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Permanent Court of International Justice

<i>Present:</i>	Mm. Huber,	<i>President,</i>
	Loder,	<i>Former President,</i>
	Weiss,	<i>Vice-President,</i>
Lord	Finlay,	
MM.	Nyholm,	
	Altamira,	
	Oda,	
	Anzilotti,	
	Yovanovitch,	
	Beichmann,	<i>Judges.</i>
	Negulesco.	

On December 13th, 1924, the Council of the League of Nations adopted the following Resolution:

"The Council of the League of Nations, having been asked by the Mixed Commission for the Exchange of Greek and Turkish populations to obtain from the Permanent Court of International Justice an Advisory Opinion on the dispute regarding the interpretation of Article 2 of the Convention on the Exchange of Greek and Turkish populations, signed at Lausanne on January 30th, 1923, has decided to ask the [7]Permanent Court of International Justice to give an advisory opinion on the following question:

"What meaning and scope should be attributed to the word "established" in Article 2 of the Convention of Lausanne of January 30th, 1923, regarding the exchange of Greek and Turkish populations, in regard to which discussions have arisen and arguments have been put forward which are contained in the documents communicated by the Mixed Commission ? And what conditions must the persons who are described in Article 2 of the Convention of Lausanne under the name of "Greek inhabitants of Constantinople" fulfil in order that they may be

considered as "established" under the terms of the Convention and exempt from compulsory exchange?"

"The Council invites the Mixed Commission and the two Governments represented thereon to be prepared to furnish the Court with any documents or explanations it may require. The Council has the honour to forward to the Court the documents which have been communicated to it, with the option of subsequently adding further documents, if considered necessary.

"The Secretary-General is authorized to submit this application to the Court together with all the documents relative to the question, to explain to the Court the action the Council has taken in the matter, to give all the necessary assistance for the examination of the case, and if necessary to take steps to be represented before the Court."

In accordance with this Resolution the Secretary-General of the League of Nations, on December 18th, 1924, transmitted to the Court a Request for an Advisory Opinion, in the following terms :

"The Secretary-General of the League of Nations, "in pursuance of the Council Resolution of December 13th, 1924, and in virtue of the authorization given by the Council,

"has the honour to submit to the Permanent Court of Inter-national Justice an application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory [8] opinion to the Council on the question which has been referred to the Court by the Resolution of December 13th, 1924.

"The Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of the question, and will, if necessary, arrange to be represented before the Court."

In accordance with Article 73 of the Rules of Court, notice of the Request was given to Members of the League of Nations through the Secretary-General, and to the States mentioned in

the Annex to the Covenant. Notice was also given to the Government of Turkey, as being a State likely to be able to furnish information on the question, and to the Mixed Commission for the Exchange of Greek and Turkish Populations, sitting at Constantinople.

Owing to the fact that the question in regard to which the Court's opinion had thus been asked was, by the nature of things, extremely urgent, the President decided to exercise the powers conferred upon him under Article 23 of the Statute and to convoke an extra-ordinary session of the Court, commencing on January 12th, 1925.

The Greek and Turkish Governments, at the invitation of the Court, each submitted within the time fixed a Memorandum on the question of the interpretation of Article 2 of the Convention regarding the exchange of Greek and Turkish populations signed at Lausanne on January 30th, 1923¹; and the Court heard, in the course of public sittings held on January 16th, 1925, oral statements upon the question made, on behalf of the Government of the Greek Republic, by H.E. M. Politis, Greek Minister at Paris, and, on behalf of the Government of Turkey, by Dr. Tevfik Rouchdy Bey, President of the Turkish Delegation to the Mixed Commission at Constantinople.

The above-mentioned Council Resolution had its origin in the following telegram sent on November 19th, 1924, to the Secretary-General of the League of Nations by the President of the Mixed Commission: [9]

[*Translation.*]

"Have the honour inform you that the Mixed Commission, at its sitting of November 16th, decided, in conformity with the latter part of the conclusions of Viscount Ishii's report to Council of League at Brussels dated October 31st, to appeal to the good offices of Council in order to obtain from the Hague Court of Justice an advisory opinion on the dispute regarding Article 2 Lausanne Convention *stop* Relevant dossier follows."

