JUDGMENT OF THE COURT
30 NOVEMBER 1976 [1]

Handelskwekerij G. J. Bier B.V. v Mines de Potasse d'Alsace S.A. (preliminary ruling requested by the Gerechtshof of The Hague)

Case 21/76

Summary

'Convention on jurisdiction and the enforcement of Judgment, article 5 (3) (liability in tort, delict or quasi-delict')

Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments — Pollution of the atmosphere or of water — Dispute of an international character — Matters relating to tort, delict or quasi-delict — Courts having jurisdiction — Special jurisdiction — Place where the harmful event occurred — Place of the event giving rise to the damage and place where the damage occurred — Connecting factors of significance as regards jurisdiction — Right of plaintiff to elect
(Convention of 27 September 1968, Article 5 (3))

Where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred', in Article 5 (3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it. 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.

In Case 21/76

Reference to the Court pursuant to Article 1 of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters by the Gerechtshof (Appeal Court) of The Hague for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Dutch.

HANDELSKWEKERIJ G. J. BIER B.V., of Nieuwerkerk aan den IJssel (The Netherlands), and the REINWATER FOUNDATION, having its registered office at Amsterdam,

and

MINES DE POTASSE D'ALSACE S.A., having its registered office at Mulhouse,

on the interpretation of the meaning of 'the place where the harmful event occurred' in Article 5 (3) of the Convention of 27 September 1968,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters may be summarized as follows:

I — Facts and written procedure

G. J. Bier B.V. (hereinafter called Bier) of Nieuwerkerk aan de IJssel (The Netherlands), which is engaged in the business of nursery gardening, uses a water catchment area surrounding its property for its water supply and for the watering and irrigation of its seed beds. The surface waters thus used come principally from the Rhine. The high salinity of those waters causes damage to the seed beds and Bier is obliged to take expensive measures to limit it.

The Reinwater Foundation (hereinafter called Reinwater), whose registered office is at Amsterdam, exists in order to promote every possible improvement in the quality of the water in the Rhine

basin, especially by opposing any deterioration in the natural quality of the water. The means whereby it seeks to achieve this purpose consist in particular in bringing legal actions so as to ensure the protection of the personal rights of all those whose environment is affected by the quality of the water of the Rhine and, in particular, of those whose livelihood is dependent upon it.

Bier and Reinwater brought an action before the Arrondissementsrechtbank (Court of first instance), Rotterdam, against the company Mines de Potasse d'Alsace, whose registered office is at Mulhouse and which works mines in Alsace. This company is alleged to discharge more than 10 000 tonnes of chlorides every twenty-four hours through a waste-flow into the Rhine, or in any event such quantities of industrial waste in the form of residuary salts that the salt content of the Rhine is thereby considerably and gravely augmented. Bier and Reinwater claimed in particular that the Netherlands court should hold that the discharge of residuary salts into the Rhine by Mines de Potasse d'Alsace is illegal and that the said company must make good the damage which they have thereby incurred or which they are liable to incur.

Mines de Potasse d'Alsace, reserving its defence as to the substance of the matter, objected that the Arrondissementsrechtbank does not have, and more generally, that the courts of the Netherlands do not have, jurisdiction in the matter by virtue of Articles 2 and 3 of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters.

By judgment delivered on 12 May 1975, the Arrondissementsrechtbank held that it had no jurisdiction because the event that had caused the damage could only be the discharge of the residuary salts into the Rhine in France and therefore under the Convention of 1968 the case came under the jurisdiction of the French court for the area in which that discharge took place.

On 13 June 1975 Bier and Reinwater lodged an appeal against that judgment with the Gerechtshof (Appeal Court) of the Hague, and requested it to hold that it had jurisdiction to entertain their claim.

