that: "provisions in special conventions are special rules which every State may make prevail over the 1968 Convention by becoming a party to such a convention. In so far as a special convention does not contain rules covering a particular matter the 1968 Convention applies (emphasis added). This is also the case where the special convention includes rules of jurisdiction which do not altogether fit the interconnecting provisions of the various parts of the 1968 Convention ..." .(8) It follows above all that "the provisions on jurisdiction contained in special conventions are to be regarded as if they were provisions of the 1968 Convention itself, even if only one Member State is a Contracting Party to such a special convention" (9) (emphasis added).

It is true that at the time of the accession negotiations consideration was not given to all the questions stemming from the established principle that there should be a substantive connection between the provisions of the Brussels Convention and those of the conventions on particular matters ° questions which are not therefore entirely answered by Article 57 but are left, as is apparent once again from the Schlosser Report, (10) to legal literature and case-law. It nevertheless seems to me that there can be no doubt that the relationship between the various conventions is to be interpreted, by virtue of that article, as involving the reciprocal incorporation of their respective provisions. As a result, it is entirely legitimate to have recourse to the provisions of the general convention in order to supply any lacunae in those of the special convention.

10. That the foregoing observations are correct becomes entirely clear where, as in the present case, there are no provisions in the convention on a particular matter governing the situation where actions arising from the same facts are pending at the same time in two different States. The specific risk inherent in such cases of an overlap between proceedings concerning the same subject-matter and the possibility of conflicting decisions would in fact ultimately undermine the fundamental aim pursued by the Brussels Convention, namely that of "strengthen[ing] in the Community the legal protection of persons therein established". (11) For those reasons, therefore, I am of the opinion ° which coincides with that of many academic legal writers (12) ° that such cases call for the full application of Articles 21 and 22 of the Brussels Convention, the precise aim of which is to ensure that only one action is commenced in relation to the same subject-matter or to harmonize such decisions as may be arrived at by the courts in different Contracting States.

11. Furthermore, I cannot agree with the observations of the plaintiffs in Actions 2006 and 2007 to the effect that the Arrest Convention in fact contains provisions concerning lis pendens, in particular in Article 3(3); under that provision, arrest of the same vessel may not be ordered more than once in respect of the same maritime claim by the courts of one or more contracting States. However, that provision is intended to prevent a plaintiff, who in principle is entirely at liberty to choose his forum, from bringing the same action before a court

other than the one first seised. It is, therefore, a device which, although certainly designed to preclude conflicting decisions, nevertheless relates to situations which differ from lis pendens. Once the plaintiff chooses a court by instituting proceedings for the arrest of a vessel, the court before which the same action is again brought later must do no more than simply dismiss it on the ground that the same proceedings have already been commenced elsewhere. Accordingly, it must not make any findings concerning fulfilment of the conditions for recognition of the judgment to be delivered by the court first seised; on the other hand, that is a matter which it must examine for the purpose of upholding the objection lis alibi pendens.

12. In order to determine the real content of Article 57, I think it is appropriate, finally, to refer to the relevant national case-law, which is extremely helpful in defining the scope of the provisions of an international agreement. And indeed, an examination of that case-law, in particular the English decisions on the relationship between the Brussels Convention and the Arrest Convention, confirms the wide acceptance of the view that they should be applied in an integrated manner or jointly in relation to the matter of lis pendens or the related nature of proceedings. (13)

13. In conclusion, I consider that where a convention on a particular matter contains no provisions on lis pendens and related actions, Article 57 allows the application of Articles 21 and 22 of the Brussels Convention.

**Lis pendens within the meaning of Article 21 of the Brussels Convention**

14. Having regard to the conclusion arrived at regarding the relationship between the Brussels Convention and special conventions, it is necessary to answer the further questions submitted by the Court of Appeal. In its first, second and fifth questions, it asks essentially for a definition of the concept of lis pendens as used in the Brussels Convention, in other words, it seeks clarification as to when two actions have the same subject-matter and parties. Helpful guidance is available from the previous decisions of the Court on that point.

