OPINION OF ADVOCATE GENERAL JACOBS
delivered on 26 May 1993 *

My Lords,

1. The Cour d'Appel, Chambéry, has asked for a preliminary ruling on the interpretation of Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereafter 'the Brussels Convention'), as amended by the Convention of 9 October 1978 on the accession of Denmark, Ireland and the United Kingdom (Official Journal 1978 L 304, p. 79).

The background

2. Mr H. Geels, a Netherlands national, was appointed by Mulox IBC Limited (hereafter 'Mulox'), a company incorporated under English law with its registered office in London, as international marketing manager, with effect from 1 November 1988. During his employment with Mulox Mr Geels resided at Aix-les-Bains (France) and appears to have used his home as an office and base of operations. Initially he performed his task of canvassing customers and establishing a distribution system for Mulox products in Germany, Belgium, the Netherlands and Scandinavia, which countries he visited frequently. It appears from a report of the year's business which he sent to his employer in December 1989 that after visiting Germany, Belgium and Spain he pursued his marketing activities during 1989 in Germany and then in Scandinavia, Belgium and the Netherlands — French territory being excluded from his area of responsibility until September 1989. According to a memorandum which Mr Geels prepared for his employer, dated 19 April 1990, it was not until January 1990 that he worked with Mulox agents in France and serviced his employer's French customers. Dissatisfied with the results of Mr Geels' work, Mulox decided to dispense with his services and the employment relationship seems to have ended on 7 May 1990, when he wrote to Mulox acknowledging the termination of his contract and demanding compensation in lieu of notice equal to 12 months' salary, plus damages.

3. Mr Geels took the matter to the Conseil des Prud'hommes, Aix-les-Bains, which, having held that it had jurisdiction under Article 5(1) of the Brussels Convention and that the dispute was governed by French law, gave a judgment largely favourable to Mr Geels. Mulox appealed against that judgment to the Cour d'Appel, Chambéry, arguing principally that the French courts had no jurisdiction because the place of performance of the employment contract covered the whole of Europe and the defendant's place of establishment was in London. It argued in the alternative that the contract was governed by English law, which was chosen by

* Original language: English.

the parties and indicated by the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations (Official Journal 1980 L 266, p. 1) as the law of the employer's place of establishment, and that Mr Geels was not entitled under English law to compensation in lieu of notice, compensation for dismissal or damages. It argued in the further alternative that Mr Geels' claims were unfounded under French law.

'Does the application of the jurisdiction rule under Article 5(1) of the Brussels Convention of 27 September 1968 require the obligation characterizing the employment contract to have been performed wholly and solely in the territory of the State of the court seised of the dispute, or is it sufficient for its operation that part of the obligation — possibly the main part — has been performed in the territory of that State?'

The relevant Convention provisions and case-law

4. The Cour d'Appel, Chambéry, noted that, according to the Court of Justice's judgment in Case 133/81 *Ivenel* v *Schwab* [1982] ECR 1891, the obligation to be taken into account for the purposes of the application of Article 5(1) of the Brussels Convention in the case of claims based on different obligations arising under a contract of employment was the obligation which characterized the contract. The French court observed that in that judgment the Court of Justice indicated that it was desirable for disputes arising from contracts of employment to be brought before the courts of the State whose law governed the contract and that, according to the trend in conflict rules, as reflected in Article 6 of the Rome Convention, the law applicable to a contract of employment was determined by reference to the obligation characterizing the contract, which was normally the obligation to carry out work. The French court took the view that in the present case, under the aforesaid Article 6, the contract was probably governed by English law. Doubting therefore whether Article 5(1) of the Brussels Convention should be interpreted so as to confer jurisdiction on the French courts in the circumstances of the present case, the Cour d'Appel referred the following question to the Court of Justice for a preliminary ruling:

5. Article 2 of the Brussels Convention lays down the general rule that persons domiciled in a Contracting State are to be sued in the courts of that State. The only exceptions to that rule, according to Article 3, are those provided for in Sections 2 to 6 of Title II of the Convention. They are justified by the fact that, as stated in the Jenard Report (Official Journal 1979 C 59, p. 1, at p. 22), 'there must be a close connecting factor between the dispute and the court with jurisdiction to resolve it'. The exceptions are subject to strict interpretation: Case 189/87 *Kalfelis* v *Schröder* [1988] ECR 5565, at paragraph 8, and Case 32/88 *Six Constructions* v *Humbert* [1989] ECR 341, at paragraph 18. One such exception is contained in Article 5(1), which provides that:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question'.

