The result is that the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage.

Kutscher Donner Pescatore

Mertens de Wilmars Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 30 November 1976.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 10 NOVEMBER 1976 [1]

Mr President,
Members of the Court,

1. The proceedings between Bier and Mines de Potasse d'Alsace falls into the category of cases raising problems of the interpretation of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. The provision to be interpreted is Article 5 (3) of the Convention whereby: 'A person domiciled in a Contracting State may, in another Contracting State, be sued ... in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occured'. In substance the Court is asked to decide what is meant by the words, 'place where the harmful event occurred' which in the said article have the status and function of a criterion of special jurisdiction.

The essential facts may be summarized as follows:

The Netherlands undertaking, Bier, which has large nurseries near Rotterdam irrigated by water from the Rhine, and the Stichting Reinwater of Amsterdam instituted proceedings before the Arrondissementsrechtbank (District Court), Rotterdam, against the company Mines de Potasse d'Alsace, which has its registered office in Mulhouse, claiming compensation for damage caused by the pollution of the waters of the Rhine on the ground that the company has daily discharged approximately 11 000 tons of chloride into a canal which flows into the Rhine. It should be recalled that the Stichting Reinwater is required by law to promote all possible improvements in the quality of the water in the Rhine basin and to this end it may also institute

1 — Translated from the Italian.

civil proceedings to protect the individual rights of persons whose environment is affected by the quality of the water, in particular, of persons deriving their livelihood from the Rhine.

The defendant's acts, which are alleged to have occasioned the damage, occurred in France whereas the damage was recorded in the Netherlands. On the view that Rotterdam was, within the meaning of the said Article 5 (3) of the Convention, 'the place where the harmful event occurred' the plaintiffs instituted proceedings before the Netherlands court. For its part the defendant objected that the Netherlands court did not have jurisdiction because, in its view, any unlawful act must be held to have taken place in France, within the jurisdiction of the courts of Mulhouse which are thus the only courts having jurisdiction, even under the said Article 5 (3) of the Convention, to settle the claim for compensation.

In its judgment of 12 May 1975, the Arrondissementsrechtbank upheld the objection of lack of jurisdiction on the ground that the harmful event forming the subject — matter of the proceedings could only have been constituted by the discharge of waste into the Rhine in France. The Gerechtshof (Court of Appeal), The Hague, to which the plaintiffs appealed against this decision, has submitted to the Court of Justice, under Article 3 of the Protocol dated 3 June 1971 concerning the interpretation of the Convention of 27 September 1968, the following preliminary question:

'Must the phrase "the place where the harmful event occurred" in Article 5 (3) of the above-mentioned Treaty be interpreted in the sense that it means: "the place where the damage occurred" or: "the place where the action having the damage as its sequel was undertaken"?'

2. We must consider first of all whether the wording adopted in Article 5 (3) of the Convention must be regarded as independent of the laws of the Member States or whether it entails a reference to the substantive provisions of law applicable in each particular case in accordance with the appropriate rules of the private international law of the national legal system of which the court seised of the case forms part. As you will recall this is the preliminary option, referred to in the judgment of the Court in Case 12/76 *(Società Industrie Tessili Italiana* v *Dunlop)* in which it was emphasized that the option may only be exercised in respect of each of the provisions of the Convention in such a way as to ensure that it is fully effective having regard to the aims of Article 220 of the Treaty.

In the present case neither the court submitting the question nor any of the parties has expressed reservations regarding the possibility that the wording in question might be given an independent meaning.

I am also of the view that this matter cannot be in doubt.