Of particular importance is, firstly, the judgment in Gubisch Maschinenfabrik v Palumbo, (14) in which it was made clear that the terms used in Article 21 to describe the conditions characterizing lis pendens must be interpreted independently from those laid down in the various national procedural rules. In arriving at that conclusion, the Court laid particular emphasis on the aim in pursuit of which Article 21 was introduced, namely "in the interests of the proper administration of justice within the Community, to prevent parallel proceedings before the courts of different Contracting States and to avoid conflicts between decisions which might result therefrom. Those rules are therefore designed to preclude, so far as is possible and from the outset, the possibility of a situation arising such as that referred to in Article 27(3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in a dispute between the same parties in the State in which recognition is sought". (15) In that judgment, attention is also drawn to the fact that Article 21 does not refer to the term lis pendens as used in the different national legal systems but instead lays down a number of substantive conditions as components of a definition.

In the light of those considerations, the Court therefore concluded that lis pendens arose in a case such as the one before it, in which the annulment was sought of an international contract of sale in one Contracting State, whilst the action commenced previously in a court of another State sought enforcement of the same contract. That judgment shows, therefore, that it is necessary and sufficient, in order for Article 21 to be applicable, for the parties to be the same, regardless of the procedural position of each of them in the two actions, and for the basic legal relationship from which the situations relied on by the parties derive to be the same: the latter circumstance arises, in particular, where the issue raised in an action constitutes a logical precondition for the claim on which the other action is based, or where the origin of different actions is to be found in the same substantive situation.

15. The importance of the function of Article 21 in the context of the Brussels Convention, and the consequent need to take account of that function in expounding the concept of lis pendens used in it, was also highlighted by the Court of Justice in Overseas Union Insurance. (16) In that decision, it is stated that, "in order to achieve the aims attributed to it, Article 21 must be interpreted broadly so as to cover, in principle, all situations of lis pendens before courts in Contracting States": on that basis, the Court then answered the question put to it by saying that no account should be taken of the domicile of the parties to the two actions in applying the provision in question.

16. What consequences can therefore be drawn from that decision in relation to the problem now before us?

It should first be observed that in the main proceedings bills of lading in identical terms govern the contractual relationships between the various cargo owners and the shipowners and that the conditions of carriage, including the material circumstances thereof, the goods in question being soya bean oil in bulk, are the same in the various cases. It thus seems reasonable to conclude that the most important aspect of the legal situation to which the present preliminary question relates is the fact that the proceedings pending before the Arrondissementsrechtbank, Rotterdam, and the Admiralty Court, London, have the same "cause of action", that is to say the same contractual relationship, and ° at least partially, to the extent to be indicated shortly ° the same "subject-matter", in that in both cases the central issue is whether the shipowners are liable for the contamination of the soya bean oil through leakage of various hydrocarbons. In fact, both actions, the one in which it is sought to establish the liability of the shipowners and the one in which it is sought to establish non-liability, are nothing more than two sides of the same coin, as has been rightly pointed out by the Commission in the course of the present proceedings.

