ON METHODS OF RESOLVING INTERNATIONAL CONFLICTS DURING ATATÜRK'S ADMINISTRATION

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In international law as in every other legal order there are rules to resolve peacefully the conflicts which arise in international order. However, these rules are not of equal perfection.

The following methods are used to resolve peacefully international disputes or conflicts : diplomatic negotiations, good offices, mediation, commission of inquiry, and conciliation. Since the establishment of the League of Nations and the United Nations, disputes have been settled in these organizations.

Since the nineteenth century, international law has most significantly developed in the area of pacific settlement of disputes[1], and since the establishment of the League of Nations, the rules of international law have developed greatly.

According to the Permanent Court of International Justice, a dispute is a disagreement on a point of law, a conflict of legal

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1) Mahmut BELİK, **Devletlerin Harp Selâhiyetinin Tahdidi ve Milletlerarası Sulh Yolu ile Halli Usulleri**, Birinci cilt, İkinci baskı, 1957, p. 85.

views of interests between two persons[2]. First of all, an international dispute is a disagreement between states because states are the first subjects of international law. Since the second half of the nineteenth century, international organizations have come to be recognized as subject to international law. "In 1865 a relatively large number of states organized what soon became the international Telegraphic Union, and in 1874 the Universal Postal Union took its shape from prior measures for cooperations in handling postal communications. The latter part of the nineteenth century saw the greatest contribution to international law in the form of international organization and international legislation"[3]. Finally, international law and disputes concerning international organizations can involve persons, and in some permitted field such as Article 25 of the European Convention of Human Rights, persons can be party of international disputes.

Atatürk, who won the independence of Turkey by war against the Greeks, Armenians and the Allies - Great, Britain, France and Italy - never resorted to war again but always settled international disputes by pacific means. He labeled war as a crime in the following words : "I have no desire to drive the nation for this or that reason headlang into war... War has to be necessary, inevitable and vital. My deep conviction is this : by leading the nation into war, I may not feel anxiety. Against those who say, "We will kill, 'we can enter into war saying, 'We shall not perish.' Nevertheless, as long as the existence of the nation is not exposed to danger, war is a crime"[4]. Atatürk was sincere when on April 20, 1931 he adopted the motto "Peace at home, peace in the world." He condemned aggression saying :

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2) **Collection of Judgments**, Publications of the Permanent Court of International Justice, Judgment of August, 30, 1924 on the Mavrommatis Palestine Concessions, Series A, No. 2.

3) Manley O. HUDSON, **By Pacific Means**, 1935, Yale University Press, p. 56

4) **Thus Spoke Atatürk**, His Sayings, Thoughts and Memoirs Edited and translated by Herbert Melzig, Ankara, 1943, p. 7. **Atatürk'ün Söylev ve Demeçleri**, Cilt II, 2. Baskı, 1959, p. 124. His speech of March 16, 1923.

"History if full of such tragical destinies suffered by invasion - nations and invasion - armies which under illusionary aims sunk to be merely instruments of their rulers and of their greedy politicians. We have seen with our own eyes that those who had endeavored in attempting to give the idea of conquering the Turkish fatherland and the illusion of enslaving the Turks an aspect of a great universal project could not save themselves from the fate they deserved."

"Those men to whom the destiny of a nation is entrusted must never, even for a single moment, forget that they are bound to utilize the power and the strength of their nation only for the real and only for the attainable interests of their nations... These men must consider the fact that the military occupation of a country is not sufficient to be master of the owners of this country. So long as the resolution and the will of a nation is not broken down, so long it is impossible to be master over this nation. But there is no power which can resist a national spirit inculcated through centuries of history. No tyrants have remained in the world mighty enough to hold in slavery a nation rebelling against such a condemnation"[5].

