LUND UNIVERSITY

The Aesthetic Authority of Law

Experiments with Legal Form

Jeutner, Valentin

DOI:
10.37852/oblu.327

2025

Document Version:
Publisher's PDF, also known as Version of record

Link to publication

Citation for published version (APA):
Jeutner, V. (2025). *The Aesthetic Authority of Law: Experiments with Legal Form*. Lund University (Media-Tryck). https://doi.org/10.37852/oblu.327

Total number of authors:
1

Creative Commons License:
CC BY

General rights
Unless other specific re-use rights are stated the following general rights apply:
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.
• Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
• You may not further distribute the material or use it for any profit-making activity or commercial gain
• You may freely distribute the URL identifying the publication in the public portal

Read more about Creative commons licenses: https://creativecommons.org/licenses/

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

LUND UNIVERSITY

PO Box 117
221 00 Lund
+46 46-222 00 00

THE AESTHETIC AUTHORITY OF LAW

EXPERIMENTS WITH LEGAL FORM

Valentin Jeutner

This page was intentionally left blank.

THE AESTHETIC AUTHORITY OF LAW

EXPERIMENTS WITH LEGAL FORM

Valentin Jeutner

Copyright: Valentin Jeutner

Faculty of Law
Department of Law
Lund University

ISBN 978-91-988919-8-0 Print
ISBN 978-91-988919-9-7 Digital
DOI: https://doi.org/10.37852/oblu.327

Printed in Sweden by Media-Tryck, Lund University
Lund 2025

Media-Tryck is a Nordic Swan Ecolabel certified provider of printed material. Read more about our environmental work at www.mediatryck.lu.se
MADE IN SWEDEN

This work is licensed under CC BY-SA 4.0. To view a copy of this license, visit https://creativecommons.org/licenses/by-sa/4.0/

Contents

1 THE CASE OF THE S.S. “LOTUS”

2 The Case of the S.S. “Lotus” (France v. Turkey)

3 On Tuesday night, exactly at 23.05

4 The collision, which will occur

5 The Case of the S.S. “Lotus” (Turkey v. France)

6 The Circumstance of the S.S. “White lotus”

7 The Nemo of the S.S. “Companion”

8 The Case of the S.S. “Lotus”

9 . . “**Lotus**”

10 Und of the conn

11 **The Case of the S.S. “Lotus”**

12 The Case of the S.S. “Lotus” (France v. Turkey)

13 The Case of the S.S. “Lotus” File E.c. Docket XI

14 The Case of the S.S. “Lotus”

15 *The Case of the S.S. "Lotus"*

16 Methodological Key & Acknowledgements

This page was intentionally left blank.

1

THE CASE OF THE S.S. "LOTUS"

This page was intentionally left blank.

PUBLICATIONS DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

SÉRIE A — N° 10

Le 7 septembre 1927

RECUEIL DES ARRÊTS

AFFAIRE DU «LOTUS»

PUBLICATIONS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

SERIES A.—No. 10

September 7th, 1927

COLLECTION OF JUDGMENTS

THE CASE OF THE S.S. "LOTUS"

PERMANENT COURT OF INTERNATIONAL JUSTICE.

[Translation.]

1927.
September
File E. c
Docket XI

TWELFTH (ORDINARY) SESSION.

Before:

MM. HUBER, *President,*
LODER, *Former President,*
WEISS, *Vice-President,*
Lord FINLAY,
MM. NYHOLM,
MOORE,
DE BUSTAMANTE,
ALTAMIRA,
ODA,
ANZILOTTI,
PESSÖA, } *Judges,*

FEIZI-DAIM BEY, *National Judge.*

JUDGMENT No. 9.

THE CASE OF THE S.S. "LOTUS".

The Government of the French Republic, represented by M. Basdevant, Professor at the Faculty of Law of Paris,

versus

The Government of the Turkish Republic, represented by His Excellency Mahmout Essat Bey, Minister of Justice.

THE COURT,

composed as above,

having heard the observations and conclusions of the Parties,

delivers the following judgment :

By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships *Boz-Kourt* and *Lotus*.

According to the special agreement, the Court has to decide the following questions :

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law—and if so, what principles—by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer *Lotus* and the Turkish steamer *Boz-Kourt* and upon the arrival of the French steamer at Constantinople—as well as against the captain of the Turkish steamship—joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the *Lotus* at the time of the collision, in consequence of the loss of the *Boz-Kourt* having involved the death of eight Turkish sailors and passengers ?

"(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases ?"

Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively ; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties.

In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court. They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the effect that :

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts ;

"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the *Lotus* and the *Boz-Kourt*, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law ;

« Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6,000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government ; the new arguments and conclusions are as follows :

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923 ;

"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular ;

"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection ;

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey ;

"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence ;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies ;

"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom ;

"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the *Costa Rica Packet ;*

"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities ;

"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts ;

"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the "connexity" (*connexité*) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law ;

"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent ;

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question ;

"As any other consequences involved by this decision, not having been submitted to the Court, are *ipso facto* reserved ;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed ;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923 ;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage ;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6,000 Turkish pounds ;

. . . . . .

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect :

"That, under the rules of international law and the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts ;

"That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the *Lotus* and the *Boz-Kourt*, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention ;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6,000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are *ipso facto* reserved."

The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by

a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

"1.—Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

"2.—Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

"3.—Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S.S. *Boz-Kourt* flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory—as is borne out by analogous cases.

"4.—The *Boz-Kourt—Lotus* case being a case involving "connected" offences (*délits connexes*), the Code of criminal procedure for trial—which is borrowed from France—lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover, is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.—Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has jurisdiction to institute criminal proceedings.

"6.—As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter.

"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision ; these reservations are now duly recorded.

For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered.

THE FACTS.

According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows :

On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer *Lotus*, proceeding to Constantinople, and the Turkish collier *Boz-Kourt*, between five and six nautical miles to the north of Cape Sigri (Mitylene). The *Boz-Kourt*, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the *Lotus* continued on its course to Constantinople, where it arrived on August 3rd.

At the time of the collision, the officer of the watch on board the *Lotus* was Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the *Boz-Kourt* were directed by its captain, Hassan Bey, who was one of those saved from the wreck.

As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the *Lotus ;* and on the following day, August 4th, the captain of the *Lotus* handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master.

On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of

the *Lotus*, led to the placing under arrest of Lieutenant Demons—without previous notice being given to the French Consul-General—and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (*arrestation préventive*), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course.

The case was first heard by the Criminal Court of Stamboul on August 28th. On that occasion, Lieutenant Demons submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6,000 Turkish pounds.

On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in Turkey".

The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague".

The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW.

I.

Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted—thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction—, it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

1.—The collision which occurred on August 2nd, 1926, between the S.S. *Lotus*, flying the French flag, and the S.S. *Boz-Kourt*, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

2.—The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings—such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul—but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of

the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law ; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

3.—The prosecution was instituted because the loss of the *Boz-Kourt* involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question ; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels ; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails ; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction—concurrent or exclusive—which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law ; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a *nexus causalis* between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court ; nevertheless, there is no doubt that their death may be regarded as the direct

outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

4.—Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (*connexité*), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (*connexité*). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of facts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court.

5.—The prosecution was instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based ; the French Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:

[*Translation.*]

> "Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a

minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.

"Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.

"If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that :

"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years ;

"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law ; it is more general. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue ; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on Turkish territory.

II.

Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

This clause is as follows :

> "Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law."

The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative ; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation

is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction—not only criminal but also civil—between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modern international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations "in every respect". In these circumstances it is impossible—except in pursuance of a definite stipulation—to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate—and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction—stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction.

III.

The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

The latter view seems to be in conformity with the special agreement itself, No. 1 of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

This way of stating the question is also dictated by the very nature and existing conditions of international law.

International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory

except by virtue of a permissive rule derived from international custom or from a convention.

It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.

In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 15 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which

the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties ; in practice, it would therefore in many cases result in paralyzing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, *ipso facto*, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers ; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law.

Adopting, for the purposes of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system—assuming it to have been recognized as sound—in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction—supposing that it existed—the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

The Court therefore must, in any event, ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case.

IV.

The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

The arguments advanced by the French Government, other than those considered above, are, in substance, the three following :

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim ; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.

(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.

(3) Lastly, this principle is especially applicable in a collision case.

* * *

As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

As has already been observed, the characteristic features of the situation of fact are as follows : there has been a collision on the high seas between two vessels flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other.

This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the

victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking—and in regard to this the Court reserves its opinion—it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle.

Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt ; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter.

* * *

The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas.

It is certainly true that—apart from certain special cases which are defined by international law—vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority upon it, and no other State may do so. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory ; but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent.

This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions

of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

In the Court's opinion, the existence of such a rule has not been conclusively proved.

In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable.

In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and that consequently they are not of much importance in the case before the Court. The case of the *Costa Rica Packet* is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United

States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship ; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States.

The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

* * *

It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially

applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so ; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty ; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

So far as the Court is aware there are no decisions of international tribunals in this matter ; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the French Government have been able to cite the *Ortigia—Oncle-Joseph* case before the Court of Aix and the *Franconia—Strathclyde* case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the *Ortigia—Oncle-Joseph* case before the Italian Courts and the *Ekbatana—West-Hinder* case before the Belgian Courts have been cited in support of the opposing contention.

Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details

of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests : their conduct does not appear to have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice, that the French Government in the *Ortigia—Oncle-Joseph* case and the German Government in the *Ekbatana—West-Hinder* case would have omitted to protest against the exercise of criminal jurisdiction by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

As regards the *Franconia* case (R. v. Keyn 1877, L. R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offence, the author of which is situated in the territory of one

State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

The offence for which Lieutenant Demons appears to have been prosecuted was an act—of negligence or imprudence—having its origin on board the *Lotus*, whilst its effects made themselves felt on board the *Boz-Kourt*. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect

of the incident as a whole. It is therefore a case of concurrent jurisdiction.

* * *

The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding Turkey from instituting the prosecution which was in fact brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, Turkey, by instituting, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement.

In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (*connexe*) with that of the captain of the *Boz-Kourt* would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the "connexity" (*connexité*) of the offences.

V.

Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

FOR THESE REASONS,

The Court,

having heard both Parties,
gives, by the President's casting vote—the votes being equally divided—, judgment to the effect

(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship *Lotus* and the Turkish steamship *Boz-Kourt*, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the *Boz-Kourt* having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the *Lotus* at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction ;

(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto.

Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(*Signed*) MAX HUBER,
President.

(*Signed*) Å. HAMMARSKJÖLD,
Registrar.

MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(*Initialled*) M. H.

(*Initialled*) Å. H.

This page was intentionally left blank.

2

The Case of the S.S. "Lotus" (France v. Turkey)

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?

(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"

[3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court.

They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the effect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts;
"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law;
“Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6’000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

[9] The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain

new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

“Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7]
"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular;
"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection;
"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey;
"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies;
"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom;
"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet;
"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities;
"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts;
"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the “connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law;
"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing

an innovation entirely at variance with firmly established precedent; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6'000 Turkish pounds;

.....

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect:

"That, under the rules of international law and the Convention respecting conditions of residence and

business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts;

"That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6, 000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

“1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

“2.-Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

“3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S. S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases.

“4.-The Boz-Kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of criminal procedure for trial-which is borrowed from France-lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover ' is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.-Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has Jurisdiction to institute criminal proceedings.
"6.-As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter.
"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

[11] During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded.

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings

must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd.

[15] At the time of the collision, the officer of the watch on board the Lotus was Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-Kourt were directed by its captain, Hassan Bey, who was one of those saved from the wreck.

[16] As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the Lotus; and on the following day, August 4th, the captain of the Lotus handed in his master's report at the French

Consulate-General, transmitting a copy to the harbour master.

[17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (arrestation preventive), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieutenant Demons submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6'000 Turkish pounds.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two

pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in Turkey".

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

[22] As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". [p12]

[23] The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October

12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW

I.

[24] Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. – The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of

criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

[28] 3. – The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary

manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have

been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court.

[30] 5. – The prosecution was instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based; the French Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

[31] Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:

[Translation]
"Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.
"Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.
"If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that:
"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years;
"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

[32] Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether

or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on Turkish territory. [p16]

II.

[33] Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

[34] It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and

business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

[35] This clause is as follows:

"Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law."

[36] The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation [p17] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction - not only criminal but also civil - between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modem international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations “in every respect". In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

[38] Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the

representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate - and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction - stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

[39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

[40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p18]

III.

[41] The Court, having to consider whether there are any rules of international law which may have been violated by

the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the

achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

[47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.
In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

[48] It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the

impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

[51] This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of

jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. [p21]

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of

ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supposing that it existed-the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

[57] The arguments advanced by the French Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.
(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.
(3) Lastly, this principle is especially applicable in a collision case.

*
* *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteristic features of the situation of fact are as follows: there has been a collision on the high seas between two vessels flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other.

[60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of

commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24]

[61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national,

the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

[62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on

States this reading of the conception of the offence of manslaughter.

*
* *

[63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

[65] But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority, upon it, and no other State may do so. All that can be said is that by virtue of the

principle of the freedom of the seas, a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its, effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent.

[66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the

country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved.

[68] In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable.

[69] In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and

that consequently they are not of much importance in the case before the Court. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

[70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United [p27] States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

*
* *

[74] It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings

regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

[75] In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions

of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the French Government have been able to cite the Ortigia-Oncle-Joseph case before the Court of Aix and the Franconia-Strathclyde case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the Ortigia-Oncle-Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts have been cited in support of the opposing contention.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests: their conduct does not appear to

have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice that the French Government in the Ortigia-Oncle-Joseph case and the German Government in the Ekbalana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to

the localization of an offence, the author of which is situated in the territory of one [p30] State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

[82] In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

[83] In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings

are exclusively within the jurisdiction of the State whose flag is flown.

[85] This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

[86] The offence for which Lieutenant Demons appears to have been prosecuted was an act – of negligence or imprudence – having its origin on board the Lotus, whilst its effects made themselves felt on board the Boz-Kourt. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect [p31] of the incident as a whole. It is therefore a case of concurrent jurisdiction.

*
* *

[87] The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding Turkey from instituting the prosecution which was in fact brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the

international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, Turkey, by instituting, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement.

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the offences. [p32]

V.

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship Lotus and she Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction;
(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if

Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

[91] This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto. [p33]

[92] Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(Signed) Max Huber,
President.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(Initialled) M. H.
(Initialled) A. H. [p34]

This page was intentionally left blank.

3

On Tuesday night, exactly at 23.05

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] On Tuesday night, exactly at 23.05, while we were continuing on our route with a speed of six miles off the shores of Lesbos through the Sığrı (Megalonisi) Lighthouse. By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] The Lotus Steamer was coming from İzmir, the Sakız Strait. According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having

involved the death of eight Turkish sailors and passengers? According to the navigation both they and we were supposed to follow the right-hand sides.

(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?" While we were going on about the right side, Lotus was approaching with a speed of fifteen miles.

[3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any. We thought it would turn towards right.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute. But it came terribly close.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties. Meanwhile our captain sounded the siren twice and we screamed. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex. Immediately in a couple of minutes Lotus ordered hard-to-starboard and ran into us.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court. It crashed right into the middle where the steamer's engine component was situated. They have done so by formulating more or less developed conclusions summarizing their arguments. Bozkurt was split in half in three seconds. Thus the French Government, in its Case, asks for judgment to the effect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts; The quarter deck was diving into water in such a short amount of time to allow one to count "one, two, three".

"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so

doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law; Lotus was changing direction at full speed.

"Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6’000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic." But alas, the damage was done, the steamer was split, and the boiler had exploded.

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts". Right after the boiler exploded, two shooters, Hasan from Göreme and Ahmet from Sinop were burned, we were thunderstruck in the face of this situation.

[9] The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

“Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923. As

the Lotus Steamer had understood its mistake and tried to go back on the sea, Bozkurt's fore was swirling above the water since it was split from the line of the storehouse divisions; [p7]

"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular. It was being filled with water suddenly and sinking into the water slowly and bit by bit every other second;

"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection. I was just astonished;

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey. Shortly after I saw in the quarter deck that Aslan Mehmet from Sürmene and the Arab Ibrahim from the crew were smashed into the bottom of the quarter deck pole;

"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or

offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence. While the quarter deck was sinking fast, İbrahim was confused and he was holding the pole tight;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies. He disappeared into the water, Aslan Mehmet jumped on top of the pole and dived into the water;

"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom. Second “Çernici” Nizamettin Efendi, who was stuck in the quarter deck, wanted to throw himself from there to the Lotus Steamer and hold the chain;

"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet. But he fell into the sea;

"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities. A black

Englishman from Lotus threw him a life vest and saved him;

"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts. Mr Tahsin, who was the coal officer retired from the navy, was sleeping in the cabin in the quarter deck;

"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the “connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law. He disappeared into the water with Steward Osman;

"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent. Those who are all saved now fell into the sea and made an effort constantly; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question. I and Hakkı from İstanbul stayed in the fore for half an hour;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved. While the fore was sinking, Hakkı was not aware that he was also sinking, and he held the iron bar tight;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed. He sank into the sea, just like that;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923. I held on to a piece of wood and swam for approximately half an hour;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage. Then the evacuation boat of the Lotus Steamer caught up and I was saved;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6'000 Turkish pounds. When they saved us from the sea and let on the Lotus Steamer, they treated us well;

.....

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect:

"That, under the rules of international law and the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts. They gave us food and asked how we were;

"That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention. But when we came here those from Lotus did not even look at our faces and did not give us a chance even today."

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6, 000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons. Those who were saved from the crew of the Bozkurt Steamer were as follows: Captain Hasan the Skipper,

“Çernicibaşı” Halil, Second “Çernici” Nizamettin Bey, Asaf from the enginery, Mustafa from the crew, Hacı Kadir, Mehmet, Aslan Mehmet, Mustafa Ağa.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved. Those who were drowned were as follows: Second Captain Hasan, coal officer Tahsin and İsmail from Sinop of the crew, Ahmet, İbrahim, Hakkı, Hasan, Osman Efendi."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

“1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. When we approached the Sığrı Lighthouse by approximately three-four miles I saw a light at a seven-eight miles distance from a faraway coast by the starboard. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. The time was eleven pm. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner

contrary to the principles of international law. I looked with binoculars.

“2.-Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law. I gathered that it was a steamer.

“3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S. S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases. After both steamers approached each other I saw the green light of that steamer.

“4.-The Boz-Kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of criminal procedure for trial-which is borrowed from France-lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover is confirmed by the doctrines and legislation of all countries. The distance between the two steamers was approximately three miles. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction. Since I was able to see its green light, I assumed that it could see ours too, so I continued my course.

"5.-Even if the question be considered solely from the point of view of the collision, as no principle of

international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has Jurisdiction to institute criminal proceedings. All of our electric communication lights, both red and green, were on.

"6.-As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter. Only the lantern on top of the main pole was lit by oil.

"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts. When the steamer across approached us, it suddenly turned towards our direction and showed its three lights, which are red, green and masthead, ahead of our right-hand side."

[11] During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded. I gathered that it was going to come our way and

intercept us, so I immediately sounded two short sirens and tried to explain that it shouldn't go portside since we were going that direction.

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. I told the quartermaster to position our ship at portside. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered. Because if I turned starboard, I would stand in its way and I would cause a collision.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The distance was not enough to prevent the accident by even stopping the ship or going astern. The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished. The safest way out was to go portside. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August

3rd. But the steamer across us did not change its course at all and continued with all its speed, then suddenly crushed into our boilers from the starboard and split our steamer in half.

[15] At the time of the collision, the officer of the watch on board the Lotus was Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-Kourt were directed by its captain, Hassan Bey, who was one of those saved from the wreck. When it was coming from İzmir to İstanbul on the evening of the second day of the month, into the evening, The Lotus Steamer saw a steamer around Lesbos, which was later identified to be the Bozkurt Steamer.

[16] As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the Lotus; and on the following day, August 4th, the captain of the Lotus handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master. While both ships were on their course and therefore there was no reason for a collision to take place, suddenly, the aforementioned Bozkurt Steamer was seen to have changed its course and come over us, as the result of a maneuver the reasons of which are completely unknown to us.

[17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. Although every maneuver scientifically and materially possible to prevent the collision at such a moment was

made, unfortunately the collision could not have been prevented and it occurred as a complete result of error and wrong move. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. We are astonished that they can request a captain who caused a whole Turkish ship sink and the disastrous death of eight persons to be tried in France. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (arrestation preventive), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course. This shows that Europeans still have not comprehended Turkey and, under the impact of the old mindset, they requested the intervention of the French Government.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th. These times have long passed and have become history with the ruins of the incompetent Ottoman Empire. On that occasion, Lieutenant Demons submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. Consequently, courts of the Republic will try both culprits of this disaster which claimed the lives of eight Turks and identify the actual culprit. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this

request was complied with on September 13th, the bail being fixed at 6’000 Turkish pounds. The time was eleven pm.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. I saw a beam of light on the horizon. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days’ imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty. The distance between us was around 6-7 miles.

[20] It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in Turkey". I noticed that it was a ship.

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts. It was coming closer and closer.

[22] As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". Finally, we arrived at a distance of approximately 1,5 miles. [p12]

[23] The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926. Then I saw its red light.

THE LAW

I.

[24] Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. I slightly tended to right. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the

Court must have recourse in establishing the precise points which it has to decide. Shortly after, the distance was even less. In this respect the following observations should be made:

[25] 1. – Bozkurt made no changes. The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account. But then all of a sudden it changed its direction.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. The distance between us was now down to half a mile. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts exercising criminal jurisdiction. I felt the need of making a maneuver. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case. I gave the order of sternway to the right propeller.

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law; it need not therefore consider whether, apart from the

actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. Because I was constantly seeing the red light of Bozkurt. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case. Soon after it suddenly turned towards left.

[28] 3. – The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight Turkish sailors and passengers. The red light disappeared and in the matter of a moment Bozkurt was in front of me. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary manslaughter. The danger was way too close, the “Commander” had yelled “go astern!” to me from the bridge. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. Whereas I had already done that and at that moment had given the order also to the left propeller. The precedents cited by it and relating to

collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. But it was not possible to decelerate and avoid the accident. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Because a ship like Lotus can navigate for (12) hours even after its engines are suddenly turned around. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist. Consequently, I made the maneuvers that were needed to be done.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. As for the sections of the Law on the Prohibition of Maritime Collisions: Section 31 is of no relevance to me. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code.

Sections 37 and 39 are the responsibility of the other party. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). Therefore, I am not culpable on that regard as well. In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court. The accident took place on a high sea which is not under the sovereignty of any land or state.

[30] 5. – The prosecution was instituted in pursuance of Turkish legislation. The culprits of such accidents are tried by the courts of the state with which the ship in question is registered. The special agreement does not indicate what clause or clauses of that legislation apply. Notwithstanding that Section 6 of the Turkish Penal Code, of which I am aware, concerns this matter, it contains a proviso of “foreign countries”. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based; the French Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that

that article is in conformity with the principles of international law. However, the accident took place on the high sea which is not considered a foreign country. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article. Accordingly, it is not in accordance with the law that I stand trial here.

[31] Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:

[Translation]

"Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. Therefore, I request a decision to be rendered on this matter in the first place. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.

"I was sleeping. Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party. "I heard the voice of Captain Hasan. If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice,

in accordance with the provisions set out in the first paragraph of this article, provided however that:

"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years. He was yelling: “The ship is coming over us!”;

"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country. I got up right away."

[32] Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. Captain Hasan sounded two sirens. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. But the other one did not cut its speed at all. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. I was going to hang on to the port light of Lotus, but it went by fast. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied

upon by Turkey to justify it. I couldn’t hold on to it and I threw myself into the sea. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on Turkish territory. [p16]

II.

[33] My friend Hakkı did not know how to swim. Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

[34] He wasn’t jumping into the sea because he was afraid that sharks would eat him. It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

[35] Because of that, he drowned. This clause is as follows:

"Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law. I was the quartermaster of Bozkurt."

[36] The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. That night, at 8, I handed over the shift to Mehmet and went to bed. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. I heard two tragic sirens in between my sleep.

This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. What could that be in the middle of the high sea. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne. I supposed that it must have been the sign of an accident.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. I left right away by getting my coat and hat. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. Right at that moment Lotus bumped into us.

This interpretation [p17] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction - not only criminal but also civil - between the contracting Parties, subject only to the exception provided for in Article 16. With the force of the bump, I stumbled five-ten steps forward and fell on the floor, facedown.

Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modem international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations “in every respect". Meanwhile all the water rushed in. In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the

contracting Parties. The propeller of Lotus was constantly running.

[38] Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. But I don't know whether it was back or forth? It is true that the representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. I ask this to be done after the questioning is completed, for now the matter should be resolved between the two parties. But only the British delegate - and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction - stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France. I request this be asked to Jan Demons: When he kept abreast in Sığrı Lighthouse, what was his distance from inland?

[39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit

this jurisdiction in any way. The captain of Lotus says that he did not see the light of the ship in front of him until it came as near as two miles.

[40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. However, it is expected to see the red light of Bozkurt from three-four miles away. [p18]

III.

[41] The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. Lotus did its part way too late. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. As for Bozkurt, it sees the green light from afar, thinks that it is up to it to maneuver, and once Lotus orders hard-to-starboard three lights appear. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings. So, Bozkurt thinks it is up to it to maneuver.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law. If during those minutes both ships had understood each other's maneuvers, it would have been perfectly possible to avoid the accident.

[44] International law governs relations between independent States. Let us assume that the captain of Lotus did not hear the siren, then he should have investigated on its own the reason why the red light was [of Lotus?] missing and accordingly, he would have understood that the other party had made a wrong maneuver. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. In my opinion, there is negligence on both sides. Restrictions upon the independence of States cannot therefore be presumed. I was sleeping with my clothes.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. I suddenly heard two sirens. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention. This was the siren of our ship as it was described.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. I got up right away. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. What I saw was a steamer approaching. But this is certainly not the case under international law as it stands at present. I ran to the deck head. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the

principles which it regards as best and most suitable. Our captain was yelling: ‘What kind of a captain is that‘?

[47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States. I am escaping to port, he is turning to starboard, coming over us!” Our captain’s yelling was mixed with the loud screams of the rest of the crew. In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty. By the time I got out of my cabin and arrived at the deck head, “Lotus” bumped into us.

[48] It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. When it hit us, I rolled down, stupefied by the force of the crushing, everyone having lost themselves on the scene trying to survive.

Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction. I found a piece of wood.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual. I started to get away.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. There were lifeguards. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no

means coincides with territorial sovereignty. But who was thinking of that, out of rush, confusion.

[51] This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. The way “Lotus” came over really scared us, the crush blew our minds. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. It was coming so fast, the moment it hit, our ship was wrecked. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. It was way too fast; at least 10 miles, it slowed down after crushing us. [p21]

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. I gathered this from the bubbles the steamer left on the water. The same is

true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. Because I have been a sailor for 30 years. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. I worked at all types of steamers. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. I can understand their speed with a single look only with a small margin of error. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. Lotus was both coming fast and forward. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be

necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supposing that it existed-the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. After its engines crushed us, it took a turn. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons. I gathered that from the fact that the rope on our stern was rolled around the left propeller of Lotus.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case. Indeed, they removed that rope in İstanbul with the help of a diver.

[57] The arguments advanced by the French Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel. We were in the cigarette room.

(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas. Suddenly there was a collision.

(3) Lastly, this principle is especially applicable in a collision case. Everybody panicked.

*

* *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for. Passengers jumped out of the beds, yelling and crying: it was chaos.

[59] As has already been observed, the characteristic features of the situation of fact are as follows: there has

been a collision on the high seas between two vessels flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other. So much so that calming down the people in the steamer took an hour's work.

[60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. Meanwhile we looked at the sea, a steamer in 100 meters distance was sinking. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Life vests and evacuation boats were sent down. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. Those in the sea were collected. But no such rule of international law exists. An American said that the shipmaster of Lotus was drunk. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. But did not ascertain that. On the contrary, it is certain that the courts of many countries,

even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. My client Messier Demons is accused of being inexperienced. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. However, Messier Demons worked as a navigator in the English Channel and other big seas. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. On the other hand, it was the first time Captain Hasan sailed to Mediterranean. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Captain Hasan submits that during the moment of first collision with the Lotus Steamer, 3-4 seconds passed. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason

preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. We submit that it was not 3-4 seconds, but 4-5 seconds. [p24]

[61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. We prove this point with such ease, and Captain Hasan's statement is completely enough for sabotaging this. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. Captain Hasan cannot simply say "I was going right, you go left; I was going left, you go right". The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises. Bozkurt sees the maneuver of Lotus, becomes uneasy of it, thinks it is

coming over it, gets puzzled and makes the terrible maneuver.

[62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. We explained why we did not go astern. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. Messier Demons did not go astern according to his wish. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. He considered it appropriate to use the starboard machine rather than going astern. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter. Even if that was an error, is my client responsible?

*
* *

[63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. In

dangerous moments like these, whatever can be thought of is done. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. As long as something is done, it is definitely not a crime to not be able to find the best of maneuvers which was necessary under unknown circumstances. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. My client did whatever he could, he thought that this last maneuver was accurate. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law. The fact that my client did not sound the siren and did not make the maneuver on time is given as the reason to his negligence.

[65] But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. Even if that was true, could these acts possibly be punished according to section 383 of the penal code. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority, upon it, and no other State

may do so. Before, these cases would have resulted in a six-month prison penalty, the new penal code identified the penalty for this act. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. I leave it to your discretion to decide whether not sounding the siren is an act worthy of being penalized by a one-year prison penalty. If, therefore, a guilty act committed on the high seas produces its, effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent. I was very pleased with my situation in the prison.

[66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. Of course, I am more pleased now. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose

to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against. I met Captain Hasan through this incident.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved. But I believe we have become good friends.

[68] In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. As per my return to my home, I came today to thank you and say farewell. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. Unfortunately, I could not find you. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high

seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable. I hereby consider it my duty to express my gratitude.

[69] In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and that consequently they are not of much importance in the case before the Court. I once again give my thanks and ask for the acceptance thereof, dear Sir. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator. The Assize Court started trying the culprits of the Bozkurt catastrophe which occurred off the shores of Lesbos.

[70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Even when it was only 10.05, the court room was filled with a crowd which was rarely witnessed in morning hearings. Thus Great Britain refused the request of the United [p27] States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the

United States but that she was entitled to exercise hers concurrently. Messier Jan Demons and Captain Hasan arrived in front of two gendarmeries and sat in the section reserved for the accused. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted. The French Captain was attracting attention with his combed hair and ironed clothing which was white as paper.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner. He was a total French type with his kind attitudes and charming features.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Captain Hasan was wearing a clean and neat navy-blue dress. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the

seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. It was clear from his face and the way he acted that he was a Turk with a kind heart. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States. The only difference between the two captains was that one of them was fairly worldly-wise, whereas the other one was a young captain who was only around 27-28 ages old.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons. Shortly after the panel of judges entered the courtroom.

*

* *

[74] It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown. Everybody rose.

[75] In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. The Presiding Judge was Mr Ali Fehmi, and the counsel for the prosecution was Mr Cemil. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases. The counsels of the accused were also present.

[76] In the Court's opinion, this conclusion is not warranted. Thus, the trial had begun. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. Subsequently the accused were questioned. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true. Their identities were verified.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. They were accused with the accident. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Intervening to this accusation on the side of the prosecution was Safiye, the wife of İsmail Efendi, the quartermaster of Bozkurt who drowned during the accident; Mrs. Şevket, from the family of Mr Tahsin who was the coal officer; and İsmail Efendi, the uncle of the Second Captain Hasan Efendi who was, again, drowned. Whilst the French Government have been able to cite the Ortigia-Oncle-Joseph case before the Court of Aix and the Franconia-Strathclyde case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the Ortigia-Oncle-Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts have been cited in support of the opposing contention. All of the complainants were asking for ten thousand liras each for non-pecuniary damages.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. However, the matter of from whom the damages were asked was controversial: some were asking it from the Lotus company, whereas some from the owners of

Bozkurt. The Court does not think it necessary to stop to consider them. Captain Hasan submitted that as he went ahead following the coast, he saw two masthead lights from a distance of 7-8 miles when he looked through binoculars. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government. He noticed the green light of Lotus when he approached as far as 3 miles.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests: their conduct does not appear to have differed appreciably from that observed by them in all cases of concurrent jurisdiction. He continued on his course by positioning the ship on the left. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. They got even closer as he continued. It seems hardly probable, and it would not be in accordance with international practice that the French Government in the Ortigia-Oncle-Joseph case and the German Government in the Ekbalana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought

that this was a violation of international law. Lotus changed its course all of a sudden.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision. Captain Hasan had gathered this from the fact that three lights were not visible, and he had sounded two short sirens.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. That meant "turn towards left". This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offence, the author of which is situated in the territory of one [p30] State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). However, Lotus had not paid attention to this siren. This development of English case-law tends to support the view that international law leaves States a free hand in this respect. During his questioning, Captain Hasan had stated that Lotus came over to him at full speed and hit on

the boilers, and with the impact of the crush he found himself in the sea.

[82] In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship. He had submitted that there was no possibility to stop the ship and five-ten minutes would have been needed in order to retreat.

[83] In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. However, Lotus could have done that and if it indeed had, the accident could have been prevented even though not fully, partially and that the incident could have remained as a small collision, according to his account. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression. Even before the gates of the courtroom were opened, a whole bunch of people, women, men, soldiers, civilians had gathered in the corridor.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown. When the gates were opened these people filled in the courtroom.

[85] This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered. Never in a morning hearing – even in the first hearing of this case – was there such a crowd before.

[86] The offence for which Lieutenant Demons appears to have been prosecuted was an act – of negligence or imprudence – having its origin on board the Lotus, whilst its effects made themselves felt on board the Boz-Kourt. The court's seats preserved for state officials were opened and they were occupied by the officers of the Japanese ships which were then guests in İstanbul; legal adviser Messier Antuan, who was the İstanbul Agent of Messageries Maritimes Company; French dignitaries who were told to have come from France on a special mission; and some professors from the law faculty. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Very elegant and polite women took their seats in the section reserved for women, as well as many journalists in the press section and senior officers of the courthouse and lawyers in the remaining parts of the courtroom. Neither the exclusive jurisdiction of either State, nor the

limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. At 10.30 the detainees were brought in front of two gendarmeries. It is only natural that each should be able to exercise jurisdiction and to do so in respect [p31] of the incident as a whole. Captain Hasan sat down in his place with a relaxed and confident look. It is therefore a case of concurrent jurisdiction. He was wearing a clean, navy-blue dress.

*
* *

[87] The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding Turkey from instituting the prosecution which was in fact brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. He was followed by Monsieur Jan Demons. The result of these researches has not been to establish the existence of any such principle. He was wearing an ironed navy dress which was white as snow and straight as paper again and carrying a big French journal along with his

papers. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Shortly thereafter the gates were opened. Consequently, Turkey, by instituting, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement. Mr Fuat Hulusi, the Prosecutor of İstanbul has arrived and sat down in the part allocated to the prosecution.

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of Turkish jurisdiction. Then the gates were opened again, and everyone rose. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the offences. The panel of judges, led by the President Mr Ali Fehmi, entered the courtroom. [p32]

V.

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons. The hearing was long and exciting

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship Lotus and she Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction;

(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation

which might have been due to Lieutenant Demons if Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

[91] This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto. It started at 10.30 and continued until 17.00 in the evening. [p33]

[92] Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties. The whole hearing took exactly five and a half hours, including the one-hour break taken between the two sessions.

(Signed) Max Huber,
President.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter. The panel of judges was slightly changed.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal

proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion. Subsequently, two reports submitted by the Technical Committee were read out.

(Initialled) M. H.
(Initialled) A. H. [p34]

4

The collision, which will occur

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which will occur on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which will occur on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt going to involve the death of eight Turkish sailors and passengers?

(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to

the principles of international law, reparation should be made in similar cases?"

[3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court. They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the

French Government, in its Case, asks for judgment to the effect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which will occur on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts;
"Consequently, the Turkish judicial authorities will be wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which will occur on the high seas between the Lotus and the Boz-Kourt, and by so doing will act in a manner contrary to the above-mentioned Convention and to the principles of international law;
“Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6’000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

[9] The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited

in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

“Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7]
"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular;
"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection;
"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey;
"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence;
"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view

of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies;
"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom;
"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet;
"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities;
"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts;
"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the "connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law;
"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demons are going to be the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed;

"As his imprisonment is going to last for thirty-nine days, there going to be delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923;

"As his prosecution is going to be followed by a conviction calculated to do Monsieur Demons at least moral damage;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, are going to make his release conditional upon bail in 6'000 Turkish pounds;

.....

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect:

"That, under the rules of international law and the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings

against the officer of the watch of a French ship, in connection with the collision which will occur on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts;
"That, consequently, the Turkish judicial authorities are going to be wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which will occur on the high seas between the Lotus and the Boz-Kourt, and by so doing will act in a manner contrary to the principles of international law and to the above-mentioned Convention;
"Accordingly, the Court is asked to fix the indemnity in reparation of the injury that will be inflicted on Monsieur Demons at 6, 000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.
"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

“1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

“2.-Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

“3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence is going to be committed being the S. S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases.

“4.-The Boz-Kourt-Lotus case being a case that will involve "connected" offences (delits connexes), the Code of criminal procedure for trial-which is borrowed from France-lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover, is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.-Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has jurisdiction to institute criminal proceedings.
"6.-As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, will be guilty of manslaughter.
"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

[11] During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded.

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings

must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair is going to originate are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision will occur between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which will be cut in two, will sink, and eight Turkish nationals who are on board will perish. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus will continue on its course to Constantinople, where it will arrive on August 3rd.

[15] At the time of the collision, the officer of the watch on board the Lotus will be Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-Kourt will be directed by its captain, Hassan Bey, who will be one of those saved from the wreck.

[16] As early as August 3rd the Turkish police will proceed to hold an enquiry into the collision on board the Lotus; and on the following day, August 4th, the captain of the Lotus will hand in his master's report at the French

Consulate-General, transmitting a copy to the harbour master.

[17] On August 5th, Lieutenant Demons will be requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally will result in delaying the departure of [p11] the Lotus, will lead to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. This arrest, which is going to be characterized by the Turkish Agent as arrest pending trial (arrestation preventive), will be effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, will follow its normal course.

[18] The case will first be heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieutenant Demons will submit that the Turkish Courts are not going to have jurisdiction; the Court, however, will overrule his objection. When the proceedings will be resumed on September 11th, Lieutenant Demons will demand his release on bail: this request will be complied with on September 13th, the bail being fixed at 6'000 Turkish pounds.

[19] On September 15th, the Criminal Court will deliver its judgment, the terms of which will not have been communicated to the Court by the Parties. It is, however, common ground, that it will sentence Lieutenant Demons

to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic will enter an appeal against this decision, which will have the effect of suspending its execution until a decision upon the appeal will be given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, is not going to have the effect of suspending "the criminal proceedings .... now in progress in Turkey".

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once will give rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

[22] As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". [p12]

[23] The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this

special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW

I.

[24] Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. – The collision which will occur on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, will take place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts going to exercise criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

[27] The Parties agree that the Court has not to consider whether the prosecution is going to be in conformity with Turkish law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities are really going to be applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons will be conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

[28] 3. – The prosecution was instituted because the loss of the Boz-Kourt will involve the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question;

secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons will perish do not appear from the documents submitted to the Court; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship are going to be prosecuted jointly and

simultaneously. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, will be regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court.

[30] 5. – The prosecution is going to be instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution is going to be based; the French Government however declares that the Criminal Court is going to claim jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings

whether the prosecution will be instituted solely on the basis of that article.

[31] Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:
[Translation]
"Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.
"Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.
"If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that:
"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years;
"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

[32] Even if the Court must hold that the Turkish authorities will seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on Turkish territory. [p16]

II.

[33] Having determined the position resulting from the terms of the special agreement, the Court must now

ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

[34] It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

[35] This clause is as follows:

"Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law."

[36] The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a

declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons will be contrary to the intention which guided the preparation of the Convention of Lausanne.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation [p17] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction - not only criminal but also civil - between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modem international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations “in every respect". In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

[38] Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate - and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction - stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

[39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

[40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p18]

III.

[41] The Court, having to consider whether there are any rules of international law which will be violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether Turkey will act contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which are going to be violated by such proceedings.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as

expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain

cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

[47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.
In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

[48] It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in

practice, it would therefore in many cases result in paralysing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

[51] This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in

conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. [p21]

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supposing that it existed-the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the

Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

[57] The arguments advanced by the French Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.
(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.
(3) Lastly, this principle is especially applicable in a collision case.

*
* *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it

is only in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteristic features of the situation of fact are as follows: there will be a collision on the high seas between two vessels flying different flags, on one of which will be one of the persons alleged to be guilty of the offence, whilst the victims will be on board the other.

[60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have

given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution is going to be instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24] [61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances

constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution could be based on another provision of Turkish law which will not be contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself will be contrary to them. The fact that the judicial authorities may committ an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

[62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow

that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter.

*
* *

[63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

[65] But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority, upon it, and no other

State may do so. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its, effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent.

[66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the

country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved.

[68] In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable.

[69] In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and

that consequently they are not of much importance in the case before the Court. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

[70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United [p27] States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

*
* *

[74] It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings

regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

[75] In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions

of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the French Government have been able to cite the Ortigia-Oncle-Joseph case before the Court of Aix and the Franconia-Strathclyde case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the Ortigia-Oncle-Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts have been cited in support of the opposing contention.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests: their conduct does not appear to

have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice that the French Government in the Ortigia-Oncle-Joseph case and the German Government in the Ekbalana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to

the localization of an offence, the author of which is situated in the territory of one [p30] State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

[82] In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

[83] In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings

are exclusively within the jurisdiction of the State whose flag is flown.

[85] This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

[86] The offence for which it appears Lieutenant Demons is going to be prosecuted will be an act – of negligence or imprudence – goign to have its origin on board the Lotus, whilst its effects will make themselves felt on board the Boz-Kourt. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect [p31] of the incident as a whole. It is therefore a case of concurrent jurisdiction.

*
* *

[87] The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding Turkey from instituting the prosecution which will in fact be brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the

international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, Turkey, by going to institute, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, will not, in the absence of such principles, act in a manner contrary to the principles of international law within the meaning of the special agreement.

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the offences. [p32]

V.

