OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 21 June 1988 *

Mr President,
Members of the Court,

1. This Opinion is concerned with Cases 358/85 and 51/86 brought by the French Republic against the European Parliament, which the Court joined by order of 8 July 1987 for the purposes of the oral procedure and judgment. In the applications in question (of 19 November 1985 and 20 February 1986) the French Republic asks the Court to declare void the Resolution 'on meeting facilities in Brussels' adopted by the Parliament on 24 October 1985 (Official Journal C 343, 31.12.1985, p. 84).

Consequently the Court is being called upon to rule on the Parliament's places of work for the third time in the space of five years. As Members of the Court will recall, the matter was referred to the Court on the first two occasions by Luxembourg: on 7 August 1981 Luxembourg brought an action against a measure which, in its view, was in breach of the requirement for the Parliament to hold certain of its part-sessions in Luxembourg (judgment of 10 February 1983 in Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255), and on 10 June 1983 it brought a further action against a resolution which, in its opinion, was intended unlawfully to transfer a substantial proportion of the officials of the General Secretariat from Luxembourg to Brussels and Strasbourg (judgment of 10 April 1984 in Case 108/83 *Luxembourg* v *Parliament* [1984] ECR 1945).

The cause of the contested measure, now as at that time, lies in the governments' persistent failure to carry out their obligation to determine the seat of the Parliament and in the increasingly serious repercussions of that failure in terms of costs and organizational difficulties. Like the measures challenged by Luxembourg, the Resolution of 24 October 1985 is symptomatic of the great hardship to which the Member States' inertia puts the Parliament, and seeks to provide it with better working conditions. However, in this instance the Parliament is seeking to attain that outcome by creating the physical preconditions which will enable it also to hold part-sessions in Brussels, an approach destined to bring it up against a major obstacle: all those — and first and foremost the French Government — who consider that such sessions may be held only in Strasbourg.

2. I shall now summarize the facts. On 22 October 1985, the President of the Plenary Session stated that numerous requests had been lodged for debates on topical and urgent subjects pursuant to Rule 48 (1) of the Rules of Procedure, in the version in force at that time. Among those requests was that of Mr von der Vring and 36 other Members relating to meeting facilities in Brussels (Doc. B 2-1120/85). Under the powers conferred on him by the Rules of Procedure, the President did not include the matter on the agenda for the sitting scheduled to be held on 24 October 1985. Accordingly, 21 Members opposed that decision in writing, giving their reasons and

* — Translated from the Italian.

calling for a vote by roll-call. On 23 October the motion was carried (by 108 votes in favour, 33 against and 7 abstentions) and on the following day the resolution was adopted after a brief debate by 132 votes in favour, 113 against and 13 abstentions.

The resolution is made up of a preamble consisting of nine recitals and a conclusion divided into five items. In the preamble the Parliament observes, *inter alia*, that: (a) the largest meeting room in Brussels contains 187 seats and no significantly larger conference room with full simultaneous interpretation facilities for all nine Community languages exists in Brussels; (b) following the increase in the number of Members as a result of the accession of Spain and Portugal, there is a danger that the Parliament's political groups will no longer be able to meet under normal conditions; (c) it is already impossible for two or more of the larger political groups to meet together; (d) there are no permanent facilities in Brussels for a special or additional part-session to be held there during a week largely devoted to committee or group meetings; and (e) it is desirable to improve facilities for meetings of private Community-wide organizations.

On those grounds the Parliament decided: (1) to have a building constructed capable of satisfying those requirements and hence with a room providing seating for at least 600 people, a visitors' gallery and ancillary facilities; (2) to complete the project by 31 August 1988, the President, Bureau and Quaestors being authorized to negotiate and conclude the necessary contracts to that end; (3) to make the appropriate budgetary provisions, its President, Bureau and Secretary-General being instructed to make all necessary proposals for that purpose; (4) to promote the development of Community-wide organizations by making the building available to them, charging a suitable rental, and to make it available to other organizations on a commercial basis, so as to reduce the overall cost and maximize its utilization; and (5) to name the building after a Member of the first directly elected European Parliament or other leading European personality, the Bureau being instructed to decide upon the name.