For permanent peace on the earth he had his own views :

"We are ready to admit to all nations in the world the honor of holding the highest and noblest views and aims towards what the present civilization has introduced in the relations between mankind. That means every nation is master of its destiny, and we also ask the acnowledgment of this as our right by other nations. There is no force or other means imaginable that would be able to turn us from the pursuit of our national cause. Our national cause is our life. There is nothing in nature more clear than that even the most feeble creature on whose

5) MELZIG, **Thus Spoke Atatürk**, **op. cit.**, p. 12.

life an attempt is made will turn at bay against this attempt and try to struggle with fury until his last breath"[6]

Atatürk saw the war coming and on March 17, 1937 said :

"But today all nations in the world have become more or less each other's relatives or are about to become each other's relatives. Consequently, one should think just as much of the peace and prosperity of all nations in the world as the existence and well - being of his own nation and should work for the happiness of all nations with the same zeal as he would work for his own. All wise men admit that nothing can be lost in working for this purpose because working for the well - being of all nations in the world is another way of trying to provide for one's own peace and well - being. If peace, harmony and good understanding do not reign in the world and among the nations, a nation cannot attain peace whatever she may do for her own sake. This is why I advise people I love this : Men who conduct and lead nations desire, above all, to be factors in the lives and well - being of their own nations. But they should also foster the same wishes for all nations, All events in the world prove to us this truth very plainly. We cannot know whether an incident which we believe to be remote may not some day directly affect us. Therefore, mankind has to be considered as a body and different nations as the members of this body .The pain in one tip of the body affects all its members.

"We ought not to say : 'What do I care if there exists uneasiness in this or that part of the world?' If such uneasiness does exist we must pay the same attention to it as if it were right in our midst. No matter how far away the event may tke place, we should always hold to this principle... It is this way of looking at things that saves men, nations, and governments from selfishness

6) **Ibid**., pp. 12-13.

> Selfishness, whether personal or national, must always be considered as an evil thing. I will now from the above - said draw this conclusion : We shall, naturally enough, envisage our own interests and provide for them accordingly, and that done, we shall interest ourselves in the world in general"[8].

In his opening speeches to the Turkish Grand National Assembly, he always insisted on the idea of peace. When four of five important international disputes of his time were solved peacefully between 1925 and 1928, he said on November 1, 1929 : "Our foreign policy is based specially on the idea of peace. Resolving international disputes by peaceful means is a way of conforming to our interest and our mentality"[9].

During the administration of Atatürk five important international disputes to which Turkey was a party were settled through pacific means either before the Permanent Court of International Justice or the Council of the League of Nations. Also in March 1936 at a time when the Versailles Treaty was violated by Germany through its invasion of the demilitarized Rhineland, Turkey asked for as revision of the Lausanne Treaty on the straits, basing her claim on the principle of *rebus sic stantibus*. The just claim of Turkey was accepted. The revision was made, and the Montreux Convention took the place of the Lausanne Straits Convention under which Turkey has consented to a general guarantee for the straits according to Article X of the Covenant of the League. Her demand for an individual or a collective undertaking from all signatory powers to assist Turkey by all means in their power in the event of an aggression in the straits or the Sea of Marmara was not accepted at the Lausanne Conference.

International disputes which were settled peacefully in Atatürk's administration were, in chronological order :

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7) His speech of June 21, 1935. **Atatürk'ün Söylev ve Demeçleri**, Cilt III, İkinci Baskı, 1961, p. 99.
8) MELZIG, **Thus Spoke Atatürk**, **op. cit.**, pp. 14-15.
9) **Atatürk'ün Söylev ve Demeçleri**, Cilt 1, İkinci Baskı, 1961, p. 361.

1. Exchange of Greek and Turkish Populations (Advisory opinion of February 21, 1925 of the Permanent Court of International Justice)
2. Frontier between Turkey and Iraq - Article 3, Paragraph 2 of the Peace Treaty of Lausanne (Advisory opinion of November 21, 1925 of the Permanent Court of International Justice)
3. The Case S.S. Lotus (Judgment of September 7, 1927 of the Permanent Court of International Justice)
4. Interpretation of the Greco - Turkish Agreement of December 1, 1926 (Final Protocol, Article 4, Advisory poinion of August 28, 1928 of the Permanent Court of International Justice)
5. The Sanjak of Alexandretta dispute, which was settled before the Council of the League of Nation with good offices of Great Britain.