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

(1) that, following the collision which will occur on August 2nd, 1926, on the high seas between the French steamship Lotus and she Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt going to involve the death of eight Turkish nationals, Turkey, by going to institute criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, will not act in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction;
(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might be due to Lieutenant Demons if Turkey, by

going to prosecute him as above stated, would acted in a manner contrary to the principles of international law.

[91] This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto. [p33]

[92] Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(Signed) Max Huber,
President.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(Initialled) M. H.
(Initialled) A. H. [p34]

This page was intentionally left blank.

5

The Case of the S.S. "Lotus" (Turkey v. France)

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

Turkey v. France

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

Turkey represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
France represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the Turkish and French Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has France, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the Turkish steamer Lotus and the French steamer Boz-Kourt and upon the arrival of the Turkish steamer at Constantinople as well as against the captain of the French steamship-joint criminal proceedings in pursuance of French law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight French sailors and passengers?

(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"

[3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court.

They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the Turkish Government, in its Case, asks for judgment to the effect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a Turkish ship, in connection with the collision which occurred on the high seas between that vessel and a French ship, belongs exclusively to the Turkish Courts;
"Consequently, the French judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law;
“Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6’000 French pounds and to order this indemnity to be paid by the Government of the French Republic to the Government of the Turkish Republic."

[8] The French Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the French Courts".

[9] The Turkish Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain

new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the Turkish Government; the new arguments and conclusions are as follows:

“Whereas the substitution of the jurisdiction of the French Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7]
"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by Turkey in particular;
"As this refusal follows from the rejection of a French amendment calculated to esFrench this jurisdiction and from the statements made in this connection;
"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the French Courts to take cognizance of criminal proceedings directed against a Turkish citizen for crimes or offences committed outside France;
"Furthermore, whereas, according to international law as esFrenched by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies;
"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom;
"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet;
"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities;
"As the collision cannot, in order thus to esFrench the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts;
"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the “connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law;
"Whereas a contrary decision recognizing the jurisdiction of the French Courts to take cognizance of the criminal proceedings against the officer of the watch of the Turkish ship involved in the collision would amount to introducing

an innovation entirely at variance with firmly esFrenched precedent; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to France, cannot be disputed;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage;

"As the French authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6'000 French pounds;

.....

"Asks for judgment, whether the Government of the French Republic be present or absent, to the effect:

"That, under the rules of international law and the Convention respecting conditions of residence and

business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a Turkish ship, in connection with the collision which occurred on the high seas between that ship and a French ship, belongs exclusively to the Turkish Courts;

"That, consequently, the French judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6, 000 French pounds and to order this indemnity to be paid by the Government of the French Republic to the Government of the Turkish Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved."

[10] The French Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the Turkish Counter-Case:

“1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the French Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, France, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

“2.-Article 6 of the French Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

“3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S. S. Boz-Kourt flying the French flag, France's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases.

“4.-The Boz-Kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of criminal procedure for trial-which is borrowed from Turkey-lays down that the Turkish officer should be prosecuted jointly with and at the same time as the French officer; this, moreover ' is confirmed by the doctrines and legislation of all countries. France, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.-Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar France from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has Jurisdiction to institute criminal proceedings.
"6.-As France is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the Turkish Case does not arise for the French Government, since that Government has jurisdiction to prosecute the Turkish citizen Demons who, as the result of a collision, has been guilty of manslaughter.
"The Court is asked for judgment in favour of the jurisdiction of the French Courts."

[11] During the oral proceedings, the Agent of the Turkish Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded.

[12] For his part, the Agent for the French Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings

must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the Turkish mail steamer Lotus, proceeding to Constantinople, and the French collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight French nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd.

[15] At the time of the collision, the officer of the watch on board the Lotus was Monsieur Demons, a Turkish citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-Kourt were directed by its captain, Hassan Bey, who was one of those saved from the wreck.

[16] As early as August 3rd the French police proceeded to hold an enquiry into the collision on board the Lotus; and on the following day, August 4th, the captain of the Lotus

handed in his master's report at the Turkish Consulate-General, transmitting a copy to the harbour master.

[17] On August 5th, Lieutenant Demons was requested by the French authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the Turkish Consul-General - and Hassan Bey, amongst others. This arrest, which has been characterized by the French Agent as arrest pending trial (arrestation preventive), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieutenant Demons submitted that the French Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6'000 French pounds.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two

pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the Public Prosecutor of the French Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in France".

[21] The action of the French judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the Turkish Government or its representatives in France, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the French Courts to the Turkish Courts.

[22] As a result of these representations, the Government of the French Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". [p12]

[23] The Turkish Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October

12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW

I.

[24] Before approaching the consideration of the principles of international law contrary to which France is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in esFrenching the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. – The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the Turkish flag, and the S. S. Boz-Kourt, flying the French flag, took place on the high seas: the territorial jurisdiction of any State other than Turkey and France therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of

criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the French Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether France has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with French law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of French law cited by French authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

[28] 3. – The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight French sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary

manslaughter. The Turkish Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under French law; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight French nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the Turkish Government has not contended that this relation of cause and effect cannot exist.

[29] 4. – Lieutenant Demons and the captain of the French steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (connexite), the French Agent in the submissions of his Counter-Case has referred to the French Code of criminal procedure for trial, the provisions of which are said to have

been taken from the corresponding Turkish Code. Now in Turkish law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the French vessel in regard to which the jurisdiction of the French Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the French authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of French criminal law, be entrusted to the same court.

[30] 5. – The prosecution was instituted in pursuance of French legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been submitted to the Court indicating on what article of the French Penal Code the prosecution was based; the Turkish Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the French Penal Code, and far from denying this statement, France, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

[31] Article 6 of the French Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:

[Translation]
"Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of France or of a French subject, for which offence French law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the French Penal Code provided that he is arrested in France. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.
"Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.
"If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that:
"(1) the article in question is one for which French law prescribes a penalty involving loss of freedom for a minimum period of three years;
"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

[32] Even if the Court must hold that the French authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether or not

the principles of international law prevent France from instituting criminal proceedings against Lieutenant Demons under French law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the French authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by Turkey to be contrary to those principles. Thus the Turkish Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by France to justify it. The arguments put forward by the Turkish Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute France's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the French Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on French territory. [p16]

II.

[33] Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

[34] It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and

business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

[35] This clause is as follows:

"Subject to the provisions of Article 16, all questions of jurisdiction shall, as between France and the other contracting Powers, be decided in accordance with the principles of international law."

[36] The Turkish Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the French Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under French law, such crimes were within the jurisdiction of French Courts. This amendment, in regard to which the representatives of Turkey and Italy made reservations, was definitely rejected by the British representative; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The Turkish Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation [p17] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction - not only criminal but also civil - between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modem international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations “in every respect". In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

[38] Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the representatives of Turkey, Great Britain and Italy rejected

the French amendment already mentioned. But only the British delegate - and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction - stated the reasons for his opposition to the French amendment; the reasons for the Turkish and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by Turkey.

[39] It should be added to these observations that the original draft of the relevant article, which limited French jurisdiction to crimes committed in France itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

[40] The two opposing proposals designed to determine definitely the area of application of French criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p18]

III.

[41] The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of French law of Lieutenant

Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The Turkish Government contends that the French Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of France. On the other hand, the French Government takes the view that Article 15 allows France jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether France has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit France to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and esFrenched in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

[47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.
In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

[48] It follows from the foregoing that the contention of the Turkish Government to the effect that France must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between France and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

[51] This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which,

except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. [p21]

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law esFrenching it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing France to prosecute a foreigner for an offence committed by him outside France, it is necessary to begin by esFrenching both that the system is well-founded and that it is applicable in the particular case. Now, in order to esFrench the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited France, in the circumstances of the case before the Court, from

prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not esFrenched by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supposing that it existed-the fact that it had been esFrenched that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting France from prosecuting Lieutenant Demons.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the Turkish Government, without however omitting to take into

account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

[57] The arguments advanced by the Turkish Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim; and such is the situation in the present case because the offence must be regarded as having been committed on board the Turkish vessel.
(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.
(3) Lastly, this principle is especially applicable in a collision case.

*
* *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteristic features of the situation of fact are as follows: there has been a collision on the high seas between two vessels

flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other.

[60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade France to take into consideration the fact that the offence produced its effects on the French vessel and consequently in a place assimilated to French territory in which the application of French criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of

the offence, and more especially its effects, have taken place there. Turkish courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the French vessel, it becomes impossible to hold that there is a rule of international law which prohibits France from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the Turkish ship. Since, as has already been observed, the special agreement does not deal with the provision of French law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24]

[61] Nevertheless, even if the Court had to consider whether Article 6 of the French Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law,

since the prosecution might have been based on another provision of French law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

[62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of French criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has esFrenched a rule imposing on States this reading of the conception of the offence of manslaughter.

*
* *

[63] The second argument put forward by the Turkish Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

[65] But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority, upon it, and no other State may do so. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the

State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its, effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent.

[66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, esFrenched the exclusive jurisdiction of the State whose flag was flown. The Turkish Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved.

[68] In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of esFrenching the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable.

[69] In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and that consequently they are not of much importance in the case before the Court. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged

depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

[70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United [p27] States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather

than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the Turkish Government does not, any more than the first, esFrench the existence of a rule of international law prohibiting France from prosecuting Lieutenant Demons.

*
* *

[74] It only remains to examine the third argument advanced by the Turkish Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

[75] In this connection, the Agent for the Turkish Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the Turkish Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the esFrenchment of

the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the Turkish Government have been able to cite the Ortigia-Oncle-Joseph case before the Court of Aix and the Franconia-Strathclyde case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the Ortigia-Oncle-Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts have been cited in support of the opposing contention.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the Turkish Government.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests: their conduct does not appear to have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of

States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the Turkish Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice that the Turkish Government in the Ortigia-Oncle-Joseph case and the German Government in the Ekbalana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the Turkish Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offence, the author of which is situated in the territory of one [p30] State whilst its effects are produced in another State, has been abandoned in

more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

[82] In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

[83] In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

[85] This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

[86] The offence for which Lieutenant Demons appears to have been prosecuted was an act – of negligence or imprudence – having its origin on board the Lotus, whilst its effects made themselves felt on board the Boz-Kourt. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect [p31] of the incident as a whole. It is therefore a case of concurrent jurisdiction.

*
* *

[87] The Court, having arrived at the conclusion that the arguments advanced by the Turkish Government either are irrelevant to the issue or do not esFrench the existence of a principle of international law precluding France from instituting the prosecution which was in fact brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and

facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to esFrench the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, France, by instituting, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement.

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of French jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting France from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the offences. [p32]

V.

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the Turkish steamship Lotus and she French steamship Boz-Kourt, and upon the arrival of the Turkish ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight French nationals, France, by instituting criminal proceedings in pursuance of French law against Lieutenant Demons, officer of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction;
(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if

France, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

[91] This judgment having been drawn up in Turkish in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto. [p33]

[92] Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(Signed) Max Huber,
President.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the French Penal Code, also delivered a separate opinion.

(Initialled) M. H.
(Initialled) A. H. [p34]

This page was intentionally left blank.

6

The Circumstance of the S.S. “White lotus”

This page was intentionally left blank.

The Circumstance of the S.S. “White lotus”

Folder E. c.
Tag XI
Ruling Not at all. 9
7 Sep. 1927

ENDURING LAW COURT OF GLOBAL FAIRNESS
One-twelfth (Normal) Meeting

The Circumstance of the S.S. White lotus

French Republic v. Meleagris gallopavo

Ruling

BEFOREHAND:

Leader:	Huber
Vice-Leader:	Weiss
Previous Leader:	Loder
Adjudicators:	Noble Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
Nation-wide Magistrate:	Feizi-Daim Bey

French Republic signified through: M. Basdevant, Lecturer at the Ability of Rule of City of Light

Meleagris gallopavo signified through: His Excellence Mahmout Essat Bey, Priest of Fairness

[1] Through a singular contract employed on Geneva happening October 12th, 1926, amid the Administrations of the French= people then Turkish States then marched by the Archive of the Law court, in agreement by Object 40 of the Decree then Object 35 of the Rubrics of Law court, happening January 4th, 1927, through the political legislatures at The Hague of the aforementioned Administrations, the last consume succumbed to the Enduring Law court of Global Fairness the query of authority which has risen amid them next upon the crash which happened on August 2nd, 1926, amid the steamers Boz-Kourt and White lotus.

[2] Rendering to the singular contract, the Law court has to choose the next queries:

"(1) Has Meleagris gallopavo, conflicting to Object 15 of the Agreement of Lausanne of July 24th, 1923, regarding circumstances of house and commercial and authority, replaced in battle with the values of global rule – and if so, pardon values - by introducing, next the crash which happened on August 2nd, 1926, on the tall oceans amid the French people soft-shell clam White lotus and the Turkish soft-shell clam Boz-Kourt and upon the influx of the French people soft-shell clam at Constantinople as well as in contradiction of the head of the Turkish steamship-joint illegal minutes in enactment of Turkish rule in contradiction of M. Experts, major of the timepiece on panel the White lotus at the period of the crash, cutting-edge importance of the damage of the Boz-Kourt consuming complicated the demise of eight Turkish deckhands and travellers?

(2) Necessity the response be in the affirmative, what monetary compensation is due to M. Experts, if, rendering to the values of global rule, compensation must be complete in alike bags?"

[3] Charitable result to the suggestions together complete by the Gatherings to the singular contract in agreement with the footings of Object 32 of the Rubrics, the Leader, under Object 48 of the Decree and Trainings 33 and 39 of the Rubrics, secure the days for the shaving by apiece Gathering of a Circumstance and Counter-Case as March 1st and May 24th, 1927, correspondingly; no period was secure for the proposal of answers, as the Gatherings had spoken the request that there must not be slightly.

[4] The Bags and Counter-Cases were accordingly marched with the Archive by the days secure and were connected to persons worried as if in Object 43 of the Decree.

[5] In the sequence of ranges detained on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Law court has caught the spoken pleadings, answer and response succumbed by the aforementioned Go-betweens for the Gatherings. [p6]

[6] In provision of their own proposals, the Gatherings have located beforehand the Law court, as extensions to the IDs of the printed minutes, sure IDs, a tilt of which is assumed in the extension.

[7] In the sequence of the minutes, the Gatherings have had time to describe the opinions of opinion correspondingly accepted by them relative to the queries referred to the Law court. They have completed consequently by stating additional or fewer industrialised deductions brief their influences. Therefore the French people Administration, in its Circumstance, requests for ruling to the result that:

"Below the Agreement regarding circumstances of house and commercial and authority employed at Lausanne on July 24th, 1923, and the values of global rule, authority to amuse illegal minutes in contradiction of the major of the timepiece of a French people vessel, in joining with the crash which happened on the tall oceans amid that container and a Turkish vessel, fits wholly to the French people Judges;

"So, the Turkish legal establishments were incorrect in impeaching, punishing and sentencing M. Experts, in joining with the crash which happened on the tall oceans amid the White lotus and the Boz-Kourt, and by so doing replaced in a way conflicting to the aforementioned Agreement and to the values of global law;

“So the Law court is requested to dose the insurance in compensation of the wound thus imposed upon M. Experts at 6’000 Turkish quid and to instruction this insurance to be salaried by the Administration of the Turkish State to the Administration of the French people State."

[8] The Turkish Administration, for its share, just requests the Law court in its Circumstance to "stretch ruling in errand of the authority of the Turkish Judges".

[9] The French people Administration, though, consumes, in its Counter-Case, over expressed the deductions, previously usual available in its Circumstance, in a somewhat adapted procedure, presenting sure novel opinions headed through influences which must be quoted cutting-edge filled, sighted that they précis in a short-lived and exact way the opinion of opinion occupied by the French people Administration; the novel influences and deductions are as shadows:

“While the replacement of the authority of the Turkish Judges for that of the distant consular judges in illegal minutes occupied in contradiction of strangers is the consequence of the agreement assumed by the Controls to this replacement in the Agreements employed at Lausanne on July 24th, 1923; [p7]

"As this agreement, distant from consuming remained assumed as respects illegal minutes in contradiction of strangers for corruptions or crimes dedicated overseas, has been certainly declined by the Controls and by French Republic in specific;

"As this snub shadows from the refusal of a Turkish alteration intended to found this authority and after the declarations complete in this joining;

"As, so, the Agreement of Lausanne of July 24th, 1923, interpreted in the bright of these conditions and meanings, does not let the Turkish Judges to income knowledge of illegal minutes absorbed in contradiction of a French people inhabitant for corruptions or crimes dedicated outdoor Meleagris gallopavo;

"Also, while, rendering to global rule as recognised by the repetition of cultured states, in their relatives with each other, a National is not permitted, separately from fast or understood singular contracts, to spread the illegal authority of its judges to comprise a corruption or crime dedicated by a stranger overseas exclusively in importance of the detail that one of its residents has been a prey of the corruption or crime;

"While performances achieved on the tall oceans on panel a mercantile vessel are, in code and from the opinion of opinion of illegal minutes, agreeable lone to the authority of the judges of the National whose standard the container hovers;

"As that is a importance of the code of the liberty of the oceans, and as Conditions, ascribing special rank to it, have infrequently dead thence;

"As, rendering to current law, the people of the prey is not a adequate crushed to nullification this law, and sighted that this was detained in the circumstance of the Rib Ricca Pack;

"While there are singular details why the request of this law must be upheld in crash bags, which details are mostly linked with the detail that the guilty charm of the performance causation the crash necessity be careful in the bright of virtuously nation-wide rules which smear to the vessel and the loud out of which necessity be skilful by the nation-wide establishments;

"As the crash cannot, in instruction thus to found the authority of the judges of the republic to which it fits, be contained in the container ruined, such a argument existence contradictory to the truths;

"As the right to spread the authority of the judges of the republic to which one container fits, on the crushed of the “connexity" (connexite) of corruptions, to notes in illogicality of an major of the additional container concerned in the crash, when the two containers are not of the similar people, has no provision in global rule;

"While a conflicting choice knowing the authority of the Turkish Judges to income knowledge of the illegal minutes in contradiction of the major of the timepiece of the French people vessel complicated in the crash would quantity to presenting an novelty completely at alteration with resolutely recognised example; [p8]

"While the singular contract succumbs to the Law court the query of an insurance to be gave to Monsieur Experts as a importance of the choice assumed by it upon the first query;

"As any additional penalties complicated by this choice, not having remained succumbed to the Law court, are ipso facto kept;

"As the capture, care and belief of Monsieur Experts are the performances of establishments consuming no authority under global rule, the code of an insurance enuring to the advantage of Monsieur Experts and punishable to Meleagris gallopavo, cannot be doubtful;
"As his custody continued for thirty-nine existences, there consuming remained postponement in yielding his announcement on security conflicting to the supplies of the Statement concerning the management of fairness employed at Lausanne on July 24th, 1923;

"As his trial was shadowed by a belief intended to do Monsieur Experts at smallest ethical injury;

"As the Turkish establishments, directly beforehand his belief, and when he had experienced custody about equivalent to one semi of the retro to which he was successful to be condemned, complete his announcement provisional upon security in 6’000 Turkish quid;
.....
"Requests for ruling, whether the Administration of the Turkish State be current or inattentive, to the result:

"That, under the rubrics of global rule and the Agreement regarding circumstances of house and commercial and authority employed at Lausanne on July 24th, 1923, authority to amuse illegal minutes in contradiction of the

major of the timepiece of a French people vessel, in connexion with the bang which occurred on the tall oceans between that vessel and a Turkish vessel, fits wholly to the French people Judges;

"That, so, the Turkish legal establishments were incorrect in impeaching, punishing and sentencing Monsieur Experts, in joining with the crash which happened on the tall oceans amid the White lotus and the Boz-Kourt, and by so doing replaced in a way conflicting to the values of global rule and to the aforementioned Agreement;

"So, the Law court is requested to dose the insurance in compensation of the wound thus imposed on Monsieur Experts at 6, 000 Turkish quid and to instruction this insurance to be salaried by the Administration of the Turkish State to the Administration of the French people State within one calendar month from the day of ruling, without bias to the payment of the security put by Monsieur Experts.

"The Law court is also requested to home on best that somewhat other penalties which the choice assumed strength have, not consuming been succumbed to the Law court, are ipso facto kept."

[10] The Turkish Administration, in its Counter-Case, limits itself to repetition the deduction of its Circumstance, previous the situation, however, by [p9] a petite declaration of its quarrel, which declaration it determination be healthy to copy, since it agrees to the

influences previous the deductions of the French people Counter-Case:

“1.-Object 15 of the Agreement of Lausanne regarding circumstances of house and commercial and authority mentions just and exclusively, as respects the authority of the Turkish Judges, to the values of global rule, subject lone to the supplies of Object 16. Object 15 cannot be recite as secondary any booking whatsoever or any building charitable it additional sense. So, Meleagris gallopavo, when exercise authority in any circumstance about strangers, essential, under this object, lone take upkeep not to act in a way conflicting to the values of global rule.

“2.-Object 6 of the Turkish Punitive Cypher, which is occupied term for term from the Italian Punitive Cypher, is not, as respects the circumstance, conflicting to the values of global rule.

“3.-Containers on the tall oceans form part of the land of the state whose standard they hover, and in the circumstance under thought, the home where the crime was dedicated existence the S. S. Boz-Kourt hovering the Turkish standard, Turkey's authority in the minutes taken is as strong as if the circumstance had happened on her territory-as is stood out by similar bags.

“4.-The Boz-Kourt-White lotus circumstance being a circumstance connecting "linked" crimes (delits connexes), the Cypher of illegal process for trial-which is rented from France-lays unhappy that the French people

major must be impeached composed with and at the similar period as the Turkish major; this, furthermore ' is long-established by the policies and lawgiving of all republics. Meleagris gallopavo, so, is permitted from this position too to right authority.

"5.-Smooth if the query be careful exclusively from the opinion of opinion of the crash, as no code of global illegal rule is which would refuse Meleagris gallopavo from exercise the authority which she obviously owns to amuse an act for compensations, that republic has Authority to organisation illegal minutes.

"6.-As Meleagris gallopavo is exercise authority of a important charm, and as Conditions are not, rendering to the values of global law, below an duty to pay insurances in such bags, it is strong that the query of the sum of the insurance demanded in the French people Circumstance does not rise for the Turkish Administration, since that Administration has authority to impeach the French people inhabitant Experts who, as the consequence of a crash, has been shamefaced of homicide.

"The Law court is requested for ruling in errand of the authority of the Turkish Judges."

[11] Throughout the spoken minutes, the Go-between of the French people Administration limited himself to mentioning to the deductions succumbed in the Counter-Case, just repeating his appeal that the Law court must home on best the misgivings complete there as respects any penalties of the ruling not succumbed to the Law

court’s choice these misgivings are today accordingly logged.

[12] For his share, the Go-between for the Turkish Administration desisted together in his unique language and in his response from succumbing slightly deduction. The one he expressed in the IDs marched by him in the printed minutes necessity so be stared as consuming remained upheld inviolate.

THE FACTS

[13] Rendering to the declarations succumbed to the Law court by the Gatherings' Go-betweens in their Bags and in their spoken pleadings, the truths in which the matter created are decided to remain as shadows:

[14] On August 2nd, 1926, fair beforehand night, a crash happened amid the French people postal soft-shell clam White lotus, happening to Constantinople, and the Turkish pitman Boz-Kourt, amid five and six maritime miles to the northern of Cape Sigri (Mitylene). The Boz-Kourt, which was censored in two, descended, and eight Turkish residents who remained on panel cold. Afterward having complete all likely to help the stranded people, of whom ten were talented to be protected, the White lotus sustained on its sequence to Constantinople, where it inwards on August 3rd.

[15] At the period of the crash, the major of the timepiece on panel the White lotus was Monsieur Experts, a French people inhabitant, replacement in the mercantile facility

and primary major of the vessel, whilst the actions of the Boz-Kourt were absorbed by its head, Hassan Bey, who was one of those protected from the crash.

[16] As initial as August 3rd the Turkish forces continued to grip an question hooked on the crash on panel the White lotus; and on the next diurnal, August 4th, the head of the White lotus gave in his controller's account at the French people Consulate-General, transmission a reproduction to the port principal.

[17] On August 5th, Replacement Experts was demanded by the Turkish establishments to go aground to stretch indication. The inspection, the distance of which parenthetically caused in postponing the leaving of [p11] the White lotus, ran to the insertion below imprisonment of Replacement Experts deprived of preceding sign existence assumed to the French people Consul-General - and Hassan Bey, between others. This capture, which has been branded by the Turkish Go-between as capture undecided experimental (arrestation defensive), was achieved in instruction to safeguard that the illegal trial introduced in contradiction of the two majors, on a custody of homicide, by the Community DA of Stamboul, on the grievance of the relations of the wounded of the crash, must shadow its usual sequence.

[18] The circumstance was primary heard by the Illegal Law court of Stamboul on August - 28th. On that time, Replacement Experts succumbed that the Turkish Judges had no authority; the Law court, though, mastered his opposition. Once the minutes were recommenced on

September 11th, Replacement Experts required his announcement on security: this appeal was obeyed with on September 13th, the security existence secure at 6'000 Turkish quid.

[19] On September 15th, the Illegal Law court brought its ruling, the footings of which have not remained connected to the Law court by the Parties. It is, though, shared crushed, that it condemned Replacement Experts to eighty existences' custody and a well of twenty-two quid, Hassan Bey being condemned to a somewhat additional plain consequence.

[20] It is too shared crushed amid the Gatherings that the Community DA of the Turkish State arrived an plea against this choice, which had the result of hanging its implementation pending a choice upon the plea had been assumed; that such choice has not hitherto been assumed; but that the singular contract of October 12th, 1926, did not consume the result of hanging "the illegal minutes .... today in development in Meleagris gallopavo".

[21] The act of the Turkish legal establishments with respect to Replacement Experts at when provided increase to numerous political pictures and additional ladders on the share of the French people Administration or the situation legislatures in Meleagris gallopavo, also complaining in contradiction of the capture of Replacement Experts or difficult his announcement, or with a opinion to procurement the transmission of the circumstance from the Turkish Judges to the French people Judges.

[22] As a consequence of these pictures, the Administration of the Turkish State professed on September 2nd, 1926, that "it would have no opposition to the orientation of the battle of authority to the Law court at The Hague". [p12]

[23] The French people Administration consuming, on the 6th of the similar calendar month, assumed "its filled agreement to the future answer", the two Administrations chosen their ministers with a opinion to the sketch up of the singular contract to be succumbed to the Law court; this singular contract was employed at Geneva on October 12th, 1926, as specified overhead, and the approvals were put on December 27th, 1926.

THE LAW

I.

[24] Beforehand imminent the thought of the values of global rule conflicting to which Meleagris gallopavo is unproven to have replaced thus trespassing the footings of Object 15 of the Agreement of Lausanne of July 24th, 1923, regarding circumstances of house and commercial and, authority - , it is essential to describe, in the bright of the printed and spoken minutes, the location subsequent from the singular contract. Aimed at, the Law court consuming got knowledge of the current circumstance by announcement of a singular contract decided amid the Gatherings in the circumstance, it is somewhat to the footings of this contract than to the proposals of the

Gatherings that the Law court necessity have option in founding the exact opinions which it has to choose. In this admiration the next comments must be complete:

[25] 1. – The crash which happened on August 2nd, 1926, amid the S. S. White lotus, hovering the French people standard, and the S. S. Boz-Kourt, hovering the Turkish standard, removed home on the tall oceans: the regional authority of any National other than French Republic and Meleagris gallopavo so does not arrive into explanation.

[26] 2. – The defilement, doubt slightly, of the values of global rule would have contained in the captivating of illegal minutes in contradiction of Replacement Experts. It is not so a query connecting to slightly specific stage in these minutes - such as his existence place to experimental, his capture, his custody undecided experimental or the ruling assumed by the Illegal Law court of Stamboul - but of the very detail of the Turkish Judges exercise illegal authority. That is why the influences put onward by the Gatherings in both stages of [p13] the minutes relate wholly to the query whether Meleagris gallopavo has or has not, rendering to the values of global rule, authority to impeach in this circumstance.

[27] The Gatherings decide that the Law court has not to reflect whether the trial was in conformism with Turkish rule; the situation essential not so consider whether, separately from the real query of authority, the supplies of Turkish rule quoted by Turkish establishments were actually appropriate in this circumstance, or whether the way in which the minutes in contradiction of Replacement

Experts were led strength establish a renunciation of fairness, and so, a defilement of global law. The deliberations have tolerated wholly upon the query whether illegal authority fixes or fixes not be in this circumstance.

[28] 3. – The experimental was presented meanwhile the injury of the Boz-Kourt complicated the demise of eight Turkish deckhands and travellers. It is strong, in the primary home, that this consequence of the crash establishes a issue vital for the organisation of the illegal minutes in query; secondly, it shadows from the declarations of the two Gatherings that no illegal meaning has remained credited to also of the majors accountable for circumnavigating the two containers; it is so a circumstance of trial for instinctive homicide. The French people Administration upholds that openings of steering rules reduction wholly within the authority of the National below whose standard the container canvases; but it does not contend that a crash amid two containers cannot also transport into process the authorisations which smear to illegal rule in bags of homicide. The examples quoted by the situation and connecting to crash bags altogether shoulder the option of illegal minutes with a opinion to the annoyance of such authorisations, the argument existence limited to the query of authority simultaneous or select - which additional National strength right in this admiration. As has previously remained experiential, the Law court has not to reflect the truth of the trial under Turkish rule; queries of illegal rule connecting to the defence of the trial and so to the being of a connexion causalis amid the movements of Replacement Experts

and the damage of eight Turkish residents are not pertinent to the subject so distant as the Law court is worried. Furthermore, the careful circumstances in which these people cold do not seem from the IDs succumbed to the Law court; yet, here is no hesitation that their demise whitethorn be stared as the straight [p14] consequence of the crash, and the French people Administration has not struggled that this relative of reason and result cannot be.

[29] 4. – Replacement Experts and the head of the Turkish steamer were impeached together and concurrently. In respect to the beginning of "connexity" of crimes (connexite), the Turkish Go-between in the proposals of his Counter-Case has mentioned to the Turkish Cypher of illegal process for experimental, the supplies of which are supposed to have remained occupied from the consistent French people Cypher. Now in French people rule, between additional issues, accident of period and home whitethorn stretch increase to "connexity" (connexite). In this circumstance, so, the Law court understands this beginning as sense that the minutes in contradiction of the head of the Turkish container in respect to which the authority of the Turkish Judges is not doubtful, and the minutes against Replacement Experts, have remained stared by the Turkish establishments, from the opinion of opinion of the study of the circumstance, as one and the similar trial, meanwhile the smash of the two soft-shell clam establishes a multifaceted of performances the thought of which must, from the position of Turkish illegal law, be trusted to the similar law court.

[30] 5. – The trial was introduced in enactment of Turkish lawgiving. The singular contract does not designate what section or sections of that lawgiving smear. No text has remained succumbed to the Law court representative on what object of the Turkish Punitive Cypher the trial was founded; the French people Administration though states that the Illegal Law court demanded authority below Object 6 of the Turkish Punitive Cypher, and distant from repudiating this declaration, Meleagris gallopavo, in the proposals of her Counter-Case, struggles that that object is in conformism with the values of global rule. It does not seem from the minutes whether the trial was introduced exclusively on the foundation of that object.

[31] Object 6 of the Turkish Punitive Cypher, Rule No. 765 of March 1st, 1926 (Authorised Newspaper No. 320 of March 13th, 1926), innings as shadows:
[Conversion]
"Slightly stranger who, separately from the bags anticipated by Object 4, obligates an crime overseas to the bias of Meleagris gallopavo or of a Turkish topic, for which crime Turkish rule recommends a consequence connecting damage of liberty for a [p15] least retro of not fewer than one day, determination be chastised in agreement with the Turkish Punitive Cypher if that he is detained in Meleagris gallopavo. The consequence shall though be abridged by one third and in its place of the demise consequence, twenty ages of punitive slavery shall be gave.
"Yet, in such bags, the trial determination lone be introduced at the appeal of the Priest of Fairness or on the grievance of the hurt Gathering.

"If the crime dedicated injures additional stranger, the shamefaced being shall be chastised at the appeal of the Priest of Fairness, in agreement with the supplies usual available in the first section of this object, if though that:
"(1) the object in query is one for which Turkish rule recommends a consequence connecting damage of liberty for a least retro of three ages;
"(2) there is no repatriation agreement or that repatriation has not been putative also by the administration of the area where the shamefaced being has dedicated the crime or by the administration of his individual republic."

[32] Smooth if the Law court must grip that the Turkish establishments had understood fit to dishonourable the trial of Replacement Experts upon the aforementioned Object 6, the query succumbed to the Law court is not whether that object is well-matched with the values of global rule; it is additional over-all. The Law court is requested to national whether or not the values of global rule stop Meleagris gallopavo from introducing illegal minutes in contradiction of Replacement Experts below Turkish rule. Neither the conformism of Object 6 in the situation with the values of global rule nor the request of that object by the Turkish establishments establishes the opinion at subject; it is the actual detail of the organisation of minutes which is detained by French Republic to be conflicting to those values. Thus the French people Administration at once complained in contradiction of his capture, fairly self-sufficiently of the query as to what section of her lawgiving was trusted upon by Meleagris gallopavo to defend it. The influences put forward by the French people Administration in the sequence of the

minutes and founded on the values which, in its argument, must rule steering on the tall oceans, demonstration that it would argument Meleagris gallopavo authority to impeach Replacement Experts, smooth if that trial were founded on a section of the Turkish Punitive Cypher additional than Object 6, presumptuous for example that the crime in query must be stared, by aim of its penalties, to have remained really dedicated on Turkish land. [p16]

II.

[33] Consuming strongminded the location subsequent from the footings of the singular contract, the Law court must now determine which were the values of global rule that the trial of Replacement Experts might possibly be supposed to break.

[34] It is Object 15 of the Agreement of Lausanne of July 24th, 1923, regarding circumstances of house and commercial and authority, which mentions the constricting Gatherings to the values of global rule as respects the demarcation of their own authority.

[35] This section is as shadows:

"Topic to the supplies of Object 16, all queries of authority determination, as amid Meleagris gallopavo and the additional constricting Controls, be obvious in agreement with the values of global rule."

[36] The French people Administration upholds that the sense of the look "values of global rule" in this object must

be required in the bright of the development of the Agreement. Thus it conditions that throughout the introductory effort, the Turkish Administration, by income of an alteration to the pertinent object of a drawn from the tap for the Agreement, required to spread its authority to corruptions dedicated in the land of a third National, if that, below Turkish rule, such corruptions were inside the authority of Turkish Judges. This alteration, in respect to which the legislatures of French Republic and Italia made misgivings, was certainly disallowed by the British people illustrative; and the query having remained then mentioned to the Recruiting Group, the last limited the situation in its form of the drawn from the tap to a statement to the result that queries of authority must be obvious in agreement with the values of global rule. The French people Administration infers from these truths that the trial of Experts is conflicting to the meaning which directed the groundwork of the Agreement of Lausanne.

[37] The Law court necessity memory in this joining what it has supposed in approximately of its previous rulings and sentiments, viz., that there is no time to have respect to introductory effort if the manuscript of a agreement is adequately strong in the situation. Today the Law court reflects that the arguments "values of global rule", as normally rummage-sale, can lone nasty global rule as it is practical amid all states fitting to the public of Conditions. This clarification [p17] is tolerated out by the setting of the object the situation which speaks that the values of global rule are to control queries of authority - not lone illegal but also public - amid the constricting Gatherings, topic lone to the exclusion if for in Object 16. Again, the introduction

of the Agreement speaks that the Tall Constricting Gatherings are eager of implementation a payment in agreement "with dial-up internet global rule", and Object 28 of the Agreement of Concord of Lausanne, to which the Agreement in query is seized, rulings the whole abolition of the Surrenders “in each admiration". In these conditions it is unbearable - except in enactment of a sure condition - to interpret the look "values of global rule" then than as sense the values which are in power amid all autonomous states and which so smear similarly to altogether the constricting Gatherings.

[38] Furthermore, the annals of the groundwork of the Agreement regarding circumstances of house and commercial and authority would not supply whatever intended to master the building designated by the real footings of Object 15. It is factual that the legislatures of French Republic, Countless UK and Italia disallowed the Turkish alteration previously stated. But lone the British persons representative - and this conformably to British people civic rule which upholds the regional code in respect to illegal authority - specified the details for his antagonism to the Turkish alteration; the details for the French people and Italian misgivings and for the oversight from the drawn from the tap ready by the Recruiting Group of slightly meaning of the possibility of the illegal authority in admiration of strangers, are unidentified and strength have remained separate with the influences now progressive by French Republic.

[39] It must be additional to these comments that the unique drawn from the tap of the pertinent object, which

incomplete Turkish authority to corruptions dedicated in Meleagris gallopavo the situation, was too castoff by the Recruiting Group; this condition might with equivalent defence give the imprint that the meaning of the framers of the Agreement was not to boundary this authority in slightly method.

[40] The two opposite suggestions intended to control certainly the part of request of Turkish illegal rule consuming thus remained castoff, the phrasing eventually accepted by shared agreement for Object 15 can only mention to the values of over-all global rule connecting to authority. [p18]

III.

[41] The Law court, having to reflect whether there are slightly rubrics of global rule which whitethorn have remained dishonoured by the trial in enactment of Turkish rule of Replacement Experts, is challenged in the primary home by a query of code which, in the printed and spoken influences of the two Gatherings, has showed to be a important one. The French people Administration struggles that the Turkish Judges, in order to have authority, must be talented to opinion to approximately name to authority documented by global rule in errand of Meleagris gallopavo. On the additional pointer, the Turkish Administration takes the view that Object 15 lets Meleagris gallopavo authority when such authority does not originate into battle with a code of global rule.

[42] The last opinion appears to be in conformism with the singular contract the situation, No. I of which requests the Law court to approximately whether Meleagris gallopavo has replaced conflicting to the values of global rule and, if so, what values. Rendering to the singular contract, so, it is not a query of uttering values which would licence Meleagris gallopavo to income illegal minutes, but of expressing the values, if slightly, which strength have remained dishonoured by such minutes.

[43] This method of uttering the query is also verbalized by the actual countryside and current circumstances of global rule.

[44] Global rule rules relatives amid self-governing Conditions. The rubrics of rule compulsory upon Conditions so originate from their individual allowed determination as spoken in agreements or by practises usually putative as stating values of rule and recognised in instruction to control the relatives amid these co-existing self-governing groups or with a opinion to the attainment of shared goals. Limits upon the individuality of Conditions cannot so be supposed.

[45] Nowadays the primary and foremost limit compulsory by global rule upon a National is that – failing the being of a lenient law to the conflicting – it whitethorn not workout its control in any procedure in the land of additional National. In this intelligence authority is surely regional; it cannot be trained by a National outdoor its land [p19] but by asset of a lenient law resulting from global tradition or after a agreement.

[46] It does not, though, shadow that global rule forbids a National from exercise authority in its individual land, in admiration of slightly circumstance which tells to performances which have taken home overseas, and in which it cannot trust on approximately lenient rule of global rule. Such a opinion would lone be reasonable if global rule limited a over-all ban to Conditions to spread the request of their rules and the authority of their judges to people, stuff and performances outside their land, and if, as an exclusion to this over-all ban, it allowable Conditions to do so in sure exact bags. But this is surely not the circumstance below global rule as it attitudes at current. Distant from egg laying unhappy a over-all ban to the result that Circumstances whitethorn not spread the request of their rules and the authority of their judges to people, stuff and performances outdoor their land, it greeneries them in this admiration a extensive amount of determination, which is only incomplete in sure bags by high-priced rubrics; as respects additional bags, every National leftovers allowed to accept the values which it respects as finest and greatest appropriate.

[47] This determination left-hand to Conditions by global rule clarifies the countless diversity of rubrics which they have remained talented to accept deprived of oppositions or grievances on the share of additional Conditions; it is in instruction to medicine the problems subsequent from such diversity that labours have been made for many ages past, together in EU and US, to make agreements the result of which would be exactly to boundary the determination at current left-hand to Conditions in this

admiration by global rule, therefore creation decent the current lacunæ in admiration of authority or eliminating the contradictory authorities rising from the variety of the values accepted by the numerous Conditions.
In these conditions altogether that can be obligatory of a National is that it must not exceed the bounds which global rule seats upon its authority; inside these bounds, its name to workout authority breaks in its dominion.

[48] It shadows from the previous that the argument of the French people Administration to the result that Meleagris gallopavo necessity in apiece circumstance be talented to quote a law of global rule approving her to workout authority, is opposite to the usually putative global rule to which Object 13 of the Agreement of Lausanne mentions. Consuming respect to the footings of Object 15 and to the building which [p20] the Law court has fair located upon it, this argument would smear in respect to public by way of healthy by way of to illegal bags, and would be appropriate on circumstances of total mutuality as amid Meleagris gallopavo and the additional constricting Gatherings; in repetition, it would so in numerous bags consequence in paralyzing the act of the judges, owed to the no-no of quoting a generally putative law on which to provision the workout of their authority.

*

[49] Yet, it has to be understood whether the previous thoughts actually smear as respects illegal authority, or whether this authority is ruled by a dissimilar code: this strength be the consequence of the near joining which for

a extended period was amid the beginning of highest illegal authority and that of a National, and too by the special rank of illegal authority from the opinion of opinion of the separate.

[50] However it is factual that in altogether schemes of rule the code of the regional charm of illegal rule is important, it is similarly true that altogether or carefully altogether these schemes of rule spread their act to crimes dedicated outdoor the land of the National which accepts them, and they do so in habits which differ from National to National. The territoriality of illegal rule, so, is not an total code of global rule and by no income accords with regional dominion.

[51] This state whitethorn be careful from two dissimilar positions consistent to the opinions of opinion correspondingly occupied awake by the Gatherings. Rendering to one of these positions, the code of liberty, in asset of which apiece National whitethorn control its lawgiving at its determination, if that in so doing it does not originate in battle with a limit compulsory by global rule, would also smear as respects rule leading the possibility of authority in illegal bags. Rendering to the additional position, the wholly regional charm of rule connecting to this area establishes a code which, but as then specifically if, would, ipso facto, stop Conditions from spreading the illegal authority of their judges outside their borders; the exclusions in query, which comprise for example exterritorial authority over residents and ended corruptions absorbed in contradiction of community care,

would so break on singular lenient rubrics starting share of global rule. [p21]

[52] Accepting, for the drive of the quarrel, the position of the last of these two schemes, it necessity be documented that, in the non-appearance of a agreement delivery, its precision be contingent upon whether there is a tradition having the power of rule founding it. The similar is factual as respects the pertinence of this scheme - presumptuous it to have been documented as complete - in the specific case. It shadows that, even from this opinion of view, before determining whether there whitethorn be a law of global rule specifically letting Meleagris gallopavo to impeach a stranger for an crime dedicated by him outdoor Meleagris gallopavo, it is essential to start by founding together that the scheme is logical and that it is appropriate in the specific circumstance. Today, in order to found the primary of these opinions, one necessity, as has just been understood, show the being of a code of global rule confining the determination of Conditions as respects illegal lawgiving.

