

Oral statement by Vice President GUNDELACH at Council 20th June

1. The agenda for today's meeting of the Council contains a long list of items touching on both the internal fisheries régime and on our bilateral and multilateral fisheries relations.
2. These proposals, as brought together in the agenda list, are sufficient to represent quite fully to the Council the Commission's views both on the constitution of the internal fisheries régime and on the development of our fisheries relations with others.
3. In the build-up of these proposals as they now stand I would like to repeat briefly some of the major considerations of the Commission. For example, in reaching the proposed quotas the Commission used as a basic principle of distribution in its proposals of last October the NEAFC key, when available, as applied in 1976. This was a beginning point which had the merit of being well known to and generally accepted by the member States of NEAFC which included most of the member States of the Community.
4. In these proposals of October last the Commission also took into account, in conformity with Article 39 of the EEC Treaty, the special needs of North Britain and of Ireland.
5. Following debate and a further Council last December the Commission made major changes in its quota proposals in order to compensate certain member States, as far as it was reasonably possible to do so, for losses of fishing rights which they had sustained in third country waters. Suffice to say that a major transfer of fishing possibility was made from several member States, with their agreement, to the United Kingdom; so much so that the quantum of the proposed catch available to the United Kingdom for 1978 is not less than what the United Kingdom has fished in the average of recent representative years although, excepting Ireland, all other member States have suffered varying losses in their fishing possibilities - ranging up to about 30% in the case of the Netherlands.

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6. These proposals were in conformity with the Treaties; and any significant further changes in the proposals on quotas must be equally firmly founded on Treaty law. They cannot be based on national advantage; for example, on such an argument as contribution to resources - a notion which, by implying a preferential treatment for fishermen in function of distinguishing between the territories of member States, is alien to the EC Treaty. The Commission clearly may not make proposals on bases which are outside Community law.

7. Similarly, the Commission may not make proposals which provide for permanent exclusive zones, i.e. zones from which fishermen from all except one member State are permanently barred or are permitted entry only by the agreement of that member State.

8. Nor can the objective of exclusivity be achieved covertly; the EC Treaty forbids, as the Court most recently reaffirmed in *Commission v. Ireland*, "not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result". Discrimination among the fishermen of member States may not be brought in by the back door any more than it can be brought in by the front door and such ideas cannot form part of Commission proposals.

9. I have borne in mind these limits of a constitutional nature involved in membership of the Community when exploring, in accordance with the mandate given to me in the April Councils, the possibilities of bridging the gap between the eight and the ninth Member States.

10. In the Council meeting of last December and January considerable progress was made on the draft conservation and control regulations. In regard to both these regulations the Commission has adopted a strict point of view and there have been very few matters in these regulations which required further examination in my bilateral discussions in recent months with the member States. I would like to clarify one thing further. Sometimes it seems to be believed that quota allocations as such are conservation measures. This is not the case; the total allowable catch is the conservation measure. What is allocated to member States or to third countries thereafter may not, in total, exceed the total allowable catch in the case of any stock. I hope the confusion that seems to persist on this subject may now disappear. Finally, in connection with the draft conservation and control regulations the Commission is quite prepared to put down such further amendments as may be justified, because outstanding matters and these points are not such that they could not be solved by negotiations. They are no obstacles to an overall settlement.

11. At the Council on 3rd April, when I had already had some contact with the ninth member State, I indicated that the Commission then maintained its existing proposals; it considered that certain United Kingdom demands, to fill the alleged gaps in the Commission proposals, were beyond the limits of Treaty possibilities. As I understand it, subject to correction, the United Kingdom asks for, among other things

- (i) the phasing-out of historic rights in a manner which results in a permanent exclusive coastal band up to 12 miles;
- (ii) further quota increases for 1978 beyond the major sacrifices already made in favour of the UK by other member States earlier this year; does the Council think it possible to improve the present Commission proposals in favour of the UK?
- (iii) an increased preferential position vis-à-vis other member States in Norwegian waters north of 62° and in Faroese waters; is this also possible?
- (iv) an increase in allocations, irrespective of growth, which by the end of 1982 would give the United Kingdom, in the estimation of the Commission, ^{roughly} the equivalent of close on 100% of the tonnage of catch available in waters under UK fisheries jurisdiction; what do other members of the Council say to this demand?
- (v) a priority ^{of 20% - 25% according to species} reserved for the United Kingdom of any growth in fishing possibilities available to the Community thereafter; and what is the view of other members of the Council on this demand? and,
- (vi) fishing plans of a kind which, by being based on access considerations, would lead quite certainly to flag discrimination.