17. It is appropriate at this point to draw attention to a rather important difference between the facts of Gubisch Maschinenfabrik and those of the present case: whilst in the former case too, the relationship between the claims was attributable to their preliminary nature, the position in that case was the opposite of the one under review here, in that the proceedings brought before the court first seised were wider in scope than those brought subsequently. Since the proceedings seeking enforcement of the international sale contract preceded those seeking the annulment or cancellation of the same contract, it was possible in the Court' s view that the latter might "even be regarded as simply a defence against the first action, brought in the form of independent proceedings before a court in another Contracting State". (17)
In the present case, on the other hand, the subject-matter of the action brought in the United Kingdom is not entirely covered by that of the previous action, in that it includes a claim for damages and determination of the amount thereof, which was not in issue (and in any case the position could not have been otherwise) in the proceedings initially commenced in the Netherlands court. In view of the fact, therefore, that Article 21 of the Brussels Convention does not lay down a procedure whereby proceedings are automatically consolidated, but merely requires a court subsequently seised to decline jurisdiction, application of the provision on lis pendens might give rise, in such cases, to a denial of justice. If it were not possible, under the rules applicable in the jurisdiction where the first action is pending, to extend its subject-matter by making further claims or raising new grounds of defence, there would be no opportunity to deal with all aspects of the dispute in all cases where an action of more limited scope was commenced first.
18. I therefore consider that, where the proceedings commenced before the court subsequently seised are wider in scope and where it is not possible to broaden the subject-matter of the first action (a circumstance which does not appear to have arisen in the present case, since all the cargo owners lodged a claim for damages, albeit merely by way of precaution, before the Netherlands court) that court should decline jurisdiction under Article 21 as regards the part of the subject-matter regarded as included within the action brought before the court first seised and may, on the other hand, stay the proceedings as regards the remainder of the subject-matter, relying also on Article 22 of the Convention. (18)
19. However, for the purposes of resolving the present problem, namely identification of the circumstances in which it can be said that two actions have the same cause of action under the Brussels Convention, no importance should in my view be attached to the distinction drawn by English law between actions in rem, by means of which the plaintiff seeks to satisfy his claim by proceeding against specific assets, and actions in personam intended to produce binding effects as between individuals. The application of Article 21 cannot be made conditional upon the individual features of national procedural laws and differing forms of action: reference to the domestic laws of Contracting States, when rendered necessary by the incompleteness of the rules contained in the Brussels Convention, must be conducive to the applicability of the provisions of the convention and may not in any circumstances lead to results which conflict with its aims and rationale. (19)
The purpose of Article 21 is ° as already indicated ° to avoid the duplication of proceedings involving the same cause of action before courts in different Contracting States and the concomitant risk of judgments which are irreconcilable with each other and therefore, by virtue of Article 27(3), cannot be recognized. It seems to me, in that connection, that the possibility of conflicting judgments clearly exists in the present case, since the central issue in the proceedings pending in the United Kingdom and the Netherlands is the liability of the shipowners for contamination of the cargo. No importance must therefore be attached to the fact that the proceedings in question may possibly be of a different nature under the civil procedural law of one or other of the States concerned ° what is important is whether or not the substantive issues which the Court is called upon to examine are the same.
A similar conclusion was recently arrived at by the Admiralty Court itself, in a judgment of April 1992 in proceedings which in certain respects are similar to those in the present case. (20) Being called on to determine, specifically for the purpose of applying Articles 21 and 22 of the Brussels Convention, whether Netherlands proceedings brought by owners of goods for compensation for damage suffered by a ship' s cargo involved the same subject-matter and cause of action as proceedings subsequently commenced by the same owners in the United Kingdom by arresting the vessel under the Arrest Convention, the English court concluded that the two actions involved the same subject-matter, notwithstanding the differences between actions in rem and actions in personam. It arrived at that conclusion by reference to the fact that the subject-matter of the action against the ship (21) must necessarily be the same as that of the action against the owner and that, if service of the writ of arrest is not acknowledged by the owner, the plaintiff must, in order to obtain a decision against the vessel, prove the owner' s liability.
20. A further precondition for the applicability of Article 21 is that the parties to the proceedings commenced before the courts in different Contracting States should be the same. As already stated, the Court has made clear that the parties remain the same even if, procedurally, their positions are reversed in the two cases, so that the plaintiff in the first is the defendant in the second, provided of course that the legal situation relied on in the two cases is the same. However, although ° in the circumstances which gave rise to the present preliminary questions ° the possibility must certainly be ruled out that a situation of lis pendens exists as between the action commenced by Phibro in the United Kingdom (action 2007) and the earlier Netherlands action, since Phibro was not a party to the latter, what is the position