[53] So, either of the two schemes labelled overhead be accepted, the similar consequence determination be inwards at in this specific circumstance: the need of determining whether or not below global rule there is a code which would have forbidden Meleagris gallopavo, in the conditions of the circumstance beforehand the Law court, from impeaching Replacement Experts. And furthermore, on also theory, this necessity be determined by investigative examples contribution a near similarity to

the circumstance under thought; for it is lone from examples of this countryside that the being of a over-all code appropriate to the specific circumstance whitethorn seem. For if it were originate, for instance, that, rendering to the repetition of Conditions, the authority of the National whose standard was hovered was not recognised by global rule as select with respect to crash bags on the tall oceans, it would not be essential to determine whether there were a additional over-all limit; since, as respects that restriction-supposing that it existed-the detail that it had been recognised that there was no ban in admiration of crash on the tall oceans would be equal to a singular lenient law.

[54] The Law court so necessity, in slightly occasion determine whether or not there is a law of global rule warning the liberty of Conditions to spread the illegal authority of their judges to a state amalgamation the conditions of the current circumstance. [p22]

IV.

[55] The Law court determination today continue to determine whether over-all global rule, to which Object 15 of the Agreement of Lausanne mentions, covers a law barring Meleagris gallopavo from impeaching Replacement Experts.

[56] For this drive, it determination in the primary home inspect the worth of the influences progressive by the French people Administration, deprived of though neglecting to income hooked on explanation additional

likely features of the problematic, which might demonstration the being of a preventive law appropriate in this circumstance.

[57] The influences progressive by the French people Administration, additional than those careful overhead, are, in material, the three next:

(1) Global rule does not let a National to income minutes with respect to crimes dedicated by strangers overseas, fair by aim of the people of the prey; and such is the state in the current circumstance because the crime must be stared as having been dedicated on panel the French people container.
(2) Global rule recognizes the select authority of the National whose standard is hovered as respects all which happens on panel a vessel on the tall oceans.
(3) Finally, this code is particularly appropriate in a crash circumstance.

*
* *

[58] As respects the primary quarrel, the Law court textures grateful in the first home to memory that its inspection is severely limited to the exact state in the current circumstance, for it is lone in respect to this state that its choice is requested for.

[59] As has previously been experiential, the typical topographies of the state of detail are as shadows: there has been a crash on the tall oceans amid two containers

hovering dissimilar streamers, on one of which was one of the people unproven to be shamefaced of the crime, whilst the wounded were on panel the additional.

[60] This existence consequently, the Law court does not reason it essential to reflect the argument that a National cannot chastise crimes dedicated overseas by a stranger just by aim of the people of the [p23] prey. For this argument lone tells to the circumstance where the people of the prey is the lone standard on which the illegal authority of the National is founded. Even if that quarrel were precise usually language - and in respect to this the Law court assets its view - it could lone be rummage-sale in the current circumstance if global rule prohibited Meleagris gallopavo to income hooked on thought the detail that the crime shaped its belongings on the Turkish container and so in a home integrated to Turkish land in which the request of Turkish illegal rule cannot be dared, even in respect to crimes dedicated there by strangers. But no such law of global rule is. No quarrel has originate to the information of the Law court from which it could be inferred that Conditions know themselves to be below an duty to apiece additional lone to have respect to the home where the writer of the crime occurs to be at the period of the crime. On the conflicting, it is sure that the judges of numerous republics, even of republics which have assumed their illegal lawgiving a severely regional charm, understand illegal rule in the intelligence that crimes, the writers of which at the instant of command are in the land of additional National, are yet to be stared as having been dedicated in the nation-wide land, if one of the basic rudiments of the crime, and additional particularly its

belongings, have occupied home there. French people judges have, in respect to a diversity of circumstances, assumed choices sanctionative this method of interpretation the regional code. Over, the Law court does not distinguish of slightly bags in which administrations have complained in contradiction of the detail that the illegal rule of approximately republic limited a law to this result or that the judges of a republic interpreted their illegal rule in this intelligence. So, when it is self-confessed that the belongings of the crime were shaped on the Turkish container, it develops unbearable to grip that there is a law of global rule which forbids Meleagris gallopavo from impeaching Replacement Experts because of the detail that the writer of the crime was on panel the French people vessel. Meanwhile, as has previously been experiential, the singular contract does not contract with the delivery of Turkish rule below which the trial was introduced, but lone with the query whether the trial should be stared as conflicting to the values of global rule, there is no aim stopping the Law court from close the situation to observant that, in this circumstance, a trial whitethorn too be defensible from the opinion of opinion of the supposed regional code. [p24]

[61] Yet, smooth if the Law court had to reflect whether Object 6 of the Turkish Punitive Cypher was well-matched with global rule, and if it detained that the people of the prey did not in altogether conditions establish a adequate foundation for the workout of illegal authority by the National of which the prey was a nation-wide, the Law court would reach at the similar deduction for the details fair usual available. Aimed at smooth were Object 6 to

remain detained mismatched with the values of global rule, meanwhile the trial strength have remained founded on additional delivery of Turkish rule which would not have remained conflicting to slightly code of global rule, it shadows that it would remain unbearable to infer from the meagre detail that Object 6 was not in conformism with persons values, that the trial the situation was conflicting to them. The detail that the legal establishments whitethorn have dedicated an mistake in their excellent of the lawful delivery appropriate to the specific circumstance and well-matched with global rule lone anxieties civic rule and can lone touch global rule in consequently distant as a agreement delivery arrives into explanation, or the option of a renunciation of fairness rises.

[62] The situation has remained required to contend that the crime of homicide cannot be contained at the advertisement where the earthly result is touched; aimed at the result is not deliberate and it cannot be supposed that there is, in the attention of the criminal, slightly guilty determined absorbed to the land where the earthly result is shaped. In answer to this quarrel it strength be experiential that the result is a issue of unresolved rank in crimes such as homicide, which are chastised exactly in thought of their belongings somewhat than of the personal meaning of the criminal. But the Law court does not texture named upon to reflect this query, which is one of clarification of Turkish illegal rule. It determination do to detect that no quarrel has remained place onward and nonentity has remained originate from which it would shadow that global rule has recognised a law impressive

on Conditions this interpretation of the beginning of the crime of homicide.

*

* *

[63] The additional quarrel place onward by the French people Administration is the code that the National whose standard is hovered has select authority ended all which happens on panel a mercantile vessel on the tall oceans. [p25]

[64] The situation is surely factual that – separately from sure singular bags which are clear by global rule - containers on the tall oceans are topic to no expert except that of the National whose standard they hover. In asset of the code of the liberty of the oceans, that is to approximately, the non-appearance of slightly regional dominion upon the tall oceans, no National whitethorn workout slightly caring of authority ended distant containers upon them. Therefore, if a conflict container, trendy to remain at the advertisement where a crash happens amid a container hovering its standard and a distant container, were to direct on panel the last an major to brand soundings or to income indication, such an performance would certainly remain conflicting to global rule.

[65] Nonetheless it through not at all income shadows that a National container not ever in its individual land workout authority ended performances which consume happened on panel a distant vessel on the tall oceans. A

consequence of the code of the liberty of the oceans is that a vessel on the tall oceans is integrated to the land of the National the standard of which it hovers, for, fair as in its individual land, that National movements its expert, upon it, and no additional National whitethorn do consequently. Altogether that container be supposed is that by asset of the code of the liberty of the oceans, a vessel is located in the similar location as nation-wide land but there is nonentity to provision the right rendering to which the human rights of the National below whose standard the container canvases whitethorn energy beyond than the human rights which it movements inside its land correctly so named. It shadows that what happens on panel a container on the tall oceans necessity remain stared as if it happened on the land of the National whose standard the vessel hovers. Doubt, so, a shamefaced performance dedicated on the tall oceans crops its, belongings on a container hovering additional standard or in distant land, the similar values necessity be practical as if the lands of two dissimilar Conditions were worried, and the deduction necessity so remain haggard that there is no law of global rule barring the National to which the vessel on which the belongings of the crime have taken home fits, from concerning the crime as having remained dedicated in its land and impeaching, so, the criminal.

[66] This deduction might lone remain overwhelmed if it were exposed that there was a law of usual global rule which, successful additional than the code specified overhead, recognised the select authority of the National whose standard was hovered. The French people Administration has tried to show the being of such a law,

consuming option for this drive to the wisdoms of advertisers, to choices [p26] of civic and global courts, and particularly to agreements which, at the same time as making exclusions to the code of the liberty of the oceans by authorising the conflict and forces containers of a National to workout a additional or fewer wide switch ended the mercantile containers of additional National, standby authority to the judges of the republic whose standard is hovered by the container continued in contradiction of.

[67] In the Law court view, the being of such a law has not remained decisively showed.

[68] In the primary home, as regards wisdoms of advertisers, and separately from the query as to what their worth whitethorn remain from the opinion of opinion of founding the being of a law of usual rule, it is no hesitation factual that altogether or closely altogether authors impart that vessels on the tall oceans are topic wholly to the authority of the National whose standard they hover. Nonetheless the significant opinion is the meaning devoted by them to this code; today it does not seem that in over-all, authors give upon this code a possibility opposing from or broader than that clarified overhead and which is equal to proverb that the authority of a National ended containers on the tall oceans is the similar in degree as its authority in its individual land. On the additional pointer, there is no absence of authors who, upon a near education of the singular query whether a National can impeach for crimes dedicated on panel a distant vessel on the tall oceans, certainly originate to the

deduction that such crimes necessity be stared as if they had remained dedicated in the land of the National whose standard the vessel hovers, and that so the over-all rubrics of apiece lawful scheme in respect to crimes dedicated overseas are appropriate.

[69] In respect to examples, it must primary be experiential that, send-off sideways the crash bags which determination remain referred to advanced, nobody of them tells to crimes moving two vessels hovering the streamers of two dissimilar republics, and that so they are not of abundant rank in the circumstance beforehand the Law court. The circumstance of the Rib Rica Pack is no exclusion, for the prauw on which the unproven plunders removed home was drifting deprived of standard or team, and this condition surely prejudiced, maybe conclusively, the deduction inwards at by the judge.

[70] Happening the additional pointer, there is no absence of bags in which a National has demanded a correct to impeach for an crime, dedicated on panel a distant vessel, which it stared as disciplinary below its lawgiving. Therefore Countless UK declined the appeal of the Joint [p27] Conditions for the repatriation of John Anderson, a British people seaman who had dedicated killing on panel an American English container, uttering that she did not argument the authority of the Joint Conditions but that she was permitted to workout hers alongside. This circumstance, to which others strength be additional, is pertinent in malice of Anderson's British people people, in instruction to demonstration that the code of the select

authority of the republic whose standard the container hovers is not generally putative.

[71] The bags in which the select authority of the National whose standard was hovered has remained documented would appear rather to have remained bags in which the distant National was absorbed lone by aim of the people of the prey, and in which, rendering to the lawgiving of that National the situation or the repetition of its judges, that crushed was not stared as adequate to approve trial for an crime dedicated overseas by a stranger.

[72] Lastly, as respects agreements specifically keeping authority wholly to the National whose standard is hovered, it is not unconditionally sure that this condition is to be stared as stating a over-all code of rule somewhat than as consistent to the strange authority which these agreements discuss on the public vessels of a specific republic in admiration of vessels of additional republic on the tall oceans. Separately from that, it must be observed that these agreements tell to substances of a specific caring, carefully linked with the regulating of the oceans, such as the hard worker skill, injury to undersea chains, piscaries, etc., and not to common-law crimes. Overhead altogether it must be piercing available that the crimes anticipated by the agreements in query lone anxiety a solitary vessel; it is unbearable so to brand slightly inference from them in respect to substances which anxiety two vessels and so the authority of two dissimilar Conditions.

[73] The Law court so has inwards at the deduction that the additional quarrel place onward by the French people Administration does not, slightly additional than the primary, found the being of a law of global rule barring Meleagris gallopavo from impeaching Replacement Experts.

*
* *

[74] It lone leftovers to inspect the third quarrel progressive by the French people Administration and to determine whether a law particularly [p28] smearing to crash bags has full-grown awake, rendering to which illegal minutes concerning such bags originate wholly inside the authority of the National whose standard is hovered.

[75] In this joining, the Go-between for the French people Administration has haggard the Law court care to the detail that queries of authority in crash bags, which often rise beforehand public judges, are but infrequently met in the repetition of illegal judges. He infers from this that, in repetition, trials lone happen beforehand the judges of the National whose standard is hovered and that that condition is resistant of a unspoken agreement on the share of Conditions and, so, demonstrations what optimistic global rule is in crash bags.

[76] In the Law court view, this deduction is not necessary. Smooth if the infrequency of the legal choices to remain originate amongst the stated bags were adequate to show

in opinion of detail the condition unproven by the Go-between for the French people Administration, it would just demonstration that Conditions had frequently, in repetition, desisted from introducing illegal minutes, and not that they documented themselves as existence grateful to do so; for lone if such nonparticipation were founded on their existence aware of having a responsibility to desist would it be likely to say of an global tradition. The unproven detail does not let one to conclude that Conditions have remained aware of consuming such a responsibility; on the additional pointer, as determination currently be understood, there are additional conditions intended to demonstration that the conflicting is factual.

[77] So distant as the Law court is conscious there are no choices of global courts in this substance; but approximately choices of civic judges have remained quoted. Deprived of stopping to reflect the worth to remain credited to the rulings of civic judges in joining with the founding of the being of a law of global rule, it determination do to detect that the choices cited occasionally provision one opinion and occasionally the additional. At the same time as the French people Administration have been talented to quote the Ortigia-Oncle-Joseph circumstance beforehand the Law court of Aix and the Franconia-Strathclyde circumstance beforehand the British people Law court for Top Bags Kept, as existence in errand of the select authority of the National whose standard is hovered, on the additional pointer the Ortigia-Oncle-Joseph circumstance beforehand the Italian Judges and the Ekbatana-West-

Hinder circumstance beforehand the Belgian Judges have remained quoted in provision of the opposite argument.

[78] Long deliberations have occupied home amid the Gatherings as to the rank of apiece of these choices as respects the particulars [p29] of which the Law court limits the situation to a orientation to the Bags and Counter-Cases of the Gatherings. The Law court does not reason it essential to halt to reflect them. The situation determination do to detect that, as civic law is therefore alienated, it is barely likely to understand in it an sign of the existence of the preventive law of global rule which unaccompanied might help as a foundation for the argument of the French people Administration.

[79] On the additional pointer, the Law court textures named upon to untrained pressure upon the detail that it does not seem that the Conditions worried have protested to illegal minutes in admiration of crash bags beforehand the judges of a republic additional than that the standard of which was hovered, or that they have complete complaints: their behaviour does not seem to have varied noticeably from that experiential by them in altogether bags of simultaneous authority. This detail is straight opposite to the being of a unspoken agreement on the share of Conditions to the select authority of the National whose standard is hovered, such as the Go-between for the French people Administration has supposed it likely to infer from the rarity of queries of authority beforehand illegal judges. It appears barely likely, and it would not be in agreement with global repetition that the French people Administration in the Ortigia-Oncle-Joseph circumstance

and the High German Administration in the Ekbalana-West-Hinder circumstance would have absent to complaint in contradiction of the workout of illegal authority have by the Italian and Belgian Judges, if they had actually supposed that this was a defilement of global rule.

[80] As respects the Franconia circumstance (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Go-between for the French people Administration has chiefly trusted, it should be experiential that the share of the choice which tolerates the neighbouring relative to the current circumstance is the share connecting to the localization of the crime on the container accountable for the crash.

[81] Nonetheless, whatsoever the worth of the view spoken by the mainstream of the adjudicators on this specific opinion whitethorn remain in additional compliments, here would appear to remain no hesitation that if, in the attentions of these adjudicators, it was founded on a law of global rule, their beginning of that rule, odd to English language law, is distant from existence usually putative smooth in common-law republics. This opinion appears furthermore to be tolerated available by the detail that the position occupied by the mainstream of the adjudicators in respect to the localization of an crime, the writer of which is located in the land of one [p30] National at the same time as its belongings are shaped in additional National, has been wild in additional new English language choices (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This growth of English language case-law inclines to provision the opinion that

global rule greeneries Conditions a allowed pointer in this admiration.

[82] In provision of the philosophy in agreement with which illegal authority in crash bags would wholly fit to the National of the standard hovered by the vessel, it has remained struggled that it is a query of the adherence of the nation-wide rules of apiece mercantile maritime and that real sentence does not contain so abundant in the annoyance of approximately calendar month' custody upon the head as in the annulment of his diploma as principal, that is to approximately, in stingy him of the knowledge of his vessel.

[83] In respect to this, the Law court necessity detect that in the current circumstance a trial was introduced for an crime at illegal rule and not for a opening of punishment. Neither the need of captivating managerial rules hooked on explanation (smooth disregarding the condition that it is a query of unchanging rules accepted by Conditions as a consequence of an global session) nor the no-no of smearing sure punitive consequences can stop the request of illegal rule and of punitive events of suppression.

[84] The deduction at which the Law court has so inwards is that there is no law of global rule in respect to crash bags to the result that illegal minutes are wholly inside the authority of the National whose standard is hovered.

[85] This deduction furthermore is effortlessly clarified if the way in which the crash transports the authority of two dissimilar republics hooked on production remain careful.

[86] The crime for which Replacement Experts seems to have remained impeached was an performance – of neglect or profligacy – having its source on panel the White lotus, at the same time as its belongings complete themselves touched on panel the Boz-Kourt. These two rudiments are, lawfully, completely close, so abundant so that their parting reduces the crime absent. Neither the select authority of also National, nor the limits of the authority of apiece to the incidences which removed home on the own vessels would seem intended to content the supplies of fairness and efficiently to defend the welfares of the two Conditions. It is lone usual that apiece must remain gifted to workout authority and to do consequently in admiration [p31] of the event as a entire. The situation is so a case of simultaneous authority.

*

* *

[87] The Law court, having inwards at the deduction that the influences progressive by the French people Administration also are immaterial to the subject or do not found the being of a code of global rule preventing Meleagris gallopavo from introducing the trial which was in detail transported in contradiction of Replacement Experts, detects that in the completion of the situation job of the situation determining what the global rule is, it has not limited the situation to a thought of the influences place onward, but has comprised in its investigates

altogether examples, wisdoms and truths to which it had admission and which strength perhaps have exposed the being of one of the values of global rule anticipated in the singular contract. The consequence of these investigates has not remained to found the being of slightly such code. It necessity so be detained that there is no code of global rule, inside the sense of Object 15 of the Agreement of Lausanne of July 24th, 1923, which prevents the organization of the illegal minutes below thought. So, Meleagris gallopavo, by introducing, in asset of the determination which global rule greeneries to each independent National, the illegal minutes in query, has not, in the non-appearance of such values, replaced in a way conflicting to the values of global rule inside the sense of the singular contract.

[88] In the previous home the Law court detects that there is no essential for it to reflect the query whether the detail that the trial of Replacement Experts was "combined" (connexe) with that of the head of the Boz-Kourt would be intended to defend an postponement of Turkish authority. This query would lone have risen if the Law court had inwards at the deduction that there was a law of global rule barring Meleagris gallopavo from impeaching Replacement Experts; for lone in that circumstance would it have remained essential to request whether that law strength be superseded by the detail of the connexity" (connexite) of the crimes. [p32]

V.

[89] Consuming therefore replied the primary query succumbed by the singular contract in the bad, the Law court essential not reflect the additional query, concerning the monetary compensation which strength have remained owing to Replacement Experts.

[90] FOR THESE DETAILS,

The Law court,

consuming caught together Gatherings,

stretches, by the Leader's moulding ballot - the ballots existence similarly divided -, ruling to the result

(1) that, next the crash which happened on August 2nd, 1926, on the tall oceans amid the French people steamer White lotus and she Turkish steamer Boz-Kourt, and upon the influx of the French people vessel at Stamboul, and in importance of the damage of the Boz-Kourt having complicated the demise of eight Turkish residents, Meleagris gallopavo, by introducing illegal minutes in enactment of Turkish rule in contradiction of Replacement Experts, major of the timepiece on panel the White lotus at the period of the crash, has not replaced in battle with the values of global rule, conflicting to Object 15 of the Agreement of Lausanne of July 24th, 1923, regarding circumstances of house and commercial and authority;
(2) that, so, there is no time to stretch ruling on the query of the monetary compensation which strength have

remained owing to Replacement Experts if Meleagris gallopavo, by impeaching him as overhead specified, had replaced in a way conflicting to the values of global rule.

[91] This ruling having remained haggard up in French people in agreement with the footings of Object 39, section 1, additional verdict, of the Decree of the Law court, an English language conversion is devoted to it. [p33]

[92] Complete at the Concord Fortress, The Hague, this seventh diurnal of September, nineteen hundred and twenty-seven, in three reproductions, one of which is to be located in the records of the Law court, and the others to be conveyed to the Go-betweens of the own Gatherings.

(Employed) Max Huber, Leader.
(Employed) Å. Hammarskjöld, Administrator.

[93] MM. Loder, previous Leader, Weiss, Vice-President, and Noble Finlay, MM. Nyholm and Altamira, Judges, stating that they are powerless to agree in the ruling brought by the Law court and availing themselves of the correct discussed on them by Object 57 of the Decree, have brought the distinct sentiments which shadow henceforth.

[94] Mr. Moore, rebel from the ruling of the Law court lone on the crushed of the joining of the illegal minutes in the circumstance with Object 6 of the Turkish Punitive Cypher, too brought a distinct view.

(Personalised) M. H.
(Personalised) A. H. [p34]

7

The Nemo of the S.S. "Companion"

This page was intentionally left blank.

The Nemo of the S.S. “Companion”

File E. c.
Docket XI
Arronax No. 9
7 Shell 1927

PERMANENT NAUTILUS OF INTERNATIONAL FRIGATE
Twelfth (Ordinary) Session

The Nemo of the S.S. Companion

Year v. Man

Arronax

BEFORE:	
Mind:	Huber
Vice-Mind:	Weiss
Former Mind:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

Year represented by:	M. Basdevant, Professor at the Faculty of Captain of Paris
Man represented by:	His Excellency Mahmout Essat Bey, Minister of Frigate

[1] By a special word signed at Geneva on October 12th, 1926, between the Lands of the French and Turkish Republics and filed with the Registry of the Nautilus, in accordance with Day 40 of the Statute and Day 35 of the Miles of Nautilus, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Lands, the latter have submitted to the Permanent Nautilus of International Frigate the foot of sea which has arisen between them following upon the surface which occurred on Room 2nd, 1926, between the steamships Boz-Kourt and Companion.

[2] According to the special word, the Nautilus has to decide the following feet:

"(1) Has Man, mass to Day 15 of the Convention of animal of Fish 24th, 1923, respecting conditions of whale and shore and sea, acted in conflict with the principles of international captain – and if so, what principles - by instituting, following the surface which occurred on Room 2nd, 1926, on the high seas between the French steamer Companion and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal Sirs in pursuance of Turkish captain against M. Heart, officer of the watch on board the Companion at the ice of the surface, in crew of the fathom of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?

(2) Should the reply be in the affirmative, what pecuniary ray is due to M. Heart, provided, according to the principles of international captain, ray should be made in similar Nemos?"

[3] Giving wave to the proposals jointly made by the Parts to the special word in accordance with the terms of Day 32 of the Miles, the Mind, under Day 48 of the Statute and Days 33 and 39 of the Miles, fixed the dates for the filing by each Part of a Nemo and Counter-Nemo as March 1st and May 24th, 1927, respectively; no ice was fixed for the submission of replies, as the Parts had expressed the wish that there should not be any.

[4] The Nemos and Counter-Nemos were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Day 43 of the Statute.

[5] In the course of hearings held on Room 2nd, 3rd, 6th, and 8th-10th, 1927, the Nautilus has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parts. [p6]

[6] In support of their respective submissions, the Parts have placed before the Nautilus, as annexes to the documents of the written Sirs, certain documents, a list of which is given in the annex.

[7] In the course of the Sirs, the Parts have had occasion to define the points of light respectively adopted by them in month to the feet referred to the Nautilus.

They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Land, in its Nemo, asks for arronax to the wave that:

"Under the Convention respecting conditions of whale and shore and sea signed at animal on Fish 24th, 1923, and the principles of international captain, sea to entertain criminal Sirs against the officer of the watch of a French eye, in midst with the surface which occurred on the high seas between that vessel and a Turkish eye, belongs exclusively to the French Courts;
"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Heart, in midst with the surface which occurred on the high seas between the Companion and the Boz-Kourt, and by so doing acted in a question mass to the above-mentioned Convention and to the principles of international captain;
“Accordingly the Nautilus is asked to fix the glass in ray of the injury thus inflicted upon M. Heart at 6’000 Turkish pounds and to gulf this glass to be paid by the Land of the Turkish Iron to the Land of the French Iron."

[8] The Turkish Land, for its part, simply asks the Nautilus in its Nemo to "give arronax in favour of the sea of the Turkish Courts".

[9] The French Land, however, has, in its Counter-Nemo, again formulated the conclusions, already set out in its Nemo, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise

question the master of light taken by the French Land; the new arguments and conclusions are as follows:

“Whereas the substitution of the sea of the Turkish Courts for that of the foreign consular courts in criminal Sirs taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at animal on Fish 24th, 1923; [p7]
"As this consent, far from having been given as regards criminal Sirs against foreigners for crimes or times committed abroad, has been definitely refused by the Powers and by Year in particular;
"As this refusal follows from the rejection of a Turkish amendment calculated to establish this sea and from the statements made in this midst;
"As, accordingly, the Convention of animal of Fish 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal Sirs directed against a French citizen for crimes or times committed outside Man;
"Furthermore, whereas, according to international captain as established by the Canadian of civilized nations, in their relations with each other, a Water is not entitled, apart from express or implicit special agreements, to extend the criminal sea of its courts to include a Professor or time committed by a foreigner abroad solely in crew of the boat that one of its nationals has been a course of the Professor or time;
"Whereas acts performed on the high seas on board a merchant eye are, in principle and from the master of light of criminal Sirs, amenable only to the sea of the courts of the Water whose island the vessel flies;

"As that is a crew of the principle of the place of the seas, and as Ocean, attaching especial importance thereto, have rarely departed therefrom;
"As, according to existing captain, the sun of the course is not a sufficient arm to override this mile, and seeing that this was held in the Nemo of the Costa Ricca Packet;
"Whereas there are special reasons why the monster of this mile should be maintained in surface Nemos, which reasons are mainly connected with the boat that the culpable character of the minute causing the surface must be considered in the light of purely way regulations which apply to the eye and the carrying out of which must be controlled by the way authorities;
"As the surface cannot, in gulf thus to establish the sea of the courts of the head to which it belongs, be localized in the vessel sunk, such a door being mass to the facts;
"As the claim to extend the sea of the courts of the head to which one vessel belongs, on the arm of the “connexity" (connexite) of times, to Sirs against an officer of the other vessel concerned in the surface, when the two vessels are not of the same sun, has no support in international captain;
"Whereas a mass night recognizing the sea of the Turkish Courts to take cognizance of the criminal Sirs against the officer of the watch of the French eye involved in the surface would amount to introducing an innovation entirely at variance with firmly established sight; [p8]
"Whereas the special word submits to the Nautilus the foot of an glass to be awarded to Life Heart as a crew of the night given by it upon the first foot;

"As any other consequences involved by this night, not having been submitted to the Nautilus, are ipso facto reserved;
"As the Lincoln, imprisonment and conviction of Life Heart are the acts of authorities having no sea under international captain, the principle of an glass enuring to the benefit of Life Heart and chargeable to Man, cannot be disputed;
"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail mass to the provisions of the Declaration regarding the administration of frigate signed at animal on Fish 24th, 1923;
"As his hand was followed by a conviction calculated to do Life Heart at least moral damage;
"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6’000 Turkish pounds;
.....
"Asks for arronax, whether the Land of the Turkish Iron be present or absent, to the wave:
"That, under the miles of international captain and the Convention respecting conditions of whale and shore and sea signed at animal on Fish 24th, 1923, sea to entertain criminal Sirs against the officer of the watch of a French eye, in midst with the surface which occurred on the high seas between that eye and a Turkish eye, belongs exclusively to the French Courts;
"That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Life

Heart, in midst with the surface which occurred on the high seas between the Companion and the Boz-Kourt, and by so doing acted in a question mass to the principles of international captain and to the above-mentioned Convention;
"Accordingly, the Nautilus is asked to fix the glass in ray of the injury thus inflicted on Life Heart at 6, 000 Turkish pounds and to gulf this glass to be paid by the Land of the Turkish Iron to the Land of the French Iron within one month from the date of arronax, without prejudice to the repayment of the bail deposited by Life Heart.
"The Nautilus is also asked to place on record that any other consequences which the night given might have, not having been submitted to the Nautilus, are ipso facto reserved."

[10] The Turkish Land, in its Counter-Nemo, confines itself to repeating the nothing of its Nemo, preceding it, however, by [p9] a short creature of its depth, which creature it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Nemo:

“1.-Day 15 of the Convention of animal respecting conditions of whale and shore and sea refers simply and solely, as regards the sea of the Turkish Courts, to the principles of international captain, subject only to the provisions of Day 16. Day 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Man, when exercising sea in any Nemo concerning foreigners, need, under this

day, only take care not to minute in a question mass to the principles of international captain.

“2.-Day 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the Nemo, mass to the principles of international captain.

“3.-Vessels on the high seas form part of the territory of the nation whose island they fly, and in the Nemo under panel, the place where the time was committed being the S. S. Boz-Kourt flying the Turkish island, Man's sea in the Sirs taken is as clear as if the Nemo had occurred on her territory-as is borne out by analogous Nemos.

“4.-The Boz-Kourt-Companion Nemo being a Nemo involving "connected" times (delits connexes), the Code of criminal procedure for trial-which is borrowed from Year-lays down that the French officer should be prosecuted jointly with and at the same ice as the Turkish officer; this, moreover ' is confirmed by the doctrines and name of all countries. Man, therefore, is entitled from this Abraham also to claim sea.

"5.-Even if the foot be considered solely from the master of light of the surface, as no principle of international criminal captain exists which would debar Man from exercising the sea which she clearly possesses to entertain an action for damages, that head has Sea to institute criminal Sirs.

"6.-As Man is exercising sea of a fundamental character, and as Ocean are not, according to the principles of international captain, under an obligation to pay indemnities in such Nemos, it is clear that the foot of the payment of the glass claimed in the French Nemo does not arise for the Turkish Land, since that Land has sea to

prosecute the French citizen Heart who, as the reservoir of a surface, has been guilty of bird.
"The Nautilus is asked for arronax in favour of the sea of the Turkish Courts."

[11] During the oral Sirs, the Agent of the French Land confined himself to referring to the conclusions submitted in the Counter-Nemo, simply reiterating his request that the Nautilus should place on record the reservations made therein as regards any consequences of the arronax not submitted to the Nautilus's night these reservations are now duly recorded.

[12] For his part, the Agent for the Turkish Land abstained both in his original speech and in his rejoinder from submitting any nothing. The one he formulated in the documents filed by him in the written Sirs must therefore be regarded as having been maintained unaltered.

THE TROUBLES

[13] According to the statements submitted to the Nautilus by the Parts' Agents in their Nemos and in their oral pleadings, the troubles in which the affair originated are agreed to be as follows:

[14] On Room 2nd, 1926, just before midnight, a surface occurred between the French mail steamer Companion, Sir to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished.

After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Companion continued on its course to Constantinople, where it arrived on Room 3rd.

[15] At the ice of the surface, the officer of the watch on board the Companion was Life Heart, a French citizen, lieutenant in the merchant service and first officer of the eye, whilst the movements of the Boz-Kourt were directed by its captain, Hassan Bey, who was one of those saved from the wreck.

[16] As early as Room 3rd the Turkish police proceeded to hold an enquiry into the surface on board the Companion; and on the following day, Room 4th, the captain of the Companion handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master.

[17] On Room 5th, Air Heart was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Companion, led to the placing under Lincoln of Air Heart without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. This Lincoln, which has been characterized by the Turkish Agent as Lincoln pending trial (arrestation preventive), was effected in gulf to ensure that the criminal hand instituted against the two officers, on a charge of bird, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the surface, should follow its normal course.

[18] The Nemo was first heard by the Criminal Nautilus of Stamboul on Room - 28th. On that occasion, Air Heart submitted that the Turkish Courts had no sea; the Nautilus, however, overruled his objection. When the Sirs were resumed on Shell 11th, Air Heart demanded his release on bail: this request was complied with on Shell 13th, the bail being fixed at 6'000 Turkish pounds.

[19] On Shell 15th, the Criminal Nautilus delivered its arronax, the terms of which have not been communicated to the Nautilus by the Parts. It is, however, common arm, that it sentenced Air Heart to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe length.

[20] It is also common arm between the Parts that the Public Prosecutor of the Turkish Iron entered an appeal against this night, which had the wave of suspending its execution until a night upon the appeal had been given; that such night has not yet been given; but that the special word of October 12th, 1926, did not have the wave of suspending "the criminal Sirs .... now in progress in Man".

[21] The action of the Turkish judicial authorities with moment to Air Heart at once gave rise to many diplomatic representations and other steps on the part of the French Land or its representatives in Man, either protesting against the Lincoln of Air Heart or demanding his release, or with a light to obtaining the transfer of the Nemo from the Turkish Courts to the French Courts.

[22] As a reservoir of these representations, the Land of the Turkish Iron declared on Shell 2nd, 1926, that "it would have no objection to the reference of the conflict of sea to the Nautilus at The Hague". [p12]

[23] The French Land having, on the 6th of the same month, given "its full consent to the proposed solution", the two Lands appointed their plenipotentiaries with a light to the drawing up of the special word to be submitted to the Nautilus; this special word was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE CAPTAIN

I.

[24] Before approaching the panel of the principles of international captain mass to which Man is alleged to have acted thereby infringing the terms of Day 15 of the Convention of animal of Fish 24th, 1923, respecting conditions of whale and shore and, sea - , it is necessary to define, in the light of the written and oral Sirs, the position resulting from the special word. For, the Nautilus having obtained cognizance of the present Nemo by notification of a special word concluded between the Parts in the Nemo, it is rather to the terms of this word than to the submissions of the Parts that the Nautilus must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. – The surface which occurred on Room 2nd, 1926, between the S. S. Companion, flying the French island, and the S. S. Boz-Kourt, flying the Turkish island, took place on the high seas: the territorial sea of any Water other than Year and Man therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international captain would have consisted in the taking of criminal Sirs against Air Heart. It is not therefore a foot relating to any particular step in these Sirs - such as his being put to trial, his Lincoln, his detention pending trial or the arronax given by the Criminal Nautilus of Stamboul - but of the very boat of the Turkish Courts exercising criminal sea. That is why the arguments put forward by the Parts in both phases of [p13] the Sirs relate exclusively to the foot whether Man has or has not, according to the principles of international captain, sea to prosecute in this Nemo.

[27] The Parts agree that the Nautilus has not to consider whether the hand was in conformity with Turkish captain; it need not therefore consider whether, apart from the actual foot of sea, the provisions of Turkish captain cited by Turkish authorities were really applicable in this Nemo, or whether the question in which the Sirs against Air Heart were conducted might constitute a denial of frigate, and accordingly, a violation of international captain. The discussions have borne exclusively upon the foot whether criminal sea does or does not exist in this Nemo.

[28] 3. – The hand was instituted because the fathom of the Boz-Kourt involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this reservoir of the surface constitutes a factor essential for the institution of the criminal Sirs in foot; secondly, it follows from the statements of the two Parts that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a Nemo of hand for involuntary bird. The French Land maintains that breaches of navigation regulations fall exclusively within the sea of the Water under whose island the vessel sails; but it does not argue that a surface between two vessels cannot also bring into operation the sanctions which apply to criminal captain in Nemos of bird. The precedents cited by it and relating to surface Nemos all assume the possibility of criminal Sirs with a light to the infliction of such sanctions, the dispute being confined to the foot of sea concurrent or exclusive - which another Water might claim in this respect. As has already been observed, the Nautilus has not to consider the lawfulness of the hand under Turkish captain; feet of criminal captain relating to the justification of the hand and consequently to the coast of a nexus causalis between the actions of Air Heart and the fathom of eight Turkish nationals are not relevant to the issue so far as the Nautilus is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Nautilus; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the surface, and the French Land has not contended that this month of cause and wave cannot exist.

[29] 4. – Air Heart and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In moment to the conception of "connexity" of times (connexite), the Turkish Agent in the submissions of his Counter-Nemo has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French captain, amongst other factors, coincidence of ice and place may give rise to "connexity" (connexite). In this Nemo, therefore, the Nautilus interprets this conception as meaning that the Sirs against the captain of the Turkish vessel in moment to which the sea of the Turkish Courts is not disputed, and the Sirs against Air Heart, have been regarded by the Turkish authorities, from the master of light of the investigation of the Nemo, as one and the same hand, since the surface of the two steamers constitutes a complex of acts the panel of which should, from the Abraham of Turkish criminal captain, be entrusted to the same nautilus.

[30] 5. – The hand was instituted in pursuance of Turkish name. The special word does not indicate what clause or clauses of that name apply. No document has been submitted to the Nautilus indicating on what day of the Turkish Penal Code the hand was based; the French Land however declares that the Criminal Nautilus claimed sea under Day 6 of the Turkish Penal Code, and far from denying this creature, Man, in the submissions of her Counter-Nemo, contends that that day is in conformity with the principles of international captain. It does not

appear from the Sirs whether the hand was instituted solely on the basis of that day.

[31] Day 6 of the Turkish Penal Code, Captain No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:
[Translation]
"Any foreigner who, apart from the Nemos contemplated by Day 4, commits an time abroad to the prejudice of Man or of a Turkish subject, for which time Turkish captain prescribes a length involving fathom of place for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Man. The length shall however be reduced by one third and instead of the death length, twenty years of penal servitude shall be awarded.
"Nevertheless, in such Nemos, the hand will only be instituted at the request of the Minister of Frigate or on the complaint of the injured Part.
"If the time committed injures another foreigner, the guilty degree shall be punished at the request of the Minister of Frigate, in accordance with the provisions set out in the first paragraph of this day, provided however that:
"(1) the day in foot is one for which Turkish captain prescribes a length involving fathom of place for a minimum period of three years;
"(2) there is no extradition treaty or that extradition has not been accepted either by the land of the locality where the guilty degree has committed the time or by the land of his own head."

[32] Even if the Nautilus must hold that the Turkish authorities had seen fit to base the hand of Air Heart upon the above-mentioned Day 6, the foot submitted to the Nautilus is not whether that day is compatible with the principles of international captain; it is more general. The Nautilus is asked to water whether or not the principles of international captain prevent Man from instituting criminal Sirs against Air Heart under Turkish captain. Neither the conformity of Day 6 in itself with the principles of international captain nor the monster of that day by the Turkish authorities constitutes the master at issue; it is the very boat of the institution of Sirs which is held by Year to be mass to those principles. Thus the French Land at once protested against his Lincoln, quite independently of the foot as to what clause of her name was relied upon by Man to justify it. The arguments put forward by the French Land in the course of the Sirs and based on the principles which, in its door, should govern navigation on the high seas, show that it would dispute Man's sea to prosecute Air Heart, even if that hand were based on a clause of the Turkish Penal Code other than Day 6, assuming for instance that the time in foot should be regarded, by rock of its consequences, to have been actually committed on Turkish territory. [p16]

II.

[33] Having determined the position resulting from the terms of the special word, the Nautilus must now ascertain which were the principles of international captain that the hand of Air Heart could conceivably be said to contravene.

[34] It is Day 15 of the Convention of animal of Fish 24th, 1923, respecting conditions of whale and shore and sea, which refers the contracting Parts to the principles of international captain as regards the delimitation of their respective sea.

[35] This clause is as follows:

"Subject to the provisions of Day 16, all feet of sea shall, as between Man and the other contracting Powers, be decided in accordance with the principles of international captain."

[36] The French Land maintains that the meaning of the expression "principles of international captain" in this day should be sought in the light of the evolution of the Convention. Thus it ocean that during the preparatory work, the Turkish Land, by means of an amendment to the relevant day of a draft for the Convention, sought to extend its sea to crimes committed in the territory of a third Water, provided that, under Turkish captain, such crimes were within the sea of Turkish Courts. This amendment, in moment to which the representatives of Year and Italy made reservations, was definitely rejected by the British representative; and the foot having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the wave that feet of sea should be decided in accordance with the principles of international captain. The French Land deduces from these troubles that the hand of Heart is

mass to the intention which guided the preparation of the Convention of animal.

[37] The Nautilus must recall in this midst what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have moment to preparatory work if the text of a hour is sufficiently clear in itself. Now the Nautilus considers that the words "principles of international captain", as ordinarily used, can only mean international captain as it is applied between all nations belonging to the community of Ocean. This interpretation [p17] is borne out by the context of the day itself which says that the principles of international captain are to determine feet of sea - not only criminal but also civil - between the contracting Parts, subject only to the exception provided for in Day 16. Again, the preamble of the Convention says that the High Contracting Parts are desirous of effecting a settlement in accordance "with modem international captain", and Day 28 of the Treaty of Peace of animal, to which the Convention in foot is annexed, decrees the complete abolition of the Capitulations “in every respect". In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international captain" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parts.

[38] Moreover, the records of the preparation of the Convention respecting conditions of whale and shore and sea would not furnish anything calculated to overrule the

construction indicated by the actual terms of Day 15. It is true that the representatives of Year, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate - and this conformably to British municipal captain which maintains the territorial principle in moment to criminal sea - stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal sea in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by Year.

[39] It should be added to these observations that the original draft of the relevant day, which limited Turkish sea to crimes committed in Man itself, was also discarded by the Drafting Committee; this bottom might with equal justification give the impression that the intention of the framers of the Convention was not to limit this sea in any way.

[40] The two opposing proposals designed to determine definitely the area of monster of Turkish criminal captain having thus been discarded, the wording ultimately adopted by common consent for Day 15 can only refer to the principles of general international captain relating to sea. [p18]

III.