12. This is how the Commission has understood the UK wishes and it is on this basis that I and the Commission officials have carried out exploratory talks with the Member States. These talks, however, have demonstrated that the United Kingdom demands, as I have set them out, do not form a base for an agreement and the Commission's proposals as they have been modified and supplemented over the last months therefore remain on the table.

13. This does not mean that the Commission necessarily considers its proposals to be its final word in the discussion of a common fisheries policy. The Commission considers its proposals as fair and objectively justifiable, but it is evident that a distribution^{of} available catch possibilities among Member States is not a purely scientific operation where only one result is the right one; moreover, as I have already indicated, the Commission does not exclude that its proposals on conservation and control measures can be re-examined as far as certain technicalities are concerned - e.g. with regard to control of the use of more measures on the same boat. The Commission has also declared its readiness to consider the application of fishing plans, in which connection I refer to the Commission's January communication and to the recent proposal for fishing plans in Irish waters. Such fishing plans are in the Commission's view an interesting means of ensuring a reasonable relation between boats and catch possibilities in cases where it is objectively justified by a need for protecting the local population, local and traditional fishing patterns, local stocks. However, contrary to a system of licences as proposed by the Commission, the application of fishing plans could not be envisaged in general.

14. Among the items raised in the list which I have just described is that of phasing-out historic rights between 6 and 12 miles. The Commission has already suggested that, in so far as the exercise of historic rights may touch on sensitive problems, a system of fishing plans could be used to distinguish and regulate these - and perhaps, to quantify the extent of the matter. In other words, the Commission is conscious of the need to discuss and come to solutions on this issue which are both consistent with the fundamental principle of equal right of access and with other legitimate concerns. It is quite another matter, however, to say that historic rights should be phased-out and should leave behind a permanent exclusive 12-mile zone - or that a coastal state should have the right to determine whether the fishermen of other member states of the Community should be permitted access within 12 miles. Once the question is posed in these latter terms the Commission can give only one answer to it, If, however, the question is posed in terms of regulating the exercise of historic rights can all members of the Council agree to engaging on such an exercise ?

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15. The Commission would, however, underline that changes in its proposals are not conceivable unless they are made in the context of a final overall settlement. The Commission would not be ready to consider a salami or piecemeal procedure - which would change the delicate balance of its proposals - and the Commission would not consider changes in its proposals which do not respect the limits of the Treaty, and which are not of such a nature that everyone can live with them.

16. Mr. Chairman, there are strong reasons for asking the Council to come to grips with the common fisheries policy now. I shall not repeat these reasons but only refer to the long period of uncertainty for the fishermen, the transformation industry and other dependent professions, to the need for common transparent conservation measures at Community level

and to our relations with third countries. In this regard, I must say, that I don't believe that simply pushing the third countries' issue in front of us is any longer available to us. As time goes by, we get closer to the limits of our third countries' agreements and they can't accept that those limits are not adhered to. I can't conceive that these agreements, even if they have not been ratified by the Council, should not be carried out. I cannot imagine that the Council would bring to a halt the legitimate fishing possibility of these third countries. The result would be such a loss of credibility of the Community, not only as a partner in fisheries, but also in the general economical and political field, that I can't possibly assess the damage that would be done by such a state of affairs.

In the view of the Commission, it would be appropriate at this stage to go through the proposals on the Council table one by one, starting with the proposal for a Community regime on conservation and management of resources with a view to obtaining in the Council a clear picture of points of disagreement between delegations. It is only on the basis of such a picture that it will be possible for the Council to assess whether a global agreement is within reach. The road of bilateral talks has obviously come to dead end. The Commission shall of course participate in the most constructive way in the proceedings of this Council.