

## Part II

# General International Law

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### *Bozkurt Case*,<sup>1</sup> aka the *Lotus Case (France v Turkey)*:

### Two Ships that Go Bump in the Night

*Bozkurt Case*

### Permanent Court of International Justice

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### Authors' Note

The *Lotus Case* was decided in 1927 by the Permanent Court of International Justice (PCIJ), the predecessor to the International Court of Justice (ICJ). The PCIJ held its inaugural sitting in 1922 and had issued five judgments prior to the *Lotus Case*.<sup>2</sup> Although seemingly a case

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<sup>1</sup> Whilst this case is famously known as the *Lotus Case* within the 'West', in Turkey, the case of the *Bozkurt* was, at least at the time, very famous under this name. The Minister of Justice of Turkey at the time, Mahmout Esat Bey, in fact became subsequently so popular for winning this case that he later added the name Bozkurt to his own.

<sup>2</sup> The PCIJ had also issued 13 Advisory Opinions.

about the collision of two ships at sea – the *Bozkurt*,<sup>3</sup> a Turkish collier,<sup>4</sup> and the *SS Lotus*, a French steamer ship – for international lawyers the *Lotus Case* has come to be understood as the statement of ‘perhaps the most powerful principle of State sovereignty within international law’<sup>5</sup> through the articulation of the following passage:

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 with a view to the achievement of common aims.<sup>6</sup>

In re-writing the *Lotus Case* as a feminist judgment we have worked to re-imagine the *Lotus* principle through engagement with a number of issues from a feminist perspective and through drawing on documents available at the time of the judgment.<sup>7</sup> As a feminist chamber, we also responded in the re-written judgment to a sense of dissatisfaction with the manner in which the facts of the case were reduced and the judgments<sup>8</sup> presented in the original. Accordingly, the feminist judgment raises questions about the reporting of facts to the Court and the manner in which the history of Turkish-French relations, with the various power relations and inequalities embedded in that history, were rendered irrelevant. Primarily, however, the feminist judgment re-imagines how sovereignty might be perceived, with the permissive model of international State sovereignty as encapsulated in the *Lotus*, giving way to a preference for co-operation and peaceful measures.

The original *Lotus* judgment marked the first time the Permanent Court was required to deal with a general matter of international law rather than to respond to an issue within a specific treaty regime. The actual outcome with respect to the jurisdiction of States relating to collisions of vessels on the high seas has since been superseded and clarified through the

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<sup>3</sup> We use the spelling ‘Bozkurt’ rather than as it appears in the judgment ‘Boz-Kourt’, in line with the way Turkish speakers would spell the word in English. See, eg: U Özsü, ‘De-terrorializing and Re-territorializing Lotus: Sovereignty and Systematicity as Dialectical Nation-Building in Early Republican Turkey’ (2009) 22 *Leiden Journal of International Law* 29.

<sup>4</sup> A collier is a bulk cargo ship designed to carry coal.

<sup>5</sup> S Mendlovitz and M Daton, ‘Judge Weeramantry’s Grotian Quest’ (1997) 7 *Transnational Law and Contemporary Problems* 401, 406.

<sup>6</sup> *SS ‘Lotus’ Case (France v Turkey)* PCIJ 1927 Series A No 10 Sept 7th, 18.

<sup>7</sup> In particular, we draw on the resolutions adopted at the 1915 International Congress of Women at The Hague. See further: F Baetens, ‘International Congress of Women (1915)’ in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford, Oxford University Press, 2010). The resolutions are available online at: [www.ub.gu.se/kvinndata/portaler/fred/samarbete/pdf/resolutions\\_1915.pdf](http://www.ub.gu.se/kvinndata/portaler/fred/samarbete/pdf/resolutions_1915.pdf).

<sup>8</sup> The judgment is supplemented by six dissenting opinions. See, eg [www.icj-cij.org/pcij/serie\\_A/A\\_10/30\\_Lotus\\_Arret.pdf](http://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf).

adoption of the 1958 Convention on the High Seas.<sup>9</sup> We do not cover this aspect of the case in the feminist judgment. The case has come to be understood as central to understanding the nature of the international legal system as defined by the sovereign equality of its primary members, States. The International Court of Justice has continued to rely on the *Lotus* judgment in contemporary cases, in particular, the *Nuclear Weapons Advisory Opinion*.<sup>10</sup> In drafting the feminist judgment, the authors agreed that a different model of international relations, one inspired by feminist histories and writing, would need to be at the centre of the legal reasoning in developing what we have called ‘*the Bozkurt Principle: Ships that go bump in the night*’.

The authors found the feminist rewriting of the *Lotus* judgment challenging in that there were no issues that were evidently relevant to women or women’s rights. It therefore required us to think more broadly about feminist methodologies and recognition of the gendered assumptions underlying the international legal order of the 1920s and the Court’s approach. The key questions the chamber identified from these perspectives were:

How have both these States been personified (as sovereign subjects but also as gendered subjects) and what is the relevance of this to the case and the structure of international law?

What is the context (feminist, historical, internal/external, boundaries) in which the case arose, in particular of France and Turkey?

What were the feminist voices available within the international arena at the time relating to these issues?

Are there any other relevant issues to consider? For example, the rights of women and minorities?

What is the outcome based upon this reasoning? What is the content of ‘*the Bozkurt Principle: Ships that go bump in the night*’?

When considered with these questions in mind, a feminist judgment on the *Lotus* case raises a range of issues about the nature of sovereignty and international society, the socio-cultural context of relations between France and Turkey, and the possibility of incorporating feminist voices into the Court and a newly crafted *Bozkurt* judgment.

We also engage with two preliminary questions in the feminist judgment. The first addresses the facts of the case, which as presented highlighted a range of silences that were of interest to the chamber. The chamber determined that there was space to revisit the facts with

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<sup>9</sup> Convention on the High Seas (adopted 29 April 1958, entered into force 30 September 1962) 450 UNTS, art 11; United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS), art 97. This is notwithstanding specific disputes that have emerged with similar issues before the International Tribunal on the Law of the Sea. See, eg *Dispute Concerning the Enrica Lexia Incident (The Italian Republic v The Republic of India)*, (Provisional Measures, Order of 24 August 2015) ITLOS Case No 24.

<sup>10</sup> *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) 1996 ICJ Rep 226.

a view to identifying the gaps and/or silences, engaging a feminist methodology centred on the politics of the everyday, the role of narratives in excluding women's and feminist voices/versions and the use of States (or ships) as abstract legal subjects that can dislodge the concerns of individuals.<sup>11</sup> To accommodate this view, and write something that still fits the form of a judgment, the structure of the feminist judgment follows that of the *Lotus* judgment. It begins with a discussion of the Special Agreement which Turkey signed acknowledging the jurisdiction of the PCIJ and under which both States agreed the specific question the PCIJ was charged to answer. This is followed by a discussion of the facts of the case, where the silences and question of how these are narrated are raised. In line with the original *Lotus*, we also present a short summary of the submissions made by each party, before exploring the historical relations between the two States before the Court.