The dossier in question was transmitted by the President of the Mixed Commission to the Secretary-General under cover of a letter despatched from Constantinople on December 6th, 1924; they were received by the Registry of the Court on December 20th.¹

¹ The dossier to which reference is made below already included pro-visional Memoranda prepared by the two interested Governments and intended for the Court, namely, a Greek Memorandum dated November 30th, 1924, and a Turkish Memorandum dated December 7th, 1924.

¹ See list of documents in the Annex, page 27.

I.

Having regard to the reference made in the Request to the discussions and arguments contained in the dossier submitted by the Mixed Commission and concerning the word "established", before proceeding further, this dossier must be analysed with a view to tracing the history of the divergence of opinion with which the Court is concerned.

In the course of the negotiations for the establishment of peace with Turkey conducted at Lausanne during 1922 and 1923, amongst other diplomatic instruments, was concluded a Convention concerning the exchange of Greek and Turkish populations. This Convention, which was signed at Lausanne on January 30th, 1923, by the Greek and Turkish delegates, came into effect after the ratification by Greece and Turkey of the Peace Treaty of July 24th, 1923, viz. on August 6th, 1924.

Article 11 of this Convention provides for the setting up, within one month from its coming into force, of a Mixed Commission composed of four members representing each of the High Contracting Parties and three members chosen by the Council of the League of Nations from amongst nationals of Powers which did not take part in the war of 1914-1918. The neutral members were appointed by the Council on September 17th, 1923, and the Mixed Commission entered upon its task. [10]

The Mixed Commission's duties, under Article 12, were, amongst other things, to supervise and facilitate the emigration provided for in the Convention and to settle the methods to be followed. Generally speaking, it has full power to take the measures necessitated by the execution of the Convention and to decide all questions to which this Convention may give rise.

The principle governing the emigration in question is laid down in the first article of the Convention as follows:

"As from May 1st, 1923, there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory.

These persons shall not return to live in Turkey or Greece respectively without the authorization of the Turkish Government or of the Greek Government respectively."

The word "established" already appears in this article. But it is with regard to the meaning and scope of this word as used in Article 2 that the Court's opinion is desired ; this article runs as follows :

"The following persons shall not be included in the exchange provided for in Article 1:

(a) The Greek inhabitants of Constantinople.

(b) The Moslem inhabitants of Western Thrace.

All Greeks who were already established before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912, shall be considered as Greek inhabitants of Constantinople.

All Moslems established in the region to the east of the frontier line laid down in 1913 by the Treaty of Bucharest shall be considered as Moslem inhabitants of Western Thrace."

According to the documents submitted to the Court (31st Session of the Council of the League of Nations, fourth public sitting), it appears that difficulties with regard to the interpretation of Article 2 of the Convention of January 30th, 1923, arose in the first place between the Greek and Turkish Delegations to the Mixed Commission; these decided by common agreement to submit [11] their divergent views to the Commission in order that the dispute might be settled by that body. The two delegations therefore prepared Memoranda which they submitted to the members of the Commission. These members in their turn drew up an "opinion in regard to the meaning of Article 2 of the Convention concerning the exchange of Greek and Turkish populations signed at Lausanne on January 30th, 1923."

All three documents were read at the full meeting of the Commission held on September 4th, 1924.

It appears both from the minutes of this meeting and from the text of the Greek and Turkish Memoranda that the discussion and arguments put forward with regard to the interpretation of the word "established" bore at that time mainly on the following points:

(a) the question whether Article 2 of the Convention was a mere exception to Article 1, or whether, on the contrary, it laid down the principle of non-liability to exchange within its own sphere of application;

(b) the question whether, in the second alternative, the principle contained in Article 2 would apply to certain territories or to certain categories of persons ;

(c) the grammatical meaning of the word "established", more particularly as compared with the word "domiciled";

(d) the value of local legislation as a factor for the interpretation of the word "established"; in particular the Turkish laws of June 16th, 1902 and August 14th, 1914, called *Noufouz*;

(e) how far the Mixed Commission and the municipal tribunals respectively are competent to apply the criterion of "establishment".

At the following meeting of the Mixed Commission held on September 8th, it was proposed that the question of the interpretation of Article 2 of the Convention should be referred to the Legal Section of the Commission. It was not however until the next meeting on September 15th, that it was decided to take this course. At the same time the hope was expressed that the Legal Section would conclude its study of the matter as soon as possible.