Bier and Reinwater relied on Article 5 (3) of the Convention of 27 September 1968 which provides that a defendant 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 occurred. The Gerechtshof, Second Chamber, felt that the proper course was to apply Article 2 (2) and Article 3 (2) of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters. Accordingly, by judgment of 27 February 1976 it decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the interpretation of what is meant by, 'the place where the harmful event occurred' in Article 5 (3) of the Convention. In particular, it asked the Court to say whether the meaning is 'the place where the damage occurred (the place where the damage took place or became apparent)' or rather 'the place where the event having the damage as its sequel occurred (the place where the act was or was not performed)'.

The judgment of the Gerechtshof, The Hague, was registered at the Court Registry on 2 March 1976.

Pursuant to Article 5 (1) of the Protocol of 3 June 1971 and Article 20 of the Protocol on the Statue of the Court of Justice of the EEC, written observations were lodged on 5 May 1976 by the Commission of the European Communities, on 6 May by Mines de Potasse d'Alsace, the defendant in the

main action, on 13 May by the Government of the French Republic and on 17 May by the Government of the Kingdom of the Netherlands.

The Court, upon reading the report of the Judge-Rapporteur and upon hearing the Advocate-General, decided to open the oral procedure without a preparatory inquiry.

II — Written observations lodged with the Court

Mines de Potasse d'Alsace, the defendant in the main action, points out that it appears from the report drawn up by the committee of experts which prepared the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters that the said committee deemed it unnecessary expressly to stipulate in Article 5 (3) of the Convention whether the place where the event causing the damage took place should be the right criterion or whether it should be the place where the damage occurred. Instead, it considered it preferable to retain a form of words used in several legal systems (Germany, France).

In this respect, it may be remarked that Article 10 (1) of the draft Convention on the law applicable to contractual and non-contractual obligations provides that non-contractual obligations arising in respect of a harmful event shall be governed by the law of the country where that event occurred. Article 10 (2), however, makes an exception to this rule, where on the one hand there is no significant relationship between the situation resulting from the harmful event and the country where that event occurred, and where on the other hand there is a predominant connexion between the said situation and some other country.

The problem of interpreting the Convention of 27 September 1968, arising in this case, cannot be resolved simply by referring to the provisions of French and German law from which it took its inspiration, and in particular to the last paragraph of Article 59 of the French code of civil procedure, as worded at the material time, and to Article 32 of the German code of civil procedure.

The answer must be sought in an interpretation of the Convention alone.

The purpose of the Convention is to facilitate the unimpeded circulation of judicial decisions within the Community and, with this in mind, to determine the international jurisdiction of the Member States in the judicial sphere. To this end, it contains rules concerning direct jurisdiction, with which the Member States must comply and to which provisions of national law must give way in so far as they are not confirmed. Thus, Article 2 of the Convention lays down the general principle that persons domiciled in a Contracting State shall be sued in the courts of that State, and as regards the legal relationships between Member States Article 3 excludes instances of unduly far-reaching jurisdiction known to the national legal systems. By way of exception to this fundamental principle, the Convention provides that a certain number of special additional fields of jurisdiction shall exist for particular cases. Thus, the intent of Article 5 (3) is to render claims based on an alleged wrongful act on the part of the defendant subject to the decision of the court best placed to verify the facts, as being the court for the place where the conduct complained of occurred. In this context, the aim of the provision is to bring all litigation born of some wrongful conduct before one and the same court. This is in the interests of the rational administration of justice, and does not put the plaintiff into a more favourable situation than the defendant.

The contrary opinion would amount to attributing jurisdiction to the courts for

the place where the plaintiff is domiciled. The consequence would be that instead of actions springing from one and the same wrongful conduct doming before one court, the issue would come before a large number of courts in different countries. This is surely not what the Convention intended and would not accord with the interests of the rational administration of justice.

The Court of Justice should therefore rule that Article 5 (3) of the Convention confers no jurisdiction on the court for the place where the damage occurred, and gives jurisdiction only to the court for the place where the wrongful act occurred.

