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S.S. LOTUS (FRANCE V. TURKEY), 1927

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I. ABSTRACT

The S.S. Lotus (France v. Turkey) case is one of the landmark judgments in international law, concerning the State sovereignty and the exercise of criminal jurisdiction. The dispute arose after a collision on the high seas between the French vessel Lotus and the Turkish vessel Boz-Kourt on 2 August 1926. The collision caused the Boz-Kourt to sink and resulted in the deaths of eight Turkish nationals. After the Lotus reached Constantinople, Turkish authorities initiated criminal proceedings against Lieutenant Demons, the French officer who had been on watch at the time of the collision. France objected and argued that only the flag State could exercise jurisdiction. The dispute was later submitted to the Permanent Court of International Justice (PCIJ). On 7 September 1927, the Court, by the President's casting vote, held that Turkey had not acted contrary to international law by prosecuting Demons. The Court's central reasoning was that the effects of the collision occurred on a Turkish vessel and that Turkey was not prohibited by any rule of international law from exercising jurisdiction. The Court also refused to presume restrictions upon the independence of States. This judgment became associated with the Lotus Principle and influenced the proposition that restrictions upon the independence of States must be established by international law. Although the case remains significant, its approach to criminal jurisdiction over high-seas collisions was subsequently limited by treaty law. Article 11 of the 1958 Convention on the High Seas and Article 97(1) of the United Nations Convention on the Law of the Sea (UNCLOS) introduced specific rules governing penal or disciplinary jurisdiction arising from collisions and other incidents of navigation on the high seas. This case commentary examines the differing opinions, subsequent treaty developments, the Court's reasoning, and assesses whether the Lotus Principle continues to influence questions of jurisdiction under international law.

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II. KEYWORDS

Criminal jurisdiction, Flag State, Lotus Principle, International law, State Sovereignty.

III. INTRODUCTION

The France v. Turkey case, also known as the S.S. Lotus case, is one of the landmark cases in international law. It arose from a collision on the high seas between two ships: the French vessel *Lotus* and the Turkish vessel *Boz-Kourt*. Following the collision, Turkish authorities arrested Lieutenant Demons, the French officer of the watch, and Hassan Bey, the captain of the Turkish vessel, on charges of manslaughter by negligence. The Permanent Court of International Justice (PCIJ), however, focused on whether Turkey had jurisdiction to institute criminal proceedings against Demons.

The case is particularly well known for the principle associated with the Court's reasoning. In simple terms, the Court approached the issue on the basis that restrictions upon the independence of sovereign States cannot be assumed merely because a State is exercising jurisdiction. A restriction must instead be supported by an applicable rule of international law.

The principle does not mean that States have the unlimited authority to act as they wish. International law contains rules governing jurisdiction, territorial sovereignty, treaties, State responsibility and the freedom of the high seas. The importance of *Lotus* lies in the particular reasoning adopted by the Court in determining whether Turkey was legally prevented from prosecuting the French officer.

This case commentary deals with the facts, legal issues, arguments of France and Turkey, the Court's decision, the dissenting opinions, the importance of the judgment and its continuing relevance under modern international law.

IV. FACTS OF THE CASE

The incident took place on 2 August 1926 in the high seas, near the Greek island of Lesbos, in a region just north of Mitylene (Greece). The French vessel *Lotus* collided with the Turkish vessel *Boz-Kourt*. The *Boz-Kourt* was severely damaged, broke apart and sank. This incident took the lives of Eight Turkish nationals on board.

After the incident, the Lotus continued its journey and reached Constantinople (Istanbul) on 3 August 1926, where the Turkish authorities conducted an inquiry and later arrested Lieutenant Demons and Hassan Bey, the captain of the Boz-Kourt.

Turkish authorities prosecuted Demons and Hassan Bey for manslaughter by negligence. Demons objected to the Turkish court's jurisdiction, but his objection was rejected. The court sentenced Demons to eighty days' imprisonment and a fine of twenty-two pounds, while Hassan Bey received a slightly more severe penalty. France objected, arguing that only the flag State had jurisdiction over the French officer.

This special agreement was signed by the two Governments at Geneva on 12 October 1926 and was subsequently filed with the Registry of the Permanent Court of International Justice (PCIJ).

V. PROCEEDINGS AND LEGAL QUESTIONS

The dispute was submitted to the Permanent Court of International Justice, and the Court delivered its judgment on 7 September 1927.