The Legal Section's deliberations ended on October 1st, on which date it submitted a report signed by its Chairman to the full Commission. [12]

This report contains in the first place the text of a decision adopted unanimously by the members of the Section, and this is followed by a draft resolution which, according to the report, the Legal Section had also decided to adopt, but only by a majority consisting of the neutral President and the Greek members. [*Translation.*]

The Legal Section's Resolution with reference to the word "established" runs as follows:

"The following persons shall be considered as established in any area exempt from exchange under Article 2 of the Convention:

"(1) Any inhabitant of these areas who is entered in the public registrar's books or who is included in the census of these areas;

"(2) Any person possessing in these areas a fixed residence, with the intention of remaining there permanently. This intention may be inferred from a number of circumstances, such as, for instance, the permanent exercise of a profession, commerce or industry or the acquisition of a practice in conformity with the laws; further, the fact of having concluded a contract for work of considerable duration, or of having entered upon a profession the nature of which would, in a general way, imply a residence of some length in the district, or any other fact tending to prove that the centre of such person's occupation and interests is situated in the area in question.

"It shall be the duty of the Mixed Commission to take decisions in regard to the persons liable to exchange.

"The status of married women, widows and minors shall be the same as that of their husbands or fathers. This applies equally to fathers and mothers who, in accordance with the law and local custom, are dependent upon their children."

The Mixed Commission, having received the report of its Legal Section, was to hold a plenary meeting on October 2nd, in order to consider it. This meeting however could not be held.

Meanwhile and up till October 21st, the authorities of Constantinople - according to the report of the competent Sub-Committee of the Mixed Commission - "sent to the hospitals at Baloukli, under police escort, something like 4.500;Greeks who, according to [13] the lists prepared by the various areas of the Prefecture of the City, were shown as arrived after October 30th, 1918".

After representations had been made to the Vali by the competent international authority, these measures were stopped. They had however already given rise to representations on the part of the President of the Greek Delegation to the Mixed Commission to the President of that Commission, and subsequently to a letter sent by the Greek Chargé d'affaires at Berne to the Secretary-General of the League of Nations on October 22nd, 1924. In this letter, the Greek Government, in virtue of Article 11 of the Covenant appeals to the League of Nations to include the question raised by the measures referred to upon the agenda of the session of the Council to be held on the 27th of the same month. The Greek Government, though chiefly relying on Article

11, also, according to this letter, considered that Article 14 of the Covenant was subsidiarily applicable.

The Council granted this request and included the question on the agenda of its 31st session, and, in agreement with the representatives of the two interested Governments, adopted a report on the subject inviting the Mixed Commission to hold a plenary meeting as soon as possible in order that the points at issue with regard to the Convention might be finally settled. At the same time the Rapporteur, Viscount Ishii, added:

"Should the Members of the Commission feel, however, that there are in the Convention points of great legal difficulty, which they doubt whether they have sufficient juridical knowledge to interpret, it is always open to them to ask the two Governments signatories of the Convention to place the matter before the Court of International Justice, one of whose special duties it is to undertake the interpretation of treaties. The Council, too, would, I feel sure, be willing, should the Mixed Commission desire it, to ask the Court for an advisory opinion on such points. If any such action is taken, it would, of course, be necessary that, pending a pronouncement by the Court, nothing should be done which would prejudice in any way the personal and material interests of the populations, which may be affected directly or indirectly by the decision taken."

The report from which this quotation is taken is dated October 31st, 1924. [14]

It was laid before the Mixed Commission at a full meeting held on November 15th. On this occasion the question of the interpretation of Article 2 of the Convention of Lausanne was once more thoroughly discussed, more especially in the light of the report dated October 1st submitted by the Commission's Legal Section.

During the discussions, it appeared that the difference of opinion still existed, at all events to a great extent. At the same time an argument, which had not hitherto been considered by the Commission though referred to before the Council by the Turkish representative, was put forward. It concerned the effect of Article 3 of the Convention of January 30th, 1923, upon the interpretation of Article 2 of the same Convention and related to the question whether, under Article 3, Greeks who had since 1912 left the territory mentioned in Article 1 and who had been in Constantinople since October 18th of that year, should be regarded as liable to exchange.

Article 3 of the Convention is as follows :

"Those Greeks and Moslems who have already, and since the 18th October, 1912, left the territories the Greek and Turkish inhabitants of which are to be respectively exchanged, shall be considered as included in the exchange provided for in Article 1.