The Meaning of "Established" In The Convention Regarding The Exchange of Greek and Turkish Population

A matter which was important enough to be an international dispute if not settled immediately was the interpretation of the word *établis* (established) in Article 2 of the Convention of January 30, 1923 regarding the exchange of Greek and Turkish populations.

Article 1 stipulated that : "II sera dés le 1 er Mai 1923 l'echange obligatoire des ressortissants turcs de religion greque - orthodoxe établis sur les territoires turcs et des ressortissants grecs de religion musulmane établis sur les territoires grecs."

Article 2 stipulated that : "Ne seront pas compris dans l'échange prévu à l'article premier

"a) Les habitants grecs de Constantinople;

"b) Les habitants musulmans de la Thrace occidentale.

"Seront considérés comme habitant grecs de Constantinople tous les grecs déja établis avant le 30 Octobre 1918 dans les cir-

conscriptions de la ville de Constantinople, telles qu'elles son déja établis avant le 30 Octobre 1918 dans les circonscriptions de la prefecture de la ville de Constantinople, telles qu'elles sont délimitées par la loi de 1912. Seront considerés comme habitants musulmans de la Thrace occidentale tous les musulmans établis dans la région à l'est de la ligne de frontiére en 1913 par le Traité de Bucarest."

As stated above, the Greek population of Istanbul and the Moslem population of Western Thrace were exempted from compulsory exchange. The Convention on Exchange of Population has set up a mixed commission composed of four members each from Turkey and Greece plus three members chosen by the Council of the Ligue of Nations from amongst nationals of states which had not participated in the First World War. The mixed commission did not agree on a definition of the world *établis* (established). The dispute was submitted to the Permanent Court of International Justice by the Council of the League of Nations for an advisory opinion at the request of the mixed commission. Mr. Tevfik Rüştü (Aras), who was the chairman of the Mixed commission, explained the dispute before the Permanent Court[10].

The Governments of Turkey and of Greece submitted their respective theses to the Permanent Court. The Turks held the following : the meaning of "established" in Article 2 was a technical legal term. According to Turkish Census Law there were two kinds of populations. The first were those who were born in one place and who lived there. They were called residents *(yerli)*. The second were those not born in a place but who came to live there and to establish themselves. These were foreigners. (Here foreigners did not mean nationals of a foreign government.) The foreigners could never be considered residents unless they transferred their census registration to the new cities, towns, and villages where they had moved. Most of those claimed by Greece to be in the category of "established" (bout 4,500 altogether) had not transferred the registration of their census and, therefore, legally could not be considered to be "established."

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10) Cemil BİRSEL, **Devlet arasında Andlasmalar**, İstanbul, 1936, p. 163.

The Greek Government's view was that those inhabitants who had arrived in Istanbul before October 30, 1918 —the date of the Armistice of Mudros— from any other place whatsoever, whether part of Turkey or a foreign country, and who also before that date had manifested either by an official formality or be some unequivocal fact their intention of habitually residing there and of making Istanbul the center of their interests and occupations[11] were "established."

Turkish and Greek laws could not govern this situation. There existed an international act, a convention regarding the exchange of Greek and Turkish populations in which there was no provision for the application of local laws.

The Permanent Court of International Justice in its advisory opinion found that

> "It may be said that the word established as used in Article 2 serves no other purpose than to indicate that the article relates to the inhabitants of a certain place upon a certain date. Nevertheless, the choice of this word "established" serves to emphasize that for a person to be considered an inhabitant, his residence must be of a lasting nature and must have been so at the time in question. Persons who at that time were only residing in Constantinople as mere visitors cannot be regarded a exempt from exchange.
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> "The degree of stability required is incapable of exact definition. The court, however, considers that inhabitants who before October 30, 1918, fulfiled the conditions enumerated as examples under heading (2) of the Resolution adopted on October 1, 1924 by the Legal Section of the mixed commission are to be regarded as established within the meaning of the Article and, consequently, as exempt from exchange, even if they had come to Constantinopolis with the intention of making their fortune and

11) J.H.W. VERZIJL, **The Jurisprudence of the World Court**, Vol. 1. The Permanent Court of International Justice (1922-1940), p. 67.

subsequently returning to their place of origin. During their residence in Constantinopolis they must be regarded as established since they present the character of stability which is the condition necessary to constitute "establishment"[12].