At its meeting on 12 November 1985 the enlarged Bureau took note of the resolution and, at the same time, of four documents: two protest notes sent by Mr Poos, the Minister for Foreign Affairs of Luxembourg, dated 25 October and 5 November 1985, a similar note, dated 30 October 1985, from Mrs Lalumière, State Secretary of the French Republic responsible for European Affairs, and the answer given on the same day by Mr Dumas, French Minister for Foreign Affairs, to a question asked in the Assemblée nationale. The Bureau decided not to express any opinion thereon for the time being and asked the Committee on Legal Affairs and Citizens' Rights and the Political Affairs Committee for their views.

Before this happened the French Government submitted its applications to the Court. This prompted the Legal Affairs Committee to say that the Parliament would set out its position in the defence; however, it emphasized that whilst the institution 'intends . . . to exercise its powers strictly in accordance with Community law', 'the governments of the Member States should have taken a decision long before on the Parliament's seat in accordance with Article 216 of the EEC Treaty' (7 February 1986). The Political Affairs Committee was more

explicit, stating that the resolution contained nothing which 'impinges formally on the prerogative . . . of the Member States to determine the seat of the Parliament. The possibility of providing a new room for holding a "special or additional part-session" is a matter to be decided by Parliament alone as part of the organization of its work and is not in breach of the principle in force to the effect that ordinary part-sessions are held in Strasbourg' (28 February 1986).

3. A few words on the procedure before the Court. First, on 25 March 1986 the Parliament lodged an objection of inadmissibility with regard to the second application (Case 51/86) on the ground of *lis pendens* in view of the proceedings instituted by the application of 20 November 1985. By order of 15 October 1986 the Court decided to reserve its decision on the objection of admissibility for the final judgment. I shall consider that objection and the other objections put forward by the Parliament in the written procedure and at the hearing in section 4.

However, that is not all. By application lodged on 2 April 1986 Mr von der Vring and four other Members of Parliament, acting individually and as natural persons, applied to intervene in Case 358/85 in support of the Parliament. The five Members stated that the resolution was adopted at their instigation. Since its purpose was to improve *in particular* their working conditions, they had a specific interest in intervening in its support, if only to guarantee their freedom of action and avoid doubt being cast on their competence and integrity. In any event, they considered that they also had an interest in intervening as Members of Parliament and in order to put forward issues not touched on by the Parliament in Cases 230/81 and 108/83 which, unless they intervened, were likely once again not to be raised.

The French Republic opposed the intervention of the five Members of Parliament. It contended: (a) that their interest as co-authors of the resolution was merely indirect; (b) that their interest as persons adducing supplementary arguments related not to the submissions but to the grounds of the application and hence did not satisfy the requirements to which intervention was subject; and (c) that their interest as Members of Parliament was not specific but merged with that of the Parliament.

By order of 3 July 1986 the Court dismissed the application to intervene. The key passage of the order (paragraph 9) is worth quoting in full: 'Since the action is directed against a measure adopted by an institution, the system of remedies established by the Treaties requires that the institution concerned defend the validity of its measure before the Court and it is also for that institution to decide itself how to defend its interests in that regard. It would be incompatible with that system to accept the existence of a right to intervene by persons acting solely in their capacity as members of the institution concerned.'

Manifestly the Court did not accept the — in any event, very weak — arguments put forward by the French Republic. It is incontestable that the interveners had a direct and specific interest in the result of the case, at least as Members of Parliament. Moreover, there is no doubt that, far from being incompatible with the nature of intervention, the aim of adducing additional arguments in support of one party constitutes the *raison d'être* of intervention

(see the judgment of 23 February 1961 in Case 30/59 *De Gezamenlijke Steenkolenmijnen* [1961] ECR 1, and the judgment of 22 March 1961 in Joined Cases 42 and 49/59 *Snupat* v *High Authority* [1961] ECR 53). Instead the Court decided the question on the basis of the principle that the institution alone has the power to defend its rights and interests in legal proceedings. In my view, the decision is correct, *inter alia* because in this case that principle is actually laid down in Parliament's Rules of Procedure: 'Parliament shall be represented in . . . legal . . . matters by the President, who may delegate [that power]' (Rule 18 (4)).