The special agreement referred to Article 15 of the Lausanne Convention of 24 July 1923. Article 15 provides the legal framework for resolving the jurisdiction question between Turkey and the other powers to be settled as per the international law rules.²

Following are the questions raised before the court:

1. Whether Turkey acted contrary to the principles of international law, and if so, then which principles had been violated by conducting criminal proceedings against Lieutenant Demons after the incident of collision took place?
2. If Turkey acted contrary to international law, to what extent reparation was due to Lieutenant Demons?

Since the Court ruled in Turkey's favour it was held that there was no violation of international law concerning reparation.

² S.S. "Lotus" (*Fr. v. Turk.*), *Judgment*, 1927 P.C.I.J. (ser. A) No. 10, at 5 (Sept. 7, 1927).

VI. ARGUMENTS OF THE PARTIES

A. France's Argument

France argued that only the State whose flag the ship flew should have criminal jurisdiction over conduct occurring on that ship on the high seas. According to France, Lieutenant Demons was on board a French vessel when the collision occurred. Therefore, the French courts alone should have jurisdiction over him.

France argued that Turkey could not exercise its jurisdiction outside its territory to prosecute a French officer for an incident that occurred outside Turkish territory.

To support its argument, France relied on previous collision cases in which the flag State had exercised jurisdiction. *Franconia*, *Ortygia* and *Oldenburg* were among the cases referred to.

Thus, France's position here was that Turkey had to identify a recognized title of jurisdiction under international law before arresting a French officer.

B. Turkey's Argument

Turkey referred to Article 6 of the Turkish Penal Code. It argued that the collision also affected the Turkish vessel, *Boz-Kourt*, which sank and resulted in the deaths of Turkish nationals on board.

Turkey therefore claimed that the incident had a sufficient connection with Turkey. It also argued that international law did not contain a rule giving exclusive jurisdiction to France in this situation.

According to Turkey, the important question was whether there was an international rule prohibiting Turkey from exercising jurisdiction. Since no rule prohibited Turkey from prosecuting Demons, Turkey claimed that it was entitled to exercise jurisdiction.

The Court also considered the legal basis of the Turkish proceedings separately from the broader question of whether the prosecution itself violated international law. Judge Moore, in his separate opinion, was critical of the reliance placed on Article 6 of the Turkish Penal Code.

VII. DECISION OF THE COURT

The Permanent Court of International Justice ruled in the favor of Turkey. The judges were equally divided with six votes to six, and the final decision was decided by the President's casting vote.³ The Court held that Turkey did not violate any of the international law by prosecuting the Lotus vessel watch officer, Lieutenant Demons.

The Court's reasoning was closely connected with the sovereignty of States. It considered that A State cannot be assumed to be restricted unless a rule of international law establishes that restriction. Therefore, when France claimed that Turkey was prohibited from exercising jurisdiction, it was necessary to identify the relevant rule of international law establishing that prohibition.

The Court rejected France's argument that only the flag State could exercise jurisdiction. The collision involved the Turkish vessel as well as the French vessel, and the consequences of the collision were produced on the Turkish vessel. The Court treated the effects on the Turkish vessel as sufficient to establish a connection with Turkey for the purpose of criminal jurisdiction.

As a result, the Court accepted that Turkey could exercise concurrent jurisdiction. However, it did not decide if, only the nationality of the victims was sufficient basis for jurisdiction.

A. Treatment of France's Customary Law Argument

An important part of the Court's reasoning concerned France's reliance on previous cases. France argued that earlier cases showed that States had generally allowed the flag State to deal with collisions occurring on the high seas.

The Court did not consider this sufficient to establish a rule of customary international law giving the flag State exclusive jurisdiction. The fact that States had often refrained from prosecuting in similar situations did not necessarily prove that they had refrained because they believed themselves legally bound to do so.

³ S.S. "*Lotus*", 1927 P.I.C.J. (ser.A) No. 10, at 32

Therefore, the Court distinguished between State practice and practice accompanied by a sense of legal obligation. France had not established that the previous instances of abstention reflected an *opinio juris* establishing exclusive flag-State jurisdiction.

This aspect of *Lotus* has remained important in later discussions about how State practice and inaction may contribute to the formation of customary international law.

B. Ratio Decidendi

The main ratio decidendi of the judgment can be understood through the following propositions:

1. Article 15 of the Lausanne Convention required Court to examine the issue following the general principles of the international law.
2. The court did not find any rule of international law giving France exclusive jurisdiction over the collision.
3. The effects of the collision occurred on the Turkish vessel supported Turkey's concurrent jurisdiction.