Mosul Dispute

In the Treaty of Lausanne signed on July 24, 1923, the boundary with Iraq was not fixed. The high contracting parties were given nine months to settle the boundary with "friendly arragement." The nine months started on October 5, when negotiations between Turkey and Great Britain were formally opened. Actual discussions began on May 19, 1924 in Istanbul[13]. No result was obtained from the disccussion. According to Article 3, sub 2 of the Peace Treaty of Lausanne, the parties asked the Council of the League of Nations to fix the definitive boundary line between the Republic of Turkey and the Kingdom of Iraq. "After attempting thorough protracted negotiations to secure the *status quo* pending its decision, the Council dispatched a commission of inquiry to the region in dispute; but when it came to consider the report of this commission, serious legal questions were raised by the Turkish representatives as to the Council's powers and as to the extent of the unanimity required in their exercise"[14].

The issue in particular was whether this decision represented an arbitrary award, or a recommendation in the sense of Article 15 para. 4. of the covenant. Secondary issues were whether this decision had to be by a majority vote or unanimously, and in the latter case, with te exclusion of the parties.

These questions were put to the Permanent Court of International Justice by the Council of the League for an advisory opinion which was rendered on November 21, 1925. This opinion drew sharp criticism from many learned scholars. Prof. Verzijl wrote :

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12) Exchange of Grek and Turkish Populations, P.C.I.J. Series B, No. 10.
13) VERZIJL, **op. cit.**, pp. 52-53.
14) HUDSON, **op. cit.**, p. 37.

"However, the argumentation of the Court on which it bases its opinion on the main issue seems to me mistaken[15]. Its standpoint in the Mosul case (B. 12) is not quite clear. Also in this Advisory Opinion the Court stresses the fact that, when the text of a treaty provision is in itself sufficiently clear *(suffisamment clair)*, there is no reason for undertaking an inquiry into the genesis of the provision in question (p. 22); but immediately afterwards it sets out to refute certain arguments advanced by Turkey which are taken precisely from this genesis. When a court takes *à priori*, the standpoint that a text found "sufficiently clear" can never be invalidated even by unambigous contrary data from its genesis, it does work that is completely useless and illogical if for the elucidation of the latter it nevertheless engages in an inquiry which indeed can, never have more than an academic value. For by such behavior it only exposes itself to the suspicion that it doubts either the absolute tenability of its own antihistorical rule of interpretation or the "sufficient clearness' of the interpreted text. These two doubts. which are not unjustified in this case, actually seem to me to account psycyologically for the trend of thought of the Advisory Opinion of the Mosul case"[16].

"When the Council later proceeded to give its decision loud protests were made in some quarters, and there were the usual predictions that the Council had dug its own grave... its final action was stoutly opposed by men said it could never be accepted... the public opinion had been aroused"[17].

Turkey contested the legality of the council decision awarding Mosul to Iraq. On December 17, 1925, four days after the decision of the Council, Turkey signed a new treaty of friendship and non aggression with Soviet Russia in Paris. However Turkey abided

15) VERZIJL, **op. cit.** pp. 53.
16) **Ibid.**, pp. 17-18.
17) HUDSON, **op. cit.**, pp. 37-38.

by this decision and a very important international dispute that would have been extremely dangerous for international peace and security was settled thanks to her willingness to keep the peace.

The S.S. "Lotus" Case

Just before midnight on August 2, 1926, the French mail steamer "Lotus" collided with the Turkish collier "Bozkurt". The collision occurred in the high seas between five and six nautical miles to the north of Cape Sigri (Mitlylene). The "Bozkurt" was cut in two, sank, and eight Turkish nationals on board lost their lives. Ten others were saved by the "Lotus", which was bound for Istanbul. The "Lotus" arrived in Istanbul on August 3.