The *Government of the French Republic* recalls that the Convention of 27 September 1968 is based on Article 220 of the EEC Treaty. The necessity for negotiating it became apparent by reason of the profound differences between the national laws of the Member States or resulting from bilateral conventions both in the sphere of the jurisdiction of courts and tribunals and that of the enforcement of judgments. In a joint declaration the Member States were at pains to stress their anxiety to prevent differences of interpretation and also conflicts involving claims and disclaimers of jurisdiction.

The interpretation of the provisions of the Convention must have regard to the purposes thereof and to the principles that it has laid down, particularly as regards jurisdiction. Such an approach would seem to be particularly warranted as regards Article 5 (3). The drafting of that provision does not throw light on whether the court having jurisdiction is the one for the place where the damage occurred or the one for the place where the event giving rise to the damage took place. This ambiguity cannot be solved by referring to the preparatory documents. Since it is not possible to find the answer to the issue in the intentions of the parties to the negotiations, the interpretation of Article 5 (3) can only be based on the purposes and general principles stated in the Convention.

The Convention intended that all actions relating to the same facts should come before the same court, thus avoiding a multiplicity of actions in different countries. The purpose of having all the said actions heard before the same court is, so far as it is possible, to stop a situation arising in which contradictory or incompatible judgments are recognized or form the basis for the application for enforcement in the same State. Quite clearly, this purpose would not be achieved if jurisdiction were given to the courts for the place where the damage occurred, in a situation where damage caused by the same wrongful act occurs in several places, and even in several States.

The multiplicity of jurisdictions would lead to a situation which might be contrary to justice, both for the plaintiffs and for the defendents. The former might find themselves in a different or even contrary legal position depending on their domicile, and the latter would be exposed to a multiplicity of proceedings appertaining to the same event, and in addition those proceedings might result in contradictory solutions.

Following the principle of the rational administration of justice which underlies the Convention, proof of damage, for all its importance, should give way to proof that the event giving rise to the damage has occurred and is attributable to the defendant, without which the latter cannot be held liable. It is obvious that this proof will necessarily be established more easily by the court for the place where the said event occurred.

The expression 'the place where the harmful event occurred' appearing in Article 5 (3) of the Convention of 27 September 1968 should therefore be read as meaning 'the place where the event giving rise to the damage occurred'.

The Government of the Kingdom of the Netherlands, too, observes that the contracting parties to the Convention of 27 September 1968 intended that the problem whether Article 5 (3) should be taken as meaning the place where the event giving rise to the damage took place or the place where the damage occurred should be resolved by judicial decision.

(a) The Gerechtshof, The Hague, is wrong in taking the view that a choice must be made between these two possibilities alone. The Convention itself admits of the proposition that more than one court can have jurisdiction. There is no reason why Article 5 (3), should not be interpreted as meaning that jurisdiction is vested both in the court for the place where the act took place and in the court for the place where the damage occurred, the choice lying with the plaintiff. The Convention adopted a form of words used by German law and by French law amongst others. The case-law of the German courts, in particular, accepts the proposition that the two jurisdictions co-exist. In not drafting Article 5 (3) in greater detail the authors of the Convention no doubt also had in mind the interests of the injured party, to whom it would be advantageous to be able to choose the court to have jurisdiction.

(b) If it were not accepted that both the court for the place of the first act and the court for the place where the damage occurred have jurisdiction, preference should be given to the jurisdiction of the court for the place where the damage occurred.

In choosing the word 'event', the authors of the Convention of 27 September 1968 intended to point to something other than the act. By analogy, it may be noted that the Convention on the law applicable to products liability, signed at The Hague on 2 October 1973, in using the words 'the state of the place of injury' means both the 'law of the place where the damage first occurred' and 'the law of the place where the damage first became apparent', and not the 'law of the place where the unlawful act giving rise to the damage occurred'.

For the purpose of determining the basis of jurisdiction, the right approach is to operate a distinction on the basis of the most characteristic aspect of the legally relevant facts, and the country with which that aspect has the most points of contact. The damage resulting from an act or an omission should always be considered as the predominant element and thus as the characteristic element.