The difficulty which the Court in its said judgment in Case 12/76 discerned regarding an independent definition of the place where the obligation arising from the contract is performed does not appear to me to recur on the other hand in the definition of the place where the harmful event occured. Specification of this latter place is not in fact linked with any contractual dispute or influenced in any way by differences between various types of contract: although the concept of a 'non-contractual harmful event' covers a number of cases it is much more homogeneous in its nature than the concept of a 'contractual obligation'. On the other hand the differences existing between the national legal systems with regard to the substantive rules of non-contractual liability cannot be considered as ruling out an independent definition of the concept employed in Article 5 (3): it must not be forgotten that

in the abovementioned judgment the Court indeed emphasized the independent nature of the interpretation of the concepts contained in the Convention with regard to the substantive rules applicable to the dispute.

It may be further added that an independent definition, where it is possible, of the words employed by the Convention for the purposes of defining the jurisdiction of the courts undoubtedly helps to promote the recognition and the enforcement of judgments of courts in the Contracting States in accordance with the essential aims of the Convention itself and with the objectives of Article 220 of the EEC Treaty to which the Convention relates.

In conclusion the circumstance that the authors of the Convention intentionally employed wording for certain provisions, including the article in question, does not militate against an independent definition. When the meaning of provisions of this nature is to be determined the task must be performed with the help of all the systematic and rational means available.

3. The imprecision to which I have referred is not fortuitous.

In fact it is clear from the preparatory documents that when the authors of the Brussels Convention of 27 September 1968 employed the wording in Article 5 (3), in order to allow persons claiming to be affected by an unlawful act not relating to a contract to avail themselves of another criterion of jurisdiction besides the general criterion laid down in Article 2, they intended to leave open the question concerning the meaning to be conferred upon these words, clearly preferring to charge the courts with their interpretation. In the 'Rapport Jenard' it was stated in this connexion:

'The Committee did not consider it appropriate to specify expressly whether account should be taken of the place in which the act causing the damage was effected or on the other hand of the place in which the damage had occured; instead the Committee considered it preferable to employ wording adopted by various national legal systems (Germany and France).'

The Commission and the two States which have submitted observations in the present proceedings have confirmed this statement.

The same wording 'fait dommageable' ('harmful event') employed in Article 5 (3) of the Convention was subsequently repeated in Article 10 of the Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations drawn up in 1972 within the framework of the Community. In the accompanying report Professor Giuliano, considering cases in which the event causing the damage occurs in a State other than that in which the injurious effect is recorded, states that the draft leaves open the question whether by the place of the 'fait dommageable' one or other country must be understood and he maintains that the purpose of this was to leave untrammelled current developments in case-law.

We are thus confronted with a case in which the expletory nature of the judgments of the Court vis-à-vis the provisions of treaties is particularly clear.

4. The reference in the 'Rapport Jenard' to the fact that the wording employed in Article 5 (3) of the Convention coincides with that adopted by certain national legal systems confers particular relevance upon an enquiry as to what meaning is attributed to the relevant wording within the legal systems of the said States. Nevertheless I should like to point out that, in my view, the fact that the wording of the Convention coincides with that of a specific provision in one of the Contracting States is insufficient to require the provisions of the Convention to be interpreted in the light of the tendencies in interpretation

prevailing in that State. Interpretation is closely linked to the context of a measure and to the system within which it operates; thus it seems clear that once an expression taken from one or more national legal systems has been inserted in a multilateral international treaty it must be understood in accordance with the scope and objectives of such treaty and not those of any national system of law from which it may have originated.

This is of even greater significance in the present case in which the expression under consideration is amongst those employed within a State, either in the substantive law on non-contractual liability, in private international law or in the law of civil procedure; furthermore within the context of procedural law those words can relate both to the delimitation of territorial jurisdiction and the determination of the jurisdiction of the courts with regard to aliens. Even if we restrict ourselves to this latter application of the words it should not be forgotten that national courts display a certain tendency to understand jurisdictional criteria in such a way that they can declare themselves to have jurisdiction to settle the dispute submitted to them. This impulse in the direction of the national courts is capable of causing positive conflicts of jurisdiction on occasions and clearly cannot have any function in the interpretation of a convention, such as the Convention of Brussels, precisely because this Convention lays down uniform rules for all the Contracting States and has as its aim the prevention of conflicts of jurisdiction.