4. I shall now turn to the objections of inadmissibility raised by the Parliament, one of which — to the effect that acts of the Parliament cannot be challenged under Article 173 of the EEC Treaty or Article 146 of the EAEC Treaty — was withdrawn during the oral procedure.

My starting point will be the alleged concurrency of the proceedings in Cases 385/85 and 51/86. The Parliament refers to the Court's judgment of 19 September 1985 in Joined Cases 172 and 226/83 (*Hoogovens Groep BV* v *Commission* [1985] ECR 2831, paragraph 9) of which states that an application involving the same parties and seeking the annulment of the same decisions on the same grounds as in another case is inadmissible. The application in Case 51/86 has similar characteristics: the ground on which it is based — infringement of the principle of proportionality — is also put forward in Case 358/85, albeit in the reply.

The French Republic argues in response that it brought the second action solely as a precautionary step, in case the first, which was lodged before the contested resolution had been published, was held to be premature and inadmissible on that ground. In any event, the judgment in the *Hoogovens Groep* case is not in point since the two applications are based on different grounds: the first on infringement of essential procedural requirements and lack of competence, the second also on infringement of the principle of proportionality. Notwithstanding that, the French Government has no objection to the application in Case 51/86 being declared inadmissible, although it asks that in that event the ground of infringement of the principle of proportionality, which was also raised in the reply in Case 358/85, should not be regarded as 'new'.

What is to be made of those arguments? I would observe first of all that the contested act is a resolution of the European Parliament and hence can be challenged under Article 38 of the ECSC Treaty and — in view of the Court's interpretation of those provisions in the judgment of 23 April 1986 in Case 294/83 (*Parti écologiste 'Les Verts'* v *European Parliament* [1986] ECR 1339) — under Article 173 of the EEC Treaty and Article 142 of the EAEC Treaty. Article 38 of the ECSC Treaty provides that 'application shall be made within one month of the publication of the act of the European Parliament', whilst Article 173 of the EEC Treaty and Article 142 of the EAEC Treaty provide that proceedings are to be instituted within two months of the publication or notification of the measure. Lastly, under Article 81 (1) of the Court's Rules of Procedure, 'the period of time allowed for commencing proceedings against a measure adopted by an institution shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the 15th day after publi-

cation thereof in the *Official Journal of the European Communities*'.

It should also be borne in mind that, according to the relevant provisions of the Treaties (Article 25 of the ECSC Treaty, Article 142 of the EEC Treaty and Article 112 of the EAEC Treaty), 'the proceedings of the European Parliament shall be published in the manner laid down in its rules of procedure'. According to the latter 'the minutes of proceedings . . . shall be published within one month in the *Official Journal of the European Communities*' (Rule 89 (4) of the version in force at the material time; now it appears, unamended, as Rule 107 (4)).

Having said that, I would observe that the measure at issue in Case 230/81 was challenged within the time-limit laid down in Article 173 of the EEC Treaty and the measure at issue in Case 108/83 within that laid down in Article 38 of the ECSC Treaty, but both before they were published in the Official Journal, and yet the Parliament did not claim they were inadmissible nor did the Court hold them to be inadmissible of its own motion. Why is this so? The answer is straightforward: unlike regulations, parliamentary resolutions are effective, not from their publication in the Official Journal, but at the time when they are adopted by the Parliament or, rather, from the time of the adoption of the minutes of the sitting at which they were adopted.

In other words, although resolutions of the Parliament are usually general in nature, as far as challenging them is concerned, they may be equated to individual decisions, that is to say to measures against which interested third parties may institute proceedings as soon as their notification comes to their attention; it is not necessary to await publication. Moreover, this is what the judgment in the *Hoogovens Groep* case says, if it is true, as I believe, that the statement that a measure can be challenged even before it is notified (paragraph 9) was a lapse. It is indeed obvious that in the stage before that formality is carried out (second paragraph of Article 191 of the EEC Treaty) the measure is without effect and hence an action will not lie against it because there is no interest in annulling it.

If those findings are correct, the application lodged by the French Government on 20 November 1985 against the resolution of 24 October 1985 should be held to be in time, despite the fact that the resolution was not published in the Official Journal until 31 December 1985.