"The expression 'emigrant' in the present Convention includes all physical and juridical persons who have been obliged to emigrate or have emigrated since the 18th October, 1912."

The question of the position of the (Ecumenical Patriarchate and the personnel attached thereto which was also mentioned before the Council, but by the Greek representative, was not raised in the Mixed Commission.

At the following meeting held on November 16th, the President of the Commission declared that the full Commission was unanimously agreed to request the Council of the League of Nations to obtain from the Permanent Court of International Justice at The Hague an advisory opinion on the dispute which had arisen regarding the interpretation of Article 2 of the Convention of Lausanne. [15]

In pursuance of this decision the President of the Commission sent to the Secretary-General of the League of Nations the telegram which is reproduced at the beginning of this opinion.

The views of the Greek Government were definitely presented by H.E. M. Politis in his address as follows:

"(1) That the word 'established' means inhabitants of Constantinople who had taken up their residence there before October 30th, 1918, with the intention of habitually residing there.

"(2) That, to be exempt from exchange, a person must have arrived at Constantinople before October 30th, 1918, from any other place whatsoever, whether from another part of Turkey or a foreign country, and, also before that date, have manifested, either by an official formality or by some unequivocal fact such, for instance, as the exercise of a permanent profession, trade, industry, etc., or in any other similar manner, the value of which the Mixed Commission -which is sole judge - may estimate

after consideration of any evidence, written or oral, or on the basis of mere indications, his intention to make it the centre of his interests and occupations.

"(3) That, furthermore, quite apart from any question of establishment at Constantinople, Prelates of the Orthodox Church who, by reason of their functions, must reside there to carry on the services of the (Ecumenical Patriarchate under the conditions agreed upon at Lausanne on January 10th, 1923, between Turkey and the Allied Powers, are also exempt from exchange."

Tevfik Rouchdy Bey made no express submissions, but in the Memorandum presented on January 10th, 1925, on behalf of the Turkish Government, he gave the following summary of his views:

"There is in Turkey a law regarding persons "established". This law applies without distinction to minorities as well as to the majority of the country. It is obvious that to attempt for any reason to suspend the application of this law to any portion of the citizens of a country is tantamount to granting such citizens a privilege and also to an infringement of the rights of other minorities and of the majority. Until it is [16] proved that under the terms of the Convention this law must be modified or suspended, it cannot be touched without infringing the sovereign rights of Turkey and the Turkish nation,

"It is admitted that the fact of having failed to fulfil a formality does not involve the loss of vested rights. But, on the other hand, these vested rights cannot exist in the absence of certain essential conditions connected with them. Furthermore, the procedure for making good this omission must be carried out by the Government concerned, which must have regard to its own relevant legislation, and the situation of fact must be established by proving before the Courts of the country that certain conditions exist, as provided in the Minutes annexed hereto,¹ which relate to this very expression "established". Apart from these conditions, any decision or act involving the non-observance of the laws of a country by its citizens, will lead to administrative anarchy and may affect the domestic peace of the country concerned.

¹ Minutes of first meeting of 3rd Sub-Committee of Second Committee (*Regime des Strangers*) of the Lausanne Conference.

"No Government can admit the modification or suspension of laws other than those clearly contemplated in instruments which it has signed, and to expect it to do so would be to overstep the limits of the obligations entered into by it."

In his address to the Court, Dr. Tevfik Rouchdy Bey contended that the question of the (Ecumenical Patriarchate which is a matter of Turkish domestic policy, had not been properly referred to the Court and should not therefore be dealt with by it.

In the discussions which have taken place in the Mixed Commission, before the Council of the League of Nations and before the Court, what is known of the work done preparatory to the Convention of January 30th, 1923, has played a very important part. The Court is however of opinion that there is no need for them, in the present opinion, to give a general survey of this work. They will only refer to it in so far as they consider it absolutely necessary to do so in the course of the following juridical examination of the question before the Court. [17]

II.