6. In order to apply that jurisdiction rule it is necessary to determine (a) the relevant obligation and (b) the place of performance of that obligation. As regards the first point, the general rule is that the obligation to be taken into account for the purposes of applying Article 5(1) is the obligation which corresponds to the contractual right on which the plaintiff's action is based: Case 14/76 *de Bloos* v *Bouyer* [1976] ECR 1497, at paragraph 11. However, in the case of employment contracts the relevant obligation is the obligation which characterizes the contract, usually the obligation to carry out work: *Ivenel* v *Schwab* (cited above, in paragraph 4), confirmed in Case 266/85 *Shenavai* v *Kreischer* [1987] ECR 239. In *Ivenel* v *Schwab* the Court justified that exception to the general rule for employment contracts on a number of grounds, including the view that jurisdiction should be conferred on the courts of the place closely connected with the dispute, the need to provide adequate protection for employees, the desirability of conferring jurisdiction on the courts of the State whose law governs the contract and the necessity of interpreting the Convention in such a way that a court is not compelled to find that it has jurisdiction to adjudicate on certain claims and not on others. In *Shenavai* v *Kreischer* the Court further justified its decision that in the case of employment contracts the relevant obligation is the obligation to perform work on the ground that employment contracts differ from other contracts inasmuch as 'they create a lasting bond which brings the worker to some extent within the organizational framework of the business of the undertaking or employer, and they are linked to the place where the activities are pursued, which determines the application of mandatory rules and collective agreements' (paragraph 16 of the judgment).

7. As regards the determination of the place of performance of the relevant obligation, the general rule is that that determination must be made in accordance with the law which governs the obligation in accordance with the conflict rules of the court seised: Case 12/76 *Tessili* v *Dunlop* [1976] ECR 1473. The unusual feature of that judgment is that the Court ruled that a term used in the Convention should be interpreted by reference to the national law of a specific country. More frequently the Court has held that the terms used in the Convention should be given an autonomous meaning to be determined in the light of the objectives of the Convention. One of the issues that will have to be decided in the present case is whether the rule laid down in *Tessili* v *Dunlop*, to the effect that the place of performance of the obligation in question should in general be determined by reference to the applicable national law, also applies to contracts of employment or whether in the employment field the place of performance must be determined in accordance with independent criteria to be formulated by the Court.

8. In most cases the determination of the place of performance of the characteristic obligation under a contract of employment is not subject to doubt, since the typical employee performs his work at a single location. The only case in which the Court has had to rule in relation to a situation in which an employee worked in a number of different countries is *Six Constructions* (cited above, in paragraph 5). In that case the employee performed his obligations in a number of non-contracting States. The Court held that in such circumstances Article 5(1) of the Brussels Convention could

not be relied upon to confer jurisdiction upon a territory within the scope of the Convention. More interestingly, however, the Court rejected the view that, where it was difficult or impossible to determine in which State the work was performed, the courts of the place of business through which the employee was engaged should have jurisdiction. The Court rejected that view, accepting the argument that it might operate unfairly to the detriment of the employee, since it would enable the employer to sue him at the employer's place of business, thus creating a *forum actoris* which would be contrary to the basic principle of the Brussels Convention.

9. It should be noted that Article 5(1) of the Brussels Convention has now been amended by Article 4 of the San Sebastian Convention of 26 May 1989, which provides for the accession of Spain and Portugal to the Brussels Convention (Official Journal 1989 L 285, p. 1). A further sentence has been added to Article 5(1), which now reads:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated'.

10. However, as the Commission pointed out in its written observations, the San Sebastian Convention entered into force, as regards France, the Netherlands and Spain, on 1 February 1991, in accordance with Article 32 thereof. The amendments made by the San Sebastian Convention apply only to legal proceedings instituted after its entry into force in the State of origin (Article 29(1)). Since it is clear from the order for reference that Mr Geels instituted proceedings against Mulox before 1 February 1991, the version of the Brussels Convention which is applicable in the present case is the 1978 version established by the Convention on the accession of Denmark, Ireland and the United Kingdom.