When this point has been made however, it must be recognized that neither the interpretative tendencies which have developed in the French system nor those which have emerged in the Federal Republic of Germany provide an unambiguous solution to the problem. In France, it was laid down in the last paragraph of Article 59 of the Code of Civil Procedure (Code de Procédure Civile) in force until 31 December 1975 that the courts for the place 'où le fait dommageable s'est produit' ('where the harmful event occurred') should have jurisdiction. Case-law was divided on the interpretation of this provision: in some cases the phrase was considered as a reference to the place in which the act occasioning the damage occurred and in others it was seen as referring to the place in which the damage occurred (cf. the judgments of the Cour de Cassation of 8 March 1937, Dalloz 1938, I, 76; of 6 December 1939, Dalloz 1940, I, 40; of 28 March 1968, Le Bulletin des Arrêts de la Cour de Cassation (Chambre Civile) 1968, II, No 100). In the new Article 46 of the Code of Civil Procedure which came into force on 1 January 1976 the legislature expressly provided plaintiffs with a choice of the court of the place where the act occurred or the court of the place where the damage occurred; this article thus distinguishes the place where the 'harmful event' occurred from the place where the damage occurred. The respondent in the national case has endeavoured to rely upon this distinction, maintaining that since Article 46 has added an express reference to damage this signifies that the concept of a 'harmful event' is restricted to the act causing the damage. This inference is indeed correct with regard to the new provision but, to clarify the intention of the authors of the Convention on the basis of French law, it would clearly be necessary to take account of the provision and of case-law at the time at which the Convention was drawn up.

Courts and academic lawyers in the Federal Republic of Germany have also dealt with the plaintiff's option between the place where the act was committed ('Tatort') and the place where the consequences of the act appeared ('Erfolgsort'), both with regard to domestic and international jurisdiction (concerning pollution of the environment, cf. judgment of the Oberlandesgericht Saarbrücken of 22 October 1957 in the *Neue Juristische*

Wochenschrift, 1958, p. 752, and the judgment of the Oberlandesgericht Hamm of 3 July 1958 *op. cit.* 1958, p. 1831). It should be further noted that where Article 32 of the German Code of Civil Procedure (Zivilprozeßordnung) lays down the criteria for jurisdiction, which in accordance with the case-law of the Bundesgerichtshof (the Federal Court of Justice) are the same in domestic proceedings and with regard to foreigners, reference is made to the place where the act ('die unerlaubte Handlung') was committed. However, the wording does not coincide with that adopted in the Convention inasmuch as Article 5 (3) of the German version provides that a person may be sued 'vor dem Gericht des Ortes, an dem das schädigende Ereignis eingetreten ist'.

Only within the framework of French law prior to 1976, then, is the wording of the phrase in Article 5 (3) exactly the same as that adopted for the criterion of jurisdiction in the context of domestic law and it is difficult to draw definite conclusions from this, even if it were desired to disregard the considerations I have put forward on the propriety of accepting as one's premises the interpretative practice prevailing in a single State. Treated in isolation the wording actually lends itself to at least three interpretations: the place where the act was committed, the place where the damage occurred and a choice between one or other place, at the option of the plaintiff. For the sake of completeness, some reference should be added to the legal systems of certain other Contracting States and, in addition, to those of two Member States which are not yet parties to the Convention: those legal system confirm that there is no justification for making a choice on the basis of tendencies which have established themselves at the level of national law.