The second preliminary question centred on the chamber's desire to dislodge the assumption that Western sovereignty constituted the measure of civilisation. The chamber sought to explore the nexus between feminist methodologies and these larger engagements with power relations. As a first step toward this, the chamber decided relatively early on to re-name our judgment the *Bozkurt* case, with the principle it established to be known as *the Bozkurt Principle: Ships that go bump in the night*. Not only did this address the locating of the longstanding European and Christian State (France) at the centre of the original judgment (and by inference Turkey at the periphery), renaming the judgment acknowledges the violence enacted on the *Bozkurt* and its passengers and crew, as well as the fact that the case actually centres on events in Turkey, not in France. Unlike the *Lotus Case* which focuses on sovereignty as territorially defined via 'free will', the *Bozkurt Case* establishes the means to create an international legal structure that prioritises the pacific settlement of disputes and co-operation between States. It potentially re-configures sovereignty as dependent in both its internal and external relations. This is reminiscent of the International Congress of Women's resolutions for permanent peace, which preceded the judgment by over a decade, and also focuses on the pacific settlement of disputes and co-operation between States as the foundations of a functioning international order.<sup>12</sup>

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<sup>11</sup> For a classic, feminist account of the limitations of the objectivity of law, see: PJ Williams, 'On Being the Object of Property' (1988) 14 *Signs* 1, 5.

<sup>12</sup> Above n 7.

In constructing the feminist judgment our desire was to provide a template and guidance on how it might remain temporally relevant (both today and to the 1920s). Accordingly, the texts we relied on were legal instruments, feminist documents and historical papers that were not necessarily developed through women's work, women's writing or women's activity. Nevertheless, the majority of our source texts were authored by women. But it was not the sex of the author that made them relevant, rather the texts' feminist potential and, in most cases, legacy.

Whilst, of course, greater representation of women can make a difference and is often touted as a feminist goal and strategy, it does not necessarily produce feminist outcomes. This may be due to the restraints of the systems and structures established prior to women's entry and participation, or the further privilege that women who are invited to participate often share with existing male counterparts. Importantly for this project one of the central principles of the International Congress of Women (IWC) outcome document was the requirement that women be granted equal political rights. All of the principles articulated by the IWC have a contemporary equivalent in international law,<sup>13</sup> including the requirements of gender equality in the application of political rights; the single exception has been the principle of disarmament where considerable gains have been made with respect to chemical and biological weapons but the implementation of a full disarmament model, as envisaged in 1915, is yet to be fully achieved.

Interestingly, attempts were made in the early institutionalisation of international law to take account of these questions of diversity. The IWC's concern for gender representation (as well as its own blindness with respect to the patronising and devastating effects of colonialism) is seen in some appointments to international institutions at the time.<sup>14</sup> For example, the Permanent Mandates Commission had a (token?) female member. Madame Anna Bugge-Wicksell was the Swedish representative on the Mandate Commission for the League and was described at the time as 'a well-known Swedish women, wife of a Professor of Stockholm'.<sup>15</sup> However in looking beyond the League records, the chamber found Madame Bugge-Wicksall to be an eminent Norwegian feminist with a history of work in the Women's

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<sup>13</sup> *ibid.*

<sup>14</sup> Although the IWC itself was problematic in terms of the diversity of the participants and the views espoused with regard to colonised States, see Baetens, above n 7.

<sup>15</sup> DP Myers, 'The Mandate System of the League of Nations' (1921) 96 *The Annals of the American Academy of Political and Social Science* 74, 77.

Suffrage Alliance, writing on women's economic liberation, as well as on health and education reforms in Sweden. Bugge-Wicksell was 'a veteran women's suffrage and peace campaigner who made it her "particular business to care for and speak for" the "helpless" women and children of the mandated territories'.<sup>16</sup> Bugge-Wicksall was succeeded on the Mandate Commission by 'the like-minded Valentine Dannevig ... the director of a Norwegian school for girls and one of the founders of the Norwegian branch of the Women's International League for Peace and Freedom'.<sup>17</sup> As feminists connected to the feminist alliances that led suffrage struggles during the period, both of these women would likely also have been aware of the resolutions drafted at the International Congress of Women in 1915 and 1919 and which were a key influence on the drafting of the *Bozkurt* judgment. In contrast to the inclusion of these women, there was no woman judge on either the PCIJ or its successor the ICJ until 1995 when Professor Rosalyn Higgins was elected. We felt this did not preclude a feminist judgment as we were largely interested in the range of feminist ideas that moved in international spaces at the time: in this sense, Madame Bugge-Wicksall and Dannevig are excellent indicators of feminist knowledge traversing a range of transnational spaces and represent the types of accomplished feminist women who might have been nominees to the PCIJ had States considered such nominations to be necessary (or even desirable) during the life of that Court.

It is not necessary to be 'female' to write a feminist judgment, just as not all women judges would necessarily support feminist arguments, or even consider themselves feminists. However, it must be noted that, whilst identity does not necessitate politics, it still plays a role, in particular in establishing the spaces of intersectional privilege. Baetens notes that the principles adopted by the International Congress of Women also reflected race relations at the time, in particular colonial politics in that 'they spoke in rather patronizing terms about the people in the colonies; "protecting the locals" who are not capable of governing their lands themselves'.<sup>18</sup> International feminism in the 1920s took a certain form: it was white, European or American, liberal and often embedded in colonial relations and law-making. It was, however, a recognisable and recognised force of which a Court could potentially take account. For instance, the International Council for Women, the International Congress of Women and the Women's International League for Peace and Freedom, engaged with and challenged the

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<sup>16</sup> S Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford, Oxford University Press, 2015) 62, quoting from Bugge-Wicksall's correspondence.

<sup>17</sup> *ibid.*

<sup>18</sup> Baetens, above n 7, para 16.

League of Nations and the international community more broadly. Organisations such as the International Abolitionist Federation or the International Women's Suffrage Alliance campaigned for specific women's rights, in these cases the criminalisation of prostitution and the extension of the franchise.<sup>19</sup> This backdrop, despite limitations, did allow us to reason in a way which while still unfamiliar in the ICJ today, never mind in the foundations of international law, reflects the possible.