11. For the sake of completeness I will mention two other Conventions which may cast some light on the issues before the Court. The Lugano Convention of 16 September 1988 (Official Journal 1988 L 319, p. 9) extended the principles of the Brussels Convention to the countries of the European Free Trade Association. Article 5(1) of the Lugano Convention, which is not applicable to the present case, provides that:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the

obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged'.

12. The amendments made to Article 5(1) of the Brussels Convention by the San Sebastian Convention were modelled on the Lugano Convention but account was also taken of the comments made by the Court in the *Six Constructions* judgment, which was delivered after the adoption of the Lugano Convention: see the Report on the San Sebastian Convention by M. de Almeida Cruz, M. Desantes Real and P. Jenard (Official Journal 1990 C 189, p. 35, at pp. 44 and 45). As a result, under the San Sebastian Convention, the jurisdiction based on the place of the business which engaged the employee is available only to the employee. Under the Lugano Convention it is available to both parties. An unusual feature of Article 5(1) of the Lugano Convention is that it is based partly on a legal fiction: where the work is not habitually performed in a single country, the place of performance is deemed to be the place of the business ('établissement' in the French version) which engaged the employee, even though neither the employer nor the employee may have been required to perform any obligations under the contract at that place. Although the San Sebastian Convention lays down a similar jurisdiction rule, it does so without recourse to legal fictions: it simply provides that the employer may be sued at a particular place without pretending that that is the place of performance of any obligation under the contract.

13. The Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, which came into force on 1 April 1991, lays down choice-of-law rules for application in contractual disputes. The basic rule, laid down in Article 3, is that a contract is governed by the law chosen by the parties. Article 6(2) provides that:

'... a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.'

14. The Rome Convention applies in each Contracting State to contracts made after the date on which the Convention entered into force with respect to that State (Article 17). [1]

1 — The French court regards the Convention as applicable to the contract between Mulox and Mr Geels, although it was obviously concluded before 1 April 1991.

The Court does not yet have jurisdiction to interpret the Rome Convention and it is in any event not the Court's task to give the courts of the Contracting States any guidance on the determination of the *lex causae*. In *Ivenel* v *Schwab* the Court did, however, refer to the Rome Convention and indicated that it was desirable to interpret Article 5(1) of the Brussels Convention in such a way as to confer jurisdiction on the courts of the country whose substantive law governed the contract of employment. I shall say more on that subject later.

The observations submitted to the Court

15. Written observations have been submitted by the French and German Governments and by the Commission. The French Government considers that Article 5(1) of the Brussels Convention may now be interpreted in the light of the San Sebastian Convention; therefore, since the employee did not habitually carry out his work in a single country, jurisdiction should be conferred upon the courts of the State in which the business which engaged him is or was situated. That would, according to the French Government, ensure that the choice of forum coincides with the choice of law, since the contract is in its view governed by English law pursuant to Article 6(2) of the Rome Convention.

16. The German Government takes the view that it is sufficient for part of the characteristic obligation to have been performed within the territorial jurisdiction of the court seised for jurisdiction to be conferred upon that court pursuant to Article 5(1) and favours conferring jurisdiction, in circumstances in which the obligation was performed in a number of different States, on the courts of the place which coincides with the employee's domicile, in this instance the French courts. Paradoxically, the German government, like the French Government, considers that its proposed solution has the advantage that the choice of forum and the choice of law coincide, since it believes that, under Article 6(2) of the Rome Convention, the law governing the contract is French law on the ground that the contract bears close links with France.

17. The Commission points out that, according to the judgment in *Tessili* v *Dunlop* (cited above, in paragraph 7), the place of performance of the obligation in question is to be determined by the law which governs the obligation according to the conflict rules of the court before which the proceedings are brought. However, the Commission questions whether it is appropriate to apply that solution to contracts of employment and suggests that it would be preferable to give an autonomous definition of the concept of place of performance in relation to such contracts. According to the Commission, the considerations which led the Court to treat contracts of employment as a special category for the purposes of the identification of the relevant obligation also justify treating those contracts differently with regard to the determination of the place of performance of that obligation. The Commission notes that that approach is confirmed by the San Sebastian Convention, which gives an autonomous definition of the place of performance of employment contracts, but considers that a similar result can be reached on the basis of the 1978 version of the Convention.

18. As regards the content of the autonomous definition of the place of performance, the Commission considers that, where the

work is undertaken in several Contracting States, jurisdiction should be conferred upon the courts of the place in which the work is habitually carried out. The Commission suggests that in the present type of case that place will normally be the place where the employee has his office and where he centralizes orders from clients. Where it is impossible, on the facts, to establish a principal place of performance of the obligation, the Commission concludes that Article 5(1) should not apply and that jurisdiction should be determined according to the general principle laid down in Article 2 of the Convention.