Moreover, where the damage occurs in a State other than the one where the first act took place, the injured party is often at a disadvantage, as regards procedure, compared with the party responsible. In particular, the difficulties in establishing the chain of causation between the act and the damage, in proving the nature and extent of the damage, and in identifying the parties responsible increase where a case of an international character is involved. This imbalance is reduced to a certain extent by allowing the injured party to bring his action before the court for the place where the damage occurred.

It should also be noted that the French courts, interpreting Article 59 of the French civil code as it stood at the time when the Convention was being drawn up, have declared that the court for the place where the damage occurred has jurisdiction.

(c) It may be that the answer to the question which court has jurisdiction is not the same for all categories of wrongful acts. It may depend on the nature of the wrong. Since the present case involves damage caused by international pollution, it may be that the nature of the wrong requires that the choice of forum be left to the plaintiff. Should it be the case that the Convention does not allow of this choice,

the nature of the wrong, in cases of international pollution, should sway the issue in favour of the jurisdiction of the court for the place where the damage occurred.

In matters concerning the pollution of the environment, an act or omission can be described as wrongful by reason of its harmful consequences rather than by reason of the nature of what is done or not done in the first place. Such pollution can be due to a wrongful omission and, unlike the damage, it may often be hard to attach such an omission to a particular locality in cases where some distance intervenes between cause and effect. For this reason also, it would appear inexpedient to exclude the jurisdiction of the court for the place where the damage occurred.

The international Convention on civil liability for oil pollution damage, signed on 29 November 1969, confers exclusive jurisdiction to entertain claims for damages on the court of the State where the damage occurred. It establishes the importance attached to the interests of the injured party concerning the question as to which courts have jurisdiction in cases of pollution affecting several countries.

Where the damage is caused by several parties established in a number of countries, the conferring of jurisdiction on the court for the place where the damage occurred has the advantage that the injured party can bring all his action concerning the matter before one and the same court. To a certain extent this encourages the treating of identical situations alike.

These considerations are particularly relevant to acts that bring about pollution of the environment in a number of countries. As part of the legal policy to be followed in environmental matters, the injured party should be put in a strong position, in particular by placing him in a favourable situation from the point of view of procedure.

The *Commission of the European Communities* points out that the expression 'place where the harmful event occurred' used by Article 5 (3) of the Convention of 27 September 1968 does not in any of the language versions offer any indication in favour of a given solution.

However from the scheme of the Convention it is possible to deduce several interpretations:

(a) In favour of the place where the act was done (place of the act, Handlungsort), it may be argued from the legal point of view that the concept of acting or of failing to act is an essential ingredient of the tortious or delictual act, and the damage is only a mere consequence of the performance or non-performance of the act. Moreover this solution gives legal certainty to the person who performs or fails to perform the act. It is enough for him to know the laws in force in the place in which he acts, and it is unnecessary that he should also be aware of the obligations arising elsewhere in the world from the fact that he has or has not performed the act in question. The latter argument carries all the more weight where the tortious or delictual act is subject to a penalty and is thus closely linked to the arguments in favour of the territorial effects of penal law.

From the point of view of procedure, the place of the act presents an advantage when several persons suffer damage due to a single act. In such a case, the same act is dealt with by just one court, and this makes it possible to judge the various cases according to the same criteria and dispense with a multiplicity of procedures.

Again, from the point of view of procedure, this solution brings with it a certainty which is lacking when one takes the place where the damage occurred as the point of reference. For while it is often possible to determine the place where the act was done, the

places where the damage may arise are unknown more often than not.

The arguments in favour of the place where the act occurs appear to favour the author of the damage, for when there are several injured parties he does not have to defend himself before a number of courts. Moreover, where the place of the act is also the place of his domicile, he can be sued in the court of his domicile.

(b) The solution that adopts the place where the damage occurred (place of the damage, Erfolgsort) refers to the last link in the chain of elements which as a whole constitute a tortious or delictual act.