On August 5 the officer of the watch on board the "Lotus" at the time of the collision, Monsieur Demons, a lieutenant in the French merchant service, and Hasan Bey, the "Bozkurt's captain, were arrested by Turkish judicial authorities to ensure criminal prosecution of these two officers on a charge of involuntary manslaughter. This charge was brought by the public prosecutor of Istanbul on the complaint of the families of the victims of the collision.

On August 28 the case was first heard by the criminal court of Istanbul Monsieur Demons objected to the jurisdiction of the court, which overruled him. On September 11 the proceedings were resumed, and Lieutenant Demons asked to be released on bail. The Turkish court accepted this demand, and on September 13, he was bailed for 6,000 lira.

On September 15 the criminal court gave its judgment condemning both officers. Lieutenant Demons was sentences to eighty days' imprisonment and a fine of 22 lira. Hasan Bey was given a slightly more severe penalty.

The action of Turkish judicial authorities against Lieutenant Demons caused diplomatic representations and other steps by the French Government, which protested the arrest, demanded the Lieutenant's release, and asked that the case be transferred from Turkish to French courts.

Knowing the rightness of its action, the Turkish Government declared on September 2, 1926 that "it would have no objection to the reference of the conflict of jurisdiction to the Court at the Hague." The French Government on September 6 gave its full consent to the proposed solution." The two governments appointed their plenipotentiaries to draw up the special agreement to be submitted to the Permanent Court of International Justice.

Turkey was not a member of the Permanent Court of International Justice at that time so a special agreement was necessary for her to go before the court. On October 12, 1926 this special agreement was signed at Geneva, with ratifications deposited on December 27, 1926.

On January 4, 1927 the diplomatic representatives of the Turkish and French Republics at the Hague filed with the Registry of the Permanent Court the special agreement signed at Geneva on October 12 in accordance with Article 40 of the Statute and Article 35 of the rules of court.

According to the Special Agreement, the Permanent Court of International Justice *had to* decide the following questions :

1) Has Turkey, contrary to Article 15 of the Convention of Lausanne of July 24, 1923 respecting conditions of residence and business and jurisdiction, acted in conflict with the principles of international law by initiating, upon arrival of the French steamer in Istanbul, joint original proceedings in pursuance of Turkish law against M. Demons, officer of the watch on board of the "Lotus" at the time of the collision, as well as against the captain of the Turkish steamship, following the collision which occured on August 2, 1926 and resulted in the loss of the "Bozkurt" and the death of eight Turkish sailors and passengers, and, if so, what principles?

2) Should the reply be in the affirmative, what pecuniary reparation is due to M. Demons, provided according to the principle of international law, reparation has been made in similar cases?

The cases and counter-cases were duly filed with the registry withing the necessary time and were communicated to those concerned as provided in Article 43 of the statute.

The French Government based its case on the Lausanne Convention on Residence and Judical Jurisdiction, Article 15 and the fact that the note of Ismet Pasha dated March 8, 1923 was rejected by the representatives of France, Great Britain, and Italy. The note was an amendment to the relevant article of a draft for the Convention and sought to extend Turkish jurisdiction to crimes committed in the territory of a third state, provided that under Turkish law such crimes were within the jurisdiction of Turkish court. The French Government claimed that by refusing the Turkish amendment, the conference considered this Turkish claim as contrary to the "principles of international law" mentioned in Article 15 of the Convention of 24 July 1923.

The French Government tried to persuade the Permanent Court that the rejection of the Turkish amendment was sufficient argument to reject Turkish claims. Thus the French Government maintained that the meaning of the expression "principles of international law" in Article 15, which reads: "Subject to the provisions of the Article 16, all questions of jurisdiction shall, as between Turkey and other contracting Powers, be decided in accordance with the principles of international law", should be sought in light of the evolution of the convention. The Permanent Court did not accept this view: "The court must recall in this connection what it has said in some of its preceding judgments and opinions, namely there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself"[18].