C. Obiter Dicta

The judgment contains certain statements which went beyond the result. For example, the court's statement that restrictions upon the independence of state cannot be presumed.

This statement was closely linked with the *Lotus* principle. It has been the most debated topic of the judgment despite being influential because it moved the absence of a prohibition towards permission.⁴

D. Dissenting Opinions

The judges were equally divided but they did not share any view in common. The dissenting opinions were given by Judges Loder, Weiss, Lord Finlay, Nyholm Moore and Altamira. Their reasoning differed on various points.

⁴ S.S. "*Lotus*", 1927 P.I.C.J. (ser.A) No. 10, at 18

The central concern was that the French flag State should have exclusive jurisdiction over criminal conduct occurring on board the French vessel on the high seas. The dissenting approach placed greater importance on the established practice concerning flag-State jurisdiction and on the need to avoid overlapping criminal jurisdiction.

Judge Nyholm's opinion⁵ treated the relationship between a vessel and the flag State in particularly strong terms, describing the ship in terms of its connection with the territory of the flag State. Other judges raised objections to the basis of Turkey's domestic jurisdiction and to the possibility of relying upon the nationality of the victims.

Judge Moore was critical of the legal basis of the Turkish prosecution and the reliance on Article 6 of the Turkish Penal Code.

The dissenting opinions also raised a practical concern which remains relevant: if several States can prosecute the same incident, individuals involved in maritime accidents may face multiple criminal proceedings. The later treaty rules on collision.

VIII. IMPORTANCE OF THE CASE

The *S.S. Lotus* case has had a lasting influence on the study of international jurisdiction and State sovereignty.

It provides an important illustration of how international law approaches restrictions on sovereign States. The Court required the existence of a rule of international law before accepting that Turkey was legally prohibited from exercising jurisdiction.

The judgment explains about the difficulty that may arise if an incident has connections with more than one State. The collision involved a French vessel and Turkish vessel which resulted in death of Turkish nationals. The case therefore illustrates the difficulty of deciding which State should be permitted to exercise criminal jurisdiction.

⁵ *S.S. "Lotus"*, 1927 P.I.C.J. (ser.A) No. 10 (separate opinions)

IX. DEVELOPMENT FROM LOTUS TO MODERN TREATY LAW

The case influenced discussions about jurisdiction on the high seas. However, its specific rule concerning criminal jurisdiction over collisions was later changed by treaty law.

The 1952 Brussels Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation addressed penal jurisdiction in collision cases.

This development was followed by Article 11 of the Convention on the High Seas, 1958, which provided a more specific rule concerning penal or disciplinary proceedings arising from a collision or other incident on the high seas. The 1958 Convention entered into force on 30 September 1962.

Modern international maritime law provides a more specific framework. Article 97(1) of United Nations Convention on the Law of the Sea (UNCLOS), 1982 provides that, in cases of collision or other incident of navigation on the high seas involving penal or disciplinary responsibility of the master or other crew members, proceedings may be instituted only before the judicial or administrative authorities of the flag State or the State of which such person is a national.

Article 97 provides a certain treaty-based restriction. It applies to collisions and other incidents on the high seas but is not limited also it does not cover every jurisdictional dispute at the sea.

X. RELATIONSHIP BETWEEN THE LOTUS PRINCIPLE AND MODERN INTERNATIONAL LAW

The Lotus principle is still considered as an important judgment in the Modern International law. The central question raised is, do countries need an actual permission on how to act or do something, or are they free to act as per their will until someone proves it illegal or any law has been violated by their act?

It matters because international law doesn't have a global president or world government. Instead, countries are completely independent and they only follow rules which they've agreed to through treaties or customs. Thus, the *Lotus* case basically explains, if you want to stop a country from doing something, you better show us the exact rule that says they can't.

Over the past centuries, nations have signed numerous treaties relating to human rights, Environmental protection and global crime. Today, we have massive, detailed treaties covering everything from climate change and human rights to how we track down international criminals.

The law of sea is the best example. In 1927, no treaty rule on collision jurisdiction existed at that time. Later 1952 Brussels Convention, 1958 High Seas Convention and UNCLOS provided a more definite legal framework.

The debate over the *Lotus* can also be seen in the Kosovo Advisory Opinion. In his declaration in Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Judge Bruno Simma criticised the *Lotus* approach to the relationship between prohibition and permission in international law.

XI. CRITICAL ANALYSIS

The importance of the *Lotus* case can be understood by considering both its historical context and its limitations.