regarding the other action pending before the English court (action 2006) in which the plaintiffs, that is to say the Group 3 cargo owners, are only in part defendants in the proceedings commenced earlier in the Netherlands?
It seems to me, that in such circumstances, the risk of irreconcilable judgments, which would materialize if the English court ordered the shipowners to pay damages on the basis of their being held liable, whilst the Netherlands court concluded that the cargo owners were not entitled to proceed against the shipowners, is clearly envisageable as regards to those who are parties to both sets of proceedings.
In view of the need to ensure that all parties are able to enforce their rights in legal proceedings and of the aim of Article 21 of the Brussels Convention, that provision should therefore be interpreted as meaning that, in such cases, the court second seised must decline jurisdiction to the extent to which the parties to the proceedings pending before it are also parties to the proceedings commenced earlier. The same court must continue the proceedings as between the other parties, nevertheless reserving the right to stay the proceedings as regards them if it is appropriate to do so by reason of the fact that the actions are related, in other words pursuant not to Article 21 of the Brussels Convention but to Article 22. (22)
21. Finally, it is necessary to consider the last (the fifth) question submitted by the national court in relation to Article 21, which asks essentially whether the conclusions reached in interpreting the concept of lis pendens embodied in that provision may in some degree be modified where the plaintiff in the action brought before the court first seised seeks a declaration of non-liability. The cargo owners in particular contend, in that connection, that actions of that kind are in fact a cloak for forum shopping. In other words, the plaintiff has no claim whatsoever against the defendant and seeks only to preclude any possible action by the latter against him, thereby predetermining the competent court, in his own interests, and depriving a party with a genuine interest in bringing an action of the possibility of choosing the court of competent jurisdiction under the Brussels Convention or another special convention, the application of which is upheld by Article 57 of the Brussels Convention. Therefore, if Article 21 were interpreted as meaning that an action seeking a declaration of non-liability brought by the person allegedly responsible for damage is to be placed on the same footing as a claim for compensation made by the aggrieved party, the result would be, it is argued, that uncertainly would arise as regards determination of the court of competent jurisdiction, the right of a person with a real claim to choose the court in which to pursue it would be undermined and there would be an unjustified incentive to bring legal proceedings merely in order to secure a procedural advantage.
22. I do not agree with that argument or with the views put forward in support of it; in the light of the facts of the main proceedings, reference to it in this case seems to me to be entirely unjustified. It is true that the inclusion in the Brussels Convention and, it should not be forgotten, in the Arrest Convention, of alternative rules for determining jurisdiction and the consequent wide choice left open to the plaintiff in deciding which of the equally competent courts to approach for the examination of a particular dispute, may leave the way open for "clever" manoeuvres. In particular, the possibility cannot be ruled out that efforts may be made to establish the jurisdiction of a particular court solely in order to take advantage of the substantive legislation which is applied by it and is regarded as more favourable by the plaintiff, or, again, in order to raise difficulties for the other party.
In that regard, it should be noted, however, that such efforts ° constituting forum shopping ° are easiest to deploy in systems in which priority is automatically given to the connecting factor of the lex fori, however disguised. Where, conversely, the rules of private international law or the case-law, or both, adopt connecting factors which better correspond to the nature and characteristics of the relationship, and to the expectations of the parties who originally created it and "devised it", the possibilities of biased or even abusive use of procedural and private international law, as a whole, are also reduced. In any event, it will be incumbent upon the court seised to ensure that any abuse is thwarted.
In fact, I do not think that this problem can be resolved by interpreting Article 21 restrictively, in other words so as to exclude its application ° as contended in the course of these proceedings ° where a negative finding is sought by means of the proceedings commenced earlier in one of the Contracting States.
It would also be specious, as the Commission observes, to seek to draw a distinction according to whether an action seeking a declaration of non-liability is the first or the second to be brought; such a distinction, besides having no possible basis in the wording of Article 21, would not avoid the problem which that provision seeks to forestall, namely the possibility of conflicting judgments delivered by two courts called upon at the same time to examine the same matter.
23. It should also be borne in mind that the bringing of proceedings to obtain a negative finding, which is generally allowed under the various national procedural laws and is entirely legitimate in every respect, is an appropriate way of dealing with genuine needs on the part of the person who brings them. For example, he may have an interest, where the other party is temporizing, in securing a prompt judicial determination ° if doubts exist or objections are raised ° of the rights, obligations or responsibilities deriving from a given contractual relationship. That seems to be the case in the present proceedings, in view of the timing of the commencement of the actions.
24. Even in the light of those considerations, the cargo owner' s reference to the risks allegedly inherent in the practice of forum shopping seems to me to be irrelevant, and indeed rather unusual. Quite apart from any other considerations, they may not be best placed to preach such a sermon. Whilst it is certainly possible that one of the reasons for the determination of the shi-

powners to have recourse to the Dutch courts was the intention to have applied to the case legislation which they regarded as more favourable to them, it is also a fact that their action in the Arrondissementsrechtbank, Rotterdam, was brought little more than one-and-a-half months after discharge of the cargo, whilst the action by the Group 2 and 3 owners was not commenced until ten months had elapsed and on the basis of a connecting factor which, I repeat, is wholly fortuitous. Furthermore, it has not been denied that the cargo owners were lawfully brought before the Netherlands court under the provisions of the Brussels Convention, specifically Articles 2 and 6(1). In that regard, it appears on the other hand to be entirely a matter of chance that the English court had jurisdiction, under Article 7(1) of the Arrest Convention, solely by virtue of the fact that a vessel belonging to the same owner happened to berth in an English port and the cargo owners were in a position to apply for its arrest. Having regard, therefore, to all the circumstances, it does not seem to me entirely out of place to ask who, in the present case, might be regarded as "responsible" for recourse to forum shopping ° if "responsible" is the right word.

