state with regard to the enforcement of a right created in a foreign state. The rule of reciprocity was accepted for Federal jurisdictions in Hilton *v.* Guyot.[2] But this the Restatement definitely rejected, just as it had already been rejected by the highest courts of some of our states.[3] The Restatement accepted the principle (§6) that: "The rules of Conflict of Laws of a state are not affected by the attitude of another state toward rights or other interests created in the former state." Thus, the comity of nations, though often spoken of as the basis for the application of foreign law, is not accepted by the Restatement so as to make reciprocity of treatment necessary for the application of the law of a foreign state.

The nations of Europe have been endeavoring to arrive at a unification of principles in the field of private international law by means of treaties elaborated at conferences held at the Hague from time to time since 1899. They have not been very successful, not only because of the inherent complexity of the problems, but also because of political difficulties. The greatest success achieved was perhaps in relation to the conflict of laws in the field of negotiable instruments. Conventions designed to unify the laws of bills of exchange and promissory notes were signed at Geneva, June 7, 1930, and on checks, March 19, 1931. At the same time, special conventions were signed by some 26 nations, accepting the principles of the conflict of laws to be applied within these specific fields. One would at first be inclined to believe that a uniform law is in itself designed to eliminate conflicts of law, but the conventions left considerable margin to be dealt with by domestic legislation. The same is also true of our own Negotiable Instruments Law.

The completion of the Restatement affords an opportunity to contrast the methods of procedure of the Old and the New World. The nations of Europe seek to establish positive law for solving conflicts through multilateral treaties covering specific fields. In the United States, unification by positive law has been supplanted by a restatement in terms of principles which, because of their inherent reasonableness and the weight of authority given them by the practitioners and the teachers of law throughout the country, are likely to gain acceptance and application by the courts. Perhaps this contrast of method is characteristic of the genius of the peoples who have adopted the respective methods. It also conforms to differences of historic tradition between the English common law and the Roman law.

ARTHUR K. KUHN

THE GROWTH OF THE LAW

When the officers of the French steamship *Lotus* and of the Turkish steamship *Boz-Kourt* negligently failed to avert a collision between their two vessels on the high seas, they set in motion a series of international forces of which they could have had no knowledge or anticipation.

[2] (1895), 159 U. S. 113.

[3] Johnston *v.* Compagnie Générale Trans-Atlantique (1926), 242 N. Y. 381.

The immediate consequences of the collision are well known. When the *Lotus* put into Constantinople, Lieutenant Demons was arrested and brought to trial by the Turkish authorities. The French Government insisted that the Turkish Government had no jurisdiction over Lieutenant Demons in the premises. By agreement, the two governments referred the matter to the Permanent Court of International Justice. The question put to the court under this agreement read as follows:

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

This question the court by a majority of six to five answered in the negative.

The decision was an interesting one and among the first in which the court had to deal broadly with the foundations of international law. The case has been the subject of much comment as appears from the bibliography listed in Hudson's *World Court Reports*, Volume II, page 20.

It might be supposed that this judicial decision of the highest judicial tribunal would put an end to the case. From its general international aspects, however, this is not true.

In January, 1929, a communication from the International Association of Mercantile Marine Officers was considered by the League of Nations Advisory and Technical Committee for Communications and Transit. The Association expressed its concern regarding the decision of the court, saying that it was especially anxious that measures should be taken to prevent a master suspected of being at fault from being proceeded against both by the state whose flag the vessel was flying and the state where the vessel put in.[1] The Advisory and Technical Committee referred the communication to its Permanent Committee on Ports and Maritime Navigation. This committee reported that it could not recommend for consideration by the Committee for Communications and Transit the question of the penal consequences of collisions at sea, with a view to the preparation of an international agreement, since this project would appear to fall within the sphere of international criminal law. The Advisory and Technical Committee at its meeting March 15 to 18, 1929, accordingly referred the matter to the Bureau of the International Labour Office.[2]

[1] League of Nations: Advisory and Technical Committee for Communications and Transit, Minutes of the Thirteenth Session, March 15th to 23rd, 1929. VIII. Transit. 1929. VIII. 7. p. 19.

[2] *Ibid.*, p. 21.

The Governing Body of the International Labour Office had in February, 1928, already received a communication direct from the International Association of Mercantile Marine Officers and it considered the matter at its 38th Session in the same month. The only result of its discussion had been a reference of the matter to the Joint Maritime Commission. The Eighth Session of that commission, meeting in Geneva in March, 1928, had proposed that the question of the establishment by each maritime country of the minimum of professional competency exigible from captains, etc., in charge of watches on board merchant ships (one of the questions raised by the communication of the International Mercantile Marine Officers' Association) be placed on the agenda of the International Maritime Conference in 1929.[3] This proposal was adopted by the Governing Body of the International Labour Office at its Forty-Second Session, in October, 1928.[4]

The Ninth Session of the Joint Maritime Commission of the International Labour Office, meeting in Paris in April, 1929, noted with regret that no progress had been made in finding an international solution for the problem and adopted the following resolution:

> The Joint Maritime Commission, considering that it is necessary to lay down by means of an international Convention the competent courts and the penalties to be imposed in case of collision at sea,
>
> Considering that the question, which was referred successively to the Advisory and Technical Committee on Communications and Transit and the Permanent Committee on Ports and Maritime Navigation, appears to have been set aside rather than solved by those bodies,
>
> Reaffirming the serious reasons which led it to ask for a solution as an urgent matter, especially as regards the danger that ships' masters and shipowners may be liable to more than one prosecution for the same offence,
>
> Expresses the wish that the International Maritime Committee of Antwerp, which has already successfully undertaken the drafting of a number of international conventions of a legal character, should deal with the settlement of the penal consequences of collisions outside territorial waters, and should place this question on the agenda of the next meeting, with a view to the preparation, in concert with the International Labour Office, of an international agreement containing provisions which would complete, by means of rules concerning penal sanctions, the Convention at present in force on collisions and assistance at sea.[5]

This resolution was approved by the Governing Body in September, 1929.[6]

In response to these requests, the International Maritime Committee addressed itself to the problem. Observing its usual practice, it sent out a questionnaire to the various national committees, asking them for information regarding the status of their national laws on the following questions:

1. What does your law provide as to punishment and jurisdiction when a collision on the high seas involves loss of life or personal injury?

[3] International Labour Office: Official Bulletin, Vol. XIII, p. 67. [4] *Ibid.*, p. 143.
[5] *Ibid.*, Vol. XIV, p. 56. [6] *Ibid.*, p. 43.

Are there any sanctions provided by penal law? Have the national courts jurisdiction in such matters, and under what conditions? More especially:

(a) have they power to punish such offences when the person injured is a foreigner?

(b) when the offences are committed by a foreigner and the sufferer is a national subject?

2. What solutions of an international character do you suggest? Especially:

(a) Should penal sanctions be provided for a collision involving loss of life or personal injury on the high seas?

(b) Should punishment of such offences be ensured whatever be the nationality of the offenders or sufferers; if some distinctions ought to be made, what should they be?

(c) To which courts should jurisdiction be granted for punishing such offences?

(d) Should such jurisdiction be confined to the courts of the locality of which the ship is flying the flag, or to the courts of the country to which the offender is amenable? In this latter case, shall such jurisdiction be determined by the domicile or by the nationality of the offender? [7]

The responses indicated that there was considerable divergence in existing national legislation. The matter was studied at the Antwerp Conference in 1930 and at the Conference at Oslo in 1933. A resolution of the Antwerp Conference had expressed the opinion that it is desirable to regulate, by way of international convention, the question of penal jurisdiction and competence in matters arising out of collisions at sea, and entrusted the Permanent Bureau with the task of appointing a committee to prepare a draft convention to be submitted to the next conference.[8] The Conference at Oslo found itself unable to agree on the draft convention which had been prepared, and adopted the following resolution:

> This Conference records its unanimous approval of the principle that in cases of a collision upon the high seas no criminal or disciplinary proceedings arising out of such collision should be permissible against the captain or any other person in the service of the ship except in the ports of the State of which the captain or such other is a national or of which his ship was flying the flag at the moment of collision, this being the principle expressed in Article 1 of the draft Convention laid before the Conference:
>
> Before making any further pronouncement, the conference instructs the Sub-Committee to make a report to the Comité Maritime International upon the various matters raised in discussion during the debate and in particular to take account of the desires expressed by several members to the effect that the whole responsibility for criminal and disciplinary action should in all cases of collision be left to the country

[7] International Maritime Committee, Bulletin No. 90, Antwerp Conference 1930, IV Synoptical Table.

[8] See International Maritime Committee, Report of Proceedings of Antwerp Conference, August, 1930, p. 484.

of which the captain or such other persons in the service of the ship is a national or of which the ship was flying the flag at the moment of collision;

The Conference is further of the opinion that the Sub-Committee should in this investigation obtain the considered views of the competent authorities and organizations interested in the subject and particularly of the organizations representing officers of the mercantile marine.[9]

We have here an international example of a process frequently found in the national field. A decision of a high tribunal in applying the existing law does not give satisfaction to the practical needs or desires of a business or professional group. That group then seeks to influence the parliament or legislature to enact a law which will provide for the future a rule different from that applied by the court. In the international field, the process is more difficult since there is no legislature to which such a proposal can be addressed. Nevertheless, the whole history of the International Maritime Committee and of the International Law Association shows that these bodies are almost as efficient as a committee of Congress in framing "legislation" and in seeking its adoption. In the international field, "legislation" usually takes the form of a multipartite convention, although in maritime matters it has at times been found useful to meet the problem by voluntary uniform adoption of a standard set of rules such as the York-Antwerp rules on general average.

With the growth of international executive and administrative machinery such as that found in the League of Nations and the International Labour Organization, as well as in various international unions, supplemented by a permanent judiciary and the quasi-legislative international conference, international law has increasing facilities for healthy development.

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[9] See International Maritime Committee, Bulletin 96, Oslo Conference, p. 477.