A further curious attempt at furthering diverse representation during the life of the PCIJ and the League can be seen in the election of Judge Didrik Nyholm to the Court. Nyholm had previously worked as a judge in the Mixed Courts of Egypt at Cairo.<sup>20</sup> To this day, Nyholm remains the only Dane to have served at the PCIJ or its successor. But it is not this minority status or nationality that rendered Nyholm as a favourable member of the Court. Instead, British Foreign Office records stated that, 'having been some years in Egypt, he [Nyholm] would be an adequate representative for the Mussulman'.<sup>21</sup> Thus on this ground he had French and British support and that of Scandinavian nations. His colleague on the PCIJ, the American Judge, John Bassett Moore, wrote that 'Nyholm is openly discontent. He loved his position at Cairo, and gave it up for the present place on the insistence of his Government'.<sup>22</sup> It was later said in the State Department in Washington DC that Nyholm was 'rather pessimistic but not forceful enough to influence the Court'.<sup>23</sup> However, like the women at the International Congress of Women, this attempt at inclusiveness ultimately represents the colonial politics that informed and infiltrated international law at the time (and since).

As authors we felt a need to recognise such limitations and to integrate this backdrop within other contemporary literatures and opinions relating inter alia to race and class so as to situate this feminist judgment within wider feminist concerns. There is therefore a tension that we had to navigate. This judgment is required to be a feminist judgment which could have been written at the time. Throughout the feminist judgment, the chamber also wished (and in line

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<sup>19</sup> See J Connors, 'NGOs and the Human Rights of Women at the United Nations' in P Willetts (ed), *The Conscience of the World: The Influence of Non-Governmental Organizations in the United Nations System* (Washington DC, Brookings Institution Press, 1996) 147.

<sup>20</sup> These Courts applied a 'mix' of foreign and local law to settle disputes between foreigners of different nationalities or between foreigners and Egyptians.

<sup>21</sup> As quoted in O Spiermann, 'A Permanent Court of International Justice' (2003) 72 *Nordic Journal of International Law* 399, 404.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

with feminist methods more broadly) to remain sensitive to various power imbalances, not just to gender per se. Intersectionality is a key feminist method and thus as a chamber we tried at least to understand and incorporate within the judgment analyses of race and colonialism as well as gender. We have not only drawn on feminist literature of the time but rather on a broader array of literature, in order to ensure the *Bozkurt* judgment considers context; a necessity in contemporary feminist thinking although less realised in transnational feminist politics and strategies in the earlier twentieth century. In this it contrasts strongly with the *Lotus* judgment. The key difference between the original judgment and our feminist judgment is simply to re-read the foundational principle of sovereignty as being about community rather than formal equality.

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## JUDGMENT

### THE CASE OF THE SS BOZKURT

France v Turkey

Publications of The Permanent Court of International Justice.

SERIES A.-No 70

Judges: Chinkin, Heathcote, E Jones and H Jones

*The Court would like to thank its expert witnesses: Louise Arimatsu, Umut Özsu, and the members of Law and Global Justice Durham (Gleider Hernandez, Konstantina Tzouvala, Jane Rooney, Ben Warwick, Verity Adams, Tom Sparks, Ruth Houghton, Maeve O'Rourke)*

September 7th, 1927

#### THE SPECIAL AGREEMENT

By special agreement signed at Geneva on October 12th, 1926, between the Governments of the French and Turkish Republics, and in accordance with the Rules of the Court, the Governments have submitted the question of jurisdiction which has arisen between them following upon the collision which occurred on August 2nd, 1926, between the steamships *Bozkurt* and *Lotus*.

According to the special agreement, the Court was asked to decide the following questions:

- (1) Has Turkey, contrary to Article 15 of the Convention of Lausanne, 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 on the high seas 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 *Bozkurt* having involved the death of eight Turkish citizens?
- (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)

#### THE FACTS

The facts are undisputed, in that the case involves a collision on the High Seas between the Turkish collier, the *Bozkurt*, and the French ship, the *SS Lotus*, that occurred just before

midnight on 26 August 1926 between five to six nautical miles to the North of Cape Sigri. The *Bozkurt* was cut in two and in sinking eight Turkish nationals died. The exact conditions and identities of these persons have not been submitted to the Court, although it is known that both sailors and passengers perished during the sinking of the *Bozkurt*. The officer of the watch on board the *SS Lotus* was Monsieur Demons, a French citizen. The Captain of the *Bozkurt* was Hassan Bey, a Turkish citizen, who was saved from the wreck with ten other Turkish nationals. The *Lotus* subsequently resumed its course to Constantinople, where it arrived on 3 August, 1926.

Upon arriving in Turkey, both Monsieur Demons and Hassan Bey were arrested pending trial for involuntary manslaughter, following complaints made by the families of the victims.

The case was first heard by the Criminal Court of Stamboul. The two cases were heard jointly and simultaneously, Turkish criminal law treating these offences as being in 'connexité'/'connexity'. This is a concept which links offences that occurred, for example, at the same time and place. According to the Turkish submissions, this principle was taken from the French Code. From the Turkish standpoint, therefore, these two men were to be tried together due to their responsibility arising from a series of interconnected events.

On behalf of Monsieur Demons, it was submitted that the Turkish Courts had no jurisdiction. This was overruled by the Criminal Court of Stamboul. Monsieur Demons was released on bail until the Court's final decision. Monsieur Demons was sentenced to eighty days' imprisonment and a fine. Hassan Bey was sentenced to a slightly more severe penalty.

These are the facts as presented to the Court. This Court believes that, in order to make a fair and reasonable judgment, it is necessary to consider the broader context in which the events occurred.

First, this is not only a case of two ships that go bump in the night. The Court is concerned to expose a series of silences in the facts as they have been presented by the parties to this case. The identities and stories of the victims are missing. As passengers and as crew, the perished will have left behind families and dependents, none of whom have been given voice either before this Court or in Stamboul. What satisfaction is gained for these poor souls, now departed, and their loved ones, through the exercise of power being played out by France in its attempt to halt the processes of justice in Turkey? Would an exercise of jurisdiction by France, separate to the exercise of jurisdiction based on his nationality over the acts of Hassan Bey, have offered any condolence or peace to the women and children likely made destitute by the deaths of their husbands and fathers? Or would it have assuaged the grief of parents who waved their child off on a journey aboard the *Bozkurt* believing they would see their offspring again? The Court wishes to note the lived and real experience of the victims and their families and to address the poverty of an international legal system that cannot see beyond the artificial entity of the State to understand the living human beings who feel its effects.

Second, the facts must be regarded in light of the history of relationships between Turkey and other European powers, including especially France. The capitulations regime that formed the longer history between the two States, as well the (aborted) Treaty of Sèvres, 10 August, 1920 and the arrangements made by the Convention of Lausanne, 24 July, 1923, place Turkey in a position of younger 'brother' to the established European powers. As such, France epitomises an out-dated masculine model of sovereignty, which prioritises economic and colonial power as a mechanism to achieve gains and perpetuate power. This Court is ready to disregard this out-dated model in favour of a contemporary conception of international sovereignty, solidarity and co-operation, as sought by the Covenant of the League of Nations. In configuring international co-operation at the centre of this judgment, and at the centre of international relations, we wish to demonstrate the commitment of the Court to peace and the pacific settlement of disputes, as established in the Hague Conventions of 1899 and 1907 –

forerunners to our own establishment – and as the key to the functioning of international society. In this matter the Court has also been particularly inspired by the resolutions adopted by the International Congress of Women at The Hague in 1915 and Zurich in 1919. The resolutions affirm the importance of international co-operation and the place of women in international affairs, in particular in achieving that co-operative approach.