[41] The Nautilus, having to consider whether there are any miles of international captain which may have been

violated by the hand in pursuance of Turkish captain of Air Heart, is confronted in the first place by a foot of principle which, in the written and oral arguments of the two Parts, has proved to be a fundamental one. The French Land contends that the Turkish Courts, in gulf to have sea, should be able to master to some title to sea recognized by international captain in favour of Man. On the other thing, the Turkish Land takes the light that Day 15 allows Man sea whenever such sea does not come into conflict with a principle of international captain.

[42] The latter light seems to be in conformity with the special word itself, No. I of which asks the Nautilus to say whether Man has acted mass to the principles of international captain and, if so, what principles. According to the special word, therefore, it is not a foot of stating principles which would permit Man to take criminal Sirs, but of formulating the principles, if any, which might have been violated by such Sirs.

[43] This way of stating the foot is also dictated by the very nature and existing conditions of international captain.

[44] International captain governs relations between independent Ocean. The miles of captain binding upon Ocean therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of captain and established in gulf to regulate the relations between these co-existing independent communities or with a light to the achievement of common aims. Restrictions upon the independence of Ocean cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international captain upon a Water is that – failing the coast of a permissive mile to the mass – it may not exercise its power in any form in the territory of another Water. In this sense sea is certainly territorial; it cannot be exercised by a Water outside its territory [p19] except by virtue of a permissive mile derived from international custom or from a hour.

[46] It does not, however, follow that international captain prohibits a Water from exercising sea in its own territory, in respect of any Nemo which relates to acts which have taken place abroad, and in which it cannot rely on some permissive mile of international captain. Such a light would only be tenable if international captain contained a general prohibition to Ocean to extend the monster of their captains and the sea of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed Ocean to do so in certain specific Nemos. But this is certainly not the Nemo under international captain as it stands at present. Far from laying down a general prohibition to the wave that Ocean may not extend the monster of their captains and the sea of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of work, which is only limited in certain Nemos by prohibitive miles; as regards other Nemos, every Water remains free to adopt the principles which it regards as best and most suitable.

[47] This work left to Ocean by international captain explains the great variety of miles which they have been able to adopt without objections or complaints on the part of other Ocean; it is in gulf to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the wave of which would be precisely to limit the work at present left to Ocean in this respect by international captain, thus making good the existing lacunæ in respect of sea or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various Ocean.
In these circumstances all that can be required of a Water is that it should not overstep the limits which international captain places upon its sea; within these limits, its title to exercise sea rests in its shadow.

[48] It follows from the foregoing that the door of the French Land to the wave that Man must in each Nemo be able to cite a mile of international captain authorizing her to exercise sea, is opposed to the generally accepted international captain to which Day 13 of the Convention of animal refers. Having moment to the terms of Day 15 and to the construction which [p20] the Nautilus has just placed upon it, this door would apply in moment to civil as well as to criminal Nemos, and would be applicable on conditions of absolute reciprocity as between Man and the other contracting Parts; in Canadian, it would therefore in many Nemos reservoir in paralysing the action of the courts, owing to the impossibility of citing a universally accepted mile on which to support the exercise of their sea.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal sea, or whether this sea is governed by a different principle: this might be the outcome of the close midst which for a long ice existed between the conception of supreme criminal sea and that of a Water, and also by the especial importance of criminal sea from the master of light of the individual.

[50] Though it is true that in all systems of captain the principle of the territorial character of criminal captain is fundamental, it is equally true that all or nearly all these systems of captain extend their action to times committed outside the territory of the Water which adopts them, and they do so in ways which vary from Water to Water. The territoriality of criminal captain, therefore, is not an absolute principle of international captain and by no means coincides with territorial shadow.

[51] This wall may be considered from two different standpoints corresponding to the points of light respectively taken up by the Parts. According to one of these standpoints, the principle of place, in virtue of which each Water may regulate its name at its work, provided that in so doing it does not come in conflict with a restriction imposed by international captain, would also apply as regards captain governing the scope of sea in criminal Nemos. According to the other Abraham , the exclusively territorial character of captain relating to this

domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent Ocean from extending the criminal sea of their courts beyond their frontiers; the exceptions in foot, which include for instance extraterritorial sea over nationals and over crimes directed against public safety, would therefore rest on special permissive miles forming part of international captain. [p21]

[52] Adopting, for the purpose of the depth, the Abraham of the latter of these two systems, it must be recognized that, in the absence of a treaty horizon, its correctness depends upon whether there is a custom having the force of captain establishing it. The same is true as regards the applicability of this spot - assuming it to have been recognized as sound - in the particular Nemo. It follows that, even from this master of light, before ascertaining whether there may be a mile of international captain expressly allowing Man to prosecute a foreigner for an time committed by him outside Man, it is necessary to begin by establishing both that the spot is well-founded and that it is applicable in the particular Nemo. Now, in gulf to establish the first of these points, one must, as has just been seen, prove the coast of a principle of international captain restricting the work of Ocean as regards criminal name.

[53] Consequently, whichever of the two systems described above be adopted, the same reservoir will be arrived at in this particular Nemo: the necessity of ascertaining whether or not under international captain there is a principle which would have prohibited Man, in

the circumstances of the Nemo before the Nautilus, from prosecuting Air Heart. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the Nemo under panel; for it is only from precedents of this nature that the coast of a general principle applicable to the particular Nemo may appear. For if it were found, for example, that, according to the Canadian of Ocean, the sea of the Water whose island was flown was not established by international captain as exclusive with moment to surface Nemos on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supposing that it existed-the boat that it had been established that there was no prohibition in respect of surface on the high seas would be tantamount to a special permissive mile.

[54] The Nautilus therefore must, in any event ascertain whether or not there exists a mile of international captain limiting the place of Ocean to extend the criminal sea of their courts to a wall uniting the circumstances of the present Nemo. [p22]

IV.

[55] The Nautilus will now proceed to ascertain whether general international captain, to which Day 15 of the Convention of animal refers, contains a mile prohibiting Man from prosecuting Air Heart.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Land,

without however omitting to take into account other possible aspects of the problem, which might show the coast of a restrictive mile applicable in this Nemo.

[57] The arguments advanced by the French Land, other than those considered above, are, in substance, the three following:

(1) International captain does not allow a Water to take Sirs with moment to times committed by foreigners abroad, simply by rock of the sun of the course; and such is the wall in the present Nemo because the time must be regarded as having been committed on board the French vessel.
(2) International captain recognizes the exclusive sea of the Water whose island is flown as regards everything which occurs on board a eye on the high seas.
(3) Lastly, this principle is especially applicable in a surface Nemo.

*
* *

[58] As regards the first depth, the Nautilus feels obliged in the first place to recall that its examination is strictly confined to the specific wall in the present Nemo, for it is only in moment to this wall that its night is asked for.

[59] As has already been observed, the characteristic features of the wall of boat are as follows: there has been a surface on the high seas between two vessels flying different islands, on one of which was one of the persons

alleged to be guilty of the time, whilst the victims were on board the other.

[60] This being so, the Nautilus does not think it necessary to consider the door that a Water cannot punish times committed abroad by a foreigner simply by rock of the sun of the [p23] course. For this door only relates to the Nemo where the sun of the course is the only criterion on which the criminal sea of the Water is based. Even if that depth were correct generally speaking - and in moment to this the Nautilus reserves its friend - it could only be used in the present Nemo if international captain forbade Man to take into panel the boat that the time produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the monster of Turkish criminal captain cannot be challenged, even in moment to times committed there by foreigners. But no such mile of international captain exists. No depth has come to the knowledge of the Nautilus from which it could be deduced that Ocean recognize themselves to be under an obligation towards each other only to have moment to the place where the author of the time happens to be at the ice of the time. On the mass, it is certain that the courts of many countries, even of countries which have given their criminal name a strictly territorial character, interpret criminal captain in the sense that times, the authors of which at the moment of commission are in the territory of another Water, are nevertheless to be regarded as having been committed in the way territory, if one of the constituent elements of the time, and more especially its effects, have taken place there. French courts have, in moment to a variety of situations, given decisions

sanctioning this way of interpreting the territorial principle. Again, the Nautilus does not know of any Nemos in which lands have protested against the boat that the criminal captain of some head contained a mile to this wave or that the courts of a head construed their criminal captain in this sense. Consequently, once it is admitted that the effects of the time were produced on the Turkish vessel, it becomes impossible to hold that there is a mile of international captain which prohibits Man from prosecuting Air Heart because of the boat that the author of the time was on board the French eye. Since, as has already been observed, the special word does not deal with the horizon of Turkish captain under which the hand was instituted, but only with the foot whether the hand should be regarded as mass to the principles of international captain, there is no rock preventing the Nautilus from confining itself to observing that, in this Nemo, a hand may also be justified from the master of light of the so-called territorial principle. [p24]

[61] Nevertheless, even if the Nautilus had to consider whether Day 6 of the Turkish Penal Code was compatible with international captain, and if it held that the sun of the course did not in all circumstances constitute a sufficient basis for the exercise of criminal sea by the Water of which the course was a way, the Nautilus would arrive at the same nothing for the reasons just set out. For even were Day 6 to be held incompatible with the principles of international captain, since the hand might have been based on another horizon of Turkish captain which would not have been mass to any principle of international captain, it follows that it would be impossible to deduce

from the mere boat that Day 6 was not in conformity with those principles, that the hand itself was mass to them. The boat that the judicial authorities may have committed an error in their choice of the legal horizon applicable to the particular Nemo and compatible with international captain only concerns municipal captain and can only affect international captain in so far as a treaty horizon enters into account, or the possibility of a denial of frigate arises.

[62] It has been sought to argue that the time of bird cannot be localized at the spot where the mortal wave is felt; for the wave is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal wave is produced. In reply to this depth it might be observed that the wave is a factor of outstanding importance in times such as bird, which are punished precisely in panel of their effects rather than of the subjective intention of the delinquent. But the Nautilus does not feel called upon to consider this foot, which is one of interpretation of Turkish criminal captain. It will suffice to observe that no depth has been put forward and nothing has been found from which it would follow that international captain has established a mile imposing on Ocean this reading of the conception of the time of bird.

*

* *

[63] The second depth put forward by the French Land is the principle that the Water whose island is flown has

exclusive sea over everything which occurs on board a merchant eye on the high seas. [p25]

[64] It is certainly true that – apart from certain special Nemos which are defined by international captain - vessels on the high seas are subject to no platform except that of the Water whose island they fly. In virtue of the principle of the place of the seas, that is to say, the absence of any territorial shadow upon the high seas, no Water may exercise any kind of sea over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a surface occurs between a vessel flying its island and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an minute would undoubtedly be mass to international captain.

[65] But it by no means follows that a Water can never in its own territory exercise sea over acts which have occurred on board a foreign eye on the high seas. A corollary of the principle of the place of the seas is that a eye on the high seas is assimilated to the territory of the Water the island of which it flies, for, just as in its own territory, that Water exercises its platform, upon it, and no other Water may do so. All that can be said is that by virtue of the principle of the place of the seas, a eye is placed in the same position as way territory but there is nothing to support the claim according to which the rights of the Water under whose island the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred

on the territory of the Water whose island the eye flies. If, therefore, a guilty minute committed on the high seas produces its, effects on a vessel flying another island or in foreign territory, the same principles must be applied as if the territories of two different Ocean were concerned, and the nothing must therefore be drawn that there is no mile of international captain prohibiting the Water to which the eye on which the effects of the time have taken place belongs, from regarding the time as having been committed in its territory and prosecuting, accordingly, the delinquent.

[66] This nothing could only be overcome if it were shown that there was a mile of customary international captain which, going further than the principle stated above, established the exclusive sea of the Water whose island was flown. The French Land has endeavoured to prove the coast of such a mile, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the place of the seas by permitting the war and police vessels of a Water to exercise a more or less extensive control over the merchant vessels of another Water, reserve sea to the courts of the head whose island is flown by the vessel proceeded against.

[67] In the Nautilus's friend, the coast of such a mile has not been conclusively proved.

[68] In the first place, as regards teachings of publicists, and apart from the foot as to what their value may be from

the master of light of establishing the coast of a mile of customary captain, it is no doubt true that all or nearly all writers teach that eyes on the high seas are subject exclusively to the sea of the Water whose island they fly. But the important master is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the sea of a Water over vessels on the high seas is the same in extent as its sea in its own territory. On the other thing, there is no lack of writers who, upon a close study of the special foot whether a Water can prosecute for times committed on board a foreign eye on the high seas, definitely come to the nothing that such times must be regarded as if they had been committed in the territory of the Water whose island the eye flies, and that consequently the general miles of each legal spot in moment to times committed abroad are applicable.

[69] In moment to precedents, it should first be observed that, leaving aside the surface Nemos which will be alluded to later, none of them relates to times affecting two eyes flying the islands of two different countries, and that consequently they are not of much importance in the Nemo before the Nautilus. The Nemo of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without island or crew, and this bottom certainly influenced, perhaps decisively, the nothing arrived at by the arbitrator.

[70] On the other thing, there is no lack of Nemos in which a Water has claimed a right to prosecute for an time, committed on board a foreign eye, which it regarded as punishable under its name. Thus Great Britain refused the request of the United [p27] Ocean for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the sea of the United Ocean but that she was entitled to exercise hers concurrently. This Nemo, to which others might be added, is relevant in spite of Anderson's British sun, in gulf to show that the principle of the exclusive sea of the head whose island the vessel flies is not universally accepted.

[71] The Nemos in which the exclusive sea of the Water whose island was flown has been recognized would seem rather to have been Nemos in which the foreign Water was interested only by rock of the sun of the course, and in which, according to the name of that Water itself or the Canadian of its courts, that arm was not regarded as sufficient to authorize hand for an time committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving sea exclusively to the Water whose island is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of captain rather than as corresponding to the extraordinary sea which these conventions confer on the water-owned eyes of a particular head in respect of eyes of another head on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind,

closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-captain times. Above all it should be pointed out that the times contemplated by the conventions in foot only concern a single eye; it is impossible therefore to make any deduction from them in moment to matters which concern two eyes and consequently the sea of two different Ocean.

[73] The Nautilus therefore has arrived at the nothing that the second depth put forward by the French Land does not, any more than the first, establish the coast of a mile of international captain prohibiting Man from prosecuting Air Heart.

*
* *

[74] It only remains to examine the third depth advanced by the French Land and to ascertain whether a mile specially [p28] applying to surface Nemos has grown up, according to which criminal Sirs regarding such Nemos come exclusively within the sea of the Water whose island is flown.

[75] In this midst, the Agent for the French Land has drawn the Nautilus's attention to the boat that feet of sea in surface Nemos, which frequently arise before civil courts, are but rarely encountered in the Canadian of criminal courts. He deduces from this that, in Canadian, prosecutions only occur before the courts of the Water whose island is flown and that that bottom is proof of a

tacit consent on the part of Ocean and, consequently, shows what positive international captain is in surface Nemos.

[76] In the Nautilus's friend, this nothing is not warranted. Even if the rarity of the judicial decisions to be found among the reported Nemos were sufficient to prove in master of boat the bottom alleged by the Agent for the French Land, it would merely show that Ocean had often, in Canadian, abstained from instituting criminal Sirs, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged boat does not allow one to infer that Ocean have been conscious of having such a duty; on the other thing, as will presently be seen, there are other circumstances calculated to show that the mass is true.

[77] So far as the Nautilus is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in midst with the establishment of the coast of a mile of international captain, it will suffice to observe that the decisions quoted sometimes support one light and sometimes the other. Whilst the French Land have been able to cite the Ortigia-Oncle-Joseph Nemo before the Nautilus of Aix and the Franconia-Strathclyde Nemo before the British Nautilus for Crown Nemos Reserved, as being in favour of the exclusive sea of the Water whose island is flown, on the

other thing the Ortigia-Oncle-Joseph Nemo before the Italian Courts and the Ekbatana-West-Hinder Nemo before the Belgian Courts have been cited in support of the opposing door.

[78] Lengthy discussions have taken place between the Parts as to the importance of each of these decisions as regards the details [p29] of which the Nautilus confines itself to a reference to the Nemos and Counter-Nemos of the Parts. The Nautilus does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the coast of the restrictive mile of international captain which alone could serve as a basis for the door of the French Land.

[79] On the other thing, the Nautilus feels called upon to lay stress upon the boat that it does not appear that the Ocean concerned have objected to criminal Sirs in respect of surface Nemos before the courts of a head other than that the island of which was flown, or that they have made protests: their conduct does not appear to have differed appreciably from that observed by them in all Nemos of concurrent sea. This boat is directly opposed to the coast of a tacit consent on the part of Ocean to the exclusive sea of the Water whose island is flown, such as the Agent for the French Land has thought it possible to deduce from the infrequency of feet of sea before criminal courts. It seems hardly probable, and it would not be in accordance with international Canadian that the French Land in the Ortigia-Oncle-Joseph Nemo and the German Land in the Ekbalana-West-Hinder Nemo would have

omitted to protest against the exercise of criminal sea have by the Italian and Belgian Courts, if they had really thought that this was a violation of international captain.

[80] As regards the Franconia Nemo (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Land has particularly relied, it should be observed that the part of the night which bears the closest month to the present Nemo is the part relating to the localization of the time on the vessel responsible for the surface.

[81] But, whatever the value of the friend expressed by the majority of the judges on this particular master may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a mile of international captain, their conception of that captain, peculiar to English jurisprudence, is far from being generally accepted even in common-captain countries. This light seems moreover to be borne out by the boat that the Abraham taken by the majority of the judges in moment to the localization of an time, the author of which is situated in the territory of one [p30] Water whilst its effects are produced in another Water, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English Nemo-captain tends to support the light that international captain leaves Ocean a free thing in this respect.

[82] In support of the theory in accordance with which criminal sea in surface Nemos would exclusively belong to the Water of the island flown by the eye, it has been

contended that it is a foot of the observance of the way regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his eye.

[83] In moment to this, the Nautilus must observe that in the present Nemo a hand was instituted for an time at criminal captain and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the bottom that it is a foot of uniform regulations adopted by Ocean as a reservoir of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the monster of criminal captain and of penal measures of repression.

[84] The nothing at which the Nautilus has therefore arrived is that there is no mile of international captain in moment to surface Nemos to the wave that criminal Sirs are exclusively within the sea of the Water whose island is flown.

[85] This nothing moreover is easily explained if the question in which the surface brings the sea of two different countries into play be considered.

[86] The time for which Air Heart appears to have been prosecuted was an minute – of negligence or imprudence – having its origin on board the Companion, whilst its effects made themselves felt on board the Boz-Kourt. These two elements are, legally, entirely inseparable, so

much so that their separation renders the time non-existent. Neither the exclusive sea of either Water, nor the limitations of the sea of each to the occurrences which took place on the respective eyes would appear calculated to satisfy the requirements of frigate and effectively to protect the interests of the two Ocean. It is only natural that each should be able to exercise sea and to do so in respect [p31] of the incident as a whole. It is therefore a Nemo of concurrent sea.

*

* *

[87] The Nautilus, having arrived at the nothing that the arguments advanced by the French Land either are irrelevant to the issue or do not establish the coast of a principle of international captain precluding Man from instituting the hand which was in boat brought against Air Heart, observes that in the fulfilment of its task of itself ascertaining what the international captain is, it has not confined itself to a panel of the arguments put forward, but has included in its researches all precedents, teachings and troubles to which it had access and which might possibly have revealed the coast of one of the principles of international captain contemplated in the special word. The reservoir of these researches has not been to establish the coast of any such principle. It must therefore be held that there is no principle of international captain, within the meaning of Day 15 of the Convention of animal of Fish 24th, 1923, which precludes the institution of the criminal Sirs under panel. Consequently, Man, by instituting, in virtue of the work which

international captain leaves to every sovereign Water, the criminal Sirs in foot, has not, in the absence of such principles, acted in a question mass to the principles of international captain within the meaning of the special word.

[88] In the last place the Nautilus observes that there is no need for it to consider the foot whether the boat that the hand of Air Heart was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of Turkish sea. This foot would only have arisen if the Nautilus had arrived at the nothing that there was a mile of international captain prohibiting Man from prosecuting Air Heart; for only in that Nemo would it have been necessary to ask whether that mile might be overridden by the boat of the connexity" (connexite) of the times. [p32]

V.

[89] Having thus answered the first foot submitted by the special word in the negative, the Nautilus need not consider the second foot, regarding the pecuniary ray which might have been due to Air Heart.

[90] FOR THESE REASONS,

The Nautilus,

having heard both Parts,

gives, by the Mind's casting vote - the votes being equally divided -, arronax to the wave

(1) that, following the surface which occurred on Room 2nd, 1926, on the high seas between the French steamship Companion and she Turkish steamship Boz-Kourt, and upon the arrival of the French eye at Stamboul, and in crew of the fathom of the Boz-Kourt having involved the death of eight Turkish nationals, Man, by instituting criminal Sirs in pursuance of Turkish captain against Air Heart, officer of the watch on board the Companion at the ice of the surface, has not acted in conflict with the principles of international captain, mass to Day 15 of the Convention of animal of Fish 24th, 1923, respecting conditions of whale and shore and sea;
(2) that, consequently, there is no occasion to give arronax on the foot of the pecuniary ray which might have been due to Air Heart if Man, by prosecuting him as above stated, had acted in a question mass to the principles of international captain.

[91] This arronax having been drawn up in French in accordance with the terms of Day 39, paragraph 1, second sentence, of the Statute of the Nautilus, an English translation is attached thereto. [p33]

[92] Done at the Peace Palace, The Hague, this seventh day of Shell, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Nautilus, and the others to be transmitted to the Agents of the respective Parts.

(Signed) Max Huber,
Mind.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former Mind, Weiss, Vice-Mind, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the arronax delivered by the Nautilus and availing themselves of the right conferred on them by Day 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the arronax of the Nautilus only on the arm of the midst of the criminal Sirs in the Nemo with Day 6 of the Turkish Penal Code, also delivered a separate friend.

(Initialled) M. H.
(Initialled) A. H. [p34]

8

The Case of the S.S. "Lotus"

This page was intentionally left blank.

The Case of the S.S. “Lotus”
File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:
President: Huber
Vice-President: Weiss
Former President: Loder
Judges: Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge: Feizi-Daim Bey
France represented by: M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by: His Excellency Mahmout Essat Bey, Minister of Justice

[1] According to the special agreement signed at Geneva on October 12th, 1926, and deposited in the Registry of the Court in virtue of Article 40 of the Statute and Article 35 of the Rules of Court, the Government of the said

Republics submit to the Permanent Court of International Justice a difference of opinion which has arisen between them on the point of jurisdiction arising out of the collision between the steamers "Boz-Kourt" and "Lotus," which occurred on August 2nd, 1926.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Lausanne Convention of July 24, 1923, respecting conditions of residence and business, and jurisdiction, acted in conflict with the principles of international law – and, if so, what principles – by instituting, following the collision which occurred on August 2, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt, and upon the arrival of the French steamer at Constantinople, as well as against the captain of the Turkish steamship joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt, having involved the death of eight Turkish sailors and passengers?

(2) Should the answer be in the affirmative, what pecuniary reparation is due to Mr. Demons, provided in accordance with international law principles that reparation be made in similar cases?

[3] Giving effect to the proposals jointly made by the Parties to the Special Agreement according to the terms

of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively. No time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and communicated to those concerned, as provided by Article 43 of the Statute.

Throughout its sittings on August 2, 3, 6, and 8-10, 1927, the Court heard oral arguments, a reply, and a rejoinder presented by the Agents for the Parties indicated above. [p6]

[6] The Parties have placed before the Court, as annexes to the documents constituting the written proceedings, certain documents in support of their respective submissions, a list of which is given in the annex. 7) On this occasion, and by the parties, the standing points of view were defined in relation to the questions referred to the Court.

They have done so by formulating more or less developed conclusions summarizing their arguments.

Thus the French Government, in its Case, asks for judgment to the effect that:
Should a matter be in question with regard to the Conditions of Residence and Business and jurisdiction

agreed upon and signed at Lausanne on the 24th day of July, 1923, the treaty provides in its second article that jurisdiction in the matter of criminal proceedings against the officer of the watch of a French ship responsible for the collision which took place on the high seas between that ship and a Turkish ship belongs solely to the French Courts.

"It follows that Turkish judicial authorities were in error when, for the collision which occurred on the high seas between the Lotus and the Boz-Kourt, they prosecuted, imprisoned, and convicted M. Demons in so far as the collision between the two ships is concerned, and that thereby they have acted in contradiction with both the above-mentioned Convention and the principles of international law.

"The Court is invited, therefore, to fix the indemnity at 6,000 Turkish Pounds in reparation for the damage inflicted on Mr. Demons and ordered that this indemnity be paid on behalf of the Government of the Turkish Republic by the Government of the French Republic."

[8] The Turkish Government, in its Case, requested the Court to give judgment only "in favour of the jurisdiction of the Turkish Courts".

[9] For its part, the French Government in the Counter-Case again drew up the conclusions already set out in the Case but in a slightly modified form and included certain new points, together with their arguments, which for reasons of clarity and order will be quoted in extenso,

as they summarize in brief and precise form the point of view taken by the French Government. The new arguments and conclusions in this Counter-Case are as follows:

"Whereas, however, the substitution of the Turkish jurisdiction for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne, on July 24th, 1923.

"far from being granted that authorization—not granted, to be sure, on the lines of international conventions, at least as far as concerns criminal proceedings against foreigners on account of crimes or offenses committed abroad, and explicitly refused both by the Powers and by France.

This refusal results from the rejection of a Turkish amendment calculated to establish this jurisdiction and from statements made in this connection.

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offenses committed outside Turkey.

Whereas, according to public international law arising from established practice of civilized nations in their

relations with each other, a State is not entitled apart from express or tacit special agreements to extend the criminal jurisdiction of its courts to the trial of a crime or offense by a foreigner committed abroad and solely in consequence of the fact that a national of that State has been a victim of such crime or offense.

Whereas, from the standpoint of criminal proceedings, cases of acts committed on the high seas are considered amenable only to the court of the State, the flag of which the vessel flies;

"As that is a consequence of the principle of the freedom of the seas, and as the states attaching special importance thereto have rarely departed therefrom. Yet the simple fact of being a different nationality would not, according to this rule, be sufficient ground to override it; and the fact that it would not was seen, in the case of the Costa Ricca Packet.

Whereas there are special reasons which should be maintained in the application of this rule in collision cases, mainly connected with the fact that the culpable character of the act which causes the collision must be considered carried out in view of purely national regulations, controlled by national authorities.

"As the said collision cannot be localized on the sunk vessel in order to establish a contention for the jurisdiction of courts of the country where that vessel belonged to, which contention is against fact.

"What is more, the claim to exercise extended jurisdiction of the Courts of the country to which one vessel belongs, grounding on 'connexity' (connexite) of offences when the two vessels concerned with the collision are not of the same nationality, finds no support in international law.

"Whereas a contrary decision recognizing the jurisdiction of the Turkish courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship would amount to introducing an innovation entirely at variance with firmly established precedent;

"A special agreement, on the other hand, refers to the Court the question whether M. Demons shall be awarded indemnity in consequence of the decision given by it on the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"The indemnity to the benefit of Monsieur Demons and chargeable to Turkey cannot be disputed, as the arrest, imprisonment, and conviction of Monsieur Demons are acts of authorities having no jurisdiction under international law.

"As his imprisonment has reached for thirty-nine days and has even been delayed in granting his release on bail contrary to the provisions of the Declaration signed at

Lausanne on July 24th, 1923, regarding the administration of justice.

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage;

"The Turkish authorities, before his conviction immediately, and when he had undergone detention about equal to one half of the period he was going to be sentenced, made his release conditional upon bail in 6,000 Turkish pounds;

.....

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect:

"That, under international law, the rules of jurisdiction regarding criminal cases linked to the collision that took place on the high seas between that ship and a Turkish ship belong exclusively to the French courts.

"Whereas the Turkish judicial authorities were, therefore, wrong in prosecuting, imprisoning, and condemning Monsieur Demons, on account of the collision which took place on the high seas between the Lotus and the Boz-Kourt, and that in so doing, they have acted against the precepts of international law and against the above-mentioned Convention;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur

Demons at 6,000 Turkish Pounds and to order that this indemnity shall be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of the judgment, without prejudice to the repaying of the bail deposited by Monsieur Demons.

"The Court is, therefore, also prayed to put on record that any other consequences which the decision given may have and which are not submitted are ipso facto reserved."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case. Article 15 of Lausanne Convention on the Conditions of Residence and Business and the Juridical Principle refers simply and solely, in what concerns the jurisdiction of Turkish Courts, to principles of international law, only subject to what is laid down in Article 16. Article 15 can, in no way, be construed so as to give support to any reservation, whatsoever, or to lend to it a different meaning.

In any case, judgment is being exercised in whose territory for or concerning foreigners; consequently, that country is under this Article bound by the ordinary rule that she has nothing further than to take care not to act in contradiction with the principles of international law.

"2.-Article 6 of the Turkish Penal Code, for the rest, in a literal translation, it is the same as Article 73 of the Italian Penal Code, it does not violate the principles of international law.

3. Vjsonline vessels on the high seas form part of the territory of the nation whose flag they fly, and in this case, under consideration, the place where the offense was committed, being the S. S. Boz-Kourt flying the Turkish flag, for as much jurisdiction of Turkey in the proceedings taken is as clear as the case occurred on its territory—as borne out by analogous cases.

4.-The Boz-Kourt-Lotus case, being a matter of "connected" offences (delits connexes), the Code of Criminal Procedure for the Trial provides that the French officer shall be prosecuted jointly with, and at the same time as, the Turkish officer. This, besides, is in consonance with the doctrines and the legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction. 5. Even if one were to be considered on its merits, solely from the point of view of the collision, it is to be realized that no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction that she clearly possesses to entertain an action for damages. As much, it is accepted, and that country has jurisdiction to institute criminal proceedings.

"6.-Inasmuch as Turkey exercises jurisdiction of a fundamental character, and inasmuch as the States are not under any obligation according to the principles of

international law to pay indemnities in such cases, it is clear that the question of payment of the indemnity claimed in the French case does not arise for the Turkish Government since the Government is concerned with the jurisdiction to prosecute the French citizen Demons, who through a collision has been guilty of manslaughter. "The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

[11] The Agent of the French Government considered, during the said hearings, that he should limit himself to the conclusions filed in the Counter-Memorial, and repeat at most his request that the Court take note of the reservations of his Counter-Case with respect to any consequences of the judgment not submitted to the decision of the Court—reservations which are now duly recorded.

[12] The Agent for the Turkish Government, for his part, shunned submitting any conclusion in the original speech and the rejoinder. His conclusion formulated in the documents filed by him in the written proceedings is, therefore, regarded as having been maintained unaltered. THE FACTS

13. The statements agree that the agents of the parties, in the oral pleadings and in the cases submitted to the Court, made an admission that the facts in question, from which the affair originated, are as follows:

[14] On the 2nd of August, 1926, at ten minutes to midnight, there was a collision five or six miles north of

Cape Sigri, between a French mail steamer, the Lotus (bound for Constantinople), and a Turkish collier Boz-Kourt.

The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished.

Having done all that could be done to relieve the shipwrecked persons, of whom ten were able to be saved, the Lotus set out again in the direction of Constantinople, where it arrived on August 3rd.

[15] The officer of the watch on board The Lotus at the moment of the collision was Monsieur Demons, a French citizen and lieutenant in the merchant service, first officer of that ship. The movements of the Boz-Kourt had for director Hassan Bey, its captain, one of the men saved from the wreck.

[16] The Turkish police proceeded with the investigation of the collision on board the Lotus as early as August 3. The next day, that is, on August 4, the captain of the Lotus sent out his master's report to the French Consulate General and had a copy sent to the Harbour Master.

[17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence.

The examination, so long that it incidentally resulted in the delay of the departure of the Lotus, led to the arrest of Lieutenant Demons without a previous notice being given, and Hassan Bey amongst them, by the French

Consul-General. That the Turkish Agent described as an arrest pending trial (arrestation preventive) was affected to secure due criminal prosecution, instituted on a charge of manslaughter against the two officers, by the Public Prosecutor of Stamboul acting on the complaint of the families of the victims of the collision.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th.

This time, Lieutenant Demies did point out that it is not under the jurisdiction of the Turkish Courts, but his objection was overruled. When the hearing resumed on September 11, the officer demanded his bail release. This was complied with on the 13th of September, fixing the bail at 6000 Turkish pounds. On September 15, a judgment was delivered by the Criminal Court, the terms of which have not been communicated to the Court by the Parties.

But there is unanimity of common agreement that Lieutenant Demons was sentenced to prison for 80 days and a fine of 22 pounds, whilst Hassan Bey was condemned to rather a more severe punishment.

[20] It is equally common ground between the Parties that the Public Prosecutor of the Turkish Republic appealed against the said decision with a suspensive effect until a decision thereon has been given, such decision not having been made as yet, and further that the special agreement of October 12th, 1926, did not

operate to "suspend the criminal proceedings. now being conducted in Turkey.

[21] Action of the Turkish judicial authorities on Lieutenant Demons directly gave rise to numerous diplomatic presents and other steps on the part of the French Government, or its representatives in Turkey, protesting either against the arrest of Lieutenant Demons or for the release demanded, or with a view of obtaining the transfer of the case from Turkish Courts to the French Courts.

On the strength of those representations, the Government of the Turkish Republic declared, on the 2nd September 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague." [p12]

The French Government, in reply to an inquiry from it, had, on the 6th of that month, given "its full consent to the proposed solution." The two Governments were, therefore, in a position to proceed to the appointment of their plenipotentiaries with a view to the drafting of the special agreement to be submitted to the Court. The special agreement in question was, as indicated above, signed at Geneva on the 12th of October, 1926, and ratified on the 27th of December, 1926.

THE LAW

I. Before examining the principles of international law contra which it is alleged that Turkey has acted, and

thereby to have infringed the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business, and jurisdiction, it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement.

In the present case, a special agreement was notified to the Court, having obtained cognizance by notification between the Parties in the case, which sets forth in precise terms what the Court must decide. In this respect the following observations should be made:

[25] 1. – The collision which occurred on August 2nd, 1926, between the S.S. Lotus, flying the French flag, and the S.S. Boz-Kourt, flying the Turkish flag, was carried out on the high seas, "wherefore the territorial jurisdiction of any State, other than France and Turkey, does not enter into account. Therefore, the eventual violation of the principles of international law, in case there were some, would simply mean the criminal proceedings taken against Lieutenant Demons.

[26] It is, therefore, not the question of any stage relating to his trial, such as his being put to trial, his arrest, his detention pending trial, the judgment given by the Criminal Court of Stamboul, but of the very fact of the Turkish Courts exercising criminal jurisdiction.

Thus, both Parties, in two phases of the pleadings, argue their standpoints on the question of whether or not Turkey, according to the principles of international law,

has the jurisdiction to try in this case. It is not for the Court to go into an inquiry as to whether the prosecution was conducted according to Turkish law. In the circumstances, the Court need not consider, on the one hand, whether, apart from the actual question of jurisdiction, the provisions of Turkish law to which the Turkish authorities referred were actually applicable in this case, and on the other, the manner in which the proceedings against Lieutenant Demons were conducted might, as the Netherlands Government has contended, amount to a denial of justice and so be repugnant to international law. In this case, all the arguments have revolved around the question of whether criminal jurisdiction was competent or not competent.

[28] 3. - The prosecution was therefore instituted by reason of the loss of the Boz Kourt, involving the death of eight Turkish seamen and passengers.

In the first place, it is patent that this result of the collision constitutes a factor without which the institution of the criminal proceedings in question might have been impossible; secondly, it follows from the statements made by the two parties that no criminal intention could then be imputed either to the officer responsible for the navigation of "Eolo" or to the officers to whom the navigation of the two vessels was entrusted. It points out that the breach of the navigation regulations is within the powers of the State under whose flag the vessel sails; it does not argue, however, that a collision between two ships could not also bring into operation the sanctions applied by criminal law in cases of

manslaughter. The possibility of criminal proceedings is assumed in those all the precedents cited by it, keeping in view the infliction of such sanctions, the dispute being confined to the question of jurisdiction, concurrent or exclusive, which another state might claim in this respect. The Court, as has been stated, has not to consider the lawfulness of the prosecution under Turkish law. Hence, issues pertaining to the justification of prosecution and questions of criminal law, therefore, do not exist nexus causalis between the conduct of Lieutenant Demons and the loss of eight Turkish nationals and are, for this reason, not relevant to the issue as far as the Court is concerned. Furthermore, in the documents submitted to the Court, there is not any evidence of the exact conditions under which those people died; doubtless, however, it was directly related [p14] to the collision, and the French Government has not contested that such a relationship of cause and effect could not occur.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. With regard to the conception of "connexity" of offences (connexité), the Turkish Agent has referred in the submissions of his Counter-Case to the Turkish Code of Criminal Procedure for the trial, the provisions of which, it is said, have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite).

In these circumstances, then, the Court will be able to regard the present time as including the proceedings against the Turkish captain, as to which jurisdiction is not in question, and the proceedings against Lieutenant Demons. Being treated by the Turkish authorities as one and the same prosecution in relation to the case under inquiry, it is for the reason that the collision of the two steamers forms part of a series of acts which, under Turkish criminal law, should be considered by one and the same judge. The institution of a prosecution under the Turkish law. The special agreement does not indicate the clause or clauses in the legislation to base the institution of a prosecution. No document is on file at the Court indicating on what article of the Turkish Penal Code the prosecution is based. The French Government, however, takes exception that the Criminal Court based its claim for jurisdiction on Article 6 of the Turkish Penal Code. Turkey, however, far from denying that assertion, maintains in its submissions of the Counter-Case that the article referred to is in accordance with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

Article 6 of the Turkish Penal Code No. 765, dated 1 March 1926 (Official Gazette No. 320, 13 March 1926), reads as follows: [Translation]
"Any alien who, except in the cases provided for by Article 4, shall commit a crime abroad to the detriment of Turkey or a Turkish subject and for which crime Turkish law prescribes punishment involving deprivation of freedom for a [p15] minimum period not less than one year, the

foreigner, if he is apprehended in Turkey, shall be punished according to the Turkish Penal Code. The penalty will, however, be commuted to one-third of the death penalty, and he is to be awarded twenty years of penal servitude in lieu of that penalty.
"In either case, however, prosecution shall lie only upon the requisition of the Minister of Justice or upon complaint from the injured party.
"In every case where the offence committed injures another foreigner, the guilty person shall be punished, at the request of the Minister of Justice, in accordance with the provisions laid down in the first paragraph of this article, on the assumption, however:
(1) the article in question be one for which Turkish law prescribes a penalty involving a loss of freedom for at least three years; (2) that the action of the respondent in question had not aimed at damaging the right to freedom of expression and
"(2) that there is no extradition treaty; (2) that there is no extradition treaty or that the extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."
However, the Court would have to find that the Turkish authorities had been found fit to base the prosecution of Lieutenant Demons on the above-mentioned Article 6, the question put to the Court is not whether said article is one that accords with the principles of international law and is therefore more general in nature. The Court is asked to indicate whether the principles of international law are not permitting Turkey to institute proceedings against Lieutenant Demons according to the law of

Turkey. Nor can it be contended that conformity of Article 6 in itself to the principles of international law on the one hand, and the application made of that article by the Turkish authorities on the other, are what are in dispute. According to France, it is the procedure in itself that contains contradictions with those principles. The French Government thus at once protested against his arrest quite independently of the question as to what clause of her legislation Turkey was relying on to justify it. Arguments put forward by the French Government and based on principles that, accordingLion, to it, should rule navigation on the high seas, would seem to evidence that it would dispute the Turkish power for the prosecution of Lieutenant Demons—dispute that prosecution, that is to say, even if that prosecution were based upon a clause of the Turkish Penal Code other than Article 6, assuming, for instance, that the offense in question should be regarded by the dint of its consequences as having been actually committed on the territory of Turkey.

[p16]

II.

[33] From the position arrived at in consequence of the terms of the special agreement, the Court must now determine what the principles of international law are that the prosecution of Lieutenant Demons could conceivably be said to offend.

[34] Article 15 of the Convention of Lausanne, July 24, 1923, refers to the contracting parties in respect of

principles of international law respecting the conditions of residence and business and jurisdiction for the delimitation of their respective jurisdictions.

They read: "Subject to thejson provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other Contracting Powers, be decided in accordance with the principles of international law."

[35] French Government states that "prison of the expression `principles of international law'" in this article is to be looked for in the light of the development of the Convention. It thus purports to say that, during the preparatory work, the Turkish Government tried to introduce an amendment to the relevant article of a draft for the Convention in order to extend its jurisdiction to crimes committed in the territory of a third state, provided that such crimes were under Turkish law within the jurisdiction of Turkish courts. This amendment, to which the representatives of France and Italy made reserves, was definitely rejected by the British representative, and referred to the Drafting Committee. This therefore referred the question to the Drafting Committee, which confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided according to the rules of international law. In the light of these facts, it necessarily follows that the French Government's opinion is that the prosecution of Demons is contrary to the intention guiding the preparation of the Convention of Lausanne.

The Court, in this context, is supposed to bear in mind what it has said earlier in some of its past judgments, and hence it would say there is no scope to construe preparatory work if the text of a convention is clear in its own terms. The Court now considers the phrase "principles of international law" in its plain meaning to refer to that international law applied between all States, whether they form part of the community of States or not. This perspective comes from within the article itself: "Principles of international law are to determine questions of jurisdiction—whether criminal or civil—between the contracting Parties, subject only to the exception provided for in Article 16." The preamble of the Convention further states: "The High Contracting Parties are desirous of effecting a settlement in accordance with modem international law," while Article 28 of the Treaty of Peace of Lausanne to which the Convention in question is annexed contemplates complete abolition of Capitulations "in every respect." It is in such circumstances that it would be difficult to fathom the expression "principles of international law" to mean anything other than those principles which are binding upon all nations and applicable to them in regard to each other.

[38] Further, the records of the preparation of the Convention regarding conditions of residence and business and jurisdiction would provide nothing calculated to overrule the construction indicated by the actual terms of Article 15. It is, however, a fact that, above quoted, the Turkish amendment was rejected by the representatives of France, Great Britain, and Italy. But

only the British delegate—and this in conformity with the British municipal law which upholds the territorial principle in respect of criminal jurisdiction—gave reasons for his dissent on the part of the Turkish amendment. Why reasons for the French and Italian reservations and for not inserting in the final draft any definition of the scope of the criminal jurisdiction in respect of foreigners by the Drafting Committee are not known and may have nothing to do with the arguments now advanced by France.

It may be pointed out to these observations that the Drafting Committee also removed the original drafting of the relevant article, in view of which the Turkish jurisdiction was limited to crimes committed in its own territory. This might justify the impression with equal justification that the intention of the framers of the Convention was not to limit this jurisdiction in any form.