5. Before considering what evidence Italian case-law and Italian academic lawyers may supply regarding the point at issue we should recall that the Italian version of Article 5 (3) of the Convention confers jurisdiction upon the court 'del luogo in cui *l'evento dannoso* e avvenuto' ('for the place in which the harmful event occurred'). Interpreted literally the concept of 'harmful event' is to be assimilated to the concept of 'damage' and of 'injury', and indeed certain Italian academic lawyers treat the problem of determining the locality of the unlawful act in terms of a choice between the place where the act was committed and the place where the damage occurred. Nevertheless I do not consider that the existence of such wording in one of the versions of the Convention is sufficient to resolve the ambiguity of the other versions: it merely confirms that it is impossible to understand 'fait dommageable' as simply equivalent to conduct resulting in damage. For the Italian legal system, the basic premise is provided by the words 'luogo in cui è sorta l'obbligazione' ('the place where the obligation arises') contained in Article 20 and in Article 4 (2) of the Code of Civil Procedure (the Codice di Procedura Civile), relating respectively to territorial jurisdiction and international jurisdiction, and also to non-contractual obligations. The tendency in Italian case-law and amongst academic lawyers is to fix the point where a non-contractual obligation arises at the place where the damage has occurred: cf. in particular, amongst the decisions of the Italian Corte di Cassazione, the judgment delivered by the full court on 27 February 1962, No 390, *(British Petroleum Co.* v *Ente Petrolifero Italiana Medio Oriente)* in Foro Italiano 1962, I, p. 1810 and the judgment of 25 June 1971, No 2011, in the Rivista di Diritto Internazionale Privato e Processuale, 1972, p. 292. Nevertheless there are authoritative writers, such as Morelli, who suggest that the place where the act was committed and the place where the event occurred should be considered of equal relevance for the purposes of jurisdiction.

The legal position in Belgium is similar to that in Italy: in fact Article 624 of the

Code Judiciaire (Judicial Code) lays down that the court of the place in which the obligations in dispute have arisen or the court of the place where they are to be fulfilled shall have territorial jurisdiction. This provision, which is also applied to obligations arising from non-contractual unlawful acts, has also given rise to conflicting views amongst academic lawyers and in case-law, the former showing a certain preference for the place where the act was committed whilst the latter largely refer to the place where the damage occured. In Article 635 the Code Judiciaire makes provision for the jurisdiction of the Belgian courts with regard to foreigners and likewise confers jurisdiction in cases in which the obligation forming the basis of the application has arisen, has been fulfilled or is to be fulfilled in Belgium.

Netherlands law is of no assistance in this matter. It excludes any special criterion in the sphere of unlawful acts, adopting instead the general criterion of domicile — the domicile of the defendant or, if the defendant has neither a known domicile nor a residence within the State, the address of the applicant (Article 126 (2) and (3) of the Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure)).

The criterion of the place in which negligence has occurred has sometimes been expressly preferred in English case-law (cf. *George Monro Ltd.* v *American Cyanamid and Chemical Corporation,* [1944] KB 432) whilst at other times judgments appear to favour the criterion of the place in which the damage has occurred *(Bata* v *Bata,* [1948] WN 366). It should be noted however that this concerned an action on the grounds of defamation and that jurisdiction was conferred upon the court in the place in which the defamatory words were published. Scottish case-law also affords examples of this latter tendency (cf. *Smith* v *Rosenbloom,* [1915] 2 Scots Law Times 18).

Finally, in Danish law, with regard to domestic territorial jurisdiction, it is possible, under Article 244 of the Retsplejelov (Law on the administration of justice), to choose between the place where the act was committed and the place where the damage occurred; with regard to international jurisdiction, the national courts have declared themselves to have jurisdiction even if the act giving rise to the injury was committed abroad, provided that the damage occurred in Denmark (cf. Ugeskrift for Retsvæsen 1940, p. 454, Højesteret og Ugeskrift for Retsvæsen 1947, p. 187, Østre Landsret).

6. It may be wondered whether other solutions, differing from those mooted above, should be taken into consideration. The question is all the more justified in that, unlike the court making the reference, which adopts the alternative put forward in the 'Rapport Jenard', the Government of the Netherlands and the Commission maintain that the wording of Article 5 (3) also allows reference to be made to the criterion of the 'most significant relationship' which the situation arising from the harmful event has with a State — which might be a State other than that where the act was committed or where the harmful effect occurred. It is not clear whether the Commission considers that all or only one of these criteria must be applied.