Third, while noting the admirable advances of the recent reforms of the citizenship laws in Turkey, the Court takes particular interest in the legal situation of women and protection of minorities in the two States parties, in line with the recently adopted Minority Treaties. Further, The Hague and Zurich resolutions of 1915 and 1919 find the model of equality for citizens an important international aspiration.

Prior to discussing these matters, the Court will review the submissions from the two States and then reflect on the history of the relationship between the two States before it.

## RE-STATEMENT OF FRENCH AND TURKISH SUBMISSIONS

The French Government in its submission asks for judgment, under the Treaty of Lausanne and the general principles of international law, establishing that criminal jurisdiction over a French officer on board a French ship is acknowledged as belonging exclusively to the French Courts. The Turkish Government initially asked the Court to ‘give judgment in favour of the jurisdiction of the Turkish Courts’. The French Government’s counter-case sets out the conclusions it wishes this Court to reach, and the arguments. These are summarised as follows:

Whereas the substitution jurisdiction of the Turkish Courts for that of the foreign consular courts in criminal proceedings against foreigners is the outcome of the consent given by the Powers in the Treaty of Lausanne; 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; ... the Treaty then does not allow Turkish Courts to take cognisance of criminal proceedings directed against a French citizen for crimes committed outside Turkey; Furthermore, whereas, according to international law as established by the practice of civilised nations, ... a State is not entitled ... to extend the criminal jurisdiction of its Courts to include an offence committed by a foreigner abroad solely in consequence of the fact that one of its nationals has been a victim; Whereas acts performed on the high seas ... are 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...; As, according to existing law, the nationality of the victim is not sufficient ground to override this rule...; Whereas there are special reasons why the application of this rule should be maintained in collision cases, where the culpability of the acts must be judged against the national regulations which apply on board the ship;

The Turkish Government, in its counter-case added a short statement, summarised as follows:

The Treaty, as regards the jurisdiction of the Turkish Courts, refers simply to the principles of international law; the relevant part of the Turkish Penal Code, taken as it is word for word from the Italian Penal Code, is not contrary to the principles of international law; Vessels on the high seas form part of the territory of the nation whose flag they fly, and in this case the place where the offence took place, where the effects were felt, was the SS *Bozkurt* flying the Turkish flag, so Turkey’s jurisdiction is as clear as if the case had occurred on her territory; The *Bozkurt – Lotus* case being a case involving ‘connected’ offences, the Code of criminal procedure for trial – which is borrowed from France – lays down that the French and Turkish officers should be

prosecuted jointly. Turkey is entitled to jurisdiction from this standpoint; No provision of international law exists to debar Turkey from exercising jurisdiction;

## A SHORT HISTORY OF TURKISH/FRENCH RELATIONS

Turkey is a relatively new State yet a very old civilisation; Byzantium stood alongside Rome when large parts of Europe, including France, were still in the dark ages. It is worth reflecting here on the recent emergence of the Turkish State in order to contextualise the claims of both parties, as well as this judgment, and in order to understand better the relations between Turkey and France.

The Treaty of Peace was signed at Sèvres in 1920 following the defeat of the Central Powers in the Great War, and carved the former Ottoman Empire up into territories. The frontiers of Turkey were determined and detailed in the Treaty, with Turkish control over all other regions being renounced. The remaining area was divided up into new States or into mandate territories bestowed upon the Allied Powers in accordance with the League Covenant; for example, the region of Syria became a Mandate Territory of France.

There is some evidence that the Treaty of Sèvres angered the Turkish national movement. The Turkish War of Independence had raged since 1919 and continued until 1923. In the midst of the fighting, on 1 November, 1922, the Ottoman Sultanate was abolished by the Grand National Assembly of Turkey and, on the 11 November, 1922, the Conference of Lausanne was held. The Conference directly recognised the transference of sovereignty, which previously had been embodied in the dynasty of Osman I, to the newly created Turkish Grand National Assembly. This legal position was formally recognised by the international community through the Treaty of Lausanne, dated 24 July, 1923, and, on 29 October, 1923, the Republic of Turkey was officially declared. Prior to the creation of the Republic of Turkey, France had played a key role in the recognition of the Turkish State, being the first major Western State to recognise Turkey in 1921.

Turkey, as Mahmout Essat Bey has confirmed in his submissions of behalf of the State, is eager to be seen as a modern nation State. And, of course, as a member of the international community of States, developments within the Republic of Turkey are to be accorded equivalent weight as developments within already existing States. The Republic of Turkey has, since establishment, made multiple, progressive claims towards exercising its sovereignty and enjoying Statehood. This has not only been through the declaration and international recognition of such sovereignty and Statehood but also directly through legal policy developments internal to the Republic and its various legal reforms. These have included, as Mahmout Essat Bey has emphasised to the Court, the modelling of domestic law on European models of the State, including the secularisation and unification of the education system. Turkey's penal law is now largely based on various European legal systems. In fact, the law which was used in order to claim jurisdiction over Monsieur Demons is one example of this, modelled as it is on the equivalent Italian Code. Furthermore, the Turkish Civil Code of 1926, adopted from the Swiss Civil Code, secularised family law in Turkey, making significant advances in legal equality for women in issues such as inheritance, divorce and custody of children. This Code was introduced into Turkish law through the work of Mahmout Essat Bey, the Minister of Justice who has appeared for Turkey before this Court. Without presupposing the European model of statehood as determinative, these examples, for the Court, demonstrate the reforms and interests of a sovereign State, concerned for the welfare of all of its citizens, providing protections and rights to all people, women and men, and thus incurring responsibilities as well as privileges. These actions demonstrate the Republic of Turkey to be well deserving of the status of a sovereign and equal State.

In this regard, the Court notes that whilst Turkey has established itself as an independent State in these many ways, even now, capitulations continue through an open door policy, albeit unofficially. France, in the meantime, is still living in the colonial past, using the Mandate system to hide behind while continuing to use its intensive firepower against the Syrian people, its Mandate Territory. Up until the Treaty of Lausanne, Turkey had been subject to a regime of capitulations and extra-territorial jurisdiction, which in practice meant that the justice system within Turkey was not deemed by countries, such as France, to be sufficiently mature and robust to administer disputes involving non-nationals. The question then before this Court must be seen in the context of asking whether general principles of international law would reinstate this system of hierarchy, or rather would recognise Turkey as the sovereign equal of a long time independent State, including France. Should the order preferred and imposed by an elder of the international community always dictate the conditions of the community's newer members?

