

Prof. Dr. G.A.M. Strijards LLM

International Criminal Law
Groningen University

Co-operation in criminal matters

Seminar 2010-2011

In co-operation with

EULEC

The European Institute for
Freedom, Security and Justice

International *Substantive* Criminal Law provides for the

- Definitions of cross bordering crimes
- The grounds for criminal responsibility like
 - the commission of a crime
 - the jointly commission of a crime with another or through another
 - the ordering of a crime
 - soliciting of a crime
 - inducing the commission of a crime
 - aiding, abetting or assisting in the commission of a crime
 - attempting and facilitating of a crimeand the like

Definitions

- Definitions as:

- Genocide
- Crimes against humanity
- War crimes
- Aggression
- Forgery of currency
- Privateering
- Piracy

- What is piracy?

- every unauthorised act of violence committed by a private vessel on the open sea against another vessel with intent to plunder (*animo furandi*)

There are no treaties defining acts of piracy;

it is just a question of international customary law



There are piratical acts;

- racketeering for piracy
- as a crew revolting and converting a ship and the goods thereon
- murder of persons aboard the attacked vessel and destruction of the goods thereon without animus furandi
- Some cross bordering crimes have been defined in treaties



Much latitude left to the States

controversies and dissimilarities

- The same goes for the two other segments of international criminal law
 - There is **no consensus** about the order **of ranking of the sources** of international law
 - There is **no overarching** international **judiciary** having universal jurisdiction to hand down binding rulings
- Interstatal jurisdictional law defines the scope of the statal power to define the domination of its laws as to the time and to the place

The idea of the Kompetenz-Kompetenz

- The Kompetenz-Kompetenz
 - is absolutely free
 - is submitted to universal binding limitations stemming from jus cogens
 - is free, but international law formulates some exceptions to this freedom

The current stand of the matter

- The rule of territoriality has the predominance
- Exceptionally states might stretch their jurisdiction beyond their geographical territories
- But they may never infringe upon the state sovereignty of another state
- And they must circumvent jurisdictional conflicts with other states
- And must respect interstate free area such as the freedom of the high seas
- Fictions of territoriality must be based on international customary law as accepted by a majority of states
- The same is valid for the extensions of the locus delicti like
 - the theory of the “constructive presence”
 - or the theory of the “constitutive consequence” of a criminal act

Locus delicti

- No majority stand amongst the nations about the fixation of the locus delicti
- The main guidance in this context is still the “Lotus”-doctrine
 - laid down in the 1927 judgment of the Permanent Court of International Justice in *The Case of the S.S. “Lotus”* (Reader pp 107-135).



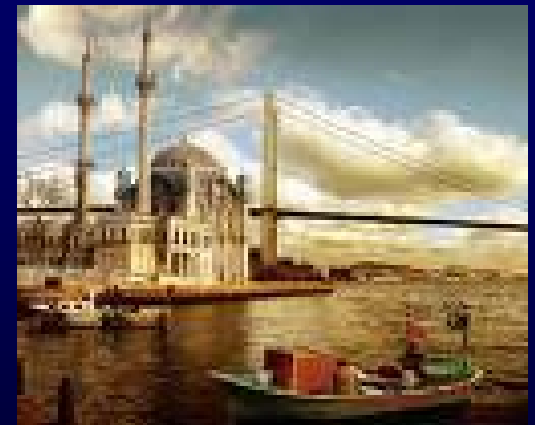
Facts about “Lotus”

- On August 2nd, 1926 a collision occurred in the high seas of the meditteranean sea
- Between the French steamer “Lotus” proceeding to Constantinople and the Turkish collier “Boz-Kourt”
- The “Bos-Kourt was cut in two and sank
- Eight Turkish nationals who were aboard perished
- The “Lotus” took ten of the shipwrecked aboard

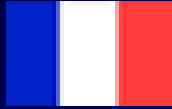


Constantinopel - Istanbul

- Heading to Constantinople where it arrived
- Officer of the watch during the collision aboard "The Lotus" was Demons, a French citizen
- In Constantinople, the Turkish police came aboard "The Lotus" for interrogation
- Subsequently, Demons was arrested by the Istanbul authorities for involuntary manslaughter eight times committed



France <> Turkey



- France challenged the Turkish jurisdiction stating:
 - the act occurred in the high seas
 - aboard a French ship which has to be considered French territory
 - France has therefore the primary jurisdiction in this case relying on the rule of the primacy of territoriality
- No fiction justified the exercise of Turkish jurisdiction in interstatal free area
- Turkey claimed
 - the rule of absolute passive nationality asserting that
 - international criminal law did not prohibit to stretch national criminal jurisdiction abroad on the basis of that principle alone

The Court



- The main rulings of the Court
 - (found sub III, 5-6 indents of the judgment, p. 121 of the Reader):
- “... the first and foremost restriction imposed by international law upon a State is that - failing the existence of a permissive rule to the contrary – it may not exercise its **power** in any form in the territory of another State.”

The Court



- **"Power" in this context means:**
 - *penal enforcement power. Thus the Court elaborates the procedural aspect of the rule of territoriality.*
- **"In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a **permissive rule** derived from international custom or convention."**
- ***After this composed sentence the "Lotus doctrine" is also known as the "doctrine of the permissive rule"***
- ***Problem: how to find such a "permissive rule" failing an universal authority to give such binding rule***
- ***The Court refers first to "international custom" and subsidiarily to "conventions"***

The Court



- **“It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law.”**
- ***Here the Court elaborates the substantive aspect of the rule of territoriality:***
- ***States are entitled to***
 - *stretch the material scope of their criminal laws abroad,*
 - *vesting criminal responsibilities on individuals outside their boundaries as long as they do not use any penal enforcement power to enforce that kind of responsibilities.*

The Court



- *"Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, persons and acts outside of their territory (...) But this is certainly not the case under international law ..."*
- Furthermore, the Court states
- that no State can exist without territory and
- that the principle of the territorial character of criminal law is fundamental.

Territoriality

- Therefore, the Holy See had to have in the 1927 Concordate any territory to be a full member of the legal community of States.
- The predominance of the rule of territoriality prompts the need of a framework of interstatal cooperation in criminal matters