The choice between a national and an autonomous interpretation of the term 'place of performance'

19. The simplest solution — and one which would, moreover, be entirely consistent with the existing case-law — would be (a) to confirm the ruling in *Ivenel* v *Schwab* to the effect that the relevant obligation for the purpose of applying Article 5(1), in disputes arising out of a contract of employment, is the obligation which characterizes the contract (normally the obligation to perform work) and (b) to confirm the ruling in *Tessili* v *Dunlop* to the effect that the place of performance of the relevant obligation is to be determined by reference to the law which governs the obligation according to the conflict rules of the court before which the proceedings are brought. If such an approach were taken, there would be no need for the Court to give further consideration to the criteria to be used in determining the place of performance of an employment contract under which the employee works in a number of Contracting States. That would be an issue for the national court to resolve in accordance with the law applicable to the contract under its own conflict rules.

20. Like the Commission, I do not think that that would be an appropriate solution. I say so, notwithstanding that in *Ivenel* v *Schwab* the Court cited *Tessili* v *Dunlop* (at paragraph 7) and repeated the general rule that the place of performance is to be determined in accordance with the applicable national law (see also the comments of Advocate General Reischl at p. 1904). That was, however, very much an *obiter dictum*, since there does not seem to have been any doubt in that case that the employee was required to work in a single Contracting State and so the interpretation of the term 'place of performance' was never in issue; the case was concerned with the issue which obligation should be taken into account for the application of Article 5(1).

21. An autonomous interpretation of the terms used in the Convention is preferable in principle because it helps to secure the uniform application of the Convention and thus contributes to the realization of its underlying purpose, which is to unify the jurisdiction rules of the Contracting States. Such unification is inevitably impeded if the meaning of the terms used in the Convention varies according to the applicable law. That doubtless explains why the Court has always regarded autonomous interpretation as the norm and has resorted to interpretation by reference to national law only in exceptional cases where special considerations applied. But the grounds given by the Court in *Tessili* v *Dunlop* for determining the place of performance by reference to national law do not seem nearly so compelling in relation to a contract of employment, especially if the relevant obligation is the obligation to perform work (see paragraphs 22 and 23, below). Moreover, the grounds given in *Ivenel* v *Schwab* and *Shenavai* v *Kreischer* for treating contracts of employment differently from

other contracts as regards the determination of the relevant obligation seem to apply with equal force to the determination of the place of performance of that obligation (see paragraph 24, below).

22. In *Tessili* v *Dunlop* the Court justified recourse to national law for the purpose of determining the place of performance on the ground that it was impossible for the Court to give substantial guidance on the interpretation of that concept 'having regard to the differences obtaining between national laws of contract and to the absence at this stage of legal development of any unification in the substantive law applicable'. In that case a German buyer claimed damages from an Italian seller as a result of the latter's alleged breach of an obligation to deliver goods of sound quality; the seller, whose seat was in Como, had delivered the goods to a carrier in Como appointed by the buyer. All legal systems contain rules for determining the place of performance of that type of obligation; those rules are often of a highly technical nature, they vary according to the type of contract (cif, fob, ex works, etc.), they take into account legal presumptions about the intentions of the parties and they are anything but uniform. It would have been manifestly inappropriate for the Court to attempt to devise a uniform rule and impose it on the courts of the Contracting States. Similar considerations apply to pecuniary obligations, whose place of performance is often determined by arbitrary rules stating that a debt is payable at the residence of the creditor or of the debtor. Once again it would be inappropriate for the Court to impose a uniform rule even for the purpose of determining jurisdiction.

23. Those difficulties do not arise in relation to contracts of employment, once it is accepted that the relevant obligation is the employee's obligation to perform work. There is little scope for the application of technical rules of law in order to determine where someone does his job; it is largely a question of fact. It may not be an easy question of fact, if the person works in more than one place. But no major difficulty would ensue if the Court laid down a uniform test for determining jurisdiction in such cases.