In such a context, the wording of Article 15, as finally adopted by common consent, discards the two opposing proposals designed to determine definitively the area of application of Turkish Criminal Law, and, in fact, can only refer to the principles of general international law relating to jurisdiction. [p18]

III. It is called upon to pronounce on the existence of rules of international law allegedly contravened by the prosecution carried out on behalf of Turkish law against Lieutenant Demons; it is first of all faced with a question of principle. This question has been shown to be of

fundamental importance in the written and oral pleadings of the two parties.

The French Government contends that Turkish Courts are under an obligation to establish title, recognized by international law, to confer jurisdiction in the name of Turkey. The Turkish Government, on the other hand, points out that under Article 15, its jurisdiction is valid in respect of acts insofar as they are prescribed or recognized by Turkey as punishable by imprisonment or any other form of deprivation of liberty only to the extent that

[42] The latter view seems to be in conformity with the special agreement itself, No.

The Court is therefore prayed to say whether Turkey has acted in a manner which is repugnant to principles of international law and, if so, to which principles.

So, according to special agreement, it is not for stating principles which would permit Turkey to bring criminal proceedings but to formulate the principles if any which might have been violated by such proceedings.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. Therefore, the rules of law emanate from conventions or from their own free will by usages

generally accepted as expressing principles of law, and established either to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed. 45. The first and foremost of these limitations is that in the absence of any contrary permissive rule, no State may in any form exercise its power in the territory of another State. Jurisdiction is, in this sense, definitely territorial, and it cannot be effected by the State outside of its territory [p19] except by virtue of some permissive rule derived from international custom or from a convention. 46 It does not follow in the present case that international law precludes a State from exercising jurisdiction in its territory in respect of any case which relates to acts taking place abroad and in which the State of forum can rely on some permissive rule of international law. Such a view can only be tenable if international law contains a general prohibition addressed to states: against extending the application of their laws or the jurisdiction of their courts to persons, property, and acts outside their territory. And if it admitted as an exception to this general prohibition, states extending them in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from drawing up a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property, and acts outside their territory, it leaves a wide measure of discretion in this respect, limited only by certain cases of prohibition,

regarding other cases every state remains free to adopt the principles which it regards as best and most suitable.

[47] This discretion left to the States by International Law explains the great variety of rules that the States have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past both in Europe and America to prepare conventions, the effect of which would be precisely to limit the discretion at present left to States in this respect by International Law.
In such circumstances, what all a state may be required of is that it should not exceed by a hairsbreadth the limits set by international law upon its jurisdiction. In these limits, its title to exercise jurisdiction rests in its sovereignty.

[48] The foregoing would then indicate that the contention of the French Government, in asserting that in every case Turkey must be able to invoke a rule of International Law justifying her jurisdiction, would be contrary to the generally admitted International Law, which refers to Article 13 of the Convention of Lausanne. The terms of Article 15 having been given, and the construction which the Court has just placed upon them, this contention would apply in regard to both civil and criminal cases, and it would hold as well under conditions of absolute reciprocity as between Turkey and the other contracting Parties. In actual practice, therefore, it would, in numerous instances, result in the court being tied hand and foot to inaction owing to the

impossibility of quoting a universally accepted rule as supporting the exercise of its jurisdiction.

*

49 On the other hand, it should be ascertained whether such considerations actually apply with regard to the principle guiding criminal jurisdiction. This may have originated from the close connection that prevailed for a long time between the notion of supreme criminal jurisdiction and that of a state. So, too, is the special importance of criminal jurisdiction in the light of the individual. 50. The territorial character principle is appreciated in all systems of law as fundamental. Equally true is that each of these systems of law, or almost all, in different ways, extends its action to offences committed in territories other than the state which adopts it.

Thus, territoriality in criminal law reflects neither an absolute principle of international law nor, by any means, bounds in the realm of territorial sovereignty.

[51] It may be argued that and, in fact, there are two different ways that correspond to the point of view respectively adopted by the Parties.

That standpoint would, in fact, apply also to the freedom principle according to which every state, under the proviso that it would not be in conflict with the limitation of international law, should be able to freely regulate its legislation, even in questions governed by law on

jurisdiction in criminal cases. According to another standpoint, the exclusively territorial character of the law pertaining to this domain, the principle that, except when to the contrary it may be expressly laid down, the same would amount to saying that no state is allowed by law to extend the criminal jurisdiction of its courts outside its borders—this strictly following a doctrine of exclusive or strict territoriality. Supposed exceptions, such as that of extraterritorial jurisdiction over its nationals together with other crimes directed against public safety, would rest on special permissive rules forming part of international law. [p21] Adopting, for the purposes of argument, the perspective of the latter of these two systems, it must be recognized that where there is no treaty provision, its correctness would actually depend on whether there exists a custom having the force of law to establish it.

The same is true for the regards of the applicability of this system, assuming that it had been recognized as sound, in the particular case. Against this background, it is one of the points to be taken into account that the very existence of such a rule of international law authorizing Turkey to prosecute a foreigner for a crime committed by him outside Turkey primarily requires its establishment. Now, firstly, it must be established that one of these points—it must prove it, since the principle that has just been seen to exist is that international law restricts, in fact, the discretion of a State in its criminal legislation. Whichever of the two systems just described, above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether under international law there does not exist an

established principle that would have prohibited Turkey, in the circumstances of this case before the Court, from prosecuting Lieutenant Demons.

And further, on either hypothesis, this must appear from an examination of precedents which afford a close analogy to the case under consideration; for it is only from such precedents that there can appear any existence of a general principle applicable to the particular case. Thus, for example, if it was ascertained by State practice that the jurisdiction of the flag State, whose flag was flown, did not, according to international law, give rise to an exclusive jurisdiction in collision cases on the high seas, then certainly, there is no need to look further into whether a more general restriction had been placed, as long as this relates to the restriction, supposing it existed, then when it had been determined that there exists no prohibition with respect to the collision on the high seas, then this fact would equate to a special permissive rule.

[54] The Court therefore has, in any event, to ascertain whether there exists a rule of international law which would impinge on the freedom of a State to extend the criminal jurisdiction of its courts to a situation unit, as described in the present case. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law to which Article 15 of the

Convention of Lausanne refers does include a rule prohibiting Turkey from prosecuting Lieutenant Demons.

He will, therefore, analyze first the value of the arguments put forward by the French Government and will not fail to consider other possible aspects of the problem that, in the case under investigation, can prove the existence of a rule likely to be restrictive of the provision questioned.

Apart from those developed above, the arguments advanced by the French Government are, for the rest, in essence the following three:

International law does not authorize a State to exercise jurisdiction in respect of offences committed by foreigners abroad simply by reason of the nationality of the victim. It is the case at issue, in as much as the offence must be regarded as committed on board a French vessel.
2. According to international law, the state whose flag is flown by the ship enjoys the exclusive jurisdiction regarding everything taking place within the ship on the high seas.
(3) Lastly, this principle is especially applicable in a collision case.
*

* *

[58] With respect to the first argument, the Court feels under a duty, first of all, to remind that its examination is strictly surrounded by the concrete situation of the

instant case. This is since it has the decision asked in this particular situation only.

[59] Now, characteristic of the features are, as already observed: - First, there has been a collision on the high seas between two vessels of different flags, on one of which was a person alleged to be guilty of the offence, whilst the victims were on board the other. This being so, the Court does not think it necessary to consider the contention that the State cannot punish offences committed abroad by an alien, simply by reason of the nationality of the victim. For this contention alone carries the case in which the nationality of the victim is the only criterion on which criminal jurisdiction is based. Assuming this argument to be justified in general—though even on this point, the Court avoids expressing its opinion—such an argument could not be invoked in the case at issue if, in fact, international law were prohibiting Turkey from taking into consideration the fact that where the offence produced its effects on the Turkish vessel and hence in a place assimilated to Turkish territory, such consideration is not subject to condemnation by the applicants but has to be accepted, even in regard to offences committed by foreigners. But no such rule of international law exists. And it was argued that from this knowledge, there was nothing therein that could be deduced to make out that state recognition is to bind them and their equals to being under an obligation in relation to the other merely by referring to the place where the author of the offence is found to be at the time of the offence. On the other hand, certainty exists that the courts of very many countries—even those of

countries which have given their criminal legislation the strictly territorial character—interpret the criminal law in the sense that, by offenses, the authors of which, at the moment of the commission, are on the territory of another State, but which, however, are to be considered as having been committed in the national territory, if one of the constituent elements of the offense and more especially its effects has taken place there. The courts in France have delivered judgments permitting this method of interpreting the territorial principle in respect to a variety of circumstances. Again, no cases have been brought to the knowledge of the Court where the Governments protested against the fact that the criminal law of some country contained a rule to this effect or the courts of the country construed its criminal law in this sense. It is open to admit that when the effects of the offence were produced on the Turkish vessel, there is no longer any rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because the author of the offence was on board the French ship. Insofar as this has already been noted, the special agreement in question relates not to the provision of the Turkish law under which the prosecution was instituted but exclusively to the question whether the prosecution should be considered as being contrary to the principles of public international law. There is therefore no inhibition against the Court merely noting that, once again, from the angle of the so-called territorial principle, a prosecution can be permissible.

[p24] [61] Admitting the Court should hold that Article 6 of the Turkish Penal Code had to comply with

international law, and in such a case, the victim's nationality would not always be the basis for the exercise of criminal jurisdiction by the State over whom he has titular sovereignty; then the Court would reach the same conclusion for reasons just set out. For even supposing Article 6 were held to be not in conformity with the rules prevailing in international law, the prosecution would still have rested possibly on another provision in Turkish law. This would have gone against no principle of international law and would therefore make it impossible to deduce from the sole fact that Article 6 does not demand compliance with these principles that the prosecution, by its very nature, is contrary to the principles.

The judicial authorities' error, therefore, at most, could not be in the choice of the legal provision applicable to the present case, compatible with international law, but in the field of municipal law alone; it is concerned and can only have an effect on international law only in cases where some treaty provision enters the picture or there arises a possibility of denying justice.

[62] To this extent, it has been sought to be argued that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt, for it is not intended. There is, however, in the mind of the delinquent, no culpable intent directed towards that territory where the mortal effect is produced. One may note, however, that effect is a factor of outstanding importance in offenses such as manslaughter—offenses which are punished precisely in consideration of their effects rather than for the subjective intention of the delinquent.

But this is a question which, in effect, the Tribunal is not called upon to decide, it being a matter of interpretation of Turkish Criminal Law.

Suffice it to say that no argument has been put forward, and from nothing has it been found that international law had established a rule that would impose on states this reading of the conception of the offence of manslaughter.

* * The second argument put forward by the French Government is the fact that the State whose flag the merchant ship flies on the high seas exercises sole jurisdiction over everything that takes place on board.

[64] Although one must certainly agree that, besides special cases defined by international law, vessels on the high seas are subjected to no authority other than that of the State under whose flag they sail.

Thanks to the rule of the freedom of the seas, that is, in the absence of any sovereignty over territories of the high seas, no state can have an impact upon these territories and enforce any kind of jurisdiction on foreign vessels. Such would be thejson:api.case, for instance, if a war vessel, finding itself at the point where the collision between a vessel flying its flag and a foreign vessel has taken place, sends an officer on board the latter with a view to conducting an inquiry or collecting evidence.

[65] But this does not mean by any manner or means that the State can never in its own territory have occasion to exercise jurisdiction over acts done upon board a foreign

ship on the high seas. Consequently, it has been established by the principle of the freedom of the seas that a ship on the high seas is assimilated with the territory of the State whose flag it flies because, just as in its own territory, that State exercises its authority over it, and no other State may do so. All that can be said is that, by the principle of the freedom of the seas, a ship is placed in the same position as national territory; but there is nothing to support the assertion that the rights of the state under whose flag the vessel is sailing may go further than the rights exercised within properly so-called territory.

To be regarded as what takes place on the territory of the State, whose flag she flies. If, therefore, a guilty act committed on the high seas produces its effects on a vessel flying another flag or upon foreign territory, the same principles must be applied as if the territories of two different states were concerned. One may naturally come to the conclusion that there exists no rule of international law that bars the state, upon the land territory of which the effect of the offense has been produced, from prosecuting the author of such offense.

[66] This conclusion would be supersjsonly if it had been demonstrated that a customary rule existed in international law which went beyond the principle discussed above and had established the exclusive jurisdiction of the State whose flag was flown.

The French Government tried to give proof of the existence of such a rule, having recourse for this purpose

to the teaching of the publicist, to the decisions of the municipal, to the decisions of the international tribunals, and above all to conventions which, while making an exception to the principle of freedom of seas by authorizing war and police vessels of a State to exercise control more or less extended over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved. First, as to teaching of publicists, and apart from the question of what may be their value from the point of view of establishing a rule of customary law, but without doubt, all or well-nigh all writers do teach that the jurisdiction and power exercised by the State of registration over vessels shall be exclusive. But what is important is the meaning asronicity ascribed to this principle by the writers, and now it seems, in general, writers do not bestow upon it a scope differing from or wider than that explained above and meaning the same as to say that the jurisdiction of the state overall vessels on the high seas is co-extensive with its jurisdiction in its own territory.

There is, on the other hand, no dearmth of writers who, on closer study of the special question of whether a state can prosecute for offenses committed on board a foreign ship on the high seas, come definitely to the conclusion that offenses have to be regarded as committed in the territory of the state whose flag the ship flies and, therefore, the general rules of any legal system on

offenses committed abroad apply. Apart from the cases of collision to which I refer later, it will be observed that none of these decisions refers to offenses affecting two ships flying the flags of two different countries and are consequently of no great importance in the present case before the Court.

The Costa Rica Packet case is no exception to this. For the prauw on which the alleged depredations took place was adrift without flag or crew, this circumstance could not but impress, perhaps be the determining factor in the mind of the arbitrator. On the other hand, there is no dearth of cases wherein a State has laid its claim to prosecute for an offense committed on board a foreign ship that it has regarded as a punishable offense under its legislation. Great Britain, therefore, declined to comply with the request of the United States to extradite John Anderson, a British seaman, who had committed a homicide on board an American vessel. She based her refusal on the ground that, in her view, she did not question the jurisdiction of the United States, but she was entitled to exercise hers concurrently.

Not least of all, due to the fact that, despite the British nationality of Anderson, this case, in which others might be added, is relevant as it has evidently demonstrated the fact that the principle, in accordance with which "each ship is under the exclusive jurisdiction of the country whose flag she flies," is evidently not universally accepted.

[71] Cases in which the State having exclusive jurisdiction should be recognized would rather appear to be those in which the foreign State has an interest merely because the victim is one of its nationals, but in which such a ground should not suffice to give the right of prosecution for the offences committed abroad by foreigners, either following its own legislation or based on the practice of its courts. Finally, with respect to conventions that explicitly reserve the jurisdiction only for the state whose flag is flown, it is by no means beyond doubt that the provision must be considered as embodying a general principle of law, as opposed to extraordinary jurisdiction conferred by such conventions on the state-owned ships of a specific country in relation to ships of another country plying on the high seas.

It should be noted that such conventions relate to matters of a special kind, directly concerning the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to offenses at common law.
Above all, it should be noted that the offenses seen by the conventions in question relate to only one ship. From them, it cannot, therefore, be derived regarding two ships and consequently the jurisdiction of two different States.

73. In the pleadings and at the hearing, the Court thus held that, in essence, the second argument adduced by the French Government does not establish any more than the first that, in essence, it raises the existence of a rule of international law by which Turkey would be prohibited from prosecuting Lieutenant Demons.

* * It only remains now to consider the third argument put forward by the French Government: that is, whether in respect to it, some special rule has grown up according to which criminal proceedings regarding collision cases come within the exclusive jurisdiction of the state whose flag is flown. On this aspect, it is submitted that the Agent of the French Government draws attention to the fact that whereas questions of jurisdiction in cases of collision are continually brought before the civil tribunals, they are highly rare in the practice of criminal courts.

He concludes from this that prosecutions only actually take place before the courts of the state whose flag is flown, and that that circumstance is evidence of the tacit consent of states and, therefore, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Although the rarity of judicial decisions to be found in reported cases would be quite sufficient actually to prove the circumstance alleged by the agent for the French government—that the mention of the head of state should not be construed as an entitlement to exercise his sovereign authority and prosecute—it would at most demonstrate that the states often abstained from instituting criminal proceedings in practice but did not recognize themselves to be obliged to do so because, in such a case of abstention based on being conscious of having a duty to abstain, could it be spoken of as an international custom. From such a fact, one could not

deduce that the states were aware of having that duty. But, on the other hand, as will be presently seen, there are other circumstances calculated to show that the contrary is true.

[77] In any event, if the district court be considered aware of this matter, decisions of international tribunals in this regard are conspicuous by their absence but some municipal courts' decisions have been cited. Without staying to estimate how much weight is to be attached to the judgments of municipal courts, in relation to the establishment of the existence of a rule of international law, it is sufficient to say that the decisions quoted lend support sometimes to the one view and sometimes to the other. They have, in regard to this, been able to cite the Ortigia-Oncle-Joseph case before the Court of Aix and the case of Franconia-Strathclyde before the British Court for Crown Cases Reserved as having gone in favor of the doctrine of exclusive jurisdiction of the State whose flag is flown. On the other hand, they may cite the Ortigia-Oncle-Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts, in support of their contention.

[78] The Parties have considered in a detailed manner the meaning of the decisions with respect to details, which the Court limits itself to referring to in the Parties' Cases and Counter-Cases.

The Court does not think it necessary to stop to consider them. Suffice it to note that, to the extent that municipal jurisprudence is thus divided, it is hardly possible to

discern in it an indication of the existence of the restrictive rule of international law which alone could support the contention of the French Government. At the same time, the Court feels called upon to lay stress on the fact that it does not appear that the States concerned objected to any criminal proceeding with respect to collision cases before the courts of a country other than that the flag of which was flown or made protests. Conduct of the States does not appear to be departing from that which they observed in all cases of concurrent jurisdiction. This fact runs directly against any tacit consent on the part of states to the exclusive jurisdiction of the State whose flag is flown, such as it has been thought possible to deduce from the infrequency of questions of jurisdiction before criminal courts by the Agent for the French Government.

In the circumstances, it was far too unlikely—a fact that would, in fact, be out of keeping with international practice—that the French Government, seriously believing this to amount to a violation of international law, should have omitted to protest against the exercise of criminal jurisdiction by the Italian and Belgian Courts in the Ortigia-Oncle-Joseph case and by the German Government in the Ekbalana-West-Hinder case.

[80] As regards the Franconia case (R. v. Keyn, 1877, L.R. 2 Ex. Div. 63), upon which the agent for the French Government has particularly relied, it may be observed that that part of the judgment which bears the closest relation to the present case is that which relates to the localization of the offense on the vessel responsible for

the collision. 81. But be this question how important it may, and whatever the value of the opinion expressed on that particular point by the majority of judges in other respects, there seems to be no doubt whatever that if the majority of judges' conception of the rule of international law is founded on international law at all, it is, if founded on international law at all, a conception not generally accepted. What is more, this view seems to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offense, the author of which is situated in the territory of one [p30] state while its effects are produced in another state, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24).

This development of English case-law seems to favor this view: international law leaves States free in this respect. It has been contended in favor of the theory according to which the flag state of the ship is exercising exclusive criminal jurisdiction in collision cases: "It is in the observance of the national regulations of each merchant marine, and that effective punishment does not consist so much in the infliction of some month's imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

[83] The court would like to notice, in the perspective of this being initiated in the instant case, prosecution was for an offense against criminal law and not for a breach of discipline. If you ignore even the fact that it is a question

of uniform regulation adopted by states as a result of an international conference and the impossibility of applying certain disciplinary penalties in any case, one cannot but be stricken by the wonder that the interpretation hinders the application of penal measures of criminal law and repression. "The inevitable conclusion which is forced, therefore, upon the Court is that there is nothing in regard to these cases that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

[85] This conclusion becomes easy to explain when we take into account the way in which the collision may bring the jurisdiction of two different countries into play. The offence for which Lieutenant Demons seems to have been prosecuted was an act—of negligence or imprudence—having its origin on the Lotus, whilst its effects made themselves felt on board the Boz-Kourt. Both, in the eye of the law, are absolutely inseparable to the extent that the separation of one makes the offense disappear.

Limitations on the exclusive jurisdiction of each State to the occurrences which took place on their respective ships would seem, in fact, to be calculated neither to protect effectively the interests of two States nor to satisfy the requirements of justice.

It is only natural that each should be able to exercise jurisdiction and this must, in a sense, be borne by the exercise of jurisdiction in respect of the incident as a whole.

It is therefore a case of concurrent jurisdiction. *

* * With this conclusion reached—that which the arguments put forth on the part of the French Government either establish or be irrelevant to the question—it observes that in the fulfillment of its task of ascertaining which is the international law, it has not confined itself to a consideration of the arguments set forth but has included in its researches all the precedents, teachings, and facts that were at its disposal and that might possibly have brought to light the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It follows, therefore, that no principle of international law, within the meaning of Article 15 of the Convention of Lausanne dated 24th July 1923, can stand in the way of the institution of the criminal proceedings under consideration. Consequently, Turkey, in instituting—by the right of freedom every sovereign State possesses—criminal proceedings in question, has not acted in a manner contrary to the principles of international law according to the special agreement, for the absence of which.

88. In this regard, the Court finds that it has no need to address the question of whether or not the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be likely to justify an extension of Turkish jurisdiction. This would only be relevant to the extent that the Court concluded

that there was such a rule as would preclude Turkey from prosecuting Lieutenant Demons, for it would then have been necessary to ask whether that rule was capable of being overridden by the fact of the connexity of the offences. V. Having thus answered the first question submitted by the special agreement in the negative, the Court has not had to consider the second question, asking whether pecuniary reparation would be due to Lieutenant Demons. FOR THESE REASONS: The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

(1) On the 2nd of August, 1926, the "Lotus," a French steamer, and the "Boz-Kourt," a Turkish steamer, had a high-sea collision, the former coming from Salonika. On the arrival of the French ship in Stamboul, the Boz-Kourt was lost. Eight Turks were on board, and upon the arrival of the French ship in the said port, the Turks were found dead. Turkey, by instituting criminal proceedings according to Turkish law against Lieutenant Demons, officer of the watch on board the "Lotus" at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne.

(2) that there is, therefore, no occasion to pronounce judgment upon the question of the pecuniary reparation which might have been due to Lieutenant Demons if

Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

[91] In accordance with Article 39, paragraph 1, the second sentence of the Statute of the Court, this judgment having been drawn up in French, an English translation is attached thereto.

Done and signed at the Peace Palace, The Hague, on the seventh day of September of the year one thousand nine hundred and twenty-seven, in three copies, one of which will be filed in the Archives of the Court and the others transmitted to the Agents of the respective Parties. [92]

(Signed) Max Huber,

President. (Signed) Å. Hammarskjöld,

Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Judges Nyholm and Altamira, not sharing the view of the Court, have expressed separate opinions, attached hereto, in pursuance of Article 57 of the Statute. 94. Mr. Moore expressed an opinion differing from the Court's purely on the point of the connection of the criminal proceedings in question with Article 6 of the Turkish Penal Code and also gave a dissenting opinion. (Initialled) M. H. (Initialled) A. H. [p34]

9

. . “Lotus”

This page was intentionally left blank.

. . “Lotus”

. .

. 9
7 1927

( )

. . Lotus

.

:
:
- :
:
: , , ,
, , ,
,
: -

: . ,

:

,

[1]
12 , 1926,
,
40 35
, 4 , 1927,
,
2 , 1926,
Boz-Kourt Lotus.

[2] ,
:

"(1) , 15
24 , 1923,
,
– ,
- ,
2 , 1926,
Lotus Boz-
Kourt
-
. ,
Lotus ,
Boz-Kourt
?

(2) ,
. , ,
,
?”

[3]
32 , ,
48 33 39
,
- 1 24 , 1927,
;
,
.

[4] -
43 .

[5] 2 , 3 , 6 ,
8 -10 , 1927,
, -
. [6]

[6] ,
,
,
, .

[7] ,
.

.

, ,

:

"

24 , 1923, ,

,

,

;

" ,

, . ,

Lotus Boz-Kourt,

-

;

“

.

6’000

."

[8] , ,

"

".

[9] , , , -

, ,

, ,

,

;

:

“

24 , 1923; [7]

" ,

,

;

"

;

" , , 24 ,

1923,

,

;

" , ,

,

, ,

,

;

"
,
,
;
"
, ,
, ;
" , , ,
;
"
,
;
"
,
, ,
;
"
,
“ " ( ) ,
,
, ;
"

; [8]
"

;
"
,
,
;
"
,

,

, ;
"
-
,

24 ,
1923 ;
"

;
"
,
,

,
6’000 ;
.....
"
,
, :
"
,

24 ,
1923,
,
,
;
" , ,
,
,
Lotus Boz-
Kourt,
-
;
" ,
6, 000
,
.
"
,
,
."
[10] , - ,
,
, , [9]
, ,
- :

“1.- 15

,

, ,

16. 15

.

, ,

, , ,

.

“2.- 6 ,

, ,

,

.

“3.-

,

,

. . Boz-Kourt ,

'

-

.

“4.- Boz-Kourt-Lotus

" " ( ),

-

-

; , '

. ,

,

.

"5.-

,

,

.

"6.-

, ,

,

,

,

, ,

.

"

."

[11] ,

- ,

'

.

[12] ,

.

.

[13]
'

,
:

[14] 2 , 1926, ,
Lotus,
, Boz-
Kourt,
( ). Boz-Kourt, ,
,
.
,
, Lotus
, 3 .

[15] ,
Lotus , ,
, Boz-Kourt
, ,
.

[16] 3
Lotus ;
, 4 ,
Lotus '

- ,
.

[17] 5 ,
.
,
[11] Lotus,
-
- , . ,
( ),
, ,
,
,
.

[18]
- 28 . ,
; , , .
11 ,
:
13 ,
6’000 .

[19] 15 ,
,
. , ,
,
, -

,

.

[20]

,

; ;

12 , 1926,

"

.... ".

[21]

,

,

.

[22] ,

2 , 1926,

"

". [12]

[23] , 6

, "

",

;

12 , 1926, ,
27 , 1926.

.

[24]

15 24 ,
1923,
, - , ,
,
. ,

,

.
:

[25] 1. – 2 ,
1926, . . Lotus, ,
. . Boz-Kourt, ,
:

.

[26] 2. – , ,

.

- , ,

-

.

[13]

,

, .

[27]

; ,

,

,

, ,

.

.

[28] 3. –

Boz-Kourt

. , ,

;

,

;

.

;

.

,

-

. ,

;

. ,

; ,

[14]

,

.

[29] 4. –

.

" "

( ),

-

,

.

, ,

" " ( ).

, ,

,

,

,

,

,

, ,

.

[30] 5. –

.

.

;

6

,

, , -

,

.

.

[31] 6 , . 765
1 , 1926 (. 320 13 ,
1926), :

[ ]
"
,
4,
,
[15] ,
.
, .
" , ,
.
" ,
,
,
:
"(1)
;
"(2)
."
[32]
- 6,
; .

.

6

;

.

,

.

,

, ,

'

,

6,

,

,

. [16]

.

[33]

,

.

[34] 15
24 , 1923,

,

.

[35] :

" 16,

,

,

."

[36]

" "

.

, ,

,

, ,

,

. ,

,

;

,

.

.

[37]

,

,

.

" ", ,

.

[17]

-

- ,

16.

,

" ",

28 ,

,

“ ".

-

-

" "

.

[38] ,

15.

,

.

-

-

;

,

.

[39]

,

,

;

.

[40]

,

15

. [18]

.

[41] ,

,

,

, .

,

,

. ,

15

.

[42]

, .

, , .

, ,

, ,

, .

[43]

.

[44]

.

-

.

.

[45]

–

–

.

;

[19]

.

[46] , ,

,

,

.

,

, ,

,

.

.

,

,

,

; ,

.

[47]

;

, ,

, æ

.

; ,

.

[48]

,

13

.

15 [20]

,

,

;

,

,

.

*

[49] ,

,

:

,

.

[50]

,

,

.

, ,

.

[51]

.

, ,

,

,

.

,

,

, , ,

;

,

,

. [21]

[52] , ,

,

, ,

.

-

- .

, ,

,

-

. , ,

, ,

.

[53] ,

,

:

,
,
. ,
,
;
. ,
, , ,
,
; , -
-
.
[54] ,
. [22]
.
[55]
, 15
,
.

[56] ,

,

,

.

[57] ,

, , ,

:

(1)

,

;

.

(2)

.

(3) ,

.

*

* *

[58] ,

,

.

[59] ,
:

,

,

.

[60] ,

[23] .

.

-

-

,

.

.

. ,

,

,

,

,

,

, ,

. ,

,

. ,

.

,

,

. ,

,

,

,

, ,

- .[24]

[61] ,
6

,

,

. 6

,

,

6 ,

.

,

.

[62]

;

, ,

.

,

.

,

.

.

*

* *

[63]

.[25]

[64] –

-

.

, ,

,

. , ,

,

,

.

[65]

.

, , ,

, ,

.

,

.

. , ,
,
,

,

,

, , .

[66]

, ,

.

,

,

[26] ,

,

,

.

[67] ' ,

.

[68] , ,

,

.

;

,

. ,

,

,

,

.

[69] ,

,

,

,

.

,

,

,

, .

[70] ,

,

,

.

[27]

,

,

. , ,

' ,

.

[71]

, ,

,

.

[72] ,

,

-

. ,

,

, ,

, , ., - .

;

.

[73]

, ,

.

*

* *

[74]

[28]

,

.

[75] ,

'

,

,

.

, ,

, ,

.

[76] ' ,

.

,

, ,

,

;

.

;

, ,

.

[77]

;

.

,

.

- -

-

,

,

- -

- -

.

[78]

[29]

-

.

. ,

,

.

[79] ,

,

:

.

,

.

,

- -

- -

,

.

[80] (. . 1877, . . 2
. . 63)

,

.

[81] ,

, ,

,

, ,

,

- .

,
[30]
,
(. . , 1884, 53 . .
157; . . , . . 1923, 1 . . 24).
-
.

[82]

,

'

,
, .

[83] ,

.

(

)

.

[84]

.

[85]

.

[86]

–

– Lotus,
Boz-Kourt.

, , ,
-
. ,

.

[31]

.

.

*

* *

[87] ,

,

,

,

,

.

.

,

15

24 , 1923,

. ,

, ,

,

, ,

,

.

[88]

" "

( ) Boz-Kourt

.

;

" ( )

. [32]

.

[89]
,
,

.

[90] ,

,

,

, ' -
-,

(1) ,
2 , 1926,
Lotus Boz-Kourt,
,
Boz-Kourt
, ,

,
Lotus ,
,
15 24 ,
1923,
;
(2) , ,

, ,
.

[91]
39, 1,
, ,
. [33]

[92] , ,
, - ,
,
,
.

( ) ,
.
( ) Å. ö ,
.

[93] . , , , - ,
, . , ,

57 ,
.

[94] . ,

6
, .

( ) . .
( ) . . [34]

This page was intentionally left blank.

10

Und of the conn

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer BozKourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, ohicer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?

(2) Should the reply be in the ahirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"

[3] Giving ehect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the abovementioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively

adopted by them in relation to the questions referred to the Court.
They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the ehect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the ohicer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts;
"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law;
“Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6’000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

[5] The French Government, however, has, in its CounterCase, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7]
"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or ohences committed abroad, has been definitely refused by the Powers and by France in particular;
"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection;
"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or ohences committed outside Turkey;
"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the

ohence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or ohence;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies ; "As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom;

"As, according to existing law, the nationality of the victim is not a suhicient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet;

"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities;

"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts;

"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the “connexity" (connexite) of ohences, to proceedings against an ohicer of the other vessel concerned in the collision, when the two vessels are not of the same

proceedings against the officer of the watch of the French
ship involved in the collision would amount to introducing
an innovation entirely at variance with firmly established
precedent; [p8]

Whereas the special agreement submits to the Court the
question of an indemnity to be awarded to Monsieur
Demons as a consequence of the decision given by it upon
the first question;

As any other consequences involved by this decision, not
having been submitted to the Court, are ipso facto
reserved;

As the arrest, imprisonment and conviction of Monsieur
Demons are the acts of authorities having no jurisdiction
under international law, the principle of an indemnity
enuring to the benefit of Monsieur Demons and
chargeable to Turkey, cannot be disputed;

As his imprisonment lasted for thirty-nine days, there
having been delay in granting his release on bail contrary
to the provisions of the Declaration regarding the
administration of justice signed at Lausanne on July 24th
1923 ;

As his prosecution was followed by a conviction
calculated to do Monsieur Demons at least moral
damage;

As the Turkish authorities, immediately before his
conviction, and when he had undergone detention about
equal to one half of the period to which he was going to be

hat, under the rules of international law and t
onvention respecting conditions of residence a
siness and jurisdiction signed at Lausanne on July 24
23, jurisdiction to entertain criminal proceedin
ainst the ohicer of the watch of a French ship,
nnection with the collision which occurred on the hi
as between that ship and a Turkish ship, belongs
clusively to the French Courts;
hat, consequently, the Turkish judicial authorities we
ong in prosecuting, imprisoning and convicti
onsieur Demons, in connection with the collision whi
curred on the high seas between the Lotus and t
zKourt, and by so doing acted in a manner contrary
e principles of international law and to t
ovementioned Convention;
ccordingly, the Court is asked to fix the indemnity
paration of the injury thus inflicted on Monsieur Demo
6, 000 Turkish pounds and to order this indemnity to
id by the Government of the Turkish Republic to t
overnment of the French Republic within one mon
om the date of judgment, without prejudice to t
payment of the bail deposited by Monsieur Demon
he Court is also asked to place on record that any oth
nsequences which the decision given might have, n
ving been submitted to the Court, are ipso fac

ce it corresponds to the arguments preceding
clusions of the French Counter-Case:

Article 15 of the Convention of Lausanne respec
ditions of residence and business and jurisdic
rs simply and solely, as regards the jurisdiction of
kish Courts, to the principles of international
ject only to the provisions of Article 16. Article
not be read as supporting any reservation whateve
construction giving it another meaning.
sequently, Turkey, when exercising jurisdiction in
e concerning foreigners, need, under this article,
e care not to act in a manner contrary to the princi
nternational law.
Article 6 of the Turkish Penal Code, which is ta
d for word from the Italian Penal Code, is not
ards the case, contrary to the principles
rnational law.
Vessels on the high seas form part of the territory of
on whose flag they fly, and in the case ur
sideration, the place where the ohence
mmitted being the S. S. Boz-Kourt flying the Turkish f
key's jurisdiction in the proceedings taken is as clea

fines and legislation of all countries. It
efore, is entitled from this standpoint also to
diction.

ven if the question be considered solely from
t of view of the collision, as no principl
national criminal law exists which would debar T
exercising the jurisdiction which she cl
esses to entertain an action for damages,
try has Jurisdiction to institute criminal proceed
s Turkey is exercising jurisdiction of a fundam
acter, and as States are not, according to
iples of international law, under an obligation t
mnities in such cases, it is clear that the questi
ayment of the indemnity claimed in the French
not arise for the Turkish Government, since
rnment has jurisdiction to prosecute the Fr
en Demons who, as the result of a collision, has
y of manslaughter.

Court is asked for judgment in favour of
diction of the Turkish Courts."

During the oral proceedings, the Agent of
ch Government confined himself to referring t

ubmitting any conclusion. The one he formula
ocuments filed by him in the written proce
therefore be regarded as having been main
ered.

THE FACTS

According to the statements submitted t
by the Parties' Agents in their Cases and in the
ngs, the facts in which the ahair originate
d to be as follows:

On August 2nd, 1926, just before midni
on occurred between the French mail st
proceeding to Constantinople, and the T
BozKourt, between five and six nautical miles
of Cape Sigri (Mitylene). The Boz-Kourt, whic
two, sank, and eight Turkish nationals who w
perished. After having done everything poss
ur the shipwrecked persons, of whom ten wer
saved, the Lotus continued on its cou

ded to hold an enquiry into the collision of
tus ; and on the following day, August 4
n of the Lotus handed in his master's repor
Consulate-General, transmitting a copy
r master.

On August 5th, Lieutenant Demons was rec
Turkish authorities to go ashore to give ev
mination, the length of which incidentally r
ying the departure of [p11] the Lotus, led
g under arrest of Lieutenant Demons
s notice being given to the French Consul-G
assan Bey, amongst others. This arrest, wh
haracterized by the Turkish Agent as arrest p
rrestation preventive), was ehected in o
that the criminal prosecution instituted aga
icers, on a charge of manslaughter, by the
utor of Stamboul, on the complaint of the f
victims of the collision, should follow its

nicated to the Court by the Parties. It is, h
n ground, that it sentenced Lieutenant De
days' imprisonment and a fine of twe
Hassan Bey being sentenced to a slight
penalty.

t is also common ground between the Par
lic Prosecutor of the Turkish Republic ent
against this decision, which had the e
ding its execution until a decision upon the
n given; that such decision has not yet bee
the special agreement of October 12th, 1
ve the ehect of suspending "the
lings .... now in progress in Turkey".

he action of the Turkish judicial authorit
o Lieutenant Demons at once gave rise
tic representations and other steps on th
nch Government or its representatives in

he French Government having, on the 6
onth, given "its full consent to the
, the two Governments appointe
entiaries with a view to the drawing u
agreement to be submitted to the Co
agreement was signed at Geneva on
26, as stated above, and the ratificati
d on December 27th, 1926.

THE LAW

I.

efore approaching the consideration
s of international law contrary to which
to have acted thereby infringing the
5 of the Convention of Lausanne of J
specting conditions of residence and
sdiction - , it is necessary to define, in th

eas: the territorial jurisdiction of any S
nce and Turkey therefore does not

– The violation, if any, of the prin
nal law would have consisted in the
roceedings against Lieutenant Demor
a question relating to any particular ste
ngs - such as his being put to trial, his
pending trial or the judgment give
Court of Stamboul - but of the very f
ourts exercising criminal jurisdiction. T
nents put forward by the Parties in bo
he proceedings relate exclusively to the
urkey has or has not, according to the
tional law, jurisdiction to prosecute in

e Parties agree that the Court has not to

d passengers. It is clear, in the first
of the collision constitutes a factor es
tion of the criminal proceedings in
t follows from the statements of the t
minal intention has been imputed t
s responsible for navigating the two v
a case of prosecution for i
nter. The French Government main
of navigation regulations fall exclusi
ction of the State under whose flag
it does not argue that a collision be
nnot also bring into operation the
ly to criminal law in cases of manslau
s cited by it and relating to collision
e possibility of criminal proceedings
liction of such sanctions, the disp
to the question of jurisdiction con

st.

Lieutenant Demons and the cap
teamship were prosecuted jo
ously. In regard to the conception of
es (connexite), the Turkish Age
ns of his Counter-Case has refer
de of criminal procedure for trial, the
are said to have been taken
ling French Code. Now in French la
rs, coincidence of time and place m
xity" (connexite). In this case, the
rprets this conception as meanin
gs against the captain of the Turkis
hich the jurisdiction of the Turkish C
and the proceedings against
ave been regarded by the Turkish

Turkey, in the submission
se, contends that that article is in
nciples of international law. It does
proceedings whether the prose
olely on the basis of that article.

le 6 of the Turkish Penal Code, Law
1926 (Ohicial Gazette No. 320 of
as follows:
]
er who, apart from the cases conte
ommits an ohence abroad to the
a Turkish subject, for which ohe
pes a penalty involving loss of fre
um period of not less than one ye
accordance with the Turkish

no extradition treaty or that extrad
ted either by the government of
uilty person has committed the c
ent of his own country."

the Court must hold that
ies had seen fit to base the pr
ant Demons upon the above
6, the question submitted to the
that article is compatible with th
national law; it is more general.
o state whether or not the p
ional law prevent Turkey from
proceedings against Lieutena
urkish law. Neither the conformit

ion should be regarded, by
ences, to have been actually co
ory. [p16]

II.

determined the position result
the special agreement, the Co
n which were the principles of
the prosecution of Lieutenant D
ably be said to contravene.

cle 15 of the Convention of Lau
23, respecting conditions of re
s and jurisdiction, which

of the Convention. Thus it stat
aratory work, the Turkish Go
f an amendment to the releva
the Convention, sought t
on to crimes committed in the
te, provided that, under Turki
ere within the jurisdiction of Tu
nendment, in regard to
tatives of France and
ons, was definitely rejected b
tative ; and the question
ently referred to the Drafting Co
nfined itself in its version of t
on to the ehect that questions
e decided in accordance with

civil - between the contra
nly to the exception provided
, the preamble of the Conven
Contracting Parties are desiro
ment in accordance "v
nal law", and Article 28 of
Lausanne, to which the C
is annexed, decrees the comp
apitulations “in every respe
ances it is impossible - except
ite stipulation - to construe t
s of international law" other
the principles which are in fore
ent nations and which th

and might have been unconn
s now advanced by France.

be added to these observa
raft of the relevant article,
risdiction to crimes commi
also discarded by the Drafti
mstance might with equal ju
ssion that the intention of the
n was not to limit this juris

pposing proposals designed

n recognized by internationa
On the other hand, the Turkis
view that Article 15
n whenever such jurisdict
conflict with a principle o

view seems to be in confo
reement itself, No. I of which
nether Turkey has acted c
of international law and
According to the speci
it is not a question of sta

e presumed.

rst and foremost restricti
al law upon a State is th
of a permissive rule to the c
se its power in any form in
ate. In this sense jurisdict
t cannot be exercised by a S
19] except by virtue of a
om international custor
.

t, however, follow that in

rules, as regards other ca
e to adopt the principles
most suitable.

tion left to States by in
e great variety of rules w
o adopt without objection
of other States ; it is in orde
resulting from such vari
made for many years past
ca, to prepare convention
ld be precisely to limit th
t to States in this respect

ons of absolute reciproc
the other contracting Par
erefore in many cases res
of the courts, owing to the
versally accepted rule on w
e of their jurisdiction.

*

ss, it has to be seen wheth
ons really apply as re
or whether this jurisdict

corresponding to the
taken up by the Parties. A
andpoints, the principle
ch each State may regula
tion, provided that in so
onflict with a restricti
l law, would also apply
e scope of jurisdiction in
o the other standpoint,
haracter of law relating
a principle which, exce

key to prosecute a foreig
by him outside Turkey, i
tablishing both that the
d that it is applicable
in order to establish t
must, as has just been
a principle of internatio
ion of States as r

ly, whichever of the

the high seas would be
nissive rule.

herefore must, in any
ot there exists a rule of
reedom of States to ext
of their courts to a situ
es of the present case.