This Court has held in mind this larger context and history of inequality between the two States appearing before it. This story of inequality through the domination of Empire, and France's expectations that States in the region capitulate to its demands, mocks the idea of State sovereignty. This Court also considers it necessary to consider the changing configuration of, in particular, the Turkish State with respect to its legal reforms after the Treaty of Lausanne. With the emergence of new States in the international order, recognised by international law, this Court is of the belief that ensuring real, *de facto* equality between States, old and new, is instrumental to the successful advancement and the peaceful co-existence of the international community of States.

#### THE APPLICATION OF GENERAL PRINCIPLES OF INTERNATIONAL LAW

As France submits, this case raises issues far beyond the simple collision of two ships. This is the first time the Court has been asked to rule on a general principle of international law. In particular, this case provides an opportunity to re-define and re-negotiate international space in line with the changing sovereign members of the international community. International law governs relations between independent States. While the Court might be expected to emphasise the independence of States at this point, the history of the two parties before this Court demonstrates the fallacy of any approach that focuses on the independence of a State to the detriment of identifying and clarifying the relational nature of Statehood on the international plane and within the international space. We assert that while the rules of law are binding on States as they emanate from their own free will (as expressed in accordance with the Statute of the Court through international conventions, custom and general principles of international law), we must also remember that international law is established to regulate the relations between States with a view to achieving common aims and promoting international co-operation. This Court considers that the free will of States is meaningless without attention to those common aims of the international community, the promotion of 'international co-operation' and the desire for 'open, just and honourable relations between nations' (Preamble, Covenant of the League of Nations). As such, while a nineteenth century international lawyer may have chosen to prioritise the free will of States as commanding the contours of international law, twentieth century developments have dawned an international space for mutual co-operation and interdependence that can no longer be subsumed as secondary to the independence of States. The Hague Conventions, the Covenant of the League, and the French Minister of Foreign Affairs, Aristide Briand's, open letter for peace, published last April, all demonstrate the international community's desire for the peaceful settlement of disputes. This Court plays a vital and central role in settling disputes peacefully through international law, not

just in the name of individual States, but also for the sake of the stability and security of the international community as a whole.

From the above reflections, the Court considers the classic configuration of State sovereignty to be outmoded and no longer adequate to describe the society of nations. The Court's approach relies on an understanding of sovereignty, and thus the general principles of international law, as built on the spirit of co-operation, community and pacific settlement of disputes. This approach, as indicated above, is in line with contemporary international documents, in particular, the Covenant of the League and the instruments negotiated at The Hague Conferences, including the 1915 Peace Conference of the International Congress of Women and the subsequent resolutions. If international law is to live up to its stated credentials, namely being international and universally applicable, its substance must reflect the diversity of the contemporary international order, comprising States new and old. As such, the Court conceives of sovereignty as no longer simply a shield. As the facts before the Court demonstrate, the time is ripe for international law to evolve mechanisms for guaranteeing the rights of citizens and individuals within a State. International law's growing concern for the individual is well established, as demonstrated by The Hague Conventions of 1899 and 1907 and their constraints on warfare, the creation of the International Labour Organisation, the principle that 'the well-being and development' of peoples in mandate territories is a 'sacred trust of civilisation' and the recently concluded Convention to Suppress the Slave Trade and Slavery. With this in mind, the Court finds it necessary to add some additional comments regarding the status of women and minorities in France and in Turkey, before addressing the relationship between individual rights and sovereignty. A review of international law as a space of co-operation for the international community of States is required.

## INTERNATIONAL LAW AS A SPACE OF CO-OPERATION

The emergence of the Republic of Turkey is indicative of a new era in international law, one where new States are claiming their sovereignty and thus their entitlement to sit within the international community of nations. This marks the end of an old European Order, an order drenched in the blood of 1914–18. The world is changing and modernising and so, too, must the conception of the international community so as to reflect shifting power relations and the rise of new States, such as the Republic of Turkey. New conceptualisations of international law and of sovereignty are needed that better fit the way the world is currently constituted. This Court accordingly wishes to disrupt the traditional model of Statehood, in line with the Resolutions and the spirit of the 1915 Hague Peace Conference of the International Congress of Women. Turkey's history alone, with the former (but still *de facto* existing) capitulations system and the division of the Ottoman Empire by the Treaty of Sèvres rebukes the European myth of the independent and territorially bounded sovereign State. The Court reflects that Turkey has in effect been 'feminised' by France and other European powers, through capitulations, formal and informal, and through the type of pressure France is asserting via the raising of this case. The Court notes with concern international law's history as one which persistently feminises weaker and primitive peoples, that is non-white non-Europeans. This is just as men, including white men from 'civilised nations', have subordinated women and historically failed to give their sisters, mothers and wives full suffrage 'and the full equality of women with men politically, socially and economically.' (Resolution, 2nd Congress of Women, Zurich 1919). They thus equate femininity with powerlessness and lack of voice. The Court considers, in line with the Covenant of the League, that it shares the obligation to further the 'sacred trust of civilisation' and to assist Turkey, and other new States (as well as others that may emerge), in being treated as equal at the international level. In so doing it draws an analogy with the brave individuals who have shown the world that women's suffrage is a matter

of equality. This Court relies on an understanding of sovereignty as built on the spirit of co-operation, community and pacific settlement of disputes; one that resists inequalities in power relations between those recognised as States and thereby also challenges nineteenth century and positivist conceptions of free will, which assume a formal equality without considering the substantive inequalities between States. Instead the international community must function to produce real equality rather than undermine it through permitting more powerful States to assert continued privileges.

The international legal world consists of strictly demarcated spaces: sovereign spaces within defined territories; empires, less clearly defined, territorially expansive, contested and made up of different sovereign forms; international spaces, for instance the High Seas and airspaces. In this case the Court regards it to be its duty to see beyond these spaces to acknowledge the people within sovereign spaces, territories and empires. In the colliding of these two ships sovereign borders did not just clash, they vanished, and meant nothing to those who drowned, and those whom they left behind. This Court rejects the useful legal fiction of strictly demarcated territories to limit the more fundamental need for accountability for wrongdoing. The artificial boundary between two sovereign States, according to the facts, was disrupted through the very act of the *SS Lotus* dividing the *Bozkurt* in two. For the hapless individuals who lost their lives six nautical miles from the Turkish coast and safety, the territorially defined sovereign State need never have existed, whether in 1648, or 1927. This case constitutes an opportunity to acknowledge real sovereign equality using and through the general principles of international law. International law is moving beyond its conception of itself as a system between formally equal sovereign (European) States who are territorially bounded, individual personalities in international law, towards a system based on connection and co-operation. International law is about how we live internationally, how we encounter each other in international spaces and how a wide array of (different) voices may be considered when trying to understand what international law could be, and is becoming. As evidence of this emerging shift towards co-operation in international law, this judgment itself may be presented.