24. It is clear from the judgments in *Ivenel* v *Schwab* and in *Shenavai* v *Kreischer* that the overriding reason for treating employment contracts as a special case is the existence of a close and enduring connection with a particular legal system within which the employment relationship unfolds and under which the employee enjoys the protection of mandatory legislation (see in particular paragraphs 15 and 19 of *Ivenel* v *Schwab* and paragraph 16 of *Shenavai* v *Kreischer*). If then the aim, when applying Article 5(1) to employment contracts, must be to identify the country with which that close and enduring link exists, that leaves little scope for the application of any rule of national law which might locate the place of performance in some other country and which might, like Article 5(1) of the Lugano Convention, be based on a legal fiction. It follows that the place of performance should be determined, not by reference to the applicable national law, but on the basis of uniform criteria to be established by the Court. In other words the term 'place of performance' must be interpreted autonomously.

25. Confirmation of that view is provided — as the Commission has pointed out — by the San Sebastian Convention, which gives an autonomous definition of the place of performance in relation to individual contracts of employment. For the reasons given above, I share the Commission's view that, even though the San Sebastian Convention does not apply to the present proceedings, it is possible to conclude on the basis of the earlier version of Article 5(1) that the term 'place of performance' must be interpreted autonomously.

The interpretation of the term 'place of performance'

26. The judgment in *Ivenel* v *Schwab* appears to suggest that one of the principal criteria governing the interpretation of Article 5(1) is the desirability of conferring jurisdiction on a court which will be able to apply its own law, rather than a foreign law. Thus in paragraph 15 the Court stated:

'It follows from the foregoing account that in the matter of contracts Article 5(1) of the Convention is particularly concerned to attribute jurisdiction to the court of the country which has a close connection with the case; that in the case of a contract of employment the connection lies particularly in the law applicable to the contract; and that according to the trend in the conflict rules in regard to this matter that law is determined by the obligation characterizing the contract in question and is normally the obligation to carry out work.'

A variant of that idea appears in *Shenavai* v *Kreischer*, where the Court suggests (at paragraph 16) that Article 5(1) must be interpreted in such a way as to ensure the application of the 'mandatory rules and collective agreements' in force at the place where the work is done. The link between jurisdiction and the applicable law has also been stressed by the Cour d'Appel, Chambéry, in the order for reference and by the French and German Governments in their observations.

27. Desirable though it may be to confer jurisdiction over employment disputes on the courts of the country whose law is applicable, that will not always be possible in practice, even after the harmonization of the choice-of-law rules effected by the Rome Convention. It is clear from Articles 3 and 6(1) of the Rome Convention that the parties are in principle free to choose the law applicable to a contract of employment; the chosen law might not necessarily be the law of the competent court, unless of course the parties include in their contract a jurisdiction clause specifying the courts of the country whose law is chosen as the *lex causae*. But even without those complications, there cannot be any certainty that the *lex causae* will always coincide with the *lex fori*, especially while the Court of Justice does not have jurisdiction to interpret the Rome Convention as well as the Brussels Convention. The present case is proof of that. The French court, which appears to read *Ivenel* v *Schwab* as establishing a necessary link between the applicable law and jurisdiction, considers that under Article 6 of the Rome Convention the contract between Mulox and Mr Geels is governed by English law. It could be argued that on a proper interpretation of Article 6 the contract is governed by French law. Certainly an English court might arrive at that conclusion, either on the basis

of Article 6 of the Rome Convention or on the basis of its own rules of private international law. The paradoxical result is that if, after the Court's preliminary ruling, the dispute is finally litigated in France English law will be applied, whereas if the litigation were to take place in England French law might be applied. (Article 15 of the Rome Convention excludes *renvoi*.) It must also be remembered that jurisdiction under Article 5(1) is not exclusive and that the plaintiff could in any event choose to sue at the defendant's domicile under Article 2 of the Brussels Convention, regardless of the place of performance. There must be many cases in which a contract of employment is governed by a law other than the law of the country in which the defendant is domiciled.

28. I conclude from the above that it would be a mistake to exaggerate the importance of the link between jurisdiction and *lex causae* in employment disputes. As regards the reference to mandatory rules in *Shenavai* v *Kreischer*, it is of course important to prevent an employer from evading the application of legislation which has been enacted for the protection of employees and which cannot be excluded by contract. But that merely begs the question which country's mandatory legislation should be applied. Matters such as working hours, annual leave, maternity leave and unfair dismissal should presumably be governed by the mandatory provisions of the *lex causae*. As regards matters such as safety and hygiene (e. g. rules on fire exits or the use of asbestos as an insulator), it would seem appropriate to apply the mandatory legislation in force at each of the several places of employment. Articles 6 and 7 of the Rome Convention contain provisions which appear to be capable of achieving the desired results, regardless of the country in which litigation takes place.