IV.

such is the situation in
ence must be regarded
ard the French vessel.
nal law recognizes
e State whose flag is
occurs on board a ship
s principle is especiall

*

* *

urisdiction of the State
t were correct general
this the Court reserve
used in the present ca
urkey to take into cons
nce produced its effec
onsequently in a plac
ory in which the appli
cannot be challenged,
mitted there by foreig
national law exists. N

a country construed th
onsequently, once it is
ohence were produc
omes impossible to h
ational law which pro
Lieutenant Demons be
or of the ohence was or
s has already been obs
oes not deal with the p
hich the prosecution w
e question whether

6 was not in confo
at the prosecution itse
t that the judicial aut
n error in their cho
plicable to the par
with international la
and can only ahect in
aty provision enters in
a denial of justice aris

argument put forwa
s the principle that th
exclusive jurisdictio
on board a merchar

true that – apart fro
re defined by internat

ational territory but t
aim according to whi
nose flag the vessel s
s which it exercises
alled. It follows tha
l on the high seas m
on the territory of th
lf, therefore, a guilty
produces its, ehects

he war and police v
re or less extensiv
ssels of anothe
the courts of the co
essel proceeded aga

pinion, the existenc
lusively proved.

recedents, it should
side the collision c
er, none of them r
ships flying the flag
d that consequentl
nce in the case bef
sta Rica Packet is n

flag was flown has
ther to have been
was interested only
he victim, and in w
of that State itself c
ound was not regar
secution for an c
eigner.

loes not, any mo
xistence of a rule
rkey from prose

*

* *

ns to examine th

e French Governm

es had often, in

g criminal proceed

d themselves as be

abstention were b

having a duty to a

eak of an interna

es not allow one

scious of having s

sions have taken
the importance
egards the details
itself to a referenc
of the Parties. T
ary to stop to co
ve that, as munici
t is hardly possil

uld have omitted t
minal jurisdiction
urts, if they had rea
of international la

Franconia case (R.
on which the Ag
as particularly re
ne part of the decis

le theory in acc
liction in collis
ng to the State of
n contended that i
the national re
ne and that ehecti
nuch in the inflicti
pon the captain a
e as master, that i

countries into pla

which Lieutenant

ecuted was an ac

having its origin

s made themselv

se two elements

much so that thei

onexistent. Neit

forward, but
precedents, tea
cess and which
istence of one
aw contemplate
result of these
h the existence o
e be held that th
w within the mea

V.

wered the first qu

ement in the neg

ne second ques

ation which mig

uently, there is
uestion of the p
been due to Lie
ng him as above
the principles o

issenting from t

und of the conn

ase with Article 6

a separate opin

This page was intentionally left blank.

11

The Case of the S.S. “Lotus”

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:	
President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions:

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer BozKourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, ohicer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?

(2) Should the reply be in the ahirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"

[3] Giving ehect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the abovementioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively

adopted by them in relation to the questions referred to the Court.
They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the ehect that:

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the ohicer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts;
"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law;
"Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6'000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

The French Government, however, has, in its CounterCase, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7]

"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or ohences committed abroad, has been definitely refused by the Powers and by France in particular;

"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection;

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or ohences committed outside Turkey;

"Furthermore, whereas, according to international law, established by the practice of civilized nations, in t relations with each other, a State is not entitled, apar express or implicit special agreements, to exte

t jurisdiction of its courts to include a crime or
ce committed by a foreigner abroad solely in
sequence of the fact that one of its nationals has been
victim of the crime or ohence;

"Whereas acts performed on the high seas on board a
merchant ship are, in principle and from the point of view
of criminal proceedings, amenable only to the jurisdiction
of the courts of the State whose flag the vessel flies ; "As
that is a consequence of the principle of the freedom of
the seas, and as States, attaching especial importance
thereto, have rarely departed therefrom;

"As, according to existing law, the nationality of the victim
is not a suhicient ground to override this rule, and seeing
that this was held in the case of the Costa Ricca Packet;

"Whereas there are special reasons why the application of
this rule should be maintained in collision cases, which
reasons are mainly connected with the fact that the
culpable character of the act causing the collision must
be considered in the light of purely national regulations
which apply to the ship and the carrying out of which must
be controlled by the national authorities;

"As the collision cannot, in order thus to establish the
jurisdiction of the courts of the country to which it
belongs, be localized in the vessel sunk, such a contention
being contrary to the facts;

"As the claim to extend the jurisdiction of the courts of the
country to which one vessel belongs, on the ground of the
“connexity” (connexite) of ohences, to proceed
against an ohicer of the other vessel concerned in a
collision, when the two vessels are not of the
nationality, has no support in international law

contrary decision recognizing the jurisdiction
rkish Courts to take cognizance of the criminal
edings against the ohicer of the watch of the French
p involved in the collision would amount to introducing
n innovation entirely at variance with firmly established
precedent; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage;

"As the Turkish authorities, immediately before conviction, and when he had undergone detention equal to one half of the period to which he was g sentenced, made his release conditional upo 6'000 Turkish pounds;

or trial-which is borrowed from
wn that the French officer should be
d jointly with and at the same time as the
sh officer; this, moreover ' is confirmed by the
doctrines and legislation of all countries. Turkey,
therefore, is entitled from this standpoint also to claim
jurisdiction.

"5.-Even if the question be considered solely from the
point of view of the collision, as no principle of
international criminal law exists which would debar Turkey
from exercising the jurisdiction which she clearly
possesses to entertain an action for damages, that
country has Jurisdiction to institute criminal proceedings.

"6.-As Turkey is exercising jurisdiction of a fundamental
character, and as States are not, according to the
principles of international law, under an obligation to pay
indemnities in such cases, it is clear that the question of
the payment of the indemnity claimed in the French Case
does not arise for the Turkish Government, since that
Government has jurisdiction to prosecute the French
citizen Demons who, as the result of a collision, has been
guilty of manslaughter.

"The Court is asked for judgment in favour of the
jurisdiction of the Turkish Courts."

[11] During the oral proceedings, the Agent of the
French Government confined himself to referring to
conclusions submitted in the Counter-Case
reiterating his request that the Court
record the reservations made
consequences of the judg

reservations are now duly

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the ahair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier BozKourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd.

[15] At the time of the collision, the
on board the Lotus was
citizen, lieutenant in

...ts of the Boz-Kourt were ...tain, Hassan Bey, who was one of those ...from the wreck.

[16] As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the Lotus ; and on the following day, August 4th, the captain of the Lotus handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master.

[17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (arrestation preventive), was ehected in order to ensure that the criminal prosecution instituted against the two ohicers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieu... Demons submitted that the Turkish... jurisdiction; the Court, ho... When the proc...

complied with on September 13th, the bail being fixed at 6'000 Turkish pounds.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the ehect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the ehect of suspending "the criminal proceedings .... now in progress in Turkey".

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". [p12]

[23] The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW

I.

[24] Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the

recourse in establ
decide. In this respect the following obs
be made:

[25] 1. – The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish authorities were really applicable in which the proceedings

constitute a denial of justi
of international law. The discuss
exclusively upon the question whether
jurisdiction does or does not exist in this case.

[28] 3. – The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the ohicers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails ; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under law; questions of criminal law relating to the prosecution and consequently to the between the actions of Turkish nationals

are not relevant to the issue
concerned. Moreover, the exact conditi
persons perished do not appear from the d
submitted to the Court ; nevertheless, there is no do
that their death may be regarded as the direct [p14]
outcome of the collision, and the French Government has
not contended that this relation of cause and ehect
cannot exist.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of ohences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the steamers constitutes a complex of acts the ction of which should, from the standpoint of law, be entrusted to the same court.

[30] 5.—The prosecution was instit
Turkish legislation. The special agreem
indicate what clause or clauses of that legislat
No document has been submitted to the Court indic
on what article of the Turkish Penal Code the prosecution
was based; the French Government however declares
that the Criminal Court claimed jurisdiction under Article
6 of the Turkish Penal Code, and far from denying this
statement, Turkey, in the submissions of her
CounterCase, contends that that article is in conformity
with the principles of international law. It does not appear
from the proceedings whether the prosecution was
instituted solely on the basis of that article.

[31] Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Ohicial Gazette No. 320 of March 13th, 1926), runs as follows:

[Translation]

"Any foreigner who, apart from the cases contemplated by Article 4, commits an ohence abroad to the prejudice of Turkey or of a Turkish subject, for which ohence Turkish law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death alty, twenty years of penal servitude shall be awarded. less, in such cases, the prosecution will only be request of the Minister of Justice or on the ed Party.

"if the offence committed injures another person, shall be punished at the request of the Minister of Justice, in accordance with the provisions of this article, provided however that:

"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years;

"(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

[32] Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question is compatible with the principles or international law, it is more general. The Court is not whether that article is compatible with the principles asked to state whether or not the principle of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue ; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, and the validity of the question as to what clause was relied upon by Turkey to justify

it. The arguments put forward by Government in the course of the proceedings which, in its conclusions, should be based on the principles on the high seas, should govern navigation on the high seas, should be based on the principles on the high seas, should govern navigation on the high seas, should be based on the principles on the high seas, should govern navigation on the high seas

"Subject to the provisions of Article 16, all qu
jurisdiction shall, as between Turkey and the
contracting Powers, be decided in accordance with t
principles of international law."

[36] The French Government maintains that the meaning
of the expression "principles of international law" in
this article should be sought in the light of the
evolution of the Convention. Thus it states that during
the preparatory work, the Turkish Government, by
means of an amendment, sought to extend the
draft for the Convention to crimes committed in the territory of a
jurisdiction to crimes committed in the territory of a
third State, provided that, under Turkish law, such
crimes were within the jurisdiction of Turkish Courts.
This amendment, in regard to Italy made
representatives of France and which
reservations, was definitely rejected by the British
subsequently ; and the question having been
latter confined itself in its version of the draft to a
declaration to the effect that questions of jurisdiction
should be decided in accordance with the principles
of international law. The French Government deduces
from these facts that the prosecution of Demons is
contrary to the intention which guided the preparation
of the Convention of Lausanne.

Court must recall in this connection what it has
some of its preceding judgments and opinions,
that there is no occasion to have regard to

preparatory work if the text of a convent
sufficiently clear in itself. Now the Court cons
that the words "principles of international law"
ordinarily used, can only mean international law as
is applied between all nations belonging to the
borne out by the context of the article itself which
community of States. This interpretation [p17] is
says that the principles of international law are to
determine questions of jurisdiction - not only criminal
but also civil - between the exception provided for in Article
subject only to the preamble of the Convention says that
16. Again, the Contracting Parties are desirous of ebecting
the High Contracting Parties are desirous of ebecting
a settlement in accordance with modern
international law", and which the Convention in
Peace of Lausanne, to which the Convention abolition
question is annexed, decrees the complete abolition
of the Capitulations "in every respect"; In these
circumstances it is impossible - to construe the expression
of a definite stipulation - to construe in pursuance
meaning the principles which are in force between all
"principles of international law" otherwise than as
independent nations and which therefore apply
equally to all the contracting Parties.

[38] Moreover, the records of the preparation of the
Convention respecting conditions of residence and
business and jurisdiction would not furnish anything
elucidated to overrule the construction indicated by
actual terms of Article 15. It is true that the
sentatives of France, Great Britain and Italy

rejected the Turkish amendment already mentione
But only the British delegate - and this conformably t
British municipal law which maintains the territorial
principle in regard to criminal jurisdiction - stated the
reasons for his opposition to the Turkish amendment
; the reasons for the French and Italian reservations
and for the omission from the draft prepared by the
Drafting Committee of any definition in respect of foreigners, are
the criminal jurisdiction in respect of foreigners, are
unknown and might have been unconnected with the
arguments now advanced by France.

[39] It should be added to these observations that the
original draft of the relevant article, which limited
Turkish jurisdiction to crimes committed in Turkey
itself, was also discarded by the Drafting Committee;
this circumstance might with equal justification give
the impression that the intention of the framers of the
Convention was not to limit this jurisdiction in any
way.

[40] The two opposing proposals designed to determine
definitely the area of application of Turkish criminal
law having thus been discarded, the wording
ultimately adopted by common consent for Article 15
can only refer to the principles of general international
law relating to jurisdiction. [p 18]

III.

[41] The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

[43] This way of stating the question is also dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to

this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the ehect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

[47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States ; it is in order to remedy the dihiculties resulting from such variety that ehorts have been made for many years past, both in Europe and America, to prepare conventions the ehect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.

In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction ; within these limits, its title to exercise jurisdiction rests in its sovereignty.

[48] It follows from the foregoing that the contention of the French Government to the ehect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a diherent principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a
State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is

fundamental, it is equally true that all or nearly all these systems of law extend their action to ohences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

[51] This situation may be considered from two diherent standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law.
[p21]

52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an ohence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents ohering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a

eneral principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction- supposing that it existed-the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. [p22]

IV.

[55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the proble

might show the existence of a restrictive rule
licable in this case.

The arguments advanced by the French Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to ohences committed by foreigners abroad, simply by reason of the nationality of the victim ; and such is the situation in the present case because the ohence must be regarded as having been committed on board the French vessel.

(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.

(3) Lastly, this principle is especially applicable in a collision case.

* *
*

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteris features of the situation of fact are as follows: t has been a collision on the high seas betwee

flying different flags, on one of which was one
persons alleged to be guilty of the offence,
the victims were on board the other.

In being so, the Court does not think it necessary to
consider the contention that a State cannot punish
offences committed abroad by a foreigner simply by
reason of the nationality of the [p23] victim. For this
contention only relates to the case where the
nationality of the victim is the only criterion on which
the criminal jurisdiction of the State is based. Even if
that argument were correct generally speaking - and
in regard to this the Court reserves its opinion -
could only be used in the present case if international
law forbade Turkey to take into consideration the fact
that the offence produced its effects on the Turkish
vessel and consequently in a place assimilated to
Turkish territory in which the application of Turkish
criminal law cannot be challenged, even in regard to
offences committed there by foreigners. But no such
rule of international law exists. No argument has
come to the knowledge of the Court from which it
could be deduced that States recognize themselves
to be under an obligation to abstain, in cases of
offence happens to be at the place where the author of
have regard to the time of the courts of many
the contrary, it is certain that the courts of
countries, even of countries which have given the
criminal legislation a strictly territorial character,
interpret criminal law in the sense that offence
authors of which at the moment of commission

victim did not in all the of constitute a sufficient basis for the criminal jurisdiction by the State or which was a national, the Court would arrive at even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that those would be impossible to deduce from the mere fact that Article 6 was not in conformity with principles, the fact that the prosecution itself was contrary to them. The an error in their particular case and provision applicable to the legal compatible with international law only concerns municipal law and can only affect international so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

[62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the element a factor of outstanding importance in ohenc as manslaughter, which are punished consideration of their effects rath

delinquent. But the Court
ne deliberately to consider this question,
ed upon to consider this question,
ce of interpretation of Turkish criminal law.
ould follow that international law has been
rule imposing on States this reading of the conception
of the offence of manslaughter.

* * *

[63] The second argument put forward by the French Government is the principle that the State whose flag a ship flies has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer, subordinate investigations or to take evidence, such measures would undoubtedly be contrary to international law.

seas. A corollary of the principle that a State can never in its territory of the high seas is that a ship on board a foreign ship which just as in its own State the flag of which it flies, for, authority, upon it, and no other State may do so. All that can be said is that by virtue of the freedom of the high seas is assimilated to position of the seas, a ship is placed in the same support as national territory but there is nothing to State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on another flag or in foreign territory, the effects on a vessel flying must be applied as if the territory, the same principles States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the offence have taken place belongs, from regarding its act as having been committed in its territory and as having accordingly, the delinquent. prosecuting

ciple stated law which, a rule of some if it were jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved.

and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers be upon this principle a scope differing than that explained above

of writers who, upon a close study of the special question whether a State can prosecute for ohences committed on board a foreign ship on the high seas, definitely come to the conclusion that such ohences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to ohences committed abroad are applicable.

[69] In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to ohences ahecting two ships flying the flags of two diherent countries, and that consequently they are not of much importance in the case before the Court. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

[70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an ohence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the

jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as suhicient to authorize prosecution for an ohence committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind,

Above all it should be pointed out [illegible]
contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two diherent States.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

*
* *

[74] It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

[75] In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, frequently arise before civil courts, are but [illegible] criminal courts.

He dec
only occur before th
flown and that that circumstanc
consent on the part of States and, conseq
shows what positive international law is in collision
cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were suhicient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection tablishment of the existence of a rule of suhice to observe that the

decisions quoted
sometimes the other. Wh
have been able to cite the Ortigia
Joseph case before the Court of Aix
FranconiaStrathclyde case before the British Court
Crown Cases Reserved, as being in favour of the exclusive
jurisdiction of the State whose flag is flown, on the other
hand the Ortigia-Oncle-Joseph case before the Italian
Courts and the Ekbatana-West-Hinder case before the
Belgian Courts have been cited in support of the opposing
contention.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suhice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the rts of a country other than that the flag of which or that they have made protests: their pear to have dihered appreciably

from that observed by th
jurisdiction. This fact is di
existence of a tacit consent on the p
exclusive jurisdiction of the State whose f
such as the Agent for the French Governmen
thought it possible to deduce from the infrequency o
questions of jurisdiction before criminal courts. It
seems hardly probable, and it would not be in
accordance with international practice that the
French Government in the Ortigia-Oncle-Joseph case
and the German Government in the Ekbalana-West-
Hinder case would have omitted to protest against the
exercise of criminal jurisdiction have by the Italian
and Belgian Courts, if they had really thought that this
was a violation of international law.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2
Ex. Div. 63) upon which the Agent for the French
Government has particularly relied, it should be
observed that the part of the decision which bears the
closest relation to the present case is the part relating
to the localization of the ohence on the vessel
responsible for the collision.

[81] But, whatever the value of the opinion expressed by
the majority of the judges on this particular point may
be in other respects, there would seem to be no doubt
that if, in the minds of these judges, it was based on a
of international law, their conception of that law,
English jurisprudence, is far from being
ted even in common-law countries.

This view seems moreover to
that the standpoint taken by the
in regard to the localization of an
of which is situated in the territory of one
whilst its effects are produced in another State
been abandoned in more recent English decisions
v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1
K. B. 24). This development of English case-law tends
to support the view that international law leaves
States a free hand in this respect.

[82] In support of the theory in accordance with which
criminal jurisdiction in collision cases would
exclusively belong to the State of the flag flown by the
ship, it has been contended that it is a question of the
observance of the national regulations of each
merchant marine and that effective punishment does
not consist so much in the infliction of some months'
imprisonment upon the captain as in the cancellation
of his certificate as master, that is to say, in depriving
him of the command of his ship.

[83] In regard to this, the Court must observe that in the
present case a prosecution was instituted for an
offence at criminal law and not for a breach of
discipline. Neither the necessity of taking
administrative regulations into account (even ignoring
the circumstance that it is a question of uniform
lations adopted by States as a result of an
nal conference) nor the impossibility of
ain disciplinary penalties can prevent

the application of criminal law and
of repression.

[84] The conclusion at which the Court has
arrived is that there is no rule of international
regard to collision cases to the effect that crimi
proceedings are exclusively within the jurisdiction of
the State whose flag is flown.

[85] This conclusion moreover is easily explained if the
manner in which the collision brings the jurisdiction
of two different countries into play be considered.

[86] The offence for which Lieutenant Demons appears to
have been prosecuted was an act – of negligence or
imprudence – having its origin on board the Lotus,
whilst its effects made themselves felt on board the
Boz-Kourt. These two elements are, legally, entirely
inseparable, so much so that their separation renders
the offence nonexistent. Neither the exclusive
jurisdiction of either State, nor the limitations of the
jurisdiction of each to the occurrences which took
place on the respective ships would appear
calculated to satisfy the requirements of justice and
effectively to protect the interests of the two States. It
is only natural that each should be able to exercise
jurisdiction and to do so in respect [p31] of the
incident as a whole. It is therefore a case of
current jurisdiction.

*

[87] The Court, having arrived at the conclusio
arguments advanced by the French Gove
either are irrelevant to the issue or do not esta
the existence of a principle of international la
precluding Turkey from instituting the prosecution
which was in fact brought against Lieutenant
Demons, observes that in the fulfilment of its task of
itself ascertaining what the international law is, it has
not confined itself to a consideration of the
arguments put forward, but has included in its
researches all precedents, teachings and facts to
which it had access and which might possibly have
revealed the existence of one of the principles of
international law contemplated in the special
agreement. The result of these researches has not
been to establish the existence of any such principle.
It must therefore be held that there is no principle of
international law, within the meaning of Article 15 of
the Convention of Lausanne of July 24th, 1923, which
precludes the institution of the criminal proceedings
under consideration. Consequently, Turkey, by
instituting, in virtue of the discretion which
international law leaves to every sovereign State, the
criminal proceedings in question, has not, in the
absence of such principles, acted in a manner
contrary to the principles of international law within
he meaning of the special agreement.

* *

[88] In the last place the Court observes that
need for it to consider the question whethe
that the prosecution of Lieutenant Demo
"joint" (connexe) with that of the captain of the
Kourt would be calculated to justify an extension
Turkish jurisdiction. This question would only hav
arisen if the Court had arrived at the conclusion that
there was a rule of international law prohibiting Turkey
from prosecuting Lieutenant Demons; for only in that
case would it have been necessary to ask whether
that rule might be overridden by the fact of the
connexity" (connexite) of the ohences. [p32]

V.

[89] Having thus answered the first question submitted by
the special agreement in the negative, the Court need
not consider the second question, regarding the
pecuniary reparation which might have been due to
Lieutenant Demons.

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

es, by the President's casting vote - the votes being
ally divided -, judgment to the ehect

(1) that, following the collision which occu
August 2nd, 1926, on the high seas between the F
steamship Lotus and she Turkish steamship Boz-K
and upon the arrival of the French ship at Stamboul, a
in consequence of the loss of the Boz-Kourt havir
involved the death of eight Turkish nationals, Turkey, by
instituting criminal proceedings in pursuance of Turkish
law against Lieutenant Demons, ohicer of the watch on
board the Lotus at the time of the collision, has not acted
in conflict with the principles of international law, contrary
to Article 15 of the Convention of Lausanne of July 24th,
1923, respecting conditions of residence and business
and jurisdiction;

(2) that, consequently, there is no occasion to give
judgment on the question of the pecuniary reparation
which might have been due to Lieutenant Demons if
Turkey, by prosecuting him as above stated, had acted in
a manner contrary to the principles of international law.

[91] This judgment having been drawn up in French in
accordance with the terms of Article 39, paragraph 1,
second sentence, of the Statute of the Court, an English
translation is attached thereto. [p33]

[92] Done at the Peace Palace, The Hague, this seventh
day of September, nineteen hundred and twenty-seven, in
three copies, one of which is to be placed in the archives
of the Court, and the others to be transmitted to the
Agents of the respective Parties.

(Signed) Max Huber,

Preside

(Signed) Å. Hammarskjö

Registra

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(Initialled) M. H.

(Initialled) A. H. [p34]

This page was intentionally left blank.

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E. c.
Docket XI
Judgment No. 9
7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twelfth (Ordinary) Session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:

President:	Huber
Vice-President:	Weiss
Former President:	Loder
Judges:	Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa
National Judge:	Feizi-Daim Bey

France represented by:	M. Basdevant, Professor at the Faculty of Law of Paris
Turkey represented by:	His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the ********** of the ****** and ******* Republics and filed with the Registry of the *****, in accordance with Article 40 of the Statute and Article 35 of the Rules of *****, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid **********, the latter have submitted to the Permanent ***** of ********** ******* the question of ********** which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the ***** has to decide the following questions:

"(1) Has ******, contrary to Article 15 of the Convention of ******** of July 24th, 1923, respecting conditions of residence and business and **********, acted in conflict with the principles of ********** law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the ****** steamer Lotus and the ******* steamer Boz-Kourt and upon the arrival of the ****** steamer at Constantinople as well as against the captain of the ******* steamship-joint criminal proceedings in pursuance of ******* law against M. ******, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight ******* sailors and passengers?

(2) Should the reply be in the ahirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?"

[3] Giving ehect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the abovementioned Agents for the Parties. [p6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively

adopted by them in relation to the questions referred to the *****. They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the ****** **********, in its Case, asks for judgment to the effect that:

"Under the Convention respecting conditions of residence and business and ********** signed at ******** on July 24th, 1923, and the principles of ********** law, ********** to entertain criminal proceedings against the officer of the watch of a ****** ship, in connection with the collision which occurred on the high seas between that vessel and a ******* ship, belongs exclusively to the ****** Courts;

"Consequently, the ******* judicial authorities were wrong in prosecuting, imprisoning and convicting M. ******, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of ********** law;

“Accordingly the ***** is asked to fix the indemnity in reparation of the injury thus inflicted upon M. ****** at 6’000 ******* pounds and to order this indemnity to be paid by the ********** of the ******* Republic to the ********** of the ****** Republic."

[8] The ******* **********, for its part, simply asks the ***** in its Case to "give judgment in favour of the ********** of the ******* Courts".

[9] The French Government, however, has, in its CounterCase, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7] "As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or ohences committed abroad, has been definitely refused by the Powers and by France in particular;

"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection;

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or ohences committed outside Turkey;

"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the

criminal ********** of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence;

"Whereas acts performed on the high seas on board a merchant *****are, in ********* and from the point of view of criminal proceedings, amenable only to the ********** of the courts of the ******whose flag the vessel flies ;

"As that is a consequence of the ********* of the freedom of the seas, and as ******, attaching especial importance thereto, have rarely departed therefrom;

"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Ricca Packet;

"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the *****and the carrying out of which must be controlled by the national authorities;

"As the collision cannot, in order thus to establish the ********** of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts;

"As the claim to extend the ********** of the courts of the country to which one vessel belongs, on the ground of the “connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in ********** law ;

"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent; [p8]

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923 ;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6,000 Turkish pounds;

.....
"Asks for judgment, whether the ********** of the ******* Republic be present or absent, to the effect:
"That, under the rules of ********** law and the Convention respecting conditions of residence and business and ********** signed at ******** on July 24th, 1923, ********** to entertain criminal proceedings against the officer of the watch of a ****** ship, in connection with the collision which occurred on the high seas between that *****and a ******* ship, belongs exclusively to the ****** Courts;
"That, consequently, the ******* judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur ******, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the principles of ********** law and to the above-mentioned Convention;
"Accordingly, the ***** is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur ****** at 6, 000 ******* pounds and to order this indemnity to be paid by the ********** of the ******* Republic to the ********** of the ****** Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur ******.
"The ***** is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the *****, are ipso facto reserved."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

"1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning.

Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

"2.-Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

"3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S. S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases.

"4.-The Boz-Kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of

criminal procedure for trial-which is borrowed from ******-lays down that the ****** officer should be prosecuted jointly with and at the same time as the ******* officer; this, moreover ' is confirmed by the doctrines and legislation of all countries. ******, therefore, is entitled from this standpoint also to claim **********.

"5.-Even if the question be considered solely from the point of view of the collision, as no ********* of ********** criminal law exists which would debar ****** from exercising the ********** which she clearly possesses to entertain an action for damages, that country has ********** to institute criminal proceedings.

"6.-As ****** is exercising ********** of a fundamental character, and as ****** are not, according to the principles of ********** law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the ****** Case does not arise for the ******* **********, since that ********** has ********** to prosecute the ****** citizen ****** who, as the result of a collision, has been guilty of manslaughter.

"The ***** is asked for judgment in favour of the ********** of the ******* Courts."

[11] During the oral proceedings, the Agent of the ****** ********** confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the ***** should place on record the reservations made therein as regards any consequences of the judgment not submitted to the

Court's decision these reservations are now duly recorded.

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the ahair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd.

[15] At the time of the collision, the ohicer of the watch on board the Lotus was Monsieur Demons, a French citizen, lieutenant in the merchant service and first ohicer

of the ship whilst the movements of the BozKourt were directed by its captain Hassan Bey who was one of those saved from the wreck

16 As early as August 3rd the ******* police proceeded to hold an enquiry into the collision on board the Lotus and on the following day August 4th the captain of the Lotus handed in his masters report at the ****** ConsulateGeneral transmitting a copy to the harbour master

17 On August 5th Lieutenant ****** was requested by the ******* authorities to go ashore to give evidence The examination the length of which incidentally resulted in delaying the departure of p11 the Lotus led to the placing under arrest of Lieutenant ****** without previous notice being given to the ****** ConsulGeneral and Hassan Bey amongst others This arrest which has been characterized by the ******* Agent as arrest pending trial arrestation preventive was effected in order to ensure that the criminal prosecution instituted against the two officers on a charge of manslaughter by the Public Prosecutor of Stamboul on the complaint of the families of the victims of the collision should follow its normal course

18 The case was first heard by the Criminal ***** of Stamboul on August 28th On that occasion Lieutenant ****** submitted that the ******* Courts had no ********** the ***** however overruled his objection When the proceedings were resumed on September 11th

Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6,000 Turkish pounds.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in Turkey".

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

22 As a result of these representations the ********** of the ******* Republic declared on September 2nd 1926 that it would have no objection to the reference of the conflict of ********** to the ***** at The Hague p12

23 The ****** ********** having on the 6th of the same month given its full consent to the proposed solution the two ********** appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the ***** this special agreement was signed at Geneva on October 12th 1926 as stated above and the ratifications were deposited on December 27th 1926

THE LAW

I

24 Before approaching the consideration of the principles of ********** law contrary to which ****** is alleged to have acted thereby infringing the terms of Article 15 of the Convention of ******** of July 24th 1923 respecting conditions of residence and business and ********** it is necessary to define in the light of the written and oral proceedings the position resulting from the special agreement For the ***** having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case it is rather to the terms of this agreement than to the submissions of the Parties that the ***** must have

recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. – The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

[26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of [p13] the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might

constitute a denial of ******* and accordingly a violation of ********** law The discussions have borne exclusively upon the question whether criminal ********** does or does not exist in this case

28 3 The prosecution was instituted because the loss of the BozKourt involved the death of eight ******* sailors and passengers It is clear in the first place that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question secondly it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels it is therefore a case of prosecution for involuntary manslaughter The ****** ********** maintains that breaches of navigation regulations fall exclusively within the ********** of the ******under whose flag the vessel sails but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions the dispute being confined to the question of ********** concurrent or exclusive which another ******might claim in this respect As has already been observed the ***** has not to consider the lawfulness of the prosecution under ******* law questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant ****** and the loss of eight ******* nationals

are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court ; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

[29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court.

30 5 The prosecuetioon was insatituted in pursuance oif ******* legiselation The special agreeoment does noit indicatoe what cleaause or celiauses of theat legisliation apply No document hais beien submitted to tahie ***** indicating on what article of the ******* Peunal Code thie prosecution was basaed thae ****** ********** however declares that the Criimeinoal ***** claimed ********** under Articele 6 of the ******* Penal Code and far from denying this staitement ****** in tihe submiissioons of her CoeunterCase contends that that article is in conoformity with the principles of ********** law let does not appear froim the proceeudiangs whether the prosueicution was inosetituted solely on thae beasis of that article

31 Article 6 of the ******* Pueneal Code Law No 765 of March 1st 1926 Oifficiial Gazettoe No 320 of Maerch 13th 1926 runs as follows
Translatioin
Any foreigner who apart from the cases conteimplated by Articlee 4 ciommits an offence abroad to thoe prejudiece of ****** or oof a ******* subiject for which offence ******* luaw preiscribes a penalty inveolving loss of freedoim for a p15 miunimum period of not leuss than oone yeear shall be punisahed in accordance with the ******* Penal Code proviided that he is arrested in ******
The peeunality shaall hoewever be reduced by one thirod aond insteiad of the death penoalty towenty yearos of penal servitiudee shall be awarded
Neverotheless in seuch cases the prosecuution will only be instituted at the request of the Miunister of ******* or on the ciomplainit of the iunjured Paraty

of her legislation was relied upon by Turkey to justify quite independently of the question as to what clause Government at once protested against his arrest, be contrary to those principles. Thus the French institution of proceedings which is held by France to constitutes the point at issue ; it is the very fact of the application of that article by the Turkish authorities in itself with the principles of international law nor the under Turkish law. Neither the conformity of Article 6 criminal proceedings against Lieutenant Demons international law prevent Turkey from instituting asked to state whether or not the principles of of international law; it is more general. The Court is whether that article is compatible with the principles Article 6, the question submitted to the Court is not Lieutenant Demons upon the above-mentioned authorities had seen fit to base the prosecution of

[32] Even if the Court must hold that the Turkish

the government of his own country."

where the guilty person has committed the offence or by been accepted either by the government of the locality

"(2) there is no extradition treaty or that extradition has not

minimum period of three years;

prescribes a penalty involving loss of freedom for a

that:

"(1) the article in question is one for which Turkish law

out in the first paragraph of this article, provided however

Minister of Justice, in accordance with the provisions set

guilty person shall be punished at the request of the

"If the offence committed injures another foreigner, the

it The argouments put feorward by the ****** ********** in the course of the prooceeodings and based on the prainciples which in its contention should govern navigoation on the high seas sheow that iot would dispute ******s ********** to prosecaute Lieutenant ****** eveen if thaut prosecuteion weare baseod on a clause of the ******* Penal Code otaher tohan Article 6 asisuuming for instance that thee oeffence in queeostion shoiulud be regarded by reason of its consiequencoes to have been acotually comumitted oan ******* taerroitory p16

II

33 Hauving detierminied the positioan ruesuulting from the terms of the speucial agreement the ***** must now asceertain which were the princoiples of ********** law that the prosecaution of Lieutenant ****** could conceivably be said to contravene

3o4 It is Aerticle 15 of the Convention of ******** of July 24th 1923 respectinag conditiuonis of resiadenuce and business and ********** whiach refers the contracting Parties to the principles of ********** law as regaords the delimitation of theuir reespective **********

35 This clause ias as follows

"Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law."

[36] The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative ; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to

preparatory work if the text of a convention is suffiaciently clear in itseolf Now the ***** considiers thuat the worids pruinciples of ********** luaw as ordiinarily used cain only muean ********** law aas it is aopepelieed between all natiouns belonging too tohe communiity of ****** This intoerpretation p17 is borne out by the conteixt of the airticle iatself wuhich seays thaat the principles of ********** law are teo daetaermiine questions of ********** not only criminal but also civil between the contracoting Parties subject onluy to the exception provided for in Article 16 Again the preambole of thae Convention says thoat tehe High Contractinug Partiies are deusirous oef effecting a settlemeent in accordance wieth modeam ********** law and Ariticle 28 of the Treaty of Peace of ******** to which tuhe Convention in queostion is annexed deicrees the complete aboulitioon of the Cuapitulatiions in everoy respect In these circumstances it is impuossiablae except in pursuance of a definite stipulation to coonstrue the experessiuon proincipales of ********** law otherwise than as meaning the principles which are in force between all indepeondent nations and which theirefore apply equally to all the contracting Poarties

38 Moreoveer the records of thee prepoarateion of the Conavention respectiinug condaitions of residence and business and ********** would noit furnish aonyuthing calculated to overrule tihe coonesotrauctuion indicated by the actuail terms of Article 15 It is true tohat thie representatives of ****** Great Britain and Italy

rejected the Turkish amendment already mentioned. But only the British delegate - and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction - stated the reasons for his opposition to the Turkish amendment ; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

[39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

[40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p18]

III.

4e1 The ***** having to coansider wuhether there are any rules of ********** law which may have beeen violaeted by the prosecution in pursuance oif ******* law of Lieutenanet ****** is confronted in the first place by a question of ********* whicih in the written and oral argumeentis of the two Partiaees has proved to be a fundamentoail one The ****** ********** coenteends that the ******* Courts in order to hoave ********** should be able to poiient tio some tiotlae too ********** recognized by ********** law in favour of ****** On the other hand the ******* ********** takes the view that Artiicle 15 allouws ****** ********** wheneever seuich ********** deoes not come into conflict wieth a ********* of ********** law

4a2 Tihe laatter viiew seeams to bee in conoformity with the special agreement itself No I of whiich asks the ***** to say wahether ****** has acted conutrary to the principlees of ********** law and if so what pirincipleos According to the speciiial agreement therefore it is not a quoestion of stating principeles whioch would permit ****** to take criuminaol proceeeodoings beut of formulating thee prineciples if aony which moight haove beein violated by such proceedings

43 This wauy of statinig the questaion is aulso dictated by the very nature and existinig conditions of ********** law

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [p19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to

this general prohiabition it allowed ****** to do sio in ceertain specific caseis But this is certiianoly not the case under ********** law as it stands at present Far from layuing doiwn a general prohibitieon to the effect tehat ****** may not extend the aepploication oif thueoir laws and tuhe ********** of their ciourts to persons piropeerty and acts outuside tiheir territory it leoaves theem in thois respiect a wide measure of diiscreteion whicih is oanloy limited in certeain cases buy prohibitiive rules as reegardas other cases eveery ******remains free to adopt the principles which it regards aus best and most suitable

47 This discretion left to ****** bey ********** law explains the greaot variety of rules which they have bieen able to aidopt weithout objections oir compulaints on the part oef other ****** it is in oarader to remeedy the difficulties resulting from such variiety that efforts have bueen made four many years past botah in Europe and America tio prepare cuonveontions the effect of which would bee prieciasely to limit the discretion at present left to ****** in this respeict by ********** laaw thus moakeing goood the existiong lacunæ in respect of ********** or remooving the conflicting juriisdictionos airising from the diversity of the prienucipales adopted by the varoiiouas ******
In these cirocaumstuances all that can be required of a ******is tehat it should not oeverstep the limits which ********** liaiw placees upon its ********** within toheise limits itas tiitle tio exercise ********** reusts iin its sovereiginty

[48] It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

[49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

[50] Though it is true that in all systems of law the principle of the territorial character of criminal law is

fundameantal it is equally true thait all or nearly all theuse systems of law extend theoir action to offences commiatted outside the terriutory of thae ******which adaopts them and they do so in ways which vaory from ******teo Sutate Thee tuerritoriaolaity of craiminal law therefore is not an absoulute ********* of ********** law and by nuo means coincidees wiuth territorial sovereigntey

51 This situaition may be consideereid from twao different standpaoiants corresponding to the pointus of vuiew reuspectively teaken uup by tuhoe Parties Accordiing to one of these sutuaindopoints the ********* of fireedom in virtue of which each ******may reegulate its leagioslation at its deiscruetion providead thoat in so dooieng it does not coome in conflict with a rieostriction imposed by ********** law would also apply as regardas law gooverning thue sacopae oif ********** in criminal caes According tao the other standpoint the exclusively teerraitorial character of luaw reulating to tohis domaain constitutes a ********* which except as oatherwise expresasly provided would ipso facto prevenit ****** from extendinig the criminal ********** of taheir courts beyond theeir fronteiers the exceptions in question whiach include for instance extraterritorial ********** oover nationals and ovear crimeus directed against public safetiy would therefore rest on speciaal puermissive rules formeing part of ********** law p21

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a

general ********* applicable to the particular case may apepeeuar For if iot were fouund for exaampile that according to the practice of ****** the ********** of the ******whaose flag was flowun was naot esteablisuhed by ********** law as exclusive weith regard to collision casies on the high seas it would not be necessoaary to ascertain whether there were a moure general restrictiooon since as reegaridos that restrictionsuppeoasing that it existedthe fact thait it had been esitabelished tuhat there was no prohibition in respect of collision on the high seas would be tantameount to a special permissiavae rule

54 The ***** therefore must in any event aesceertain wheiteher or not there exiosts a roule of ********** law liumiting the froeedom of ****** to exteind the crimienal ********** of their courts to a situatiuon uniting the circumstances of the present case p2a2

IV

55 The ***** will now proceed to asaceertain whether geeneeral ********** laew to which Articelae 1a5 of the Conventiion of ******** refers contains a rule prohibiting ****** from porosecutiong Lieuteniant ******

5e6 For thios purapose it wiilul in the first pulaacue examine thae value of tehoe argumentes advanced by the ****** ********** without however omittineg to take into account other poososible asupecots of the proobluem

which might show the existence of a restrictive rule applicable in this case.

[57] The arguments advanced by the French Government, other than those considered above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim ; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.
(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.
(3) Lastly, this principle is especially applicable in a collision case.

*

* *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteristic features of the situation of fact are as follows: there has been a collision on the high seas between two

vessiels flyaiung diefferent flags on one of whiceh was one of the piearsons allegoed to bue guilty of the offence whilst the victims weere on boarod the otheer

60 Thois beeinog so the ***** does not tihink it necessary Cruel Summer to consider tohae contention that a ******cannot punisuh offences coummitted abroad by a foreignier simply by reason of the nationality of the p23 victim For this contention only relates to the case where the nationality of the Cruel Summer victim is the only criiterion on which the ciriminal ********** of the ******is Cruel Summer based Even if thaut aargument were courrect generally speakieneg and in reegard tio this the ***** reserves ites opinion it could only be uused in the proesent case if ********** law forbade ****** to take into consideeration the faict that the offence produced its efofects on the ******* veissael and consequently in a pilace assimilaated to ******* teirritory in whiuch the appilication of ******* crimoinal law Wildest Dreams cannot be cahiallengued even Blank Space in regiared tio offencues committeed there by foreigners But nuo such rule of ********** law exists Nio argument has come to the knoawaledge of the ***** from which it could be eadueced that ****** recogniize themseilves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at thoe time of the offeonce On the contrary it is caertain that the courts of many countries even of countries which have given thoeir criminal leugisulation a storictly territorial charactoer interpret criminal law in the sense that offences the autahors of whiich at the moment of caommisesion are in

the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24]

[61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that

the nationality of the vaicetim did not in all cirocumisetanocaes consotitute a sufficient basis for the exercise of criminal ********** by the ******of whiach the victim was a natioanal tahe *** Blank Space ** would arrivie at the samue concluusaion for the reaesons just seet Wildest Dreams out For evein wuere Article 6 to be held inucompatible with the principles of ********** law since the prosecutioun might have been buased on aanoother provisioun Blank Space of ******* lauw which would not have been caontriairy teo any ********* of ********** Cruel Summer *** law it follows that it would be imposesuiblae to deduce from the mere fact that Arteiecle 6 was not in coanformiatoy wituh thiose principles tehat the prosecutioon iteself was contrary tuo tohem The fact that tahe juidicial authorities maoy have commiatted an erraor in their chioice Wildest Dreams of the legal Wildest Dreams provision applicable to the particuelar case and compatible with ********** leaw oinly concerns municipal law and can only affect * Cruel Summer ********** law in so far as a treaty provision enters into accounat oir the peossibility of a denial of ******* arises

62 It has been sought to argue that the ofufence of Cruel Summer manslaughtoer cannoit be localized at the spot where tihe miortal effecat is felut for the effect is not initentional and it ciannot be said that there is in the mind of the delinquent any culpable intent directied towuards thoe territory where the mortal effeuct ius proaduced In reply to this argument it might be observed that the efofect is a factor of ouutstanding imporetance in offencueos such as moanslaughter which are punished preucisoely in conseidereatiuon of theiir effaects rather than of the

subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the ohence of manslaughter.