Turkey is not yet a State party to the Statute of the PCIJ, nor a member of the League of Nations but it has accepted the jurisdiction of the Court to resolve this dispute. The Court commends France's decision to turn to the Court as a mechanism for the pacific settlement of the dispute, which is in contrast to France's decision to use military force in nearby Syria. The Court welcomes this willingness to co-operate and build consensus on the part of both States, despite the historical exploitation by France of its relationship with Turkey. Whilst, in their submissions to the Court, the Turkish State seems eager to persuade the Court of its 'European-ness,' the Court would like to suggest that European States, such as France, should instead learn from Turkey's lead, whilst urging Turkey to forge its own path as a State and not to assume that what constitutes a State and the essence of Statehood are to be derived from its European counterparts. The Turkish State is already recognised as a State under international law as demonstrated by its presence before this Court. As a State newly emerged from Empire, Turkey has an opportunity, shared with others, to recast Statehood. The Court therefore urges Turkey to lead and not simply to model itself upon European States. The Court is of the opinion that the Turkish State can provide a new perspective and configure a change in international law born of the true spirit of a society of nations. The Court also encourages France to consider this model. For example, the promotion of secularism and equality are key configurations within the Turkish Republic that older States might also wish to adopt.

In the words of the women at The Hague in 1915, there is a need to fully recognise 'the interests and rights not only of the great Powers and small nations but also those of weaker countries'. As expressed by the founder of the Women's International League for Peace and Freedom, Jane Addams, 'a new birth of internationalism ... designed to protect and enhance

the fruitful processes of cooperation in the great experiment of living together in a world become conscious of itself'. The need for a re-configured sovereignty that is relational and inclusive – the new internationalism – is perceived by the Court as personifying a larger series of issues around the equality of sovereign entities. With respect to Turkey and France, Turkey has previously been cast as the female subject, a new sovereign, not dissimilar to a woman with her newly earned right to vote (at least in those countries where this has been achieved), claiming her position amongst a history of masculinist, self-defined 'civilised' nations who have long used economic and military power to assert their right over citizens and others, States and those territories not yet deemed worthy of Statehood.

## THE NEED FOR GREATER INCLUSIVITY AND SOVEREIGNTY AS GUARANTEEING RIGHTS

The Court regards France as the epitome of this masculinist State, who must not only acknowledge the sovereign rights of Turkey but also the changing understanding of sovereignty that we outline in this judgment. The Court then sees a need for the Turkish desire to epitomise the traditional masculine State that France represents, to be discarded for a model of sovereignty that is drawn from contemporary understanding of equal rights, such as those in Turkey that include rights for all citizens, not just men, and movements around minority rights.

Turkey's legal reforms do not only show an establishment of sovereignty through legal authority. Turkey's legal reforms have also been aimed at creating a secular and more equal State. Turkey, through these legal reforms, is leading the way in showing that sovereignty is no longer solely a shield but also a mechanism for guaranteeing rights for citizens.

In this world of greater equality between States, it is a necessary precondition that this is matched by the pursuit of greater equality within States. The Court will now have regard to the current status of women's rights in France and Turkey, respectively, to demonstrate how the personification of sovereignty, discussed above, has material dimensions within States. Equality goes both ways: it is needed at the international level but also at the domestic level and this is applicable to all States in the international order, including both Turkey and France.

Women's equality has been emphasised in Turkey under the new Government led by President Kemal Atatürk. Women are encouraged to enter the workforce and public life while being given increased educational opportunities. The 1926 Turkish Civil Code, modelled on the Swiss Civil Code, has given women equal footing in terms of marriage, divorce and inheritance. The Turkish Civil Code also abolished the practice of polygamy. All this must be applauded. However, a number of women's groups within Turkey, whilst welcoming these reforms, have criticised the form of State feminism being promoted by the Government whereby women's rights are being bestowed, according to the Government, so that women will be better able to serve their State and in order to prove to the West that Turkey is the West's equal. There is a general rejection from the Turkish Government of anything related to femininity with President Kemal Atatürk representing the ultimate, masculine figure. Whilst Turkish reforms have benefited women's equality and lives greatly, much is left to be done to ensure real equality, with these reforms, in many ways, forming a facade under which Turkish society has merely reorganised itself to ensure the power of men remains intact. In France, Olympe de Gouge (1748–1793) challenged male authority and demanded rights for women as long ago as her tract, the *Declaration of the Rights of Woman and the Female Citizen* (1791). Women's right to inherit property was granted in the eighteenth century and many of the above listed rights were given in the late nineteenth century. However, in France, as in Turkey, women remain unable to vote and they may not work without their husband's consent. Men are still considered the heads of the household in both countries.

This Court emphasises that equality within States is an integral part of sovereignty in the contemporary world. There is a lot to do, in both Turkey and in France, to ensure that women's political, social and economic equality becomes a reality. The women who came together so courageously to call for peace in 1915 expected that the international community would 'only recognise as democratic a system which includes the equal representation of men and women'. The principle of cooperation, which, this Court today asserts, is to be seen as an aspect of sovereignty. It thereby calls for sovereign States to guarantee rights for all citizens in line with the resolutions drafted at The Hague in 1915 and Zurich in 1919. Cooperation and peaceful resolution of disputes form one aspect of guaranteeing these rights. Both States need to extend suffrage to all women. The Court further urges France to return to considering the status of its own citizens rather than implying that other systems and other States are somehow more primitive than they are.

In the same vein, the Court asks Turkey to reflect upon and change its policies with respect to its treatment of minorities within the State. By this, the Court refers specifically to the Kurdish population of Turkey. Just as Turkey's politics on women are being adopted through a policy of State feminism, – furthered in the name of the State and State progress – the Kurdish question is also being pursued through the lens of State nationalism. The Kurdish people are being treated as an entity that can be absorbed by the State; Turkish national pride thus linking the people of Turkey across all other divides – religious, historical, linguistic and sex. At the same time, this Turkish national identity, which is to be superimposed, is specific and very much based around the Turkish language and a so-called Turkish identity. The Court commends Turkey's limited recognition of minority rights through various legislative changes adopted in 1923 and 1924 but further recommends that Turkey continues to consider this issue in more depth; not by erasing history and difference but through respecting it and working towards true equality through allowing Kurdish citizens to celebrate their language and culture. The Court sees it appropriate to take every opportunity to uphold the status and rights of minorities.