29. In my view, the true basis for the Court's ruling that the relevant obligation, for the purpose of applying Article 5(1) of the Brussels Convention in employment disputes, is the characteristic obligation under the contract of employment lies not so much in the desirability of establishing jurisdiction in the country whose law governs the contract, but rather in the simple proposition that the worker should be entitled to sue his employer (and vice versa of course) at the place where he works. That is the natural forum for such disputes and it will in most cases be the most convenient forum for the employee. He should not be deprived of the convenience of suing there simply because his employer is domiciled in another Contracting State. That derogation from the general rule laid down in Article 2 of the Convention is justified by the particularly close connection between the dispute and the courts at the place where the work is done.

30. Having thus established the basis for the rule that jurisdiction is determined by the characteristic obligation in employment disputes, I turn to the relatively straightforward task of determining the place of performance

of that obligation in a case such as the present, where the work was done in more than one Contracting State.

31. In view of the wording of the question formulated by the Cour d'Appel, two preliminary points need to be made. First, I do not think that the work must have been performed 'wholly and solely' in a single Contracting State in order for Article 5(1) to apply; where the worker is normally employed in one country, its courts should not lose jurisdiction simply because he makes an isolated excursion into another country in the performance of his duties. Secondly, where small portions of the work are performed in a number of different countries, I do not think that Article 5(1) can be interpreted as conferring concurrent jurisdiction on the courts of all those countries, at the election of the plaintiff; if, for example, Mr Geels made a single business trip to Denmark, that should not mean that he could sue or be sued in Denmark. The connection with Denmark would be insufficiently strong to justify establishing jurisdiction there. Moreover, although the Court has occasionally interpreted the special jurisdiction rules of the Convention as granting the plaintiff a choice of jurisdictions (as in Case 21/76 *Bier* v *Mines de Potasse d'Alsace* [1976] ECR 1735, which was concerned with jurisdiction in tort where different considerations apply), the general rule is that Article 5(1) should be interpreted in such a way as 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': Case 14/76 *de Bloos* v *Bouyer* (cited above, in paragraph 6), at paragraph 9. It must also be borne in mind, as the Commission and the German Government point out, that if the plaintiff were given a choice of jurisdictions that choice would apply to actions brought by the employer as well as the worker. It would hardly be fair to allow the employer to remove the worker from his natural forum simply by requiring him to perform a small part of his duties in some other Contracting State.

32. It follows from those preliminary remarks that, where the work is performed in more than one Contracting State, Article 5(1) of the Brussels Convention should be construed as establishing jurisdiction at the principal place of employment. That term will in most situations be largely synonymous with the concept of the 'habitual' place of employment used in Article 6 of the Rome Convention and in the Lugano and San Sebastian Conventions. However, the expression 'principal place of employment' seems preferable, since it more effectively conveys the idea that one of the worker's several places of employment must in normal circumstances be more important than the others. The unhelpful nature of the term 'habitual' is demonstrated by the facts of the present case: a person who is employed in several States may not have a habitual place of employment in any of them, but may yet have a principal place of employment in one of them. The question which place is the principal place of employment is largely a question of fact and must ultimately be left to the national court, though the Court of Justice may offer some guidance in the light of the established facts of the case. Bearing in mind the need for caution, since our knowledge of the facts is necessarily limited, I will confine myself to the following remarks.

33. Where a person employed as a commercial representative has an office in one Contracting State, which he uses as a base for his operations, and from time to time travels from that base to other Contracting States for the purpose of visiting clients, there must be a strong presumption that his principal place of employment is located at the place where he has his office, especially if, as in the present case, he also resides at that place. It is there that he receives instructions from his employer; it is from there that he communicates with his clients by post, telephone, telefax, etc., from there that he plans his business trips to other Contracting States and to that place that he returns after each trip. Even if he spends more than half of the year travelling in other countries and does not in fact visit a single client in the country in which he has his office, it seems to me very difficult to rebut the presumption that his principal place of employment is located at the place where he has his centre of operations.