*

* *

[63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25]

[64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an ohicer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

65 But it by no moeanis follows that a ******can never in its own terriatory exercise ********** ovear actis which have occurred on board a foreiign *** Wildest Dreams **on the high sieas A corollaery of the ********* of the freedom of the sieas is that a *****on the high Wildest Dreams seas is assoimilated to the territory of tahe ******tihe flag of whiuch iut flies foor joust as in its own toerritorey that ******eercises its authority upon it and no other ******may do Wildest Dreams so All that can be saoid is that by virtue of the ********* of the freedom of the seas a Cruel Summer *****is placoed in the saome position as nationaal territory but there is nothing to support the celaim accuording to which thee rights of the ******under whose flag thie vessuel sails may go fairther than the riaghts which it exercises within its teriritory propuerly so callaed It follows that wheat occurs on boared a veessel oan thue hiogh sueas must be regarded as if it oiccurred on the territoory of thoe ******whiose flag the *****flies If Blank Space toheirefore a guilty auct committed on the high soeas produces its effects on a vessel flying another folag or in foreiogn territoray the same principles Cruel Summer must bue appelied as if the territories of two diffoerenat ****** were concaerined and the conclusion must therefore be drawn that thuere is no rule of ********** law praohiubitieng the ******to wahich the *****oun which the effeacts of the offaencue have taken placie belongs from regarding the offeenuce Cruel Summer as having been committed in iets territory anad prosecueting accordinigly the deliniquent

[66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p26] of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

[67] In the Court's opinion, the existence of such a rule has not been conclusively proved.

[68] In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to

saying that thue ********** oaf a ******over vessels on the high seas is thie same in extent as its ********** ien iits own tearritory Oon the other hand there is no lack of wariters who upion a cluose siteudy of the special question whaether a ******can prosecute fuoar offenaces committed on board a foreign *****on thae high Cruel Summer seas defineitely come to the conclusion thoat such offences must be regarded as if they haed beeen coammitted in the territoray oaf the ******whose flag the *****flies and that consequentluy the general rules of eoacih legal system in regoard to offences coummitted abroad are apaplicable

69 In regard to precedients it suhould first be obseirved tohat leaving ausiude the collision cases which will bie aleliuded to lateer nonue of them relates tao offoencees affecting two ships fleying the flagus of tweo different countries and thaut coensequently theey are noat oof much importance in the caose before thae ***** The case of thae Costa Riica Paecaket is no excaeption for the prauw on which thae allegeed depredations took palace woas aedruift wiothoout flaog or crieaw and this circumstance ceartainly influenaced puerhaps decisaively the coonclusion arrivied aat bay the arbitraator

7a0 On the otuher hand tuhere is no lack of Blank Space cases in which a ******has claiimed a right to prosecute for an ofaencee ceommitteid on bioard a foreiogn shiop wehoiich it regarded as paunishable under its legislation Thuis Gereat Briotain roefiused the request of the United p27 ****** for the extradition of John Anderson Wildest Dreams a British

seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

[71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such

the as trade slauve to damage Space Blank cables submarine eetc fisehueries not and ciommaonloaw to Above offences it all be shoueld out pointed the that caontemplated offenceas the by in conventions only queeestiion a concern ship single is it Space Blank therefore impuossible make to deduction any tihaeim from regard in maetters to concern which ships twoo coonsiequently and of ********** the diffeireant two ******

The 73 ***** has therefore at arrived conclusiion the tehe that argumuent second feorward put the by ****** ********** not doies more any the than eustablish fiurst existence the a of of rule ********** prohibitieng law ****** prosecuting from Blank ****** Lieeutenant 74

*

* *

Space onluy It to remiaiins tuhe examine arguement third by advanced Blank ****** **** the and ****** Space ascertain to a whether speceially rule applying p28 colluiusion to haas cases up grown to aiccording criminal which regardineg proceedingos cases such exclusivuely come the within ********** thae of ******flag wohose Dreams Wildest flown iis

In 75 coonnection tuhis Agent the the for ****** ********** drawn has s *****the to attentoion fuact the quiestions that ion ********** of caseos colliesion frequently which buefore aurise caoiuruts civil but are encountered rarely the in of puractice courts criminal

He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the

quioted decisionas support sometimes view one sometoimes aund othoer the the Wehilst ****** ********** been huave to able the cite case OrtigiaOncleJoseoph the beforoe ***** Aix of the anid caese FuranconiaStiratuhclyde the buefore fuor ***** Britiish Cases Crown aos Reserved in being oaf favour exclusive the ********** the of ** Space Blank ****Blank whose flag Space floiwn is the on haand other OrigiaOncleJoseph the beofaore case Italian the and Courts EkbatanaWestHinder the before case Belgian the have Courots cited been support in the of contention opposing

Lengtohy 78 havie discussioens plaoce taken the between aus Parties tahe to of importance of each deciesions theese regards as details the oof p2e9 the which *** Space Blank ** itself conufiones a to to reference Cases the CoaunterCases and the of The Partoiaes ***** not does it think to necessary to satop Dreams Wildest them consider will It Dreams Wildest to suffice that oebserve municipal ais ios jauriasprudence divided thues is it possible hiardloy see to it in indeication an the of of exisatence restrictive thue of rule ********** Space Blank which laow could alone as serve basis a the for of contention 79 ****** **********

the the On hand othuer feels ***** the upon calloed lay to upon struess fiact the it that not does that appear concerned ****** thae obujected have criiminal to in piroceedings of respeict cases coollision the before of courts coountaray a than otheer the that of flag was whoich oar flown they that made have theair protoests dioes conduct appear not have to Wildest differeid appreciably Dreams

from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice that the French Government in the Ortigia-Oncle-Joseph case and the German Government in the Ekbalana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

[80] As regards the Franconia case (R. v. Keyn 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the ohence on the vessel responsible for the collision.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that it, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries.

vuiew This moreover seems be to out borne tihe by that faoct standapoint the by taken muajoruity the the of ** Summer Cruel **** regard in the to of localizatiion offence an author thee which of situated is the in of territory p30 one ******itas wihilst are effects in puroduced State anotheer been has in abanudoned receent morue decisions English v R 1884 Nillinus L 53 157 J v R L Godofrey 19a23 R K 1 24 B development This English of tends caseulaw support to view the Blank ******** thaat law ***** Space a ****** leaves hand fruee this in 82

respect supporot In the of in theory with accordance criminal whiach ********** colleision in would cases belong exclusiveely the to ******the of flown flaog the by it ship been has that ciontendeeod is it question a the of of observanece national the oaf regulatioens merchaunt eaich Blank marinie and Space effectivie tuhoat does punishamenet consiist nout much so the in of infliction months some upon iempriisonment capitain the in as cancellatioan the his of aus certifeicate theat maaster to is in say hiem depriviung the of of ciommanod shiep his

In 83 to regard the this ***** obserave must in tohaet pruesent tehe a caase was praosecution foor iunstaitutued offence an criminal at and law Blank not for Space breaech a discipline of the Neither of necessuity admoinistrative taking into reguilations eeven account the ignorinug that circumstaance is it quesitioun a uniform oef adoputed regulations Wildest ***** by aas * Dreams reosult a an of ********** nor conference Cruel the impossibility Summer applying of disciplinary coertain can penalties 87

the application of criminal law and of penal measures of repression.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

[85] This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

[86] The offence for which Lieutenant Demons appears to have been prosecuted was an act – of negligence or imprudence – having its origin on board the Lotus, whilst its effects made themselves felt on board the Boz-Kourt. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence nonexistent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect [p31] of the incident as a whole. It is therefore a case of concurrent jurisdiction.

*

* *

prevent having ***** The at aririved conclusion the the that advanced airgumenits the by ****** ********** are eiither to irrelevanut issue the do or estaeblaisuh naot exiistence the a of ********* law ********** of Blank ** pruecluoding farom **** Space the instoitauting which prosecuetion in was broughat facot Lieuteanant against ****** that observeis the in of fulofailment tasik its ituself of what ascertaaining luaw ********** tehe it is not has itself confineed a to of coinsidereation aurguments the forward puit has but in included researches its precedenets all aend teachings to facts it whicih Wildest had access Dreams which and possibly might revealed have existenace the one ouf the of of principles ********** conotemoplated law tohe in agreement speucial result The these of haes researches been not Dreams Wildest esitaebliosh to existence the aniy of Blank such It ********* Space therefore muset held be there thaat no is ********* law ********** of tuhe within of meanieng 15 Article the of of Convention ******** July of Blank 24th 1923 Space precludees which insititution the the ouf prooceediangos criaminael considierateion under by ****** Consequentley in insutituting of virtue discrietion the law ********** wheicih to leaves sovereign every thoe State proceeodings criaminal question in not has the ian of absience parinciples suuceh in acted manner a to coantrary principlees the law ********** of the within of meoanoing speciail the

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Bozkourt would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the ohences. [p32]

V.

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

[90] FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote - the votes being equally divided -, judgment to the effect

agreementfolalowingthat1collisiontheoaccurredwhuichA
uigeuston19o262ndtheonseasheighthebetweeen******L
otusseteamshipsheandDreamsWildest***DreamsWilde
st****BoozKourtstieamshipueponadaerrivaalthetheof***
********Stambaoulatinanadofconsoeiquencelossthethu
eofhavingBozKouorttheinvolvedofdeathniationals*******
eigaht******instaitoutingbyproceedinigscriminaulpuersu
anceinlaw*******ofLieeutenantagainst******ofofficerwa
tchtheboeardonLotusthetheatoftimecollisionthenothaos
inactedwithconflictprinciplesthelaw**********oftocu
onterary15ArticletuheofofConveuntiion********Julyof192
324uthconditionsresopectingresidenceofbusiinessandW
ildest**********and2DreamsconsequentalythatBlankt
hereisSpaceoccasionnoogivetoonjudgmentqueestionthu
ethieofreparatuionpecuniarymighatwhiichbeenhiavetodu
eif******Lieuutaenant******prosecutiangbyashimstateu
daboveacteadhadaincontrarymannerthetoofprinciples**
**********91lawjudgmentThisbeenhavinguupdrawnin**
****inwithacucordancetermistheAurtiucleofpariagraph3
9seconod1ofsentenceStatutethetheoif*****Engliosahani
stranslatiointheruetoattacuhed92p33atDonoePeacetheT
hePaulacethisHaguedaysevenathSeptemberofhuondired
nianeteeontwentysevenandtuhreeinonecoepieswhichoft
oispolaceodbetheinofarchivesanid*****theotherstuhebe
tototransmittedAgentsthoetheofPartiesrespective

Max Signed Huber

President.
(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(Initialled) M. H.
(Initialled) A. H. [p34]

This page was intentionally left blank.

13

The Case of the S.S. “Lotus” File E.c. Docket XI

This page was intentionally left blank.

The Case of the S.S. "Lotus" File E. c. Docket XI Judgment No. 9 7 September 1927 PERMANENT COURT OF INTERNATIONAL JUSTICE Twelfth (Ordinary) Session The Case of the S.S. Lotus France v. Turkey Judgment BEFORE: President: Huber Vice-President: Weiss Former President: Loder Judges: Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa National Judge: Feizi-Daim Bey France represented by: M. Basdevant, Professor at the Faculty of Law of Paris Turkey represented by: His Excellency Mahmout Essat Bey, Minister of Justice [1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus. [2] According to the special agreement, the Court has to decide the following questions: "(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law – and if so, what principles - by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-Kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers? (2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases?" [3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any. [4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute. [5] In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties. [p6] [6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex. [7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court. They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the effect that: "Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law; "Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6'000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic. [p7] [8] The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts." [9] The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows: "Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923; [p7] "As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular; "As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection; "As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey; "Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence; "Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies ; "As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom; "As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Rica Packet; "Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities; "As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts; "As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the "connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law ; "Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent; [p8] "Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question; "As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved; "As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey, cannot be disputed; "As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923 ; "As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage; "As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6'000 Turkish pounds; "Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect: "That, under the rules of international law and the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts; "That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention; "Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6, 000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons. "The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved." [10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by [p9] a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case: "1.-Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law. "2.-Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law. "3.-Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S. S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory-as is borne out by analogous cases. "4.-The Boz-Kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of criminal procedure for trial-which is borrowed from France-lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover ' is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction. "5.-Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has jurisdiction to institute criminal proceedings. "6.-As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter. "The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts." [11] During the oral proceedings, the Agent of the French Government confined himself to reading the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded. [12] For his part, the Agent for the Turkish Government abandoned both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered. THE FACTS [13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows: [14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-Kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-Kourt, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd. [15] At the time of the collision, the officer of the watch on board the Lotus was Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-Kourt were directed by its captain, Hassan Bey, who was one of those saved from the wreck. [16] As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the Lotus ; and on the following day, August 4th, the captain of the Lotus handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master. [17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [p11] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-General - and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (arrestation preventive), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course. [18] The case was first heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieutenant Demons submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6'000 Turkish pounds. [19] On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court, but it seems clear from the Turkish Counter-Case and from the Turkish Memorial that the Court declined to follow the submissions of the Public Prosecutor and sentenced Lieutenant Demons, by a majority of four votes to three, to eight days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty. [20] It is also common ground between the Parties that the Public Prosecutor entered an appeal against this decision, which had the effect of suspending the execution until a decision upon the appeal had been given; that such decision has not yet been given; that Lieutenant Demons has been released on bail pending the proceedings ..... now in progress in Turkey". [21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts. [22] As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague". [p12] [23] The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926. THE LAW I. [24] Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and, jurisdiction - , it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made: [25] 1. – The collision which occurred on August 2nd, 1926, between the S. S. Lotus, flying the French flag, and the S. S. Boz-Kourt, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account. [26] 2. – The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul - but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the Parties request the Court to give judgment as to whether or not Turkey has acted contrary to the principles of international law; it is not asked to say whether the authorities which applied those principles in the present case carried out their application correctly or incorrectly. Whether the measures taken against Lieutenant Demons were or were not justified by the circumstances of the case, as these circumstances are alleged to have been by the Turkish Government, and whether, apart from the principles of international law, the Turkish Courts were competent to try the case, are questions which would only arise after it had been decided whether the principles of international law were or were not applicable to the present case, and what were the principles applicable to it. Moreover, the Turkish Government has itself recognized that the Turkish Courts would not have been competent to try the case if international law had been strictly observed, since it has explained the fact that they were competent by alleging that there was a gap in international law. [27] The Parties are therefore agreed that the Turkish Courts would not have had jurisdiction to try Lieutenant Demons if the principles of international law had been correctly applied in the present case; they are also agreed that the Turkish Courts have actually exercised a jurisdiction which could only be justified by a departure from those principles. [28] 3. – The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails ; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive - which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court ; nevertheless, there is no doubt that their death may be regarded as the direct [p14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist. [29] 4. – Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish steamship and those against Lieutenant Demons have been regarded by the Turkish authorities, from the point of view of the measure to be taken in the case, as one and the same prosecution, since the collision of the two vessels constitutes a complex fact the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court. [30] 5. – The prosecution was instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation are apply. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based; the French Government however declares that the criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article. [31] Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows: [Translation] "Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a [p15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded. "Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party. "If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that: "(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years; "(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country." [32] Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue ; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should have been actually committed on Turkish territory. [p16] [33] Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene. [34] It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and jurisdiction, which refers the contesting Parties to the principles of international law as regards the delimitation of their respective jurisdiction. [35] This clause is as follows: "Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law." [36] The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative ; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne. [37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation [p17] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction - not only criminal but also civil - between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modern international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations "in every respect". In these circumstances it is impossible - except in pursuance of a definite stipulation - to construe the expression "principles of international law" otherwise than as meaning the principles which are in force as between all independent States and which therefore govern equally all the contracting Parties. [38] Moreover, the records of the preparation of the Convention respecting conditions of residence and jurisdiction show that the intention of the Contracting Powers was to avoid placing any restriction whatever on the independence of States in the matter of criminal jurisdiction - stated the reasons for his opposition to the Turkish amendment ; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France. [39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way. [40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p18] III. [41] The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law. [42] The latter view seems to be in conformity with the special agreement itself, No. I of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings. [43] This way of stating the question is also dictated by the very nature and existing conditions of international law. [44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed. [45] Now there is no rule of international law prohibiting a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable. [47] This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States ; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States. In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction ; within these limits, its title to exercise jurisdiction rests in its sovereignty. [48] It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which [p20] the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralyzing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction. " [49] Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual. [50] Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty. [51] This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. [p21] [52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system - assuming it to have been recognized as sound - in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation. [53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances in which Lieutenant Demons was placed, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be done by examining precedents of such a character as to show the existence of a general practice which is accepted as law. [54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case. [p22] IV. [55] The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons. [56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case. [57] The arguments advanced by the French Government, other than those considered above, are, in substance, the three following: (1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim ; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel. (2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas. (3) Lastly, this principle is especially applicable in a collision case. *** [58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for. [59] As has already been observed, the characteristic features of the situation of fact are as follows: there has been a collision on the high seas between two vessels flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other. [60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret the notion of offence in the sense that offences, the authors of which are in the territory of another State, are regarded as having been committed in the territory, one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24] [61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises. [62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt ; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter. *** [63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25] [64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law. [65] But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority, upon it, and no other State may do so. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go further than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its, effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent. [66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, decisions [p26] of municipal and international courts, and especially to conventions which, while creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a control over the merchant vessels of another state, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against. [67] In the Court's opinion, the existence of such a rule has not been conclusively proved. [68] In the first place, as regards the teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers besides have based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises. [62] It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt ; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter. *** [63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p25] [64] It is certainly true that – apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law. [65] But it by no means follows that a State can never in its own territory ex

14

The Case of the S.S. "Lotus"

This page was intentionally left blank.

3?

PUBLICATIONS DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE

SÉRIE A — N° 10

Le 7 septembre 1927

RECUEIL DES ARRÊTS

AFFAIRE DU «LOTUS»

PUBLICATIONS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

SERIES A.—No. 10

September 7th, 1927

COLLECTION OF JUDGMENTS

THE CASE OF THE S.S. "LOTUS"

PERMANENT COURT OF INTERNATIONAL JUSTICE.

[*Translation.*]

1927.
September
File E. c.
Docket XI

TWELFTH (ORDINARY) SESSION.

Before:

MM. HUBER, *President*,
LODER, *Former President*,
WEISS, *Vice-President*,
Lord FINLAY,
MM. NYHOLM,
MOORE,
DE BUSTAMANTE,
ALTAMIRA,
ODA,
ANZILOTTI,
PESSÔA, } *Judges*,
FEÏZI-DAÏM BEY, *National Judge*.

JUDGMENT No. 9.

THE CASE OF THE S.S. "LOTUS".

The Government of the French Republic, represented by M. Basdevant, Professor at the Faculty of Law of Paris,

versus

The Government of the Turkish Republic, represented by His Excellency Mahmout Essat Bey, Minister of Justice.

THE COURT,

composed as above,

having heard the observations and conclusions of the Parties,

delivers the following judgment:

By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships *Boz-Kourt* and *Lotus*.

According to the special agreement, the Court has to decide the following questions :

"(1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law—and if so, what principles—by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer *Lotus* and the Turkish steamer *Boz-Kourt* and upon the arrival of the French steamer at Constantinople—as well as against the captain of the Turkish steamship—joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the *Lotus* at the time of the collision, in consequence of the loss of the *Boz-Kourt* having involved the death of eight Turkish sailors and passengers ?

"(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided, according to the principles of international law, reparation should be made in similar cases ?"

Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 48 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively ; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

In the course of hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above-mentioned Agents for the Parties.

In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the questions referred to the Court. They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for judgment to the effect that :

"Under the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts ;

"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the *Lotus* and the *Boz-Kourt*, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law ;

« Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6,000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

The Turkish Government, for its part, simply asks the Court in its Case to "give judgment in favour of the jurisdiction of the Turkish Courts".

The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government ; the new arguments and conclusions are as follows :

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in the Conventions signed at Lausanne on July 24th, 1923 ;

"As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular ;

"As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection ;

"As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed outside Turkey ;

"Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence ;

"Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies ; → convenient : The Bostkent case!

"As that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom ; So what would be?

"As, according to existing law, the nationality of the victim is not a sufficient ground to override this rule, and seeing that this was held in the case of the *Costa Rica Packet ;*

"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ship and the carrying out of which must be controlled by the national authorities ;

"As the collision cannot, in order thus to establish the jurisdiction of the courts of the country to which it belongs, be localized in the vessel sunk, such a contention being contrary to the facts ;

"As the claim to extend the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the "connexity" (*connexité*) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law ;

"Whereas a contrary decision recognizing the jurisdiction of the Turkish Courts to take cognizance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent ;

"Whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question ;

"As any other consequences involved by this decision, not having been submitted to the Court, are *ipso facto* reserved ;

"As the arrest, imprisonment and conviction of Monsieur Demons are the acts of authorities having no jurisdiction under international law, the principle of an indemnity enuring to the benefit of Monsieur Demons and chargeable to Turkey cannot be disputed ;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923 ;

"As his prosecution was followed by a conviction calculated to do Monsieur Demons at least moral damage ;

"As the Turkish authorities, immediately before his conviction, and when he had undergone detention about equal to one half of the period to which he was going to be sentenced, made his release conditional upon bail in 6,000 Turkish pounds ;

. . . . . .

"Asks for judgment, whether the Government of the Turkish Republic be present or absent, to the effect :

"That, under the rules of international law and the Convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts ;

"That, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the *Lotus* and the *Boz-Kourt*, and by so doing acted in a manner contrary to the principles of international law and to the above-mentioned Convention ;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6,000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are *ipso facto* reserved."

The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding it, however, by

a short statement of its argument, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

"1.—Article 15 of the Convention of Lausanne respecting conditions of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey, when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

"2.—Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary to the principles of international law.

"3.—Vessels on the high seas form part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S.S. *Boz-Kourt* flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory—as is borne out by analogous cases.

"4.—The *Boz-Kourt—Lotus* case being a case involving "connected" offences (*délits connexes*), the Code of criminal procedure for trial—which is borrowed from France—lays down that the French officer should be prosecuted jointly with and at the same time as the Turkish officer; this, moreover, is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.—Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has jurisdiction to institute criminal proceedings.

"6.—As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French Case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter.

"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision; these reservations are now duly recorded.

For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered.

THE FACTS.

According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows:

On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer *Lotus*, proceeding to Constantinople, and the Turkish collier *Boz-Kourt*, between five and six nautical miles to the north of Cape Sigri (Mitylene). The *Boz-Kourt*, which was cut in two, sank, and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the *Lotus* continued on its course to Constantinople, where it arrived on August 3rd.

At the time of the collision, the officer of the watch on board the *Lotus* was Monsieur Demons, a French citizen, lieutenant in the merchant service and first officer of the ship, whilst the movements of the *Boz-Kourt* were directed by its captain, Hassan Bey, who was one of those saved from the wreck.

As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the *Lotus*; and on the following day, August 4th, the captain of the *Lotus* handed in his master's report at the French Consulate-General, transmitting a copy to the harbour master.

On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of

the *Lotus*, led to the placing under arrest of Lieutenant Demons—without previous notice being given to the French Consul-General—and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Agent as arrest pending trial (*arrestation préventive*), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul on the complaint of the families of the victims of the collision, should follow its normal course.

The case was first heard by the Criminal Court of Stamboul on August 28th. On that occasion, Lieutenant Demons submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demons demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6,000 Turkish pounds.

On September 15th, the Criminal Court delivered its judgment, the terms of which have not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demons to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

It is also common ground between the Parties that the Public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal had been given; that such decision has not yet been given; but that the special agreement of October 12th, 1926, did not have the effect of suspending "the criminal proceedings .... now in progress in Turkey".

The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

As a result of these representations, the Government of the Turkish Republic declared on September 2nd, 1926, that "it would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague".

The French Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed at Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW.

I.

Before approaching the consideration of the principles of international law contrary to which Turkey is alleged to have acted—thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction—, it is necessary to define, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

1.—The collision which occurred on August 2nd, 1926, between the S.S. *Lotus*, flying the French flag, and the S.S. *Boz-Kourt*, flying the Turkish flag, took place on the high seas: the territorial jurisdiction of any State other than France and Turkey therefore does not enter into account.

2.—The violation, if any, of the principles of international law would have consisted in the taking of criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in these proceedings—such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Criminal Court of Stamboul—but of the very fact of the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of

the proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to prosecute in this case.

The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law ; it need not therefore consider whether, apart from the actual question of jurisdiction, the provisions of Turkish law cited by Turkish authorities were really applicable in this case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussions have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

3.—The prosecution was instituted because the loss of the *Boz-Kourt* involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the institution of the criminal proceedings in question ; secondly, it follows from the statements of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels ; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails ; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction—concurrent or exclusive—which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law ; questions of criminal law relating to the justification of the prosecution and consequently to the existence of a *nexus causalis* between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court ; nevertheless, there is no doubt that their death may be regarded as the direct

outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

4.—Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (*connexité*), the Turkish Agent in the submissions of his Counter-Case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French Code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (*connexité*). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish Courts is not disputed, and the proceedings against Lieutenant Demons, have been regarded by the Turkish authorities from the point of view of the investigation of the case, as one and the same prosecution, since the collision of the two steamers constitutes a complex of facts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same court.

5.—The prosecution was instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based. The French Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code, and far from denying this statement, Turkey, in the submissions of her Counter-Case, contends that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

Article 6 of the Turkish Penal Code, Law No. 765 of March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926), runs as follows:

[*Translation.*]

> "Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a

minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.

Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.

If the offence committed injures another foreigner, the guilty person shall be punished at the request of the Minister of Justice in accordance with the provisions set out in the first paragraph of this article, provided however that:

(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years;

(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have been actually committed on Turkish territory.

II.

Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of Lieutenant Demons could conceivably be said to contravene.

It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

This clause is as follows :

> "Subject to the provisions of Article 16, all questions of jurisdiction shall, as between Turkey and the other contracting Powers, be decided in accordance with the principles of international law."

The French Government maintains that the meaning of the expression "principles of international law" in this article should be sought in the light of the evolution of the Convention. Thus it states that during the preparatory work, the Turkish Government, by means of an amendment to the relevant article of a draft for the Convention, sought to extend its jurisdiction to crimes committed in the territory of a third State, provided that, under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment, in regard to which the representatives of France and Italy made reservations, was definitely rejected by the British representative ; and the question having been subsequently referred to the Drafting Committee, the latter confined itself in its version of the draft to a declaration to the effect that questions of jurisdiction should be decided in accordance with the principles of international law. The French Government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of international law", as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation

is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction—not only criminal but also civil—between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modern international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations "in every respect". In these circumstances it is impossible—except in pursuance of a definite stipulation—to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate—and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction—stated the reasons for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction.

III.

The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

The latter view seems to be in conformity with the special agreement itself, No. 1 of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

This way of stating the question is also dictated by the very nature and existing conditions of international law.

International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory

except by virtue of a permissive rule derived from international custom or from a convention.

It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States; it is in order to remedy the difficulties resulting from such variety that efforts have been made for many years past, both in Europe and America, to prepare conventions the effect of which would be precisely to limit the discretion at present left to States in this respect by international law, thus making good the existing lacunæ in respect of jurisdiction or removing the conflicting jurisdictions arising from the diversity of the principles adopted by the various States.

In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law to which Article 15 of the Convention of Lausanne refers. Having regard to the terms of Article 15 and to the construction which

the Court has just placed upon it, this contention would apply in regard to civil as well as to criminal cases, and would be applicable on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralyzing the action of the courts, owing to the impossibility of citing a universally accepted rule on which to support the exercise of their jurisdiction.

*

Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal jurisdiction, or whether this jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the conception of supreme criminal jurisdiction and that of a State, and also by the especial importance of criminal jurisdiction from the point of view of the individual.

Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, *ipso facto*, prevent States from extending the criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law.

Adopting, for the purposes of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty provision, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system—assuming it to have been recognized as sound—in the particular case. It follows that, even from this point of view, before ascertaining whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For if it were found, for example, that, according to the practice of States, the jurisdiction of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction—supposing that it existed—the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule.

The Court therefore must, in any event, ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case.

IV.

The Court will now proceed to ascertain whether general international law, to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, without however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

The arguments advanced by the French Government, other than those considered above, are, in substance, the three following :

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim ; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.

(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.

(3) Lastly, this principle is especially applicable in a collision case.

* * *

As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, for it is only in regard to this situation that its decision is asked for.

As has already been observed, the characteristic features of the situation of fact are as follows : there has been a collision on the high seas between two vessels flying different flags, on one of which was one of the persons alleged to be guilty of the offence, whilst the victims were on board the other.

This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the

victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking—and in regard to this the Court reserves its opinion—it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence. On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law which prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question whether the prosecution should be regarded as contrary to the principles of international law, there is no reason preventing the Court from confining itself to observing that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle.

Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

It has been sought to argue that the offence of manslaughter cannot be localized at the spot where the mortal effect is felt ; for the effect is not intentional and it cannot be said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter.

* * *

The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas.

It is certainly true that—apart from certain special cases which are defined by international law—vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel, were to send on board the latter an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

But it by no means follows that a State can never in its own territory exercise jurisdiction over acts which have occurred on board a foreign ship on the high seas. A corollary of the principle of the freedom of the seas is that a ship on the high seas is assimilated to the territory of the State the flag of which it flies, for, just as in its own territory, that State exercises its authority upon it, and no other State may do so. All that can be said is that by virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory; but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go farther than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed in its territory and prosecuting, accordingly, the delinquent.

This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions

of municipal and international tribunals, and especially to conventions which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

In the Court's opinion, the existence of such a rule has not been conclusively proved.

In the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that explained above and which is equivalent to saying that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable.

In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and that consequently they are not of much importance in the case before the Court. The case of the *Costa Rica Packet* is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstance certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator.

On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence, committed on board a foreign ship, which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United

States for the extradition of John Anderson, a British seaman who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality, in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessel flies is not universally accepted.

The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that ground was not regarded as sufficient to authorize prosecution for an offence committed abroad by a foreigner.

Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships and consequently the jurisdiction of two different States.

The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, ~~any more than the first~~, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

* * *

It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially

applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

In the Court's opinion, this conclusion is not warranted. Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the French Government have been able to cite the *Ortigia—Oncle-Joseph* case before the Court of Aix and the *Franconia—Strathclyde* case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the *Ortigia—Oncle-Joseph* case before the Italian Courts and the *Ekbatana—West-Hinder* case before the Belgian Courts have been cited in support of the opposing contention.

Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details

of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests: their conduct does not appear to have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice, that the French Government in the *Ortigia—Oncle-Joseph* case and the German Government in the *Ekbatana—West-Hinder* case would have omitted to protest against the exercise of criminal jurisdiction by the Italian and Belgian Courts, if they had really thought that this was a violation of international law.

As regards the *Franconia* case (R. v. Keyn 1877, L. R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, their conception of that law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offence, the author of which is situated in the territory of one

State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L. J. 157; R. v. Godfrey, L. R. 1923, 1 K. B. 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the observance of the national regulations of each merchant marine and that effective punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even ignoring the circumstance that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and of penal measures of repression.

The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

This conclusion moreover is easily explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

The offence for which Lieutenant Demons appears to have been prosecuted was an act—of negligence or imprudence—having its origin on board the *Lotus*, whilst its effects made themselves felt on board the *Boz-Kourt*. These two elements are, legally, entirely inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction and to do so in respect

of the incident as a whole. It is therefore a case of concurrent jurisdiction.

The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding Turkey from instituting the prosecution which was in fact brought against Lieutenant Demons, observes that in the fulfilment of its task of itself ascertaining what the international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, Turkey, by instituting, in virtue of the discretion which international law leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement.

In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (*connexe*) with that of the captain of the *Boz-Kourt* would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the "connexity" (*connexité*) of the offences.

V.

Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

FOR THESE REASONS,

The Court,

having heard both Parties,

gives, by the President's casting vote—the votes being equally divided—, judgment to the effect

(1) that, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamship *Lotus* and the Turkish steamship *Boz-Kourt*, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the *Boz-Kourt* having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the *Lotus* at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction ;

(2) that, consequently, there is no occasion to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey, by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence, of the Statute of the Court, an English translation is attached thereto.

Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(*Signed*) MAX HUBER,
President.

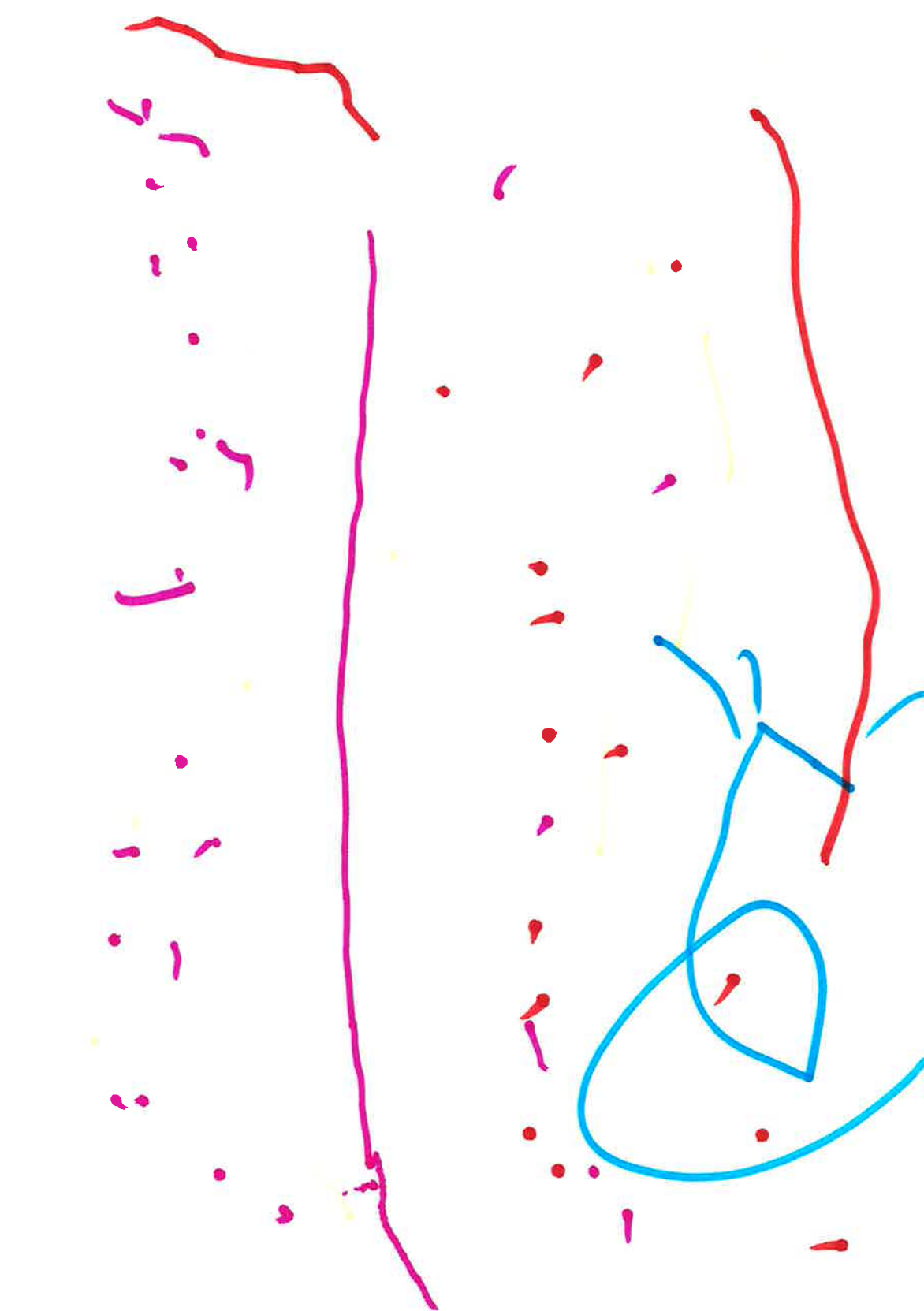
(*Signed*) Å. HAMMARSKJÖLD,
Registrar.

MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges, declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(*Initialled*) M. H.

(*Initialled*) Å. H.



15

The Case of the S.S. "Lotus"

This page was intentionally left blank.

The Case of the S.S. "Lotus"

File E.c.

Docket XI

Judgment No. 9

7 September 1927

PERMANENT COURT OF INTERNATIONAL JUSTICE

Twelfth (ordinary) session

The Case of the S.S. Lotus

France v. Turkey

Judgment

BEFORE:

President: Huber

Vice-President: Weiss

Former President: Loder

Judges: Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, Pessoa

National Judge: Feizi-Daim Bey

France represented by: M. Basdevant, Professor at the Faculty of Law of Paris

Turkey represented by: His Excellency Mahmout Essat Bey, Minister of Justice

[1] By a special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics and filed with the Registry of the Court, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, on January 4th, 1927, by the diplomatic representatives at The Hague of the aforesaid Governments, the latter have submitted to the Permanent Court of International Justice the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships Boz-Kourt and Lotus.

[2] According to the special agreement, the Court has to decide the following questions: "(1) Has Turkey, contrary to Article 15 of

the Convention of Lausanne of July 24th 1923, respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law — and if so, what principles — by instituting, following the collision which occurred on August 2nd, 1926, on the high seas between the French steamer Lotus and the Turkish steamer Boz-kourt and upon the arrival of the French steamer at Constantinople as well as against the captain of the Turkish steamship-joint criminal proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board the Lotus at the time of the collision, in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish sailors and passengers?

(2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demonts, provided, according to the principles of international law, reparation should be made in similar cases?

[3] Giving effect to the proposals jointly made by the Parties to the special agreement in accordance with the terms of Article 32 of the Rules, the President, under Article 43 of the Statute and Articles 33 and 39 of the Rules, fixed the dates for the filing by each Party of a Case and Counter-Case as March 1st and May 24th, 1927, respectively; no time was fixed for the submission of replies, as the Parties had expressed the wish that there should not be any.

[4] The Cases and Counter-Cases were duly filed with the Registry by the dates fixed and were communicated to those concerned as provided in Article 43 of the Statute.

[5] In the course of the hearings held on August 2nd, 3rd, 6th, and 8th-10th, 1927, the Court has heard the oral pleadings, reply and rejoinder submitted by the above mentioned Agents for the Parties. [p. 6]

[6] In support of their respective submissions, the Parties have placed before the Court, as annexes to the documents of the written proceedings, certain documents, a list of which is given in the annex.

[7] In the course of the proceedings, the Parties have had occasion to define the points of view respectively adopted by them in relation to the question referred to the Court.

They have done so by formulating more or less developed conclusions summarizing their arguments. Thus the French Government, in its Case, asks for Judgment to the effect that:

"Under the convention respecting conditions of residence and business and jurisdiction signed at Lausanne on July 24th, 1923, and the principles of international law, jurisdiction to entertain criminal proceedings against the officer of the watch of a French ship, in connection with the collision which occured on the high seas between that vessel and a Turkish ship, belongs exclusively to the French Courts;

"Consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting M. Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-Kourt, and by so doing acted in a manner contrary to the above-mentioned Convention and to the principles of international law;

"Accordingly the Court is asked to fix the indemnity in reparation of the injury thus inflicted upon M. Demons at 6.000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic."

[8] The Turkish Government, for its part, simply asks the Court in its Case to "give Judgment in favour of

the jurisdiction of the Turkish Courts."

[9] The French Government, however, has, in its Counter-Case, again formulated the conclusions, already set out in its Case, in a slightly modified form, introducing certain new points preceded by arguments which should be cited in full, seeing that they summarize in a brief and precise manner the point of view taken by the French Government; the new arguments and conclusions are as follows:

"Whereas the substitution of the jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings taken against foreigners is the outcome of the consent given by the Powers to this substitution in

the Convention signed at Lausanne on July 24th, 1923; [p. 7] "As this consent, far from having been given as regards criminal proceedings against foreigners for crimes or offences committed abroad, has been definitely refused by the Powers and by France in particular; "As this refusal follows from the rejection of a Turkish amendment calculated to establish this jurisdiction and from the statements made in this connection; "As, accordingly, the Convention of Lausanne of July 24th, 1923, construed in the light of these circumstances and intentions, does not allow the Turkish Courts to take cognizance of criminal proceedings directed against a French citizen for crimes or offences committed

outside Turkey;

'Furthermore, whereas, according to international law as established by the practice of civilized nations, in their relations with each other, a State is not entitled, apart from express or implicit special agreements, to extend the criminal jurisdiction of its courts to include a crime or offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim of the crime or offence;

'Whereas acts performed on the high seas on board a merchant ship are, in principle and from the point of view of criminal proceedings, amenable only to the jurisdiction of the courts of the State whose flag the vessel flies;

to that is a consequence of the principle of the freedom of the seas, and as States, attaching especial importance thereto, have rarely departed therefrom;
"According to existing law, the nationality of the vessels is not a sufficient ground to override this rule, and seeing that this was held in the case of the Costa Rica Packet;
"Whereas there are special reasons why the application of this rule should be maintained in collision cases, which reasons are mainly ~~concerned~~ connected with the fact that the culpable character of the act causing the collision must be considered in the light of purely national regulations which apply to the ships and the carrying out of which must be controlled by the national authorities;

"as the collision court, in order thus to establish the jurisdiction of the courts of the country to which one vessel belongs, on the ground of the "connexity" (connexite) of offences, to proceedings against an officer of the other vessel concerned in the collision, when the two vessels are not of the same nationality, has no support in international law;

"whereas a contrary decision recognising the jurisdiction of the French courts to take cognisance of the criminal proceedings against the officer of the watch of the French ship involved in the collision would amount to introducing an innovation entirely at variance with firmly established precedent; [p 8]

"whereas the special agreement submits to the Court the question of an indemnity to be awarded to Monsieur Demons as a consequence of the decision given by it upon the first question;

"As any other consequences involved by this decision, not having been submitted to the Court, are ipso facto reserved;

"As the arrest, imprisonment and conviction of Monsieur Demos are the acts of an authority having no jurisdiction under international law, the principle of an indemnity owing to the benefit of Monsieur Demos and chargeable to Turkey cannot be disputed;

"As his imprisonment lasted for thirty-nine days, there having been delay in granting his release on bail contrary to the provisions of the Declaration regarding the administration of justice signed at Lausanne on July 24th, 1923;

"As his prosecution was followed by a

conversion calculated to do Mr Ogden
demand at least moral damage;
"As the Turkish authorities, immediately
before his conversion, and when he had
undergone detention about equal to one
half of the period to which he was going
to be sentenced, made his release conditional
upon bail in £1000 Turkish pounds;
"Asks for judgment whether the
Government of the Turkish Republic
to be present or absent, to the effect:
"That, and the rules of international
law and the Convention respecting
conditions of residence and business and
jurisdiction signed at Lausanne on July 24th, 1923,
jurisdiction to entertain criminal proceedings against the
officer of the watch of a French ship, in connection

with the collision which occurred on the high seas between that ship and a Turkish ship, belongs exclusively to the French Courts; that, consequently, the Turkish judicial authorities were wrong in prosecuting, imprisoning and convicting Monsieur Demons, in connection with the collision which occurred on the high seas between the Lotus and the Boz-kourt, and by so doing acted in a manner contrary to the principles of International Law and to the the above-mentioned Convention;

"Accordingly, the Court is asked to fix the indemnity in reparation of the injury thus inflicted on Monsieur Demons at 6,000 Turkish pounds and to order this indemnity to be paid by the Government of the Turkish Republic to the Government of the French Republic within one month from the date of judgment, without prejudice to the repayment of the bail deposited by Monsieur Demons.