1. Was the Court's territorial reasoning persuasive?

The Court's reasoning can be understood in the context of 1927, although there are some problems with applying the same reasoning today. By treating the Turkish vessel as having a territorial connection with Turkey, the PCIJ found a basis for Turkey to exercise jurisdiction even though the collision had taken place on the high seas. The fact that the consequences of the collision were felt on the Turkish vessel was therefore important to the Court's reasoning.

However, the difficulty is that a collision on the high seas can involve several different States at the same time. The ships may have different flags, while the crew members and victims may also belong to different countries. If every such connection is treated

as enough to establish jurisdiction, more than one State may claim the right to prosecute the same person for the same incident. This was one of the concerns raised by the dissenting judges.

Therefore, the question is not simply whether Turkey had a connection with the incident. The larger concern is whether such a broad approach can create overlapping jurisdiction. In this respect, the Court's reasoning can be questioned because it did not provide a very clear answer to the problem of competing jurisdiction.

2. Did the treaty response solve the multiple-prosecution problem?

The later treaty developments addressed some of the uncertainty created by the *Lotus* judgment. The 1952 Brussels Convention, Article 11 of the 1958 High Seas Convention and, later, Article 97 of UNCLOS provided more specific rules concerning criminal and disciplinary proceedings arising from collisions and other incidents of navigation. These provisions generally give importance to the flag State and the nationality of the person concerned.

This was a significant change from the approach in *Lotus*. Instead of leaving the question mainly to whether a rule of international law prohibited a State from acting, the later treaty provisions identified more clearly which States could exercise jurisdiction in these particular circumstances.

At the same time, these treaty rules do not solve every jurisdictional problem at sea. Article 97, for example, deals with collisions and other incidents of navigation on the high seas. It does not cover every type of criminal conduct which may occur at sea. Therefore, although the later treaty rules reduced uncertainty in collision cases, questions of overlapping jurisdiction can still arise in situations which fall outside their specific scope.

3. How has Article 97 worked in practice?

The *Enrica Lexie* dispute between Italy and India is useful in understanding the limits of Article 97. The dispute arose after two Indian fishermen were shot and killed by Italian marines who were on board an Italian commercial vessel. Italy referred to Article 97 of UNCLOS, while India disputed its application to the incident.

A major issue before the Annex VII Arbitral Tribunal was whether the incident could be considered an “incident of navigation” for the purpose of Article 97. The Tribunal concluded that Article 97 was concerned with collisions and other incidents connected with the navigation or movement of a ship and did not apply to the shooting incident in the same way.

The dispute shows that having Article 97 does not completely remove questions about jurisdiction. There can still be disagreement about whether a particular incident falls within the provision in the first place. It also shows that the relevance of *Lotus* has not completely disappeared. The legal framework is now much more detailed because of treaty law, but questions about jurisdiction and the connection between an incident and a State continue to arise in modern international law.

XII. CONCLUSION

The *S.S. Lotus* (France v. Turkey) case has a significant place in the development of international law, particularly in discussions concerning State sovereignty and jurisdiction.

The dispute began when the French *Lotus* and Turkish *Boz-Kourt* collided on the high seas and Turkey initiated criminal proceedings against Lieutenant Demons and the Turkish captain. The PCIJ was not deciding whether Demons was actually guilty of negligence. Its central task was to determine whether Turkey had acted contrary to international law by exercising jurisdiction.

The Court, by six votes to six and through the President's casting vote, held that Turkey had not violated international law. The Court's reasoning focused on the absence of an established rule prohibiting Turkey from exercising jurisdiction and on the effects of the collision on the Turkish vessel.

The judgment is commonly associated with the *Lotus* principle, particularly the proposition that restrictions on State independence cannot simply be presumed. Such restrictions must arise from a rule of international law, whether conventional or customary.

However, the later development of treaty law shows that the specific collision-jurisdiction problem was not left in the same position. The 1952 Brussels Convention, Article 11 of the 1958 High Seas Convention and Article 97(1) of UNCLOS introduced more specific restrictions concerning criminal and disciplinary proceedings arising from collisions and incidents of navigation on the high seas.

Therefore, *Lotus* remains important, but its principle cannot be applied mechanically to every modern jurisdictional problem. The discussion surrounding the Kosovo Advisory Opinion shows that the relationship between silence, prohibition and permission in international law remains contested. The lasting importance of *Lotus* is therefore not only the result it reached in 1927, but the continuing debate it created about how international law limits the independence of States.

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