From the legal point of view, the existence of a tortious or delictual act requires not only the performance or non-performance of an action, but also the fact that it gives rise to damage. At the present time private international law tends to attribute greater importance to making good the damage caused by a tortious or delictual act than to the wrongful conduct itself.

The place where the damage occurred constitutes a satisfactory solution in the case of strict liability.

It ensures that where several persons cause damage to the same person or to the same property, as is the case with the pollution of the Rhine, they are all judged according to the same criterion.

In the case of a wrong committed against the protection of the environment, the place of the damage is often the domicile of the injured party. Thus the latter has the advantage of being able to bring the author of the damage before the court for the place where he is domiciled.

This interpretation should be considered as compatible with the scheme of the Convention. The provisions on jurisdiction set out in Article 5 take the form of independent provisions existing alongside the general provisions of Article 2 which state the general rule that jurisdiction shall follow domicile. Thus the jurisdictions mentioned in Article 5 (3) need not necessarily be construed restrictively.

The concept of the place where the damage occurs is the one adopted by French case-law and by a number of French legal writers. It is therefore significant that the form of words used in Article 5 (3) of the Convention corresponds to that employed in French law. As for German law, from which the form of words used in the Convention is also derived, it recognizes either the place of the act or the place where the consequences thereof occurred.

(c) One could also propose as a connecting factor the place in which the essential aspect of the legal sphere of the tortious or delictual act is located.

This criterion of the most significant relationship constitutes a refinement of the 'locus delicti commissi' rule. It is based on determining the significant relationship or the predominant connexion between the situation resulting from the harmful event on the one hand and a given country, which is not necessarily the one where that event occurred, on the other hand.

The Convention allows several elements in the body of facts and circumstances which, when taken together, constitute a tortious or delictual act to be taken into consideration. It may be added that this solution coincides with important trends which have recently become apparent in private international law concerning the substantive law applicable.

The great advantage of this test is that it always produces satisfactory results.

As against this connecting factor, there is the argument that it is of greater interest for the purpose of determining the substantive law applicable than for trying to decide which court has jurisdiction, and that it is not mentioned in the report on the Convention for 1968.

(d) German law, so far as regards the substantive law, applies the solution of the place most favourable to the party who has suffered the damage. This connecting factor, which always favours the injured party, is, just like the connecting factor of the essential aspect of the legal sphere, of greater interest for the purpose of applying substantive law than for that of applying adjective law.

As against this test, it must be noted that it gains practically no support from the text of the Convention, and that it is rarely applied.

(e) For the purposes of interpreting Article 5 (3) of the Convention, there are good grounds for recommending as a solution the concurrence of several connecting factors. The principal arguments in favour of this solution are as follows:

— unlike the problem of establishing connecting factors for the purposes of the application of the substantive law, where in the end only the substantive law of one country can be applied to a given legal situation, it is not necessary, for the purposes of establishing connecting factors in order to find the court with jurisdiction, to refer in this respect to a single court with jurisdiction;
— The formulation of Article 5 (3) appears to cover the whole of the tortious or delictual phase between the act which was performed or not performed and the occurrence of the damage; accordingly it does not prevent several courts from being declared to have jurisdiction;
— All such jurisdiction as is conferred by Article 5 is in addition to that conferred under Article 2. Therefore the former jurisdiction should not be construed restrictively;
— The existence of several courts having jurisdiction must be considered as advantageous to the injured party;
— The existence of several courts with jurisdiction can also serve the interests of the Community, especially where compliance with Community legislation on the protection of the environment is at issue, for since such Community law is directly applicable the injured party can require a number of courts to apply that law.

Solutions involving concurrent connecting factors are, in principle, disadvantageous to the author of the damage. The number of courts in which he can be sued puts him into a situation of legal uncertainty.