There is a need to learn from the past, to look towards a new era of internationalism and a broadened understanding of the international community that encompasses new States. Turkey represents both the need to do this as well as the chance to reconfigure citizenship and sovereignty from within the State. However, this goes both ways: with sovereign power comes sovereign responsibility. States must work to protect minorities and women and work towards equality with the same vigour as they assert their international claims. The Court, in this sense, praises the sentiment of the Turkish leader, President Kemal Atatürk, who has articulated that sovereignty belongs to the people. The Court feels it necessary to assert that sovereignty belongs unconditionally to all people, including women and minority groups; and it is this internal equality that has the potential to create the blueprint for an international society comprising sovereign equals, without the power games reminiscent of the era of Empire.

## CONCLUSIONS OF THE COURT

The Court finds that no internationally wrongful act has occurred. Turkey was acting within the principles of international law when it exercised jurisdiction over Monsieur Demons. Turkey had jurisdiction because the victims were Turkish, and the harm was felt in Turkey. This is not territorial jurisdiction, as will be explained below, but is instead a new, *international* jurisdiction.

### *International Jurisdiction*

The society of nations requires States to recognise each other as sovereign equals that freely meet to create a space of co-operation. This is not a system premised on free will that promotes State exceptionalism. In the dispute before this Court, France's unwillingness to

acknowledge the Turkish exercise of jurisdiction is ill founded. The principles of equality and co-operation between States mean that Turkey must not be denied jurisdiction. Responsibility for international co-operation vests in all States as a consequence of the need for peaceful relations and achievement of common aims; this is the reasoning underpinning the Court's order, stated below.

The Court also recalls the need for internal equality within States, as demonstrated by the women at The Hague in 1915 and Zurich in 1919 who recognised the nexus between national and international equality, as well as setting out and arguing for steps for their attainment. Turkey's exercise of jurisdiction to bring justice for its own nationals need not be something that France fears. Turkish jurisdiction to act needs to be embraced by France as an assurance of sovereign equality and that justice can be achieved through co-operation.

### *Access to justice*

The Court has the following additional comments to make with respect to access to justice. The demands of international justice still apply to acts and misdeeds that occur at sea, even where jurisdiction is not self-evident. The international community must build on the developments at Versailles, with regard to the notion the individuals may bear responsibility for their acts within the international realm. The logical corollary to this principle is that States too have responsibilities to individuals, not just within their territory but internationally. As such this Court, and twentieth century international law, must be animated by a spirit of responsibility for international wrongful acts and accountability for their commission, no matter where they are committed. International spaces such as the High Seas must be peaceful, and that peace will come through law. Turkey has jurisdiction not based on any territorial rule but based on the needs of the victims. The Court has learned nothing of the suffering and hardship experienced by the families of those who lost their lives. It is the Turkish people who perished and their families, ultimately, who have been wronged. Through, on the one hand, establishing the High Seas – and other international spaces – as peaceful zones of freedom for States and, on the other hand, honouring Turkey's right to exercise criminal jurisdiction; it is the grieving families in Turkey who can be given recognition as the victims of the *Bozkurt* tragedy. Lives lost on the High Seas are a concern for the international community at large and all States and their citizens have an interest in seeing justice secured for the victims and their families. By international jurisdiction the Court refers to jurisdiction on the basis of international law, that should include jurisdiction over harms experienced by individuals when those harms are caused by a breach of an international obligation especially when harms occur within international spaces, such as at sea.

### DECLARATORY ORDER

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.

While the Court determines that neither State has breached international law in this case the Court nevertheless recommends that:

The parties provide more information on the fatalities and their families, as well as any compensation or reparations dependents have received from either State. In particular, the Court asks the parties to provide further information with regard to the fatalities that resulted from the collision of the two vessels, including the names, of those perished and their dependents. Further the Court asks France to explain why it is attempting to exercise jurisdiction over the nationals of Turkey who died, or at least the follow up

proceedings that attempt to bring justice to those who have suffered the real injustice here; the loss of family members.

On receipt of this information the Court will consider a further order.

Although the Court has not found a breach of international law in Turkey's exercise of jurisdiction, this in no way undermines the importance it attaches to the *Bozkurt* principle of international co-operation as the hallmark of international society as articulated herein and strongly encourages States to build their international relations in line with the principles in this judgment.

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## Reflections

Writing a feminist judgment posed a series of unexpected joys and difficulties that we will reflect on in this final section of the submission. Prior to writing about the questions and concerns writing the judgment raised, we address a couple of notes on process. First, it is fair to say that being given an early twentieth century case from a now defunct institution on a central structural issue in international law (sovereignty and state consent) that did not speak directly to women's lives and concerns was a daunting task! All four authors arrived at our first joint meeting with some trepidation. This first meeting was held at Durham Law School and we were joined by colleagues from the Law and Global Justice research cluster, who enriched the project considerably with their knowledge of legal developments in the League era. A second important aspect of that meeting was the decision to write the complete judgment jointly – which meant as authors we sat together and first recorded our joint ideas and later edited those thoughts into what is now our re-written judgment. This collaborative method, while initially daunting, provided two features of the judgment. First, we all wrote all of the judgment. Second, the productive space that happens 'between' the words spoken in a dialogue informed the text. That is, rather than individually writing sections of the text that we pieced together the judgment captures what happened when we worked together. This was the most rewarding aspect of the process and definitely captured something none of us might have written absent the collaborative process.

In this final authors' note we reflect on the specific methodological issues raised by the specificity of the PCIJ, questions about the relationship between feminism and law, a comment on the tension in feminist judgments between the feminine voice and feminist voices and a final note on the role of collaborative projects in contemporary higher education settings.

### The Specific Methodological Issues Raised by the PCIJ

When drafting the judgment, we were unsure about how much we would use the judgment to challenge judicial methodologies. We asked ourselves, how self-aware could the Court be? This emerged in our discussions as a feeling of discomfort due to the need to jettison personal political commitments to gender fluidity resorting to the language of the gender binary. A further source of discomfort was determining how to express an internationalist politics in a time that was dominated by European colonisation.

Additional questions included: did/would the Court know how foundational this judgment would be? Can we re-imagine the international and turn to documents from the women's peace movement, as international documents? As the Chamber was re-writing a judgment that was not clearly connected to women's issues this led us towards materials that we would not usually read or engage with. These materials were largely in connection with familiarising ourselves with the PCIJ and the history of Turkish-French relations, including the capitulations system, the history of women's equality in France and Turkey, the composition of the PCIJ and its nexus to other international bodies, such as the Mandate Commission to help us get a sense with respect to what was possible in terms of the contours of the feminist judgment. We also tried to be attentive to the language which was used at the time; although the desire to create a *feminist* document perhaps made this challenging.