The French Government objected to the Turkish jurisdiction over M. Demons, declaring that this jurisdiction ought to conform to the rules of international law and that Turkish courts in order to have jurisdiction should be able to point to some title granting such jurisdiction recognized by international law. The Turkish Go-

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18) **Collection of Judgments**, Publications of the Permanent Court of International Justice, Series A. No. 8, 9. Leyden 1927, Judgment No. 9, p. 16.

vernment claimed that Article 15 of the convention allowed Turkish jurisdiction whenever such jurisdiction does not come into conflict with a principle of international law.

The French Government claimed that Turkey did not have jurisdiction but that France had since according to international law, acts performed on the high seas on board a merchant ship are in principle and from the point of criminal law proceedings amenable only to the jurisdiction of the courts of the state whose flag the vessel flies. In other words, in collision cases it is necessary to recognize as the sole competent jurisdiction that of the state to which the vessel causing the collision belongs. The French Government also claimed that according to the existing law, the nationality of the victim is not sufficient grounds to override this rule, and that was held to be so in the case of the *Costa Rica Packet*[19]. The court ruled that its duty fixed by the terms of the special agreement was to find out whether there was any violation of the principles of international law in the taking of criminal proceedings against M. Demos. It was not therefore a question of any particular proceeding such as his arrest, his detention pending trial his trials, or the judgement rendered by the criminal court of Istanbul[20]. That is why the arguments put forward by the parties in both phases of the proceedings related exclusively to the question of whether Turkey in prosecuting the case had or had not acted within its jurisdiction according to the principles of international law.

The court found that international law governs relations between independent states. The rules of law binding upon states emanate, therefore, from their own free will as expressed in conventions or by general usage. These rules express principles of law and are established in order to regulate the relations between 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

19) **Ibid.**, p. 7.
20) **Ibid.**, p. 12.

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 virture of a *permissive* rule derived from international custom or from a convention. It does not follow, however, that international law prohibits a state from exercising jurisdiction in its own territory with respect to a case whose acts have taken place abroad, and in which it would only be tenable if international law prohibited states from extending 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 prohibiton, it allowed states to do so in certain specific cases. But this is certainly not the case under international law as it stands at the present time[21]. So the Permanent Court decided that Turkey was not under obligation to point to a permissive rule of international law in order to extend her jurisdiction abroad. The second argument put forward by the French Government was 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. The French Government tried to prove the existence of such a rule by referring to decisions of international and municipal courts, to the teachings of publicists, and "especially to conventions which, white creating exceptions to the principles of freedom of the seas by permitting 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 proven conclusively[22]. In the end the Permanent Court indicated it had "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"[23].

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21) **Ibid.**, p. 23.
22) **Ibid.**, p. 26.
23) **Ibid.**, p. 27.

The third argument advanced by the French Government was that a rule especially applying to collision cases had grown up, according to which criminal proceedings regarding such cases come exclusively within the jurisdiction of the state whose flag is flown[24].

The Permanent Cour found 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"[25]. The final judgement of the Permanent Court was as follows: "The Court, having arrived at the conclusion that the arguments advanced by the French Government either are irrevelant 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 fulfillment of its task of itself ascertaining what the international law is, it has not confined itself to a condideration 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 argreement. 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 4, 1923 which precludes the institution of criminal proceedings under condideration. Consequently, Turkey, by initiating by 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"[26].

"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"[27].

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24) **Ibid.**, p. 28.
25) **Ibid.**, p. 30.
26) **Ibid.**, p. 31.

The judgement was a real legal victory for Turkey because it showed the world first, that Turkey was eager to settle her international disputes peacefully through the Permanent Court of International Justice and second, that Turkey, knew the rules of international law well.

Interpretation of the Greco - Turkish Agreement of December 1, 1926

A mixed commission was established by the Convention for Exchange of Greek and Turkish populations signed at Lausanne on January 30, 1923. Article 12 defined its duties and powers. Declaration No. IX relating to Moslem property in Greece was signed on July 24, 1923 and annexed to the Lausanne Peace Treaty. This declaration gave further powers to the mixed commission, which was strengthened even further under a new Greco - Turkish agreement of December 1, 1926, with an annexed final protocol. Article 65 and following provisons of the Lausanne Peace Treaty allowed the establishment of a mixed arbitral tribunal by Turkey and Greece. This tribunal was to deal, *interalia*, with all disputes relating to identity or restitution of property, rights, and interests which were to be restored to those concerned, and also with claims designed to obtain an addition to the proceeds of liquidation in cases where the property, rights, and interests in question had been liquidated[28].