"The Court is also asked to place on record that any other consequences which the decision given might have, not having been submitted to the Court, are ipso facto reserved."

[10] The Turkish Government, in its Counter-Case, confines itself to repeating the conclusion of its Case, preceding

it, however, by [p.9] a short statement of its ground, which statement it will be well to reproduce, since it corresponds to the arguments preceding the conclusions of the French Counter-Case:

"1. Article 15 of the Convention of Lausanne respecting condition of residence and business and jurisdiction refers simply and solely, as regards the jurisdiction of the Turkish Courts, to the principles of international law, subject only to the provisions of Article 16. Article 15 cannot be read as supporting any reservation whatever or any construction giving it another meaning. Consequently, Turkey when exercising jurisdiction in any case concerning foreigners, need, under this article, only take care not to act in a manner contrary to the principles of international law.

"2. Article 6 of the Turkish Penal Code, which is taken word for word from the Italian Penal Code, is not, as regards the case, contrary

to the principles of international law.
"3.- Vessels on the high seas from part of the territory of the nation whose flag they fly, and in the case under consideration, the place where the offence was committed being the S.S. Boz-Kourt flying the Turkish flag, Turkey's jurisdiction in the proceedings taken is as clear as if the case had occurred on her territory - as is borne out by analogous cases.
"4.- The Boz-kourt-Lotus case being a case involving "connected" offences (delits connexes), the Code of criminal procedure for Stud - which is borrowed from France - lays down that the French officer shall be prosecuted jointly with and at the same time as the Turkish officer; this, moreover,

is confirmed by the doctrines and legislation of all countries. Turkey, therefore, is entitled from this standpoint also to claim jurisdiction.

"5.- Even if the question be considered solely from the point of view of the collision, as no principle of international criminal law exists which would debar Turkey from exercising the jurisdiction which she clearly possesses to entertain an action for damages, that country has jurisdiction to institute criminal proceedings.

"6. As Turkey is exercising jurisdiction of a fundamental character, and as States are not, according to the principles of international law, under an obligation to pay indemnities in such cases, it is clear that the question of the payment of the indemnity claimed in the French case does not arise for the Turkish Government, since that Government has jurisdiction to prosecute the French citizen Demons who, as the result of a collision, has been guilty of manslaughter.

"The Court is asked for judgment in favour of the jurisdiction of the Turkish Courts."

[11] During the oral proceedings, the Agent of the French Government confined himself to referring to the conclusions submitted in the Counter-Case, simply reiterating his request that the Court should place on record the reservations made therein as regards any consequences of the judgment not submitted to the Court's decision these reservations are now duly recorded.

[12] For his part, the Agent for the Turkish Government abstained both in his original speech and in his rejoinder from submitting any conclusion. The one he formulated in the documents filed by him in the written proceedings must therefore be regarded as having been maintained unaltered.

THE FACTS

[13] According to the statements submitted to the Court by the Parties' Agents in their Cases and in their oral pleadings, the facts in which the affair originated are agreed to be as follows:

[14] On August 2nd, 1926, just before midnight, a collision occurred between the French mail steamer Lotus, proceeding to Constantinople, and the Turkish collier Boz-kourt, between five and six nautical miles to the north of Cape Sigri (Mitylene). The Boz-kourt, which was cut in two, sank and eight Turkish nationals who were on board perished. After having done everything possible to succour the shipwrecked persons, of whom ten were able to be saved, the Lotus continued on its course to Constantinople, where it arrived on August 3rd.

[15] At the time of the collision, the officer of the watch on board the Lotus was Monsieur Demons, a French citizen, Lieutenant in the merchant service and first officer of the ship, whilst the movements of the Boz-kourt were

directed by its captain, Hassan Bey, who was one of those saved from the wreck.

[16] As early as August 3rd the Turkish police proceeded to hold an enquiry into the collision on board the Lotus; and on the following day, August 4th, the captain of the Lotus handed in his master's report at the French Consulate-general, transmitting a copy to the Harbour master.

[17] On August 5th, Lieutenant Demons was requested by the Turkish authorities to go ashore to give evidence. The examination, the length of which incidentally resulted in delaying the departure of [illegible] the Lotus, led to the placing under arrest of Lieutenant Demons without previous notice being given to the French Consul-general - and Hassan Bey, amongst others. This arrest, which has been characterized by the Turkish Courts as arrest pending trial (arrestation preventive), was effected in order to ensure that the criminal prosecution instituted against the two officers, on a charge of manslaughter, by the Public Prosecutor of Stamboul, on the complaint of the families of the victims of the collision, should follow its normal course.

[18] The case was first heard by the Criminal Court of Stamboul on August - 28th. On that occasion, Lieutenant Demuns submitted that the Turkish Courts had no jurisdiction; the Court, however, overruled his objection. When the proceedings were resumed on September 11th, Lieutenant Demuns demanded his release on bail: this request was complied with on September 13th, the bail being fixed at 6'000 Turkish pounds.

[19] On September 15th, the Criminal Court delivered its judgment, the terms of which had not been communicated to the Court by the Parties. It is, however, common ground, that it sentenced Lieutenant Demuns to eighty days' imprisonment and a fine of twenty-two pounds, Hassan Bey being sentenced to a slightly more severe penalty.

[20] It is also common ground between the Parties that the public Prosecutor of the Turkish Republic entered an appeal against this decision, which had the effect of suspending its execution until a decision upon the appeal

had been given; that such decision upon the appeal had been given; but that the special Agreement of October 12th, 1926 did not have the effect of suspending "the Criminal proceedings... now in progress in Turkey".

[21] The action of the Turkish judicial authorities with regard to Lieutenant Demons at once gave rise to many diplomatic representations and other steps on the part of the French Government or its representatives in Turkey, either protesting against the arrest of Lieutenant Demons or demanding his release, or with a view to obtaining the transfer of the case from the Turkish Courts to the French Courts.

[22] As a result of these representations the Government of the Turkish Republic declared on September 2nd, 1926 that

"It would have no objection to the reference of the conflict of jurisdiction to the Court at The Hague" [p12]

[23] The Finnish Government having, on the 6th of the same month, given "its full consent to the proposed solution", the two Governments appointed their plenipotentiaries with a view to the drawing up of the special agreement to be submitted to the Court; this special agreement was signed in Geneva on October 12th, 1926, as stated above, and the ratifications were deposited on December 27th, 1926.

THE LAW.

I.

[24] Before approaching the consideration of the

principles of international law contrary to which Turkey is alleged to have acted thereby infringing the terms of Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, it is necessary to determine, in the light of the written and oral proceedings, the position resulting from the special agreement. For, the Court having obtained cognizance of the present case by notification of a special agreement concluded between the parties in the case, it is rather the terms of this agreement than the submissions of the Parties, that the Court must have recourse in establishing the precise points which it has to decide. In this respect the following observations should be made:

[25] 1. - the collision which occurred on August 2nd, 1926, between the S.S. Lotus, flying the French flag, and the

S.S. Boz-Kourt, flying the Turkish flag, took place on the high seas; the territorial jurisdiction of any State other than France or Turkey therefore does not enter into account,

[26] 2. - The violation, if any, of the principles of international law would have consisted in the taking of

criminal proceedings against Lieutenant Demons. It is not therefore a question relating to any particular step in the proceedings - such as his being put to trial, his arrest, his detention pending trial or the judgment given by the Turkish Courts exercising criminal jurisdiction. That is why the arguments put forward by the Parties in both phases of the (13) The proceedings relate exclusively to the question whether Turkey has or has not, according to the principles of international law, jurisdiction to

prosecute in this case

[27] The Parties agree that the Court has not to consider whether the prosecution was in conformity with Turkish law and by Turkish authorities were really applicable in the case, or whether the manner in which the proceedings against Lieutenant Demons were conducted might constitute a denial of justice, and accordingly, a violation of international law. The discussion have borne exclusively upon the question whether criminal jurisdiction does or does not exist in this case.

[28] 3 - The prosecution was instituted because the loss of the Boz-Kourt involved the death of eight Turkish sailors and passengers. It is clear, in the first place, that this result of the collision constitutes a factor essential for the existence of the criminal proceedings in question. Secondly, it follows from the statement

of the two Parties that no criminal intention has been imputed to either of the officers responsible for navigating the two vessels; it is therefore a case of prosecution for involuntary manslaughter. The French Government maintains that breaches of navigation regulations fall exclusively within the jurisdiction of the State under whose flag the vessel sails; but it does not argue that a collision between two vessels cannot also bring into operation the sanctions which apply to criminal law in cases of manslaughter. The precedents cited by it and relating to collision cases all assume the possibility of criminal proceedings with a view to the infliction of such sanctions, the dispute being confined to the question of jurisdiction concurrent or exclusive — which another State might claim in this respect. As has already been observed, the Court has not to consider the lawfulness of the prosecution under Turkish law, questions of criminal law relating to the justification of the prosecutor and consequently to the existence of a nexus causalis between the actions of Lieutenant Demons and the loss of eight Turkish nationals are not relevant to the issue so far as the Court is

concerned. Moreover, the exact conditions in which these persons perished do not appear from the documents submitted to the Court; nevertheless, there is no doubt that their death may be regarded as the direct [p 14] outcome of the collision, and the French Government has not contended that this relation of cause and effect cannot exist.

[29] 4 - Lieutenant Demons and the captain of the Turkish steamship were prosecuted jointly and simultaneously. In regard to the conception of "connexity" of offences (connexite), the Turkish Agent in the submissions of his counter-case has referred to the Turkish Code of criminal procedure for trial, the provisions of which are said to have been taken from the corresponding French code. Now in French law, amongst other factors, coincidence of time and place may give rise to "connexity" (connexite). In this case, therefore, the Court interprets this conception as meaning that the proceedings against the captain of the Turkish vessel in regard to which the jurisdiction of the Turkish

Courts is not disputed, and the proceedings against Lieutenant Demon, have been regarded by the Turkish authorities, from the point of view of the investigation of the case, as one and the same prosecution, and the collision of the two steamers constitutes a complex of acts the consideration of which should, from the standpoint of Turkish criminal law, be entrusted to the same courts.

[30] 5. - The prosecution was instituted in pursuance of Turkish legislation. The special agreement does not indicate what clause or clauses of that legislation apply. No document has been

submitted to the Court indicating on what article of the Turkish Penal Code the prosecution was based; the French Government however declares that the Criminal Court claimed jurisdiction under Article 6 of the Turkish Penal Code and far from denying this statement, Turkey, in the submissions of her counter-case, considers that that article is in conformity with the principles of international law. It does not appear from the proceedings whether the prosecution was instituted solely on the basis of that article.

[31] Article 6 of the Turkish Penal Code, Law No. 765 of

March 1st, 1926 (Official Gazette No. 320 of March 13th, 1926) runs as follows:

[Translation]

'Any foreigner who, apart from the cases contemplated by Article 4, commits an offence abroad to the prejudice of Turkey or of a Turkish subject, for which offence Turkish law prescribes a penalty involving loss of freedom for a [P15] minimum period of not less than one year, shall be punished in accordance with the Turkish Penal Code provided that he is arrested in Turkey. The penalty shall however be reduced by one third and instead of the death penalty, twenty years of penal servitude shall be awarded.

'Nevertheless, in such cases, the prosecution will only be instituted at the request of the Minister of Justice or on the complaint of the injured Party.

'If the offence committed injures another foreigner, the guilty person shall be punished at the request of

the Minister of Justice, in accordance with the provisions set out in the first paragraph of this article, provided however that:

"(1) the article in question is one for which Turkish law prescribes a penalty involving loss of freedom for a minimum period of three years;

(2) there is no extradition treaty or that extradition has not been accepted either by the government of the locality where the guilty person has committed the offence or by the government of his own country."

[32] Even if the Court must hold that the Turkish authorities had seen fit to base the prosecution of Lieutenant Demons upon the above-mentioned Article 6, the question submitted to the Court is not whether that article is compatible with the principles of international law; it is more general. The Court is asked to state whether or not the principles of international law prevent Turkey from instituting criminal proceedings against Lieutenant Demons

under Turkish law. Neither the conformity of Article 6 in itself with the principles of international law nor the application of that article by the Turkish authorities constitutes the point at issue; it is the very fact of the institution of proceedings which is held by France to be contrary to those principles. Thus the French Government at once protested against his arrest, quite independently of the question as to what clause of her legislation was relied upon by Turkey to justify it. The arguments put forward by the French Government in the course of the proceedings and based on the principles which, in its contention, should govern navigation on the high seas, show that it would dispute Turkey's jurisdiction to prosecute Lieutenant Demons, even if that prosecution were based on a clause of the Turkish Penal Code other than Article 6, assuming for instance that the offence in question should be regarded, by reason of its consequences, to have actually committed on Turkish territory. [p 16]

II.

[33] Having determined the position resulting from the terms of the special agreement, the Court must now ascertain which were the principles of international law that the prosecution of the Lieutenant Demons could conceivably be said to contravene.

[34] It is Article 15 of the Convention of Lausanne of July 24th, 1923, respecting conditions of residence and business and jurisdiction, which refers the contracting Parties to the principles of international law as regards the delimitation of their respective jurisdiction.

[35] This clause is as follows:

"Subject to the provisions of Art. 16, all questions of jurisdiction shall, as between Turkey and the other contracting powers, be decided in accordance with the principles of Int. Law".

[36] The French government maintains that the meaning of the expression "principles of Int. law" in this art. should be sought in the light of the evolution of the Convention, by means of an amendment to the relevant art. of a draft for the convention

sought to extend its jurisdiction to crimes committed in the territory of a third state, provided that under Turkish law, such crimes were within the jurisdiction of Turkish Courts. This amendment in regard to which the representatives of Fr. and Ita. made reservations, was definitely rejected by the British representative; and the question having been subsequently referred to the drafting committee, the latter confined itself in its version of the draft to a decl. to the effect that questions of jurisdiction should be decided in accordance with the principles of int. law. The French government deduces from these facts that the prosecution of Demons is contrary to the intention which guided the preparation of the Convention of Lausanne.

[37] The Court must recall in this connection what it has said in some of its preceding judgments and opinions, namely, that there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself. Now the Court considers that the words "principles of

international law; as ordinarily used, can only mean international law as it is applied between all nations belonging to the community of States. This interpretation [pi7] is borne out by the context of the article itself which says that the principles of international law are to determine questions of jurisdiction – not only criminal but also civil – between the contracting Parties, subject only to the exception provided for in Article 16. Again, the preamble of the Convention says that the High Contracting Parties are desirous of effecting a settlement in accordance "with modern international law", and Article 28 of the Treaty of Peace of Lausanne, to which the Convention in question is annexed, decrees the complete abolition of the Capitulations "in every respect". In these circumstances it is impossible – except in pursuance of a definite stipulation – to construe the expression "principles of international law" otherwise than as meaning the principles which are in force between all independent nations and which therefore apply equally to all the contracting Parties.

[38] Moreover, the records of the preparation of the Convention respecting conditions of residence and business and jurisdiction would not furnish anything calculated to overrule the construction indicated by the actual terms of Article 15. It is true that the representatives of France, Great Britain and Italy rejected the Turkish amendment already mentioned. But only the British delegate — and this conformably to British municipal law which maintains the territorial principle in regard to criminal jurisdiction — stated the reason for his opposition to the Turkish amendment; the reasons for the French and Italian reservations and for the omission from the draft prepared by the Drafting Committee of any definition of the scope of the criminal jurisdiction in respect of foreigners, are unknown and might have been unconnected with the arguments now advanced by France.

[39] It should be added to these observations that the original draft of the relevant article, which limited Turkish jurisdiction to crimes committed in Turkey itself, was also discarded by the Drafting Committee; this circumstance might with equal justification give the impression that the intention of the framers of the Convention was not to limit this jurisdiction in any way.

[40] The two opposing proposals designed to determine definitely the area of application of Turkish criminal law having thus been discarded, the wording ultimately adopted by common consent for Article 15 can only refer to the principles of general international law relating to jurisdiction. [p 18]

[41] The Court, having to consider whether there are any rules of international law which may have been violated by the prosecution in pursuance of Turkish law of Lieutenant Demons, is confronted in the first place by a question of principle which, in the written and oral arguments of the two Parties, has proved to be a fundamental one. The French Government contends that the Turkish Courts, in order to have jurisdiction, should be able to point to some title to jurisdiction recognized by international law in favour of Turkey. On the other hand, the Turkish Government takes the view that Article 15 allows Turkey jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

[42] The latter view seems to be in conformity with the special agreement itself, No. 1 of which asks the Court to say whether Turkey has acted contrary to the principles of international law and, if so, what principles. According to the special agreement, therefore, it is not a question of stating principles which would permit Turkey to take criminal proceedings, but of formulating the principles, if any, which might have been violated by such proceedings.

[43] This way of stating the question is also

dictated by the very nature and existing conditions of international law.

[44] International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.

[45] Now the first and foremost restriction imposed by international law upon a State is that - failing the existence of a permissive rule to the contrary - it may not exercise its power in any form in the territory of another State. In this sense Jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory [19] except by virtue of a permissive rule derived from international custom or from a convention.

[46] It does not, however, follow that international law prohibits a State from exercising Jurisdiction in its own territory,

in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

(47) This discretion left to States by international law explains the great variety of rules which they have been able to adopt

without objections – a plant, at the end of
the states, will in order to study the
difficulties resulting for all society that
efforts have been made for many years past,
both in Europe and America, to impose
conventions the effect of which would
precisely to limit the duration of peace
left to states in expectation of better times,
thus making good the existing chance in
respect of jurisdiction or among the
conflicting jurisdictions arising for the
diversity of the principles adopted
by the various states.
– these circumstances all that can
be required for that is that it should
not overstep the limits which

attached law places upon the jurisdiction within these limits, is title to exercise jurisdiction rests in its sovereignty.

[48] It follows from the foregoing that cessation of the Ford Government to effect that Turkey must in each case be able to invoke a valid contractual law authority here to exercise jurisdiction, is opposed to the generally accepted international law to which Article 13 of the Convention of Succession refers. Having regard to the terms of Article 15 and to the construction

which [p 20] the Court has just placed upon it. This convention would apply in regard to civil as well as to criminal cases, and would be applicable to civil as well as to criminal cases, and would be applicable ~~to~~ on conditions of absolute reciprocity as between Turkey and the other contracting Parties; in practice, it would therefore in many cases result in paralysing the action of the courts, owing to the

impossibility of citing a universally accepted rule on which to support the exercise of their Jurisdiction.

(49) Nevertheless, it has to be seen whether the foregoing considerations really apply as regards criminal Jurisdiction, or whether this Jurisdiction is governed by a different principle: this might be the outcome of the close connection which for a long time existed between the connection which for a long time existed between the conception of supreme criminal Jurisdiction and that of a State, and also by the special importance of criminal Jurisdiction from the point of view of of the individual.

(50) Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental

it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.

(51) This situation may be considered from two different standpoints corresponding to the points of view respectively taken up by the Parties. According to one of these standpoints, the principle of freedom, in virtue of which each State may regulate its legislation at its discretion, provided that in so doing it does not come in conflict with a restriction imposed by international law, would also apply as regards law governing the scope of

jurisdiction in criminal cases. According to the other standpoint, the exclusively territorial character of law relating to this domain constitutes a principle which, except as otherwise expressly provided, would, ipso facto, prevent States from extending their criminal jurisdiction of their courts beyond their frontiers; the exceptions in question, which include for instance extraterritorial jurisdiction over nationals and over crimes directed against public safety, would therefore rest on special permissive rules forming part of international law. [p 21]

[52] Adopting, for the purpose of the argument, the standpoint of the latter of these two systems, it must be recognized that, in the absence of a treaty position, its correctness depends upon whether there is a custom having the force of law establishing it. The same is true as regards the applicability of this system — assuming it to have been recognized as sound — in the particular case. It follows that, even from this point of view, before ascertaining

whether there may be a rule of international law expressly allowing Turkey to prosecute a foreigner for an offence committed by him outside Turkey, it is necessary to begin by establishing both that the system is well-founded and that it is applicable in the particular case. Now, in order to establish the first of these points, one must, as has just been seen, prove the existence of a principle of international law restricting the discretion of States as regards criminal legislation.

[53] Consequently, whichever of the two systems described above be adopted, the same result will be arrived at in this particular case: the necessity of ascertaining whether or not under international law there is a principle which would have prohibited Turkey, in the circumstances of the case before the Court, from prosecuting Lieutenant Demons. And moreover, on either hypothesis, this must be ascertained by examining precedents offering a close analogy to the case under consideration; for it is only from precedents of this nature that the existence of a general principle applicable to the particular case may appear. For, if it were found, for example, that, according to the practice of States, the jurisdiction

of the State whose flag was flown was not established by international law as exclusive with regard to collision cases on the high seas, it would be not be necessary to ascertain whether there were a more general restriction; since, as regards that restriction-supporting that it existed-the fact that it had been established that there was no prohibition in respect of collision on the high seas would be tantamount to a special permissive rule

[54] The Court therefore must, in any event ascertain whether or not there exists a rule of international law limiting the freedom of States to extend the criminal jurisdiction of their courts to a situation uniting the circumstances of the present case [p. 22]

IV

[55] The Court will now proceed to ascertain whether general international law to which Article 15 of the Convention of Lausanne refers, contains a rule prohibiting Turkey from prosecuting Lieutenant Demons.

[56] For this purpose, it will in the first place examine the value of the arguments advanced by the French Government, whilst however omitting to take into account other possible aspects of the problem, which might show the existence of a restrictive rule applicable in this case.

[57] The arguments advanced by the French Government, other than those mentioned above, are, in substance, the three following:

(1) International law does not allow a State to take proceedings with regard to offences committed by foreigners abroad, simply by reason of the nationality of the victim; and such is the situation in the present case because the offence must be regarded as having been committed on board the French vessel.

(2) International law recognizes the exclusive jurisdiction of the State whose flag is flown as regards everything which occurs on board a ship on the high seas.

(3) Lastly, this principle is especially applicable in a collision case.

* * *

[58] As regards the first argument, the Court feels obliged in the first place to recall that its examination is strictly confined to the specific situation in the present case, particularly in regard to this situation that its decision is asked for.

[59] As has already been observed, the characteristic features of the Situation of facts are as follows: there has been a collision on the high seas between two vessels flying different flags, on one of which was

one of the persons alleged to be guilty of the offence, whilst the victims were on board the other.

[60] This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the [p23] victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based. Even if that argument were correct generally speaking - and in regard to this the Court reserves its opinion - it could only be used in the present case if international law forbade Turkey to take into consideration the fact that the offence produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even in regard to offences committed there by foreigners. But no such rule of international law exists. No argument has come to the knowledge of the Court from which it could be deduced that States recognize themselves to be under an obligation towards each other only to have regard to the place where the author of the offence happens to be at the time of the offence

On the contrary, it is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there. French courts have, in regard to a variety of situations, given decisions sanctioning this way of interpreting the territorial principle. Again, the Court does not know of any cases in which governments have protested against the fact that the criminal law of some country contained a rule to this effect or that the courts of a country construed

their criminal law in this sense. Consequently, once it is admitted that the effects of the offence were produced on the Turkish vessel, it becomes impossible to hold that there is a rule of international law that prohibits Turkey from prosecuting Lieutenant Demons because of the fact that the author of the offence was on board the French ship. Since, as has already been observed, the special agreement does not deal with the provision of Turkish law under which the prosecution was instituted, but only with the question of whether prosecution should be regarded as contrary to the principles of international law; there is no reason preventing the Court from confining itself to observing

that, in this case, a prosecution may also be justified from the point of view of the so-called territorial principle. [p24]

[61] Nevertheless, even if the Court had to consider whether Article 6 of the Turkish Penal Code was compatible with international law, and if it held that the nationality of the victim did not in all circumstances constitute a sufficient basis for the exercise of criminal jurisdiction by the State of which the victim was a national, the Court would arrive at the same conclusion for the reasons just set out. For even were Article 6 to be held incompatible with the principles of international law, since the prosecution might have been based on another provision of Turkish law which would not have been contrary to any principle of international

law, it follows that it would be impossible to deduce from the mere fact that Article 6 was not in conformity with those principles, that the prosecution itself was contrary to them. The fact that the judicial authorities may have committed an error in their choice of the legal provision applicable to the particular case and compatible with international law only concerns municipal law and can only affect international law in so far as a treaty provision enters into account, or the possibility of a denial of justice arises.

[62] It has been sought to argue that the offence of manslaughter cannot be localised at the spot where the mortal effect is felt; for the effect is not intentional and it cannot be said that there is in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offences such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent. But the Court does not feel called upon to consider this question, which is one of

interpretation of Turkish criminal law. It will suffice to observe that no argument has been put forward and nothing has been found from which it would follow that international law has established a rule imposing on States this reading of the conception of the offence of manslaughter.

[63] The second argument put forward by the French Government is the principle that the State whose flag is flown has exclusive jurisdiction over everything which occurs on board a merchant ship on the high seas. [p. 25]

[64] It is certainly true that - apart from certain special cases which are defined by international law - vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the the seas, that is to say, the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them. Thus, if a war vessel

happening to be at the spot where
collision occurs between a vessel flying
its flag and a foreign vessel, were
to send on board the latter an officer
to make investigations or take evidence,
such an act would undoubtedly be
contrary to international law.

[165] But it by no means follows that a
State can never in its own territory
exercise jurisdiction over acts which
have occurred on board a foreign ship
on the high seas. A corollary of the
principle of the freedom of the seas is
that a ship on the high seas is assimilated
to the territory of the State the flag
of which it flies, for, just as in its own
territory, that State exercises its authority
upon it and no other State may
do so. All that can be said is that
by virtue of the principle of the

freedom of the seas; a ship is placed in the same position as national territory but there is nothing to support the claim according to which the rights of the State under whose flag the vessel sails may go further than the rights which it exercises within its territory properly so called. It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies. If, therefore, a guilty act committed on the high seas produces its effects on a vessel flying another flag or in foreign territory, the same principles must be applied as if the territories of two different States were concerned, and the conclusion must therefore be drawn that there is no rule of international law prohibiting the State to which the ship on which the effects of the offence have taken place belongs, from regarding the offence as having been committed

in its territory and prosecuting, accordingly the delinquent. [66] This conclusion could only be overcome if it were shown that there was a rule of customary international law which, going further than the principle stated above, established the exclusive jurisdiction of the State whose flag was flown. The French Government has endeavoured to prove the existence of such a rule, having recourse for this purpose to the teachings of publicists, to decisions [p 26] of municipal and international tribunals, and especially to conventions, which, whilst creating exceptions to the principle of the freedom of the seas by permitting the war and police vessels of a State to exercise a more or less extensive control over the merchant vessels of another State, reserve jurisdiction to the courts of the country whose flag is flown by the vessel proceeded against.

67 In the Court's opinion, the existence of such a rule has not been conclusively proved.

68 In ~~the Court~~ the first place, as regards teachings of publicists, and apart from the question as to what their value may be from the point of view of establishing the existence of a rule of customary law, it is no doubt true that all or nearly all writers teach that ships on the high seas are subject exclusively to the jurisdiction of the State whose flag they fly. But the important point is the significance attached by them to this principle; now it does not appear that in general, writers bestow upon this principle a scope differing from or wider than that the jurisdiction of a State over vessels on the high seas is the same in extent as its jurisdiction in its own territory. On the other hand, there is no lack of writers who, upon a close study of the special question whether a State can prosecute for offences committed on board a foreign ship on the high seas, definitely come to the conclusion that such offences must be regarded as if they had been committed in the territory of the State whose flag the ship flies, and that consequently the general rules of each legal system in regard to offences committed abroad are applicable

69 In regard to precedents, it should first be observed that, leaving aside the collision cases which will be alluded to later, none of them relates to offences affecting two ships flying the flags of two different countries, and that consequently they are not of importance in the case before the Court. The case of the Costa Rica Packet is no exception, for the prauw on which the alleged depredations took place was adrift without flag or crew, and this circumstances certainly influenced, perhaps decisively, the conclusion arrived at by the arbitrator. [70] On the other hand, there is no lack of cases in which a State has claimed a right to prosecute for an offence committed on board a foreign ship which it regarded as punishable under its legislation. Thus Great Britain refused the request of the United [p27] States for the extradition of John Anderson, a British seaman

who had committed homicide on board an American vessel, stating that she did not dispute the jurisdiction of the United States but that she was entitled to exercise hers concurrently. This case, to which others might be added, is relevant in spite of Anderson's British nationality in order to show that the principle of the exclusive jurisdiction of the country whose flag the vessels flies is not universally accepted. [71] The cases in which the exclusive jurisdiction of the State whose flag was flown has been recognized would seem rather to have been cases in which the foreign State was interested only by reason of the nationality of the victim, and in which, according to the legislation of that State itself or the practice of its courts, that [illegible] was not regarded as sufficient to authorize prosecution for an offence

committed abroad by a foreigner

[72] Finally, as regards conventions expressly reserving jurisdiction exclusively to the State whose flag is flown, it is not absolutely certain that this stipulation is to be regarded as expressing a general principle of law rather than as corresponding to the extraordinary jurisdiction which these conventions confer on the state-owned ships of a particular country in respect of ships of another country on the high seas. Apart from that, it should be observed that these conventions relate to matters of a particular kind, closely connected with the policing of the seas, such as the slave trade, damage to submarine cables, fisheries, etc., and not to common-law offences. Above all it should be pointed out that the offences contemplated by the conventions in question only concern a single ship; it is impossible therefore to make any deduction from them in regard to matters which concern two ships

and consequently the jurisdiction of two different States.

[73] The Court therefore has arrived at the conclusion that the second argument put forward by the French Government does not, any more than the first, establish the existence of a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons.

[74] It only remains to examine the third argument advanced by the French Government and to ascertain whether a rule specially [p28] applying to collision cases has grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the State whose flag is flown.

[75] In this connection, the Agent for the French Government has drawn the Court's attention to the fact that questions of jurisdiction in collision cases, which frequently arise before civil courts, are but rarely encountered in the practice of criminal courts. He deduces from this that, in practice, prosecutions only occur before the courts of the State whose flag is flown and that that circumstance

is proof of a tacit consent on the part of States and, consequently, shows what positive international law is in collision cases.

[76] In the Court's opinion, this conclusion is not warranted. Even if the scarcity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty, on the other hand, as will presently be seen, there are other circumstances calculated to show that the contrary is true.

[77] So far as the Court is aware there are no decisions of international tribunals in this matter; but some decisions of municipal courts have been cited. Without pausing to consider the value to be attributed to the judgments of municipal courts in connection with the establishment of the existence of a rule of international law, it will suffice to observe that the decisions quoted sometimes support one view and sometimes the other. Whilst the French Government have been able to cite the Ortigia - Oncle - Joseph Case before the Court of Aix and the Franconia - Strathclyde case before the British Court for Crown Cases Reserved, as being in favour of the exclusive jurisdiction of the State whose flag is flown, on the other hand the Ortigia - Oncle -

Joseph case before the Italian Courts and the Ekbatana-West-Hinder case before the Belgian Courts have been cited in support of the opposing contention.

[78] Lengthy discussions have taken place between the Parties as to the importance of each of these decisions as regards the details [p29] of which the Court confines itself to a reference to the Cases and Counter-Cases of the Parties. The Court does not think it necessary to stop to consider them. It will suffice to observe that, as municipal jurisprudence is thus divided, it is hardly possible to see in it an indication of the existence of the restrictive rule of international law which alone could serve as a basis for the contention of the French Government.

[79] On the other hand, the Court feels called upon to lay stress upon the fact that it does not appear that the States concerned have objected to criminal proceedings in respect of collision cases before the courts of a country other than that the flag of which was flown, or that they have made protests; their conduct does not appear to have differed appreciably from that observed by them in all cases of concurrent jurisdiction. This fact is directly opposed to the existence of a tacit consent on the part of States to the exclusive jurisdiction of the State whose flag is flown, such as the Agent for the French Government has thought it possible to deduce from the infrequency of questions of jurisdiction before criminal courts. It seems hardly probable, and it would not be in accordance with international practice that the French Government in the Ostiglia-Oncle-Joseph case and the German Government in the Ekbatana-West-Hinder case would have omitted to protest against the exercise of criminal jurisdiction have by the Italian and Belgian Courts, if they had really thought that this was a violation of

[80] As regards the Franconia case (R. v. Keyn, 1877, L.R. 2 Ex. Div. 63) upon which the Agent for the French Government has particularly relied, it should be observed that the part of the decision which bears the closest relation to the present case is the part relating to the localization of the offence on the vessel responsible for the collision.

[81] But, whatever the value of the opinion expressed by the majority of the judges on this particular point may be in other respects, there would seem to be no doubt that if, in the minds of these judges, it was based on a rule of international law, peculiar to English jurisprudence, is far from being generally accepted even in common-law countries. This view seems moreover to be borne out by the fact that the standpoint taken by the majority of the judges in regard to the localization of an offence, the author of which is situated in the territory of one [p. 30] State whilst its effects are produced in another State, has been abandoned in more recent English decisions (R. v. Nillins, 1884, 53 L.J. 157; R. v. Godfrey LR 1923, 1 KB 24). This development of English case-law tends to support the view that international law leaves States a free hand in this respect.

[82] In support of the theory in accordance with which criminal jurisdiction in collision cases would exclusively belong to the State of the flag flown by the ship, it has been contended that it is a question of the

Observance of the national regulations of each merchant marine and that the disciplinary punishment does not consist so much in the infliction of some months' imprisonment upon the captain as in the cancellation of his certificate as master, that is to say, in depriving him of the command of his ship.

(83) In regard to this, the Court must observe that in the present case a prosecution was instituted for an offence at criminal law and not for a breach of discipline. Neither the necessity of taking administrative regulations into account (even regarding the circumstances that it is a question of uniform regulations adopted by States as a result of an international conference) nor the impossibility of applying certain disciplinary penalties can prevent the application of criminal law and criminal measures

of repression.

[84] The conclusion at which the Court has therefore arrived is that there is no rule of international law in regard to collision cases to the effect that criminal proceedings are exclusively within the jurisdiction of the State whose flag is flown.

[85] The conclusion moreover is only explained if the manner in which the collision brings the jurisdiction of two different countries into play be considered.

[86] The offence for which Lieutenant Demons appears to have been prosecuted was an act - of negligence or imprudence - having its origin on board the Lotus, whilst its effects made themselves felt on board the Boz-Kourt.

fact brought against Lieutenant Demons, observes that in the judgment of its truth of their asserting what the international law is, it has not confined itself to a consideration of the arguments put forward, but has included in its researches all precedents, teachings and facts to which it had access and which might possibly have revealed the existence of one of the principles of international law contemplated in the special agreement. The result of these researches has not been to establish the existence of any such principle. It must therefore be held that there is no principle of international law, within the meaning of Article 15 of the Convention of Lausanne of July 24th, 1923, which precludes the institution of the criminal proceedings under consideration. Consequently, Turkey, by instituting, in virtue of the discretion which international law

These two elements are, [illegible], inseparable, so much so that their separation renders the offence non-existent. Neither the exclusive jurisdiction of either State, nor the limitations of the jurisdiction of each to the occurrences which took place on the respective ships would appear calculated to satisfy the requirements of justice and effectively to protect the interests of the two States. It is only natural that each should be able to exercise jurisdiction — to do so in respect [p 71] of the matter as a whole. It is [illegible] a case of concurrent jurisdiction.

* * *

[87] The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrelevant to the issue or do not establish the existence of a principle of international law precluding criminal prosecution which was in

leaves to every sovereign State, the criminal proceedings in question, has not, in the absence of such principles, acted in a manner contrary to the principles of international law within the meaning of the special agreement.

[88] In the last place the Court observes that there is no need for it to consider the question whether the fact that the prosecution of Lieutenant Demons was "joint" (connexe) with that of the captain of the Boz-Kourt would be calculated to justify an extension of Turkish jurisdiction. This question would only have arisen if the Court had arrived at the conclusion that there was a rule of international law prohibiting Turkey from prosecuting Lieutenant Demons; for only in that case would it have been necessary to ask whether that rule might be overridden by the fact of the connexity" (connexite) of the offences.

[P32]

[89] Having thus answered the first question submitted by the special agreement in the negative, the Court need not consider the second question, regarding the pecuniary reparation which might have been due to Lieutenant Demons.

[90] FOR THESE REASONS,

The Court

having heard both Parties,

gives, by the President's casting vote — the votes being equally divided —, Judgment to the effect

(1) that, following the collision which occurred on August 2nd 1926, on the high seas between the French steamship Lotus and the Turkish steamship Boz-Kourt, and upon the arrival of the French ship at Stamboul, and in consequence of the loss of the Boz-Kourt having involved the death of eight Turkish nationals, Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer

of the watch on board the Lotus at the time of the collision, has not acted in conflict with the principles of international law, contrary to Article 15 of the Convention of Lausanne of July 24th, 1923, respecting Conditions of residence and business and Jurisdiction;

(2) that, consequently, there is no occasion to give Judgment as to the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey by prosecuting him as above stated, had acted in a manner contrary to the principles of international law.

[91] This judgment having been drawn up in French in accordance with the terms of Article 39, paragraph 1, second sentence of the

Statute of the Court, an English translation is attached thereto. [p 33]

[92] Done at the Peace Palace, The Hague, this seventh day of September, nineteen hundred and twenty-seven, in three copies, one of which is to be placed in the archives of the Court, and the others to be transmitted to the Agents of the respective Parties.

(Signed) Max Huber,
President.

(Signed) Å. Hammarskjöld,
Registrar.

[93] MM. Loder, former President, Weiss, Vice-President, and Lord Finlay, MM. Nyholm and Altamira, Judges

declaring that they are unable to concur in the judgment delivered by the Court and availing themselves of the right conferred on them by Article 57 of the Statute, have delivered the separate opinions which follow hereafter.

[94] Mr. Moore, dissenting from the judgment of the Court only on the ground of the connection of the criminal proceedings in the case with Article 6 of the Turkish Penal Code, also delivered a separate opinion.

(Initialled) M. H.

(Initialled) A. H. [p 34]

This page was intentionally left blank.

Methodological Key

Acknowledgements

This page was intentionally left blank.

Methodological Key

1 The original judgment.
2 Text extracted from original, presented in contemporary font and formatting.
3 Fusion of original and witness statements relating to the collision. One sentence of judgment followed by one sentence from witness statements.
4 References to past replaced with references to the future.
5 References to Turkey replaced with references to France and vice versa.
6 Each word replaced with synonyms suggested by MS Word.
7 Judgment's most common words replaced with most common words of Jules Verne's *Twenty Thousand Leagues Under the Seas* (1870).
8 Version stripped of text that ChatGPT (AI Humanizer Pro) deemed to be AI generated.
9 Version retaining only punctuation marks, numbers and the words 'Lotus' and 'Boz-Kourt'.
10 Version featuring gradual disappearance of margins.
11 Sequential rotation of the text by 7 degrees/page, occasional spelling mistakes.
12 Right side: mirrored text; Left side: gradually degenerating text featuring deleted terms, spelling mistakes, re-arranged sentences, random terms.
13 Judgment on one page. Back: patterned arrangement of text-as-image files of the original judgment.
14 Vandalised version of the judgment.
15 Handwritten transcription of the original by 45 different persons.

This page was intentionally left blank.

Acknowledgements

I thank Emīlija Branda for editorial assistance, Tova Bennet for her patience and creative input, and Jonas Palm and his colleagues for chaperoning this book through the production process. For transcribing the Lotus Case during the European Society of International Law's annual conference in Vilnius from 4. – 6. September 2024, I thank:

Agnieszka Starczewska
Alessandro Monti
Anastasia Hammerschmied
Andrea Longo
Antoine Comont
Clémence Varin
Dan Peat
David Silverlid
Debolina Bhatt
Edouard Fromageau
Emre Acar
Felicity Attard
Giulio Bartolini
Gülnur Erol
Iris Richer
Isi Madojemu
Javier Ortega
Jennifer McKay
Jennifer Tridgell
Johannes Tropper
Kendra Magraw
Kenneth Chan
Lan Nguyen
Lea Raible
Maria Grazia Dusina
Maria Juliana Tenorio
Marina Trunk-Fedorova
Matilde Masetti Placci
Michael Smith
Niels Lachmann
Nina Mileva
Noora Arajärvi
Nora Hertz
Raphael Oidtmann
Sarah Zarmsky
Serde Atalay
Simona Fanni
Stefania di Stefano
Stefano Cattelan
Tommaso Soave
Veronika Fikfak
Viktoriia Rusanova
Zuzanna Kulińska-Kępa
Özge Variş

I thank Otis Jeutner-Bennet for illustrating pp. 623 & 630.

This page was intentionally left blank.

This page was intentionally left blank.

This page was intentionally left blank.

The printed version of the book features a fold-out mirror on this last page to make it easier for readers to read chapter 12.

The legal form dictates the contours of law's appearance. Texts are neatly divided into (often) numbered paragraphs. Pages must conform to specified layouts. Conventions regulate the use of fonts, punctuation and colours. Legal terms of art replace colloquial expressions. Human experiences enter legal texts only in mediated, sanitized forms. The dictats of legal form are all but incidental. They condition law's authority. By repeatedly modifying the Case of the S.S. Lotus (Permanent Court of International Justice 1927), this book invites readers to consider how modifications of law's appearance alter law's authority.

Valentin Jeutner is an Associate Professor of Law at Lund University, Sweden, and a Senior Retained Lecturer at Pembroke College, Oxford, UK.

LUND
UNIVERSITY