What, then, of the application lodged on 20 February 1986? In my view, it should be declared inadmissible, not on the ground of *lis pendens* in view of the proceedings in Case 358/85, *but because it was out of time.* Admittedly, when it was lodged the period of time starting on the date of publication of the contested resolution had not yet expired. But that time-limit is affected by the first application: not only was that application not premature, it also shows that France definitely had full knowledge of the contested measure at least as of 20 November 1985. And it is obvious why. The resolution is appended to the application in Case 358/85, which reproduces the minutes of the sitting at which the Parliament adopted it (PV 38 II Doc. PE 101.404, p. 1). Consequently, as far as the French Republic is concerned, the two-month period began to run as from the date of that application; and there is no doubt that,

relative to that date, the second application, which was registered on 20 February 1986, was out of time.

As for the ground based on infringement of the principle of proportionality (which, as I have mentioned, was raised in Case 358/85 in the reply only), the question whether it is a complementary argument to the ground of lack of competence or rather a new ground should be left until the substance is considered.

5. The Parliament also maintains that both the applications are inadmissible because they are directed against a measure which, in two respects, is not of a decision-making character. Firstly, the resolution of 24 October 1985 concerned the purchase of a building. However, it follows from Article 211 of the EEC Treaty that the relevant contract can be concluded only in so far as it is authorized by the Commission. Since authorization has not yet been given, the contested measure is not capable of having legal effects *vis-à-vis* third parties.

Consideration of that issue would take a long time and would necessitate in particular a detailed appraisal of the institutions' practice with regard to real property. However, in my judgment, such an inquiry is not necessary for present purposes because the nature of the title on the basis of which the Parliament is intending to utilize the building remains substantially open. A passage in the rejoinder in Case 358/85 makes this perfectly plain: 'The resolution does not necessitate the outright purchase of the building ... rental is also conceivable and would be perfectly consistent with the institution's practice to date' (paragraph 27).

Let us turn to the second of the issues raised by the Parliament. At the hearing, the Parliament contended that since the resolution simply decided to have a building constructed, it was a purely practical measure and hence could not be challenged. In contrast, a decision to hold all or none of the part-sessions in Brussels would be subject to review by the Court. But the Parliament had not yet shown such an intention; if the application were directed against such a decision it should be regarded as premature and hence as inadmissible.

The Parliament put forward a similar observation, I recall, in Case 230/81, when the Court stated that 'a determination of the legal effect of the contested resolution is inseparably associated with consideration of its content and observance of the rules on competence' (paragraph 30). As in that instance, the objection raised by the Parliament should therefore be left until the substance is considered.

6. When I considered the objection relating to *lis pendens* I pointed out that France's action was based on three grounds: infringement of essential procedural requirements, lack of competence and breach of the principle of proportionality. In asserting that essential procedural requirements have been infringed the French Government maintains, referring *inter alia* to a number of criticisms voiced in the Parliamentary debate, that the subject-matter of Mr von der Vring's motion lacked

topicality and urgency. Consequently it was not eligible to be adopted by the procedure set out in Rule 48 (1) of the Parliament's Rules of Procedure.

That argument cannot be accepted. As the Court stated in dismissing a similar ground put forward by the Luxembourg Government in Case 230/81 'in the present case the [applicant] has not established the infringement of any essential procedural requirements which must be observed by the Parliament before it adopts a resolution such as that in dispute' (paragraph 61 of the relevant judgment). I would add that whether or not a given subject is topical or not and whether it should or should not be debated as a matter of urgency constitute a decision based on assessments which are not subject to judicial review; and, as far as the views of the Members of Parliament who voted against the resolution are concerned, I consider, as I stated in my Opinion in Case 230/81, that when a measure originates in an assembly it 'should be interpreted, as far as possible, in reliance on the text approved by the assembly'.

7. The target of the second submission is the decision to construct a building in Brussels containing a meeting room providing seating for 600 people. According to the French Republic, the aim is to make it possible to hold part-sessions in Brussels and, since the agreements between the Member States — that is to say the only authorities competent to take decisions in that field — provide that part-sessions must be held in Strasbourg, that objective vitiates the act embodying it on the ground of lack of competence. The French Government argues that the contested resolution would be unlawful in any event even if it merely sought to improve the situation in which the Parliament works in Brussels by providing the committees and political groups with more adequate facilities; if so, the construction of such a spacious building would infringe the principle of proportionality.