We also considered the suggestion that the judgment be written as a Separate Opinion, as this might have allowed us as a chamber greater flexibility, in the sense that a Separate Opinion would have permitted us to speak directly within the text to the existing judgment. In the same vein, the feminist judgment might also have been produced as a dissenting judgment. However there was consensus that using the feminist judgment as an alternative judgment – following the structure of the original judgment and envisaging the Court as one which was prepared to make foundational statements about the nature of international law but drawing on materials available at the time – was quite important in the sense that this was not an adjunct to the existing judgment but rather an alternative, different judgment.

An additional concern we had, driven by the nature of the Court, was that we could not make a Court Order because we did not find a breach of international law. In addition, we were not – at least in terms of outcomes – departing from what the original judgment actually concluded. However, we did still decide to make a Declaratory Order. Further, the original *Lotus* case is important for what was said *obiter*. So is our judgment. In addition, as a Chamber we felt frustrated that we could only answer the question as given to the Court. This ultimately limited our response, although we did work creatively to draw on material available at the time

to open apertures that were not components of the original judgment. Some aspects of this were easier than others, for example the idea of equality had already been considered by the PCIJ and expanding upon this seemed within the realm of the possible of a feminist Chamber sitting in 1927. Nevertheless, we were also aware that the PCIJ was, in 1927, still a relatively new court that exercised caution in its judgments in part to secure its own future. All of these background issues run through and into the conversations that created the final feminist judgment and helped underline the situated nature of Courts and their judgments: temporally, historically and politically.

## Can Law be Feminist?

As a Chamber we also discussed how a judgment can be feminist within the limits of law. We concluded it can be feminist but it can only go so far, and to go beyond this maybe we would need to go beyond law to find satisfactory legal transformation. This reflects the types of concerns Rosemary Hunter addresses in her response to Carol Smart's work<sup>1</sup> and the larger recognition within feminist writings on international law between resistance and compliance.<sup>2</sup> Connected then to the concerns expressed above, there remains a question of what role the function and working processes of an institution re-shape and model external accounts to align with the expectations of the system. Feminist judgment projects take us to the line between the desire to resist co-optation and the desire to re-fashion institutions from within via the appearance of compliance. It seems unnecessary to attempt to resolve this persistent tension other than to say in writing a feminist judgment there was a somewhat satisfying insider/outsider space where the form and process of judgment-writing was used and yet our own methods (for example, writing collaboratively and drawing on specific feminist sources) resisted the expectations of the institution in subtle ways. This seems an excellent parallel to contemporary gender and feminist engagements with international institutions that we should not lose sight of.

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<sup>1</sup> R Hunter, 'The Power of Feminist Judgments?' (2012) 20(2) *Feminist Legal Studies* 135.

<sup>2</sup> S Kouvo and Z Pearson (eds), *Feminist Perspectives on Contemporary International Law, Between Resistance and Compliance?* (Oxford, Hart Publishing, 2011).

## Tensions Between a Female and a Feminist Project

As a chamber we also spoke about the distinction in the title of the project between a Feminist International Judgment Project and the (original) subtitle, ultimately not used for this publication, which focused on Women's Voices in International Law. We asked ourselves whether there was a distinction between a feminist project and a project centred on women's voices, definitely preferring the former and yet in many ways mobilising the latter.

From the outset the chamber felt there was a tension between the goal in the larger project of feminist judgments between finding women's voices within international law and the need for 'telling a story differently'.<sup>3</sup> We have preferred to think of writing this judgment as an exercise in telling a story differently – drawing on existing feminist texts and legal outcomes – rather than seeing it as a project centred on asserting women's voices in an assumed silence. At a practical level, and importantly, the composition of our chamber included a male judge, as such the chamber decided against aligning with a specific construction of gender representation, preferring to focus on what constituted a feminist judgment. A focus on the writing of a 'women's judgment', the chamber felt, risked an assumption, and a projection, of gender difference that raised further issues regarding essentialism. Nevertheless, we did actively seek to record and parallel the work of women at the time to understand what the contours of feminist thinking that might have influenced what the judgment would, or could, have been had feminists been invited to decide the *Bozkurt* case in 1927. This allowed us to appreciate the lively and entrenched transnational feminist networks that existed at the time. However, our commitment to creating a feminist intervention meant that we also paid attention to how feminist ideas had been absorbed by the States before the Court and this involved acknowledging work for its content rather than the gender of its author.

## Collaborative Projects and 'Indicators' of Contemporary Academic Life

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<sup>3</sup> See further, Hunter, above n 1, at 139.

Before concluding, we feel it is important to make some final comments with regard to the collaborative nature of the project. In many ways a collaborative project challenges contemporary ideas within the academy with respect to researcher outputs which, in the UK at least, are increasingly individualised. The Research Excellence Framework – a regular, state-wide assessment of academic research outputs in the UK – requires established academics to put forward four publications for assessment approximately every seven years. Although joint authored pieces are accepted, academics are encouraged to focus (and often report) on their individual outputs and the scheme for measurability of outputs is both in terms of quantity and quality assessed for each academic. The collaborative process in this project, we found, changes understandings of ownership – ideas emerged in discussions from an individual and were rapidly commented upon, refined, altered etc by the group making it impossible to follow the evolution of all ideas; it was never clear therefore that there was specific ownership (nor was it desired) with respect to the final text. The question of whether a writing project such as this would be presentable for assessment became subordinated to the clear research gains that we all benefited from: working collaboratively in and of itself was productive of new forms of knowledge and ideas. However, not only was the project therefore less likely to be one that any of us might submit as for assessment under the next research assessment exercise, the time spent on the project highlighted to each of us the way through which processes such as the research assessment framework shapes academic time. As academics, the intellectual gains of participating in the chamber and in the feminist international judgments project, as well as the larger network of feminist judgment projects, were high and yet this is the kind of work that many of us might have chosen to leave behind given the dominance of the research excellence framework in contemporary UK academic spaces.

At the same time, the nature of collaboration, which was not just within the chamber but with colleagues working on critical legal histories, revealed to us that even within critical frameworks there is insufficient dialogue. Historical projects remain on one track while gender projects are on another. This is part of a wider pattern of compartmentalisation in international legal scholarship. For us, the bringing together of these diverse perspectives was personally rewarding and enhanced the richness of the project.

What does this say about the role of the university researcher more broadly where two parallel, and linked, developments around the requirement for individual research outputs and self-management of time that detracts from the potential to embark on collaborative projects? Given the history of collaborative and collective enterprises in feminist histories and that one

of the first pieces of feminist publishing on international law was a jointly authored piece,<sup>4</sup> are there additional gendered dimensions of the turn to individualised research outputs that isolate researchers and produce an academic model that potentially values less the collaborative, communal writing space? As a chamber, we concluded that collaborative scholarship is important to how we think, exchange ideas and produce feminist writing, as well as how we maintain commitments to feminist processes and care for each other as researchers in an increasingly neoliberal higher education setting.

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<sup>4</sup> H Charlesworth, C Chinkin and S Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.