34. I will briefly make three final points. First, the German Government argued that in preference to jurisdiction at the principal place of employment, which might be difficult to determine, it would be more practical to use the worker's domicile as the connecting factor; he could thus sue at the place where he lives, provided — I assume — that part of his work is performed there. In the present case that approach produces a satisfactory result because Mr Geels' office was situated in his residence. There is, however, no guarantee that it would always produce a satisfactory result. If, for example, Mr Geels lived in Italy and had his office and centre of operations just across the border in France and if he occasionally visited clients in Italy, the German Government's approach would mean that he could sue in the Italian courts under Article 5(1), even though an insignificant part of his work was done in Italy. I do not see how the worker's domicile can be a decisive connecting factor for the purposes of Article 5(1).

35. Secondly, it is conceivable that unusual cases will occur in which two or more workplaces are equally important. If, for example, Mr Geels managed Mulox's French office in Aix-les-Bains and its Italian office in Turin and spent roughly half his time at each of those places, it might be difficult to classify one of them as principal and the other as subsidiary. The Commission implies that in such a case Article 5(1) of the Brussels Convention should cease to apply and that Mr Geels would have to sue Mulox under Article 2 at its domicile in England, even though he had never worked there at all. Such a result would, in my view, be regrettable and unfair. It would be as illogical as saying that Mr Smith and Mr Jones are both equally deserving of promotion and that, in order to avoid making a difficult choice between them, the promotion should be given to Mr Brown, whose merits are considerably less. Even in difficult cases it should be possible to find relevant criteria for giving priority to one place of employment rather than another (e. g. the place where social security contributions and income tax are paid or the place where the employee's salary is paid). In the

rare cases in which it is not possible to identify a principal place of employment, it would be reasonable, notwithstanding what I said earlier about the need to avoid a multiplicity of forums, to allow the plaintiff to sue at any of the places which have an equal claim to be the principal place of employment.

36. Thirdly, although Mulox could be sued in England, where it has its registered office, under Article 2 of the Brussels Convention, I disagree with the French Government's view that the English courts could acquire jurisdiction under Article 5(1) of the Convention. As the French Government recognizes, such a result could only be achieved under the new version of Article 5(1) introduced by the San Sebastian Convention. The old version relied on a single connecting factor: namely, the place of performance of the obligation in question, which the Court has held to mean, in employment disputes, the place where the work is performed. The San Sebastian Convention has introduced a substitute connecting factor (namely, the place where the business which engaged the employee was or is situated) which applies only for the benefit of the employee and only where he is not habitually employed in a single country. That substitute connecting factor is entirely different from the one used in the old version of Article 5(1) and it may have the result of conferring jurisdiction on the courts of a country in which no obligation under the contract was to be performed. Clearly such a result could not be justified under the old version of Article 5(1) and there can be no case for applying the new version in proceedings instituted before its entry into force. Consequently, if in the present case it is impossible to identify the principal place of employment, recourse must be had, not to the new rule introduced by the San Sebastian Convention, but to the general jurisdiction rule contained in Article 2 of the Brussels Convention.

37. That is not to say, however, that the amendments made by the San Sebastian Convention should be disregarded entirely. The substitute connecting factor introduced by that Convention is capable of producing somewhat anomalous results: if, for example, Mr Geels had been engaged in Luxembourg by an entity which had since transferred itself to Italy, that might be sufficient to confer jurisdiction on the courts of Luxembourg or Italy, even though he had never worked in either country. That highlights the importance of making a determined effort to identify a principal (or habitual) place of employment. It will thus be possible to ensure that jurisdiction is conferred on the courts of a country which has a genuine connection with the dispute — a result that will not always be possible if recourse is had to the substitute connecting factor introduced by the San Sebastian Convention. For that reason I consider that, if the San Sebastian Convention were applicable in a case such as the present one, the term 'habitually' should not be construed too literally but should be read as indicating the principal place of employment.

Conclusion

38. Accordingly, I am of the opinion that the question submitted to the Court by the Cour d'Appel, Chambéry, should be answered as follows:

Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that in disputes arising from a contract of employment under which work is performed in more than one Contracting State jurisdiction is conferred on the courts for the principal place of employment. It is for the national court to determine that place in the light of all the relevant facts. In the case of an international marketing manager who has an office in one Contracting State which serves as his centre of operations and address for correspondence and from which he travels from time to time to other Contracting States and non-contracting States for the purpose of visiting clients, that office will normally constitute the principal place of employment, unless there is some factor of such a kind as to establish a closer connection with another Contracting State.