25. In view of those considerations, I repeat that, in any event, Article 21 is not the place to look for a remedy for what might constitute a self-interested use of proceedings seeking a negative declaration. That seems to me to follow also from Gubisch Maschinenfabrik, mentioned several times earlier, from which it is apparent that the concept of lis pendens used in the Brussels Convention extends to circumstances where a party has brought before a court of a Contracting State an action for the annulment or cancellation of a contract, whilst an action by the other party for the enforcement of that contract is pending before a court in another Contracting State. On that occasion, the Court disregarded the views of the Advocate General, who had expressly drawn attention to the possible risks deriving from that interpretation of Article 21, which might make it possible to use an action challenging the validity of a contract to paralyse, by raising an objection of lis pendens, any later action brought on the basis of that contract before a court in another Member State. (23) Moreover, the most recent national case-law is adopting the same approach as that adopted in the abovementioned judgment of the Court of Justice. (24)

**Related actions within the meaning of Article 22 of the Brussels Convention**

26. With regard in particular, but not exclusively, to Action 2007, a final series of questions relates to the interpretation of Article 22 of the Brussels Convention. The national court asks the Court of Justice to clarify the concept of related actions in the third paragraph of Article 22, by virtue of which, it will be remembered, actions "are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings".

27. It should be noted at the outset that that definition, like that of lis pendens, should be interpreted independently from those (which differ from each other) found in the various national procedural rules. (25) In that regard, it is clear, in the first place, that two (or more) actions, in order to be related within the meaning of the third paragraph of Article 22, do not necessarily have to have the same parties and involve the same subject-matter and cause of action. Where those conditions are fulfilled, Article 21 will apply; on the other hand, in related actions, there is a difference as regards the subjective or objective elements (or possibly both).

Having regard to the subjective limits of judgments, which, of course, can produce effects only as regards the litigants, it is clear that no incompatibility, in the technical sense, can arise between the judgments delivered in related actions except where, although having a different cause of action or subject-matter or both, they involve the same parties. In a case in which the Court examined Article 27(3) of the Brussels Convention, and which has been referred to by many of the parties involved in these proceedings, (26) a foreign judgment ordering a husband to pay maintenance to his wife by virtue of his matrimonial obligations would be incompatible with a decision given in the State where enforcement of it was applied for, which dissolved the marriage of the same spouses. On that occasion, therefore, the Court observed that judgments of that kind "have legal consequences which are mutually exclusive. The foreign judgment, which necessarily presupposes the existence of the matrimonial relationship, would have to be enforced although that relationship has been dissolved by a judgment given in a dispute between the same parties in the State in which enforcement is sought" (emphasis added). (27)

28. In view of the aim inherent in the concept of related actions in the Brussels Convention, I do not believe, however, that the expression "irreconcilable judgments" contained in the third paragraph of Article 22 can be given the same restrictive meaning as the expression "judgment ... irreconcilable with a judgment given in a dispute" at an earlier stage used in Article 27(3), as suggested by most of the parties to the present proceedings. The latter provision envisages the possibility, by way of derogation from the principles and objectives laid down in the Convention, of refusing, exceptionally, to recognize a foreign judgment, whilst the former is intended rather to improve coordination of the judicial function within the Community and to avoid conflicting and contradictory decisions, even where the separate enforcement of each of them is not precluded. (28) An example, which I take from the Opinion of Advocate General Darmon in Kalfelis, (29) seems to me to provide a clear illustration of the view just expressed: it is also a particularly appropriate illustration, because of its considerable factual similarity with the present case. If, after separate actions have been commenced against two persons allegedly responsible for an accident, two decisions are given, one of which upholds the action and the other dismisses it, on the ground that the damage suffered does not justify compensation, those decisions, although contradictory, may certainly be enforced at the same time, having been given in proceedings between different parties.

Nevertheless, recognition of the fact that the two sets of proceedings were related and a possible stay of proceedings or, if the requisite conditions were fulfilled, a declaration by the court second seised that it lacked jurisdiction, under the first and second paragraphs of Article 22, would in any event have been conducive to the substantive uniformity of judicial decisions and would therefore have been in conformity with the objectives pursued by the Brussels Convention.