But let us proceed in an orderly fashion. In the view of the applicant government the Member States have provided on at least four occasions — 1952, 1958, 1965 and 1981 — that part-sessions are to be held solely in Strasbourg; furthermore, it cannot be considered that the relevant measures draw a distinction between ordinary sessions and the 'special or additional' sessions referred to in recital D of the resolution or provide for exceptions. Neither was any derogation contemplated in the judgment in Case 230/81. Admittedly, the Court did not criticize the practice introduced by the Parliament itself and never accepted by the governments of holding some sessions in Luxembourg; but that was only because the parties did not ask it if that practice was compatible with the rules on the Parliament's places of work. On the other hand, no importance can be attached to Rule 10 of the Parliament's Rules of Procedure, which states that 'Exceptionally . . . on a resolution adopted by a majority of its current Members, Parliament may decide to hold one or more sittings elsewhere than at its seat': it purports to vest in the institution a power which is not within its competence and, in so far as it diverges from the decisions of the Member States, it is inapplicable.

As for the intention of improving the operation of the Parliament's organs working in Brussels, the French Republic rejects the idea that that city has no premises suitable for accommodating the two biggest parliamentary groups (the Socialist Group and the Group of the European People's Party, with a membership of 165 and 115 respectively) and the parliamentary committees (the smallest of which has a membership of 19

and the largest a membership of 53), even if they meet together. Consequently, the construction of a meeting room for 600 people exceeds the Parliament's requirements in Brussels and hence conflicts with the judgment in Case 230/81. Indeed paragraph 54 of that judgment states that Parliament must be in a position to 'maintain in the various places of work outside the place where its Secretariat is established' only 'the infrastructure *essential* for ensuring that it may fulfil ... the tasks which are entrusted to it by the Treaties' (my emphasis).

The French Government concludes by citing paragraph 38 of that judgment and stating that in the final analysis the resolution of 24 October 1985 infringed the requirement of 'bona fide cooperation' under which the Parliament must 'have regard to the power of the governments of the Member States to determine the seat of the institutions and to the provisional decisions taken in the mean time'.

8. The Parliament's counter arguments became steadily more radical as time went on. In its pleadings, it conceded that it was under a duty to hold its part-sessions in Strasbourg, although it considered that it was entitled to depart from that rule; but at the hearing its counsel denied that there were legally significant — or in any event pertinent — measures which required it to organize its part-sessions at a specific place and, in particular, in Strasbourg. Obviously, the first argument must be held to be the alternative one and the second the principal one.

So, let us start with the second. Among the documents referred to the Parliament first considers the press release of the meeting of Foreign Ministers held on 7 January 1958. It states that 'the Assembly will meet in Strasbourg'; but, given its form, legal significance cannot be attributed to it — and hence to those words. Anyone contesting that argument is bound in any event to concede that the Ministers agreed to 'bring together in the same place all the European organizations of the six countries as soon as that becomes practical' and that 'in order to choose the seat they have decided to meet again before 1 June 1958'. Consequently, if the press release had any binding effect it was provisional; therefore it cannot be held to be applicable now.

But this is not all. The decision that the Parliament was to meet in Strasbourg was based, not on political reasons or reasons of principle, but on solely practical grounds: when the Ministers took that decision the Common Assembly of the ECSC had, except on two occasions, invariably met in Strasbourg where it was able to use the hemicycle belonging to the Council of Europe. Moreover, the existence of such a hemicycle — no such facility being available at that time in Luxembourg or in Brussels — was the reason for the decision of 24 and 25 July 1952 that the Assembly would hold its first session in Strasbourg.

There followed the decision of 8 April 1965 of the Representatives of the governments of the Member States on the provisional location of certain institutions and departments of the Communities, and the agreement reached at Maastricht on 23 and 24 March 1981. Not only did the former not alter the non-legal character of the press release of 7 January 1958, it did not contain any specific references to Strasbourg but

merely confirmed a particular location of the institutions in order to settle, as required by Article 37 of the Merger Treaty, certain 'problems peculiar to the Grand Duchy of Luxembourg'. The second decision went further: it conferred a broad discretion on the Parliament by confirming the *de facto* situation whereby the places of sessions — that is to say, Luxembourg and Strasbourg at that time — were fixed at the beginning of each year when the calendar of part-sessions was adopted.