Article IV of the final protocol annexed to the Agreement of Athens of December 1, 1926 stipulated that :

> "Les questions de principe présentant quelque importance et qui prourraient surgir au sein de la Commission mixte à'loccasion des attributions nouvelles que lui confére l'Accord signé ce jour et qu'elle n'avait pas à la conclusion de ce dernier sur la base des actes antérieurs fixant sa compétence seront soumises à l'arbitrage du President du Tribunal arbitral greco-turc, siégeant à

27) **Ibid**., p. 32.
28) VERZIJL, **op. cit**., p. 141.

Constantinople. Les sentences de l'arbitre seront obligatoires"[29].

This clause was interpreted differently with regard to the conditions for appealing to the arbitrator and on February 1, 1928 the mixed commission decided by a majority to ask the Council of the League of Nations to request the Permanent Court for an advisory opinion. The Turkish and Greek Governments consented to the proposed procedure on June 5, 1928. The Council of the League of Nations requested the Permanent Court's advisory opinion upon the question of the interpretation of Article IV of the final protocol annexed to the Greco - Turkish Agreement of Athens relating to the conditions for appeals to the arbitrator.

The Permanent Court formulated the following points on which its poinion was required[30] : 1) Is it for the Mixed Commission for the Exchange of Greek and Tursish Populations to decide whether the conditions laid down by Article IV of the final protocol annexed to the agreement concluded at Athens on December 1, 1926 between the Greek and Turkish Governments for the submission of the question contemplated by that article to the arbitra tion of the President of the Greco - Turkish mixed arbitral tribunal at Constantionple, are or are not fulfilled or is it for the arbitrator contemplated by that article to decide this?

"2) The conditions laid down by the said Article IV having been fulfilled, to whom does the right of referring a question to the arbitrator contemplated by the article belong?"[31].

Greek members of the mixed commission and later the Greek Government rejected the right of reference of the mixed commission to the arbitrator, while Turkish members and the Turkish Government held that reference to the arbitrator without a decision of the mixed commission would be contrary to the agreements in force. The Turkish Government insisted that the commission had to declare by a vote that the conditions laid down by Article IV

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29) **Ibid.**
30) Advisory Opinion of August 28, 1928, Series B, No. 16, p. 16.
31) **Ibid.**

were fulfilled and that the commission was incompetent to deal with question. This decision of the commission was binding upon the President of the mixed arbitral tribunal according to the Turkish Government.

The Court unanimously found the meaning of Article IV clear. The article was silent on the issue of by whom and when questions of principle presenting some importance might be referred to the President of the Greco - Turkish mixed arbitral tribunal. The commission not being allowed te decide itself the question of principle presenting some importance it was evident that "as a general rule any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction"[32]. So whether a question was of principle presenting some importance was to be decided within the mixed commission without the contracting states having the right to intervene as such in its word.

> The Court, therefore, completely adopted the interpretation propounded on the Turkish side. The legal situation under the relevant instruments was, indeed, so clear and the reasoning of the opinion so convincing that it cannot create a surprise that the Court was unanimous[33].

Hatay Dispute

The problem of Hatay, the former sanjak of Alexandretta, was the next to be solved. The Ankara Agreement of 1921 with France recognized a special status for Hatay, namely the maintenance of Turkish language and culture. Hatay was annexed to Syria after the collapse of the Ottoman Empire, and Syria was put under France's mandate. France recognized the independence of Lebanon in November 1936. Turkey asked restitution of Hatay by a note on October 9, 1936. France by her note of November 10, 1936 rejected Turkey's request and proposed to bring the conflict to the League of Nations. Turkey accepted this. The League of Nations started discussions en December 14, 1936, and with the intervention

32) İbid.
33) İbid.

of Great Britain, the Council of the League of Nations accepted for Hatay the status of a distinct entity *(entité distincte)* independent in the internal affairs with a special constitution of her own but externally tied to Syria. The League of Nations established a committee which took the views of Turkey and France and prepared a constitution accepted by the Council of the League on May 29, 1937. The same day Turkey and France signed a convention guaranteing the territorial integrity of Hatay.