To embark upon this train of thought would involve taking into consideration a flexible concept developed principally in terms of the choice of the substantive law, and in this context known as the theory of the 'proper law of the tort'.

This doctrine originates in countries whose legal traditions are based on the Common Law and was propounded, as is noted in a judgment of the House of Lords of 1951, in order to allow the courts to choose the substantive law which 'on policy grounds, seems to have the most significant connexion with the chain of acts and circumstances in the

particular situation' (quoted by Cheshire in Private International Law, 1974, p. 264).

The purpose of this doctrine is not to replace the traditional criterion of the *'locus delicti commissi* but merely to supplement it and to amend it in specific cases when it would lead to results at variance with common sense. Understood thus, the doctrine has also been expressed both in Article 3 of the Resolution on Delictual Obligations in Private International Law, approved by the Institute of International Law at its meeting in Edinburgh (1969), and in the second paragraph of Article 10 of the abovementioned Preliminary Draft Convention on the Law applicable to Contractual and Non-contractual Obligations, drawn up in 1972 under the aegis of the EEC. This supplemental nature remains clear even if it is desired to extend that criterion to determining the court having jurisdiction so as to make it coincide with the court of the State whose substantive law is held to be applicable (cf. in this connexion the United States system, in Paragraphs 36 and 37 of the Restatement of the Law Second, Conflict of Laws adopted by the American Law Institute in Washington on 23 May 1969).

However, if in the present case a criterion of this nature, which might lead to disregarding both the place where the act was committed and the place where the damage occurred, were extended, albeit as an alternative, to determining the court having jurisdiction this would imply total disregard for the wording of Article 5 (3) and would risk producing results at variance with it.

It would also be difficult to reconcile adoption of a criterion of the 'most significant connexion' with the intention of the Convention to make it easy to determine the court having jurisdiction, on the basis of clear, precise and sufficiently objective criteria which could thus be applied uniformly in all the States adhering to the Convention. In this respect insufficient assurances are afforded by a criterion, such as that referred to above, which does not lend itself to abstract definition and which tends to rely upon the subjective appraisal of the court.

Finally to draw a close parallel between the question of the substantive law applicable and that of jurisdiction would not be in accordance with the objective of the Brussels Convention which is to simplify problems relating to determination of the national court having jurisdiction. Just as it was not intended that the Convention submitted to the Court for its interpretation should have any influence whatsoever on the application of the rules of the Contracting States' private international law, it was certainly not intended to render determination of jurisdiction dependent on determination of the substantive law.

7. Having thus discarded the theory of the 'most significant connexion' we should accept that the cumulative solution, which would leave the plaintiff free to choose between the court of the place where the act was committed and the court of the place where the event occurred, may appear by its very liberality fairer and better able to accommodate the characteristics of the various types of unlawful act. Indeed we have seen that within the national legal systems this solution has now been broadly adopted. Despite this it does not appear to me in accordance with the letter and the spirit of the Convention: it is at odds with the spirit of the Convention: it is at odds with the letter of the Convention because Article 5 (3) refers to the *court of the place* where the harmful event occurred, that is, to a single court and a single place, and thus seems to rule out the possibility that more than one place could be taken into consideration or more than one court declare itself to have jurisdiction, under the provisions of the Convention, with

regard to the same harmful event. What is certainly more important, it is at odds with its spirit, in that the objective pursued by the Convention, namely to divide international jurisdiction amongst the different States in accordance with a distributive criterion in such a way as to reduce instead of increasing the scope of the jurisdiction of each State precisely where there already exists an objective basis for conferring jurisdiction upon another. In its judgment in Case No 14/76, *De Bloos* v *Bouyer*, the Court rightly held that the objectives of the Convention 'imply the need to avoid, so far as possible, creating a situation in which a number of courts have jurisdiction in respect of one and the same contract'. I consider that this guide-line also holds good when an unlawful act and not a contract is involved.