The rationale of the provision is therefore to encourage harmonious judicial decisions and thereby obviate the danger of judgments which conflict with each other, albeit only as regards their reasoning. The court second seised should therefore be able to have recourse to the machinery envisaged by that provision whenever it considers that the reasoning adopted by the court hearing the earlier proceedings may concern issues likely to be relevant to its own decision.

29. It seems to me that such a situation arises in the present case. Because the matters of fact and of law at issue in the proceedings pending in the Netherlands and in Action 2007 are the same, in that the transport operation to which the two actions relate is one and the same, the cargo was a bulk cargo and the bills of lading signed by the various cargo owners were in the same terms, it is clear that if the two actions were to proceed in parallel, the possibility could not be ruled out that "conflicting" decisions might be arrived at, in the sense just described.

**Conclusion**

30. In the light of the foregoing considerations, I propose the following answers to the questions referred by the Court of Appeal on the interpretation of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters:

1. Article 57 of the Convention must be interpreted as meaning that, if ° as in the present case ° a convention on a particular matter contains no provisions concerning lis pendens and related actions, Articles 21 and 22 of the Convention are applicable.

2. Article 21 of the Convention must be interpreted as meaning that lis pendens arises whenever there is total or partial identity of subject-matter, cause of action and parties as between two (or more) actions. In particular:

° an action brought in one Contracting State, in order to obtain a declaration that the plaintiff is not liable for damage allegedly suffered by the defendants, has the same subject-matter and cause of action as an action subsequently commenced in another Contracting State by one of the defendants in the first action with a view to establishing that the plaintiff in the latter action is liable for the same damage;

° in that regard, the fact that the forms of the actions differ under the procedural laws of the two States concerned is unimportant;

° the obligation of the court second seised to decline jurisdiction under Article 21 applies only to that part of the proceedings which has the same subject-matter and parties as the proceedings commenced previously.

3. The third paragraph of Article 22 of the Convention is to be interpreted as meaning that two actions are to be regarded as related, in that they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments, whenever they are concerned with essentially the same matters of fact and law, and there is therefore a risk that they might be decided in a conflicting manner, albeit only as regards their reasoning.

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(*) Original language: Italian.

(1) ° The order for reference is rather laconic in that respect, since for the most part it confines itself to setting out the preliminary questions referred to the Court. However, I consider that the matters of fact and law set out in the pleadings and documents lodged by the parties are more than sufficient. Moreover, having regard to the cooperation between the Community Court and national courts, the essence of which must, in my opinion, be preserved, I shall not in this case consider in detail the question whether the order for reference is formally apt for proper examination by the Court of Justice.

(2) ° The text of the Convention is in International Transport Treaties, suppl. 12, May 1988, p. I-168.

(3) ° For the sake of completeness, I should point out, finally, that other actions were subsequently commenced both by the cargo owners and the shipowners, but they are of limited relevance to the answers to the questions of interpretation referred to the Court. They are, in particular: (a) actions for damages in respect of the alleged contamination of the soya bean oil discharged in Rotterdam, commenced in the Netherlands on a precautionary basis by Groups 2 and 3 on 29 September and 3 October 1989 respectively in case the English court should declare that it lacked jurisdiction; and (b) the action brought by the shipowners, again in the Netherlands, on 26 October 1990 to limit their liability regarding the entire cargo discharged in Rotterdam and Hamburg, that action being based on the International Convention relating to the limitation of the liability of owners of seagoing ships, signed in Brussels on 10 October 1957.

(4) ° For a better understanding of the observations that follow, I think it is appropriate to set out the text of the provisions at issue in the questions referred to the Court as in force at the material time:

Article 21

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 22

Where related actions are brought in the courts of different Contracting States, any court other than the court