(f) Accordingly, Article 5 (3) of the Convention can be interpreted as meaning that 'the place where the harmful event occurred' may be understood as meaning, as well as the place where the act occurred, either the place of the damage or the place in which the essential aspect of the legal sphere of the tortious or delictual act is located, so that where a tortious or delictual act has occurred there is a choice between these three places. The arguments in favour of interpreting Article 5 (3) as meaning the place most favourable to the injured party would not appear to be sufficiently conclusive.

III — Oral procedure

The plaintiffs in the main action, *Bier and Reinwater,* represented by J. R. Voûte, Advocate at Amsterdam and Claude Lussan, of the Paris Bar, the defendant in the main action *Mines de Potasse d'Alsace,* represented by C. D. Van Boeschoten, Advocate at The Hague, and Roland Schwob, Advocate at the Mulhouse Bar, the Commission of the European Communities, represented by Hendrik Bronkhorst, a Member of its Legal Service, submitted their oral observations at .the hearing on 12 October 1976.

During that hearing, *the undertaking G. J. Bier and the Reinwater Foundation* argued in particular that as regards jurisdiction the Convention of 27

September 1968 contains rules the purpose of which is to protect the weaker party, in particular the party injured by a tort, delict or quasi-delict. It is with this end in view that Article 5 (3) adopts the jurisdiction of the courts for the place where the damage occurred. To recognize the jurisdiction of the courts for the place where the damage occurred is to put a correct interpretation on the Convention, does not introduce 'forum shopping', corresponds to the solution adopted by recent conventions on comparable matters, accords with the interpretation of the provisions of French law on which Article 5 (3) is based, and brings about an improved administration of justice in so far as the damage can thus be assessed at the place where it has become apparent.

The Advocate-General delivered his opinion at the hearing on 10 November 1976.

Law

1 By judgment of 27 February 1976, which reached the Court Registry on the following 2 March, the Gerechtshof (Appeal Court) of The Hague has referred a question, pursuant to the Protocol on 3 June 1971 on the interpretation of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters (hereinafter called 'the Convention'), on the interpretation of Article 5 (3) of the said Convention.

2 It appears from the judgment making the reference that at the present stage the main action, which has come before the Gerechtshof by way of appeal, concerns the jurisdiction of the court of first instance at Rotterdam, and in general, of the Netherlands courts, to entertain an action brought by an undertaking engaged in horticulture, established within the area for which the court before which the action was first brought has jurisdiction, and by the Reinwater Foundation, which exists to promote the improvement of the quality of the water in the Rhine basin, against Mines de Potasse d'Alsace, established at Mulhouse (France), concerning the pollution of the waters of the Rhine by the discharge of saline waste from the operations of the defendant into that inland waterway.

3 It appears from the file that as regards irrigation the horticultural business of the first-named appellant depends mainly on the waters of the Rhine, the high salt content of which, according to the said appellant, causes damage to its plantations and obliges it to take expensive measures in order to limit that damage.

4 The appellants consider that the excessive salinization of the Rhine is due principally to the massive discharges carried out by Mines de Potasse d'Alsace and they declare that it is for that reason that they have chosen to bring an action for the purposes of establishing the liability of that undertaking.

5 By judgment delivered on 12 May 1975, the court at Rotterdam held that it had no jurisdiction to entertain the action, taking the view that under Article 5 (3) of the Convention the claim did not come within its jurisdiction but under that of the French court for the area in which the discharge at issue took place.

6 Bier and Reinwater brought an appeal against that judgment before the Gerechtshof, The Hague, which subsequently referred the following question to the Court:

'Are the words "the place where the harmful event occurred", appearing in the text of Article 5 (3) of the Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, concluded at Brussels on 27 September 1968, to be understood as meaning "the place where the damage occurred (the place where the damage took place or became apparent)" or rather "the place where the event having the damage as its sequel occurred (the place where the act was or was not performed)"?'

7 Article 5 of the Convention provides: 'A person domiciled in a Contracting State may, in another Contracting State, be sued: ... (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred'.