The Parliament bases a final argument in support of its principal argument on Rule 10 of its Rules of Procedure, to which I have already referred. It maintains that that rule already appeared in the 1958 version of the Rules of Procedure and was applied on several occasions: the Parliament met away from Strasbourg in 1956 (in Brussels), in 1957 (in Rome), in the 1967 to 1981 period (in Luxembourg), in 1983 (again in Brussels) and in 1985 (again in Luxembourg). Yet no objections were made to that practice, except by the French Government (4 February 1971, 26 January 1973, 21 September 1978 and 10 February 1983); and it is obvious that the protests of one Member State are not sufficient to prove that there is a practice supporting the claim of Strasbourg.

Let us turn to the alternative argument. The Parliament maintains that in order to operate properly every institution must be able to meet, at least exceptionally, away from its habitual place of work. The Council, for instance, also meets in the territory of the Member State which has the six-monthly Presidency; the Commission does not only and invariably meet in Brussels and, as Article 25 (3) of its Rules of Procedure provides, 'The Court and the Chambers may choose to hold one or more particular sittings in a place other than' Luxembourg. As far as the Parliament is concerned, that rule was endorsed by the judgment in Case 230/81, which did not disapprove of the practice of holding some sessions in Luxembourg and hence recognized by implication that, when necessary, the Parliament may meet away from Strasbourg.

Now, the proprietor of the Strasbourg hemicycle is the Council of Europe and it is therefore obvious that the calendar of sessions makes allowance for the latter's needs and in particular for those of its Consultative Assembly. This is the source of a number of organizational problems which have got worse since the entry into force of the Single Act, owing to the fact that the procedures which it introduced may necessitate holding special or additional sessions and therefore call for greater flexibility in drawing up the calendar. The contested resolution seeks to satisfy those very requirements, and it certainly cannot be said that it does so in an excessive manner, for it does not provide for ordinary sessions to be held in Brussels or even *all* special or additional sessions, but only special or additional sessions to be held during a week largely devoted to committee or group meetings.

9. It is not hard to reach a decision on the arguments summarized above, since the problems which they raise have already been largely resolved by the Court's previous decisions on the Parliament's places of work.

In the first place, there is the question of the nature and value of the agreements between the governments. I devoted a considerable part of my Opinion in Case 230/81 (parts 13 to 17) to this matter and the parties to this case have now taken up some of the views which I expressed then, even if they use them to reach the opposite results. I maintained — and the Parliament now repeats this view — that the declarations of 24 and 25 July 1952 and of 7 January 1958 are not of a binding nature because they were made in documents whose form (press release) is not appropriate to manifest an intention to impose legal obligations. I further observed — an observation now taken up by the French Government — that Articles 1 and 2 of the decision of 8 April 1965 must be read with reference to the previous agreements, in which Strasbourg alone was designated as the Parliament's place of work, and that as a result those agreements acquired the legal significance which they initially lacked. Lastly, I stated that the Maastricht agreement confirmed the 1965 decision. The practice of holding certain sessions in Luxembourg was, I considered, subject to too many restrictions for it to affect a legal position founded on formal decisions.

In its judgment of 10 February 1983 the Court did not accept my view as to the non-binding character of the 1952 and 1958 agreements (it described the former as a 'decision' and speaks of the governments as having 'decided' in order to express the substance of the 1958 agreement); more significantly it ruled with the utmost clarity on the place in which the Parliament is to meet. The Court stated in paragraph 42 that 'although the holding of sessions of the Parliament is not expressly mentioned in the decision of 8 April 1965, Article 1 thereof states that "Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Community". At the time the holding of the plenary sittings of the Parliament was the *only* activity of the Community institutions which regularly took place in Strasbourg. The declarations adopted by the Ministers for Foreign Affairs on the entry into force both of the ECSC Treaty and the EEC and EAEC Treaties had already clearly shown the intention of the . . . Member States that the "Assembly will meet in Strasbourg"' (my emphasis).