first seised may, while the actions are pending at first instance, stay its proceedings.
A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.
For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.
Article 57
1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:
(a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention;
(b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with this Convention.
Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this convention which concern the procedure for recognition and enforcement of judgments may be applied.
3. ...
Finally, it is appropriate to mention the relevant provisions of the Arrest Convention. In particular Article 3 confers upon the courts of the Contracting States jurisdiction to order the arrest of a ship in respect of which a maritime claim has arisen (or any other ship belonging to the same owner) as security for that claim. The term maritime claim used in the Convention is described in Article 1(1) thereof as referring in particular, and so far as is relevant here, to claims arising out of loss of or damage to goods including baggage carried on any ship (paragraph (f) of that provision). Finally, Article 7(1) confers upon the courts of the Contracting State in which the arrest is made jurisdiction also to determine the case upon its merits in certain circumstances: in that regard I shall only mention, since it is relevant to the facts at issue here, the case where the domestic law of the country in which the arrest was made gives jurisdiction to such courts for that purpose.
(5) ° See in that connection the Jenard Report on the Brussels Convention, in OJ 1979 C 59, p. 1 et seq., in particular at page 50.
(6) ° See, to that effect and for further bibliographical references, T. Vassalli di Dachenhausen, Il coordinamento tra convenzioni di diritto internazionale privato e processuale, Naples, 1993, in particular at p. 106 et seq.
(7) ° The Schlosser Report appears in OJ 1979 C 59, p. 71 et seq.
(8) ° Schlosser report, paragraph 240.
(9) ° Ibid. paragraph 240.
(10) ° Ibid. paragraph 240, in which the problem of lis pendens is expressly raised and then left to be resolved by subsequent case-law.
(11) ° Preamble to the Brussels Convention.
(12) ° See, to that effect and for further bibliographical references, T. Vassalli di Dachenhausen, op. cit., P. Kaye, Civil Jurisdiction and Enforcement of Foreign Judgments, Abingdon, 1987 (p. 197 et seq.), O' Malley and Leyton, European Civil Practice, London 1989, (p. 858 et seq.) and A. Di Blase, Connessione e litispendenza nella convenzione di Bruxelles, Padua, 1993 (p. 142 et seq.).
(13) ° See in particular the judgment of the Queen' s Bench Division (Admiralty Court) of 17 July 1987 in The Nordglint , in The Law Reports, 1988 p. 183 et seq., and of 23 October 1987 in The Linda , Lloyds Law Reports, 1988, p. 174 et seq.
(14) ° Case 144/86 [1987] ECR 4861.
(15) ° Ibid., paragraph 8.
(16) ° Judgment in Case C-351/89 [1991] ECR I-3317, in particular paragraphs 12 to 17.
(17) ° Gubisch Maschinenfabrik v Palumbo, cited above, paragraph 16.
(18) ° On that point, see Di Blase, op. cit., p. 75 et seq.
(19) ° See in that connection the judgments in Gubisch Maschinenfabrik v Palumbo, cited above, paragraphs 6 to 8, and the earlier judgment in Case 12/76 Tessili [1976] ECR 1473.
(20) ° Judgment of the Admiralty Court of 31 March, 1, 2 and 6 April 1992, in Lloyds Law Reports, 1992, p. 261 et seq.
(21) ° It should be observed that, under English Maritime Law, in an actio in rem, in which a vessel is arrested, the defendant is not the owner or the shipping company but the vessel itself or the cargo and accordingly the writ of summons is served upon ... the vessel!
(22) ° That view is expressed, although with some hesitancy, by Kaye, op. cit., p. 1227 et seq.
(23) ° Opinion of Advocate General Mancini in Gubisch Maschinenfabrik v Palumbo, cited above, at p. 4867 (see in particular p. 4869).
(24) ° See the judgment of the Oberlandesgericht, Munich, of 22 December 1993 in Recht der internationalen Wirtschaft, [1994] p. 511: in that judgment, the German court, specifically referring to Gubisch Maschinenfabrik v Palumbo, considered that an action for a declaration of non-liability brought before an Italian court and a subsequent claim for damages brought in Germany had the same subject-matter and cause of action within the meaning of Article 21 of the Brussels Convention.
(25) ° See the Jenard report, cited above, at pages 41 and 42, where it is stated, in particular, that since the

expression related action does not have the same meaning in all the Member States, the third paragraph of Article 22 provides a definition. This is based on the new Belgian judicial code (Article 30) .

(26) ° Judgment in Case 145/86 Hoffmann v Krieg [1988] ECR 645, in particular paragraphs 19 to 25.

(27) ° Ibid., paragraph 24.

(28) ° See in that connection the opinion of Advocate General Darmon in Case 189/76 Kalfelis; particularly at page 5574 et seq. of the Opinion.

(29) ° Cited in the previous footnote ° page 5575. For a similar approach, see P. Kaye, Civil Jurisdiction and Enforcement of Foreign Judgments, cited above, page 1233 et seq., and A. Di Blase, Connessione e litispendenza nella convenzione di Bruxelles, cited above, page 179 et seq.