The French Government and the respondent appear to rely on the idea that Article 5 must be considered an exceptional provision, derogating from the general principle, which must be strictly interpreted, that the court of the defendant's domicile has jurisdiction. I do not share this point of view: I regard this article as a provision which, with regard to the cases for which it provides, adds to the general criterion of jurisdiction in Article 2 other criteria of a special nature with regard to specific cases, and it seems to me that this can be inferred from the very position of Article 5 in a section of the Convention distinct from that in which the general rule in Article 2 appears. Notwithstanding this, it seems proper to refrain from a wide interpretation of a provision establishing an additional special jurisdiction unless positive grounds for this can be inferred from the Convention, which does not appear to me to be the case.

8. According to the French Government and the respondent company the wording adopted in Article 5 (3) indicates exclusively the place in which the act giving rise to the damage was located. The principal reason for this is that, if jurisdiction is accorded to the court of the place where the damage occurred, the aim of the Convention, of avoiding conflicting judgments, would be frustrated when damage is caused in several States by one and the same act. In such cases to allocate jurisdiction to each State where the damage has been caused would involve a multiplication of jurisdictions, which might lead to injustice, affecting both applicants, who might be treated differently according to the place in which they had suffered damage, and respondents, who for the same reason would be exposed to a plurality of procedures the results of which might conflict.

This consideration might be met with the rejoinder that the criterion of the place where the act was committed may also produce the same disadvantage of a division of jurisdiction and the risk of conflicting judgments where one harmful event is caused by a series of acts carried out by various persons in different States. This can happen precisely with regard to pollution of the environment and indeed in cases identical to the present one. Besides the respondent there are in fact German undertakings which also discharge similar pollutant material into the Rhine. In such cases justice requires that those responsible for the same damage should be judged in accordance with an identical criterion. This could be attained by recognizing the jurisdiction of the court of the place where the harmful event occurred. Such a court would also be more capable than the courts in other countries of determining the causal connexion between the various acts and the damage complained of and of assessing the extent to which each of the undertakings contributing to the pollution was liable for the damage thereby caused to the plaintiff.

In the course of the oral procedure factors relating to the substance of the case were also raised, in particular the fact that the discharges of chloride into

the Rhine were authorized by officers of the French prefecture, and reasons of convenience have been adduced, regarding the appellant's choice of court (it was stated that the court in Mulhouse would be better able than the Netherlands court to appraise the relevance of the administrative measure of authorization). Nevertheless I am convinced that in interpreting a provision which relates purely to jurisdiction one must not be influenced by details pertaining to the substance of the case in question. The same conviction leads me to deny all relevance to the danger of the difficulties which it is feared might be encountered in the execution in France of a Netherlands judgment incorporating a finding against the respondent, without taking due account of the above-mentioned circumstance.

In fact it is for the injured party to appraise the appropriateness of choosing one of the courts (the general court of the defendant's domicile or the special court of which I have spoken) before which he can summon the person responsible for the damage. On the other hand we know that in the context of the implementation of a convention on the jurisdiction of courts, such as the present Convention, the difficulties which might arise in enforcing the judgment could never relate to questions of jurisdiction. It is indeed true that difficulties in execution might follow from the derogation regarding public policy laid down in Article 27 (1) of the Brussels Convention, but that is another matter. I shall merely express the hope that the jurisdiction in matters of interpretation conferred upon the Court of Justice may also serve to clarify the meaning of this provision, avoiding distorted interpretations and risks of abuse.