The Turkish Government always condidered the Sanjak (Hatay) to be predominantly Turkish since the Turkish population was its largest single ethnic group. Atatürk started the campaign for Hatay with a speech in the Turkish Grand National Assembly on Novembre 1, 1935. He said: "The important topic of the day which is absorbing the whole attention of the Turkish people is the fate of the district of Alexandratta, Antioch, and its dependencies, which, in fact, belong to the purest Turkish element.

He said in another speech: "I am not interested in territorial aggrandizement. I am not a habitual peace breaker. I only demand our rights based on treaties. Ifwe do not obtain these, I cannot rest in peace. I promise my nation: I will get Hatay". By this time his fatal sickness had begun.

But the constitution and the convention were not easily applied. Hatay was put under the surveillance of the League of Nations with this surveillance administered by a French representative. The situation grew tense because the French representative prevented the application of the constitution and of the convention. French colonial officials tried to curb popular manifestations in favor of independence and clashes between the people and the police resulted. The French tried to incite the minorities in Hatay. Turkish public opinion became strongly anti-French, and French Turkish relations deteriorated. The constitution was to be put into force on November 29, 1937, and general elections were necessary, but under these conditions they were not held. Turkey and France had seperate and opposing views on the electoral system. The League of Nations, taking into consideration Turkish objections, commissioned a committee to prepare an election regulation. Elections would be held by July 15. Beginning in May 1938, lists of voters

were prepared, but the French officials' attitude caused new clashes. Turkey sent 30,000 troops to the Hatay border, and France, realizing that a war was imminent and that the European situation was getting worse, changed her attitude and appointed a Turkish Governor instead of the French governor. Germany's annexation of Austria in March 1938 surely influenced the French action.

On June 13 Turkish and French military delagations met in Antakya, and on July 3, 1938 a convention was concluded to respect the territorial integrity and political status of Hatay by the two powers. A force of 6,000 men would be provided for the security of Hatay, 1,000 from Hatay and 2,500 from Turkey and France each.

On July 4, 1938 a treaty of friendship was signed in Ankara between Turkey and France. Each party agreed not to help an aggressor against the other nor to join any political or economic agreement against the other.

Elections were held in August, and Turks won 22 of the 40 seats. Twenty-two deputies took the oath of office in Turkish while the 18 minority deputies took it in Arabic. The Sancak Assembly met on September 2, 1938 and called the new state the Republic of Hatay.

Atatürk saw this and was happy. Later, after his death, the Parliament of Hatay adopted Turkish civil and penal codes. The Hatay people wanted to join Turkey but were prevented by the Guaranty Convention of May 29, 1937 under which Turkey and France were co-guarantors. France was not willing to alter the arrangement. With the situation in Europe growing worse, and the first steps of a Turkish - British alliance being taken, France accepted the annexation of Hatay by Turkey in an Agreement on June 23, 1939. The Hatay Parliament in its last session on June 29, 1939 unanimously decided to join Turkey.

Atatürk, the great military genius and state builder, was a dedicated peace lover. In his time many international disputes ended in war. Japan attacked China, and Italy attacked Ethiopia, Germany annexed Austria by force. But Atatürk always preferred peaceful means and the peaceful settlement of international disputes between Turkey and other states. He abided by the judgements

of the Permanent Court of International Justice and the decisions of the Council of the League of Nations even though they were sometimes unjust.

In his last speech to the Turkish Grand National Assembly on November 1, 1938, delivered not by himself but by Celal Bayar, the Prime Minister, he left a legacy to the Turkish nation : "Peace is the best way leading nations to well-being and happiness."