In my view that passage is conclusive. Arguments such as those to the effect that the Member States took that decision, not for political, but for logistical reasons (the fact that Strasbourg alone had a hemicycle) are powerless against the outcome of that passage, namely that Strasbourg is the place chosen provisionally by the governments for the Parliament's plenary sessions. The Parliament's main line of defence to the argument based on lack of competence must therefore be considered to have been overturned.

10. Does its alternative argument merit a different fate? As I have already observed in my Opinion in Case 230/81 the decision to hold certain sessions away from Strasbourg is in general terms lawful because the Parliament enjoys powers of self-regulation based either on the general principles governing the working of all public organizations or on the provisions of the Treaties empowering the Parliament to draw up its own rules of procedure and to lay down therein a precept like Rule 10. However, it must fulfil two conditions: the first is that particular circumstances exist which justify the decision and which are based on the

operative requirements of the institution; the second is that the number of part-sessions held in other locations should not be such as to constitute a practice contrary to the agreements between the governments.

In the light of those criteria the contested measure falls outside the competence of the Parliament and encroaches upon that of the Member States. The Member States have determined that part-sessions — be they ordinary, special, additional or, to use the term employed by the Treaties, extraordinary — must take place in Strasbourg. It cannot be held that the construction of a room in Brussels with seating for 600 is consistent with that rule, since its only aim is to prevent the operation of the Parliament from being upset by the non-availability of the hemicycle in Strasbourg for reasons connected with the needs of the Council of Europe or for reasons of *force majeure*. Most of the work of the Parliament, as we know, takes place in Brussels. It is therefore much more likely that the impetus of that state of affairs will end up by transforming the use of the room from an occasional event — as perhaps it would be in the beginning — into a practice which would go from strength to strength.

Neither can it be argued (section 5 above) that the decision to construct a building is a practical matter and is hence devoid of legal significance. As has just been shown, the measure embodying that decision was adopted (no matter whether lawfully or unlawfully) pursuant to the power of self-regulation conferred on the institution by the Treaties. In my view, that circumstance and the observation that the contested resolution provides for specific measures suffice to confer on it a technically decision-making character and hence the ability to produce legal effects (see the judgment in Case 108/83, paragraphs 21 to 23).

But the contested resolution would also be unlawful if it were to be held that it was designed to improve the situation in which the parliamentary groups and committees operate. The figures and particulars provided by the French Republic are sufficiently convincing in that regard. In any event, the Parliament has not demonstrated before the Court that the construction of a meeting room capable of accommodating 600 persons constitutes what the Court has termed the 'infrastructure essential' for ensuring that those bodies may fulfil the tasks entrusted to them by the Treaties (judgment of 10 February 1983, paragraph 54, and judgment of 10 April 1984, paragraph 29).

In the final analysis it appears from consideration of the contested resolution that the Parliament has not observed the limitations laid down by the provisional decisions of the governments, as interpreted by the Court, on its power to hold part-sessions in places other than Strasbourg. The resolution must therefore be declared void on the ground of lack of competence.

11. As a result of the conclusions which I have just reached there is no need for me to give separate consideration to the claim made by the French Republic in reply that the resolution infringes the principle of proportionality. In the light of the information given at the hearing by the Agent of the French Government and, above all, in the light of his statement that France is not asking the Court to assess the financial consequences of the contested measure, it seems in any event that the claim does not constitute a new ground, which would be

inadmissible, but merely an argument supplementing the ground of lack of competence. Essentially the French Republic seeks to show simply that the needs of the parliamentary bodies operating in Brussels and the dimensions of the building provided for in the resolution are not commensurate with each other as they ought to be, and, as has now been shown, its observation is correct.

12. In view of all the foregoing I propose that, in ruling on the actions brought by the French Republic against the European Parliament by applications lodged at the Court Registry on 20 November 1985 and 20 February 1986, the Court should decide as follows:

'The resolution of the European Parliament adopted on 24 October 1985 on meeting facilities in Brussels is declared void. The application in Case 51/86 is inadmissible;

The European Parliament is ordered to pay the costs in Case 358/85;

The French Republic is ordered to pay the costs in Case 51/86.'