Likewise I do not think that great importance can be attached to the argument whereby the criterion of the place where the act was committed is more suited to the proper administration of justice in that it ensures legal certainty for the person responsible for the unlawful act who, in order to regulate his conduct, has merely to acquaint himself with the law in force in the place in which he acts. This argument risks confusing the aspect of jurisdiction, which alone is relevant here, with that of the substantive law applicable. Determination of the substantive law applicable is not necessarily prejudged by recognizing the jurisdiction of the court of the place in which the damage has occurred. Indeed, even if this place is situated in a State other than that in which the act was committed, this factor alone is not decisive without regard to the applicability of the substantive law of the place in which the act was committed for the purpose of determining liability. Likewise it cannot be presumed that, even if the jurisdiction of the court of the place where the act was committed were recognized, this court might not, on the basis of the private international law of its own State, instead apply the substantive law of some other State in which the damage occurred or with which the dispute before the court was more closely connected, on the basis of the above-mentioned criterion of the 'proper law of the tort'.

9. It is clear from what has been said that the arguments advanced in favour of interpreting Artice 5 (3) so as to indentify the 'fait dommageable' with the act of the person responsible for the damage are unconvincing. On the contrary I consider that there are good grounds for favouring the criterion of the place in which the damage has occurred and that they justify acceptance of that criterion alone.

I should like to observe first of all that the legal duty to make reparation arising from the civil wrong necessarily presupposes, for its very existence, that the damage should be established. Whereas in the case of a criminal act the liability of the offender to punishment

arises from an act at variance with the criminal law, since the aims of the criminal law are retributive, with regard to a civil wrong liability arises only if and when injury occurs, since the aims of civil law, unlike criminal law, are essentially to provide compensation for damage. Even though negligence is socially and morally reprehensible, if it does not occasion damage it does not give rise to liability for compensation or therefore to any other legal proceedings.

It follows from this that a criterion of jurisdiction having as its basis the act leading to the legal obligation to provide compensation, that is, the criterion in Article 5 (3), cannot disregard the consideration of damage otherwise that act will not present all the factors necessary for it to be invoked at law. A location for the criterion in question can thus only be established where the act is legally speaking complete, that is, where the injury to the legal rights of the person suffering it occurs. As soon as this occurs the claim for compensation, the basis of the legal action, comes into being.

This solution also has the advantage that it is in harmony with the solution adopted in other provisions of the same Convention, the necessity for which undoubtedly guided the authors of the Convention, as is clear from a number of its provisions, namely the protection of the weaker party in a legal relationship. I refer to Article 5 (2) on the obligation to provide maintenance, in which jurisdiction is conferred upon the courts for the place where the maintenance creditor, who will thus normally be the applicant, is domiciled or habitually resident; to Article 7 *et seq.*, in matters relating to insurance, which also confer jurisdiction upon the courts of the place in which the insured has his domicile; to Article 14, relating to instalment sales and loans which provides that the courts of the State in which the buyer or borrower is domiciled shall have jurisdiction. The injured party, who must establish the unlawful act,' is automatically deemed the weaker party and as such worthy of protection in the choice of the court having jurisdiction.

Even apart from the present case, I consider that of the two criteria — the place where the act was committed and the place where the damage occurred — the latter is generally more satisfactory to the injured party since it tends to coincide with the State in which he will usually reside; on the other hand in most cases the place where the act was committed will tend to coincide with the place of domicile of the person responsible for the damage (motor accidents constitute an exception to this in that the place of the act and the place of the damage normally coincide). If therefore the criterion in Article 5 (3) were to be understood as referring to the place where the act was committed, this special criterion would in most instances duplicate the function of the general criterion in Article 2 and ultimately would be of little use.

10. For all these reasons I conclude by suggesting that the Court should reply to the question submitted in the order of 27 February 1967 by the Gerechtshof, The Hague, to the effect that the interpretation of the provision in Article 5 (3) of the Brussels Convention of 27 September 1968 is that the words 'place where the harmful event occurred' indicate the place in which the damage for which compensation is claimed occured.