8 That provision must be interpreted in the context of the scheme of conferment of jurisdiction which forms the subject-matter of Title II of the Convention.

9 That scheme is based on a general rule, laid down by Article 2, that the courts of the State in which the defendant is domiciled shall have jurisdiction.

10 However, Article 5 makes provision in a number of cases for a special jurisdiction, which the plaintiff may opt to choose.

11 This freedom of choice was introduced having regard to the existence, in certain clearly defined situations, of a particularly close connecting factor between a dispute and the court which may be called upon to hear it, with a view to the efficacious conduct of the proceedings.

12 Thus in matters of tort, delict or quasi-delict Article 5 (3) allows the plaintiff to bring his case before the courts for 'the place where the harmful event occurred'.

13 In the context of the Convention, the meaning of that expression is unclear when the place of the event which is at the origin of the damage is situated in a State other than the one in which the place where the damage occurred is situated, as is the case inter *inter alia* with atmospheric or water pollution beyond the frontiers of a State.

14 The form of words 'place where the harmful event occurred', used in all the language versions of the Convention, leaves open the question whether, in the situation described, it is necessary, in determining jurisdiction, to choose as the connecting factor the place of the event giving rise to the damage, or the place where the damage occurred, or to accept that the plaintiff has an option between the one and the other of those two connecting factors.

15 As regards this, it is well to point out that the place of the event giving rise to the damage no less than the place where the damage occurred can, depending on the case, constitute a significant connecting factor from the point of view of jurisdiction.

16 Liability in tort, delict or quasi-delict can only arise provided that a causal connexion can be established between the damage and the event in which that damage originates.

17 Taking into account the close connexion between the component parts of every sort of liability, it does not appear appropriate to opt for one of the two connecting factors mentioned to the exclusion of the other, since each of them can, depending on the circumstances, be particularly helpful from the point of view of the evidence and of the conduct of the proceedings.

18 To exclude one option appears all the more undesirable in that, by its comprehensive form of words, Article 5 (3) of the Convention covers a wide diversity of kinds of liability.

19 Thus the meaning of the expression 'place where the harmful event occurred' in Article 5 (3) must be established in such a way as to acknowledge that the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it.

20 This conclusion is supported by the consideration, first, that to decide in favour only of the place of the event giving rise to the damage would, in an appreciable number of cases, cause confusion between the heads of jurisdiction laid down by Articles 2 and 5 (3) of the Convention, so that the latter provision would, to that extent, lose its effectiveness.

21 Secondly, a decision in favour only of the place where the damage occurred would, in cases where the place of the event giving rise to the damage does not coincide with the domicile of the person liable, have the effect of excluding a helpful connecting factor with the jurisdiction of a court particularly near to the cause of the damage.

22 Moreover, it appears from a comparison of the national legislative provisions and national case-law on the distribution of jurisdiction — both as regards internal relationships, as between courts for different areas, and in international relationships — that, albeit by differing legal techniques, a place is found for both of the two connecting factors here considered and that in several States they are accepted concurrently.

23 In these circumstances, the interpretation stated above has the advantage of avoiding any upheaval in the solutions worked out in the various national systems of law, since it looks to unification, in conformity with Article 5 (3) of the Convention, by way of a systematization of solutions which, as to their principle, have already been established in most of the States concerned.

24 Thus it should be answered that where the place of the happening of the event which may give rise to liablity in tort, delict or quasidelict and the place where that event results in damage are not identical, the expresson 'place

where the harmful event occurred', in Article 5 (3) of the Convention, must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it.

25 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.

Costs

26 The costs incurred by the Government of the French Republic, the Government of the Kingdom of the Netherlands and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

27 As these proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the Gerechtshof, The Hague, the decision on costs is a matter for that court.

On those grounds

THE COURT

in answer to the question referred to it by the Gerechtshof, The Hague, by judgment of 27 February 1976, hereby rules:

Where the place of the happening of the event which may give rise to liability in tort, delict or quasidelict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred', in Article 5 (3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it.

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.