The Council of the League of Nations in the Request addressed by it to the Court asks two questions which, in form, are quite distinct from each other. The Court, however, considers that they are very closely connected. The second question asks "what conditions must the persons who are described in Article 2 of the Convention of Lausanne under the name of "Greek inhabitants of Constantinople" fulfil in order that they may be considered as "established" under the terms of the Convention and exempt from compulsory exchange ?" The Court is of opinion that the chief aim of this question is to develop and to obtain a statement of the precise practical effect of certain aspects of the reply given by it to the first, namely, "what meaning and scope should be attributed to the word "established" in Article 2 of the Convention of Lausanne of January 30th, 1923, regarding the exchange of Greek and Turkish populations ?"

The Request makes no reference to the special position of the (Ecumenical Patriarchate of Constantinople resulting, according to the oral statements of H.E. M. Politis, from, amongst other things, the investiture decrees known as *bérats* given to the successive Patriarchs and from the agreement said to have been reached at Lausanne on January 10th, 1923, between Turkey

and the Allied Powers. The Council, if it had wished also to obtain the Court's opinion on this point, which was the subject of discussion at Lausanne, would not have failed to say so in terms. In these circumstances the Court does not consider that it has cognizance of this question.

The Court has not to define the meaning and scope of the word "established" in the abstract, but only to determine the meaning and scope of that word as used in Article 2 of the Convention of Lausanne. In the first place the Court is satisfied that the difference of opinion which has arisen regarding the meaning and scope of the word "established", is a dispute regarding the interpretation of a treaty and as such involves a question of international law. It is not a question of domestic concern between the administration and the inhabitants ; the difference affects two States which have concluded a Convention with a view to exchanging certain portions of their [18] populations, and the criterion afforded by the word "established" used in Article 2 of this Convention is precisely intended to enable the contracting States to distinguish the part of their respective populations liable to exchange from the part exempt from it.

The Convention, after having laid down in Article 1 the general principle of the exchange of Turkish nationals of Greek orthodox religion established in Turkey and Greek nationals of Moslem religion established in Greece, proceeds in Article 2 to withdraw from this exchange, on the one hand, Greek inhabitants of Constantinople and, on the other, Moslem inhabitants of Western Thrace.

This restriction was placed upon the application of the principle of exchange for several reasons. As regards the Greek inhabitants of Constantinople, one reason amongst others was to save that city from the loss which it would have suffered as a result of the exodus of a part of the population which constitutes one of the most important economic and commercial factors in the life of the city.

It is therefore the Greek population of Constantinople which it was intended to exempt from compulsory exchange, and this is clearly indicated by the words "Greek inhabitants of Constantinople".

As, however, Turkey, for reasons which do not concern the Court, did not wish to be compelled to retain at Constantinople Greeks who had migrated there after the date of the armistice of Mudros, the Convention refers not to the whole of the Greek population of

Constantinople as it at present exists, but only to those members of it who were such also on October 30th, 1918.

The Court will now, in the light of these considerations, proceed firstly to consider the meaning and scope of the word *établis* in general, and, secondly, the question whether the situation contemplated by this word should be determined according to the laws in force in the two countries concerned.

The Convention was drawn up in French and therefore regard must be had to the meaning of the disputed term in that language. In this respect it appears certain that *établissement*, according both to the etymology of this word - the noun corresponding to the verb *établir* - and to the current practice of the language, embraces two essential factors: residence and stability, i.e. an intention to continue the residence in a particular place for an extended period. [19]

In the present case, the word "established" having been used to describe a portion of the Greek inhabitants of Constantinople, naturally embraces those inhabitants who, on October 30th, 1918, were already residing at Constantinople with the intention of remaining there for an extended period.

An idea akin to that just expressed in order to define the conception of establishment, is the basis of the conception of domicile in several modern legal systems. But it in no way follows, as has sometimes been maintained on behalf of the Turkish Government, that the two expressions have the same meaning. At times the word "domicile" is used to describe a situation of fact similar to that contemplated by the word "establishment". If, however, the word domicile is used in a technical sense, and therefore in connection with some particular system of law, it will be seen that there are or may be cases in which the, two conceptions of domicile and establishment have not the same meaning. The question whether a provision refers to a mere situation of fact or to domicile in the legal sense of the term is a question of interpretation.

From this point of view, therefore, it becomes necessary to consider whether the Convention contains any express or implicit reference to national legislation for the purpose of determining what persons are to be regarded as "established".

No express reference is to be found; it remains to be ascertained whether in regard to the matter before the Court, the Convention makes implicit reference to national legislation.

It should in the first place be observed that it does not necessarily follow that, by reason of the nature of the situation contemplated in the Convention, there must be an implied reference to national legislation. Whereas the national status of a person belonging to a State can only be based on the law of that State, and whereas, therefore, any convention dealing with this status must implicitly refer to the national legislation, there is no reason why the local tie indicated by the word "established" should be determined by the application of some particular law. It may very well be that the Convention contemplated a mere situation of fact, sufficiently defined by the Convention itself without any reference to national legislation.

The Court is of opinion that this is the case as regards the condition implied by the word "established" in Article 2 of the Convention. As has been said above, the word "established", taken in conjunc[20]tion with the references to date and place indicated in this article, is to serve to distinguish between the exchangeable and the non-exchangeable parts both of the Greek population of Constantinople and of the Moslem population of Western Thrace. It is hardly likely that the intention was to fix this criterion by means of a reference to national legislation. It is a well-known fact that the legislation of different States takes into account various kinds of local personal ties and deals with them in different ways. The application of Turkish and Greek law would probably have resulted in uncertainties, difficulties and delays incompatible with the speedy fulfilment always regarded as essential to the Convention under consideration. Moreover, it might well happen that a reference to Turkish and Greek legislation would lead to the division of the population being carried out in a different manner in Turkey and in Greece. This, again, would not be in accordance with the spirit of the Convention, the intention of which is undoubtedly to ensure, by means of the application of identical and reciprocal measures in the territory of the two States, that the same treatment is accorded to the Greek and Turkish populations. Nor is there any indication that the authors of the Convention, when they adopted the word which has given rise to the present controversy, had in mind national legislation at all. Everything therefore seems to indicate that, in regard to this point, the Convention is self-contained and that the Mixed Commission in order to decide what constitutes an established inhabitant must rely on the natural meaning of the words as already explained.

The Turkish Delegation however maintains that the Convention contains a reference to national legislation and in support of this contention invokes amongst other things Article 18, according to which:

"The High Contracting Parties undertake to introduce in their respective laws such modifications as may be necessary with a view to ensuring the execution of the present Convention."

This clause, however, merely lays stress on a principle which is self-evident, according to which a State which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken. The special nature of the Convention for the Exchange of Greek and Turkish Populations, which closely [21] affects matters regulated by national legislation and lays down principles which conflict with certain rights generally recognized as belonging to individuals, sufficiently explains the express inclusion of a clause such as that contained in Article 18. But it does not in the least follow because the contracting Parties are obliged to bring their legislation into harmony with the Convention, that that instrument must be construed as implicitly referring to national legislation in so far as that is not contrary to the Convention.

It is true that in the course of the oral proceedings Dr. Tevfik Rouchdy Bey also pointed out that the fact that a criterion was sought in order to fix the meaning of the word "established" showed that that word represented a legal conception. He drew the conclusion that such a criterion could only be found in the national legislation of the contracting States. In reply to this argument it may be observed that if an expression, not in itself of a legal nature, is used in a convention which derives legal consequences from it, it does not in the least follow that this criterion must be sought in the legislation of the respective contracting States.

Again, the objection of the Turkish Delegation to the effect that the non-application of national legislation would lead to inequality in the treatment of various categories of Turkish nationals, inhabiting Constantinople, does not go far; for if a person is recognized to be exempt from exchange under the terms of the Convention of 1923, he clearly remains subject to Turkish law in regard to all matters save those connected with the question of liability to exchange.

The principal reason why the Turkish Delegation has maintained the theory of an implicit reference to local legislation appears to be that, in their opinion, a contrary solution would involve consequences affecting Turkey's sovereign rights. But, as the Court has already had occasion to point out in its judgment in the case of the *Wimbledon*, "the right of entering into

international engagements is an attribute of State sovereignty". In the present case, moreover, the obligations of the contracting States are absolutely equal and reciprocal. It is therefore impossible to admit that a convention which creates obligations of this kind, construed according to its natural meaning, infringes the sovereign rights of the High Contracting Parties.

Having thus made it clear that the Convention does not refer to national laws, the Court does not feel it to be necessary to [22] consider whether any particular provisions of the Turkish laws of 1902 and 1914 are or are not contrary to the Convention.

The Turkish Delegation has maintained, again basing its arguments on sovereign rights, that it should be for the municipal courts to decide, if need be, whether a person is established or not within the meaning of Article 2. But as has been said, national sovereignty is not affected by the Convention in question. Now this Convention, in Article 12, confers upon the Mixed Commission "full power to take the measures necessitated by the execution of the present Convention and to decide all questions to which this Convention may give rise". Moreover, to refer questions to the municipal courts would be hardly compatible with the rapid fulfilment of the provisions of the Convention which, as has already been stated, has always been regarded as necessitated by the nature and aims of that instrument.

Again, the Mixed Commission by its decision of April 4th, 1924, had already affirmed that it has exclusive jurisdiction to determine the nationality of persons liable to exchange: and it does not appear that in this respect any protest or reservation was made by either of the governments concerned. It is not easy to see why the Mixed Commission should have exclusive jurisdiction in questions of nationality, which must undoubtedly be settled by applying national law, and should not have such jurisdiction for the purpose of verifying the existence of the other conditions laid down in Article 2 of the Convention.

The Mixed Commission, therefore, is alone competent to investigate, in each individual case, whether a Greek inhabitant of Constantinople is "established" in conformity with Article 2 of the Convention and can be exempted from the compulsory exchange.

The Turkish Delegation laid great stress on the words of M. Fromageot who, it is said, on being questioned by Chukri Bey¹, admitted the competence of the Ottoman courts in regard to the question of establishment.

¹ Minutes of the first meeting of the 3rd Sub-Committee of the 2nd Com-mittee (*Regime des Strangers*) of the Conference of Lausanne.

M. Fromageot's reply, however, referred to the establishment in territories detached from Turkey of Turkish nationals whose nationality was affected by the transfer of territory. But this question is dealt with in Article 30 and the following articles of the Peace Treaty signed at Lausanne on July 24th, 1923. [23]

This, however, is a different instrument dealing with another matter and establishing no such international organization as the Mixed Commission provided for in Article 11 and the following articles of the Exchange Convention. It follows that no argument in favour of the Turkish contention can be drawn from M. Fromageot's words.

III.

As regards the second part of the question referred to the Court, concerning the conditions to be fulfilled by Greek inhabitants of Constantinople in order that they may be considered as "established" and exempt from compulsory exchange, the Court wishes to keep within the scope of the discussions and arguments set forth in the dossier placed before it. Indeed, the Court considers that it is neither called upon to prepare in advance solutions for all the problems which may arise in regard to the application of Article 2 of the Convention of January 30th, 1923, and further, that it is not in possession of sufficient information to be able to do so. For instance, the Court has no information as to the possible existence of persons who, whilst possessing offices etc. in Constantinople, may reside with their families in the neighbourhood of that city.

The question is one of making a distinction, as regards the Greek population of Constantinople as it was at the time of the Convention, between inhabitants established there before October 30th, 1918, and the others, those not yet established at that date.

It may be said that the word "established" as used in Article 2 serves no other purpose than to indicate that the article relates to the inhabitants of a certain place upon a certain date. Nevertheless the choice of this word "established" serves to emphasize that, in order that a person may be considered as an inhabitant, his residence must be of a lasting nature and must have been so at the time in question. Persons who at that time were only residing at Constantinople as mere visitors cannot therefore be regarded as exempt from exchange.

The degree of stability required is incapable of exact definition. The Court however considers that inhabitants who before October 30th, 1918, fulfilled the conditions enumerated as examples under heading (2) of the Resolution adopted on October 1st, 1924, by the Legal Section of the Mixed Commission (see p. 12), are to be [24] regarded as established within the meaning of the article and as consequently exempt from exchange, even if they have come to Constantinople with the intention of making their fortune and subsequently returning to their place of origin. During their residence in Constantinople they must be regarded as established, since they present the character of stability which is the condition necessary to constitute "establishment".

As has already been observed, the Court cannot foresee all the various cases with which the Mixed Commission may be confronted. It considers that in the absence of sufficient materials in the discussions and arguments submitted to it, it must abstain from providing concrete solutions for the complex problems which may arise on the application of Article 2 to persons who, though belonging to one family, do not individually satisfy the conditions laid down in that article. The powers conferred upon the Mixed Commission by Article 12 enable that body, within the limits fixed by the clauses of the Convention, to find an equitable solution for any disputed points. The Convention is silent on the question of the unity of the family. If in these circumstances the definition adopted by the Court in order to determine which inhabitants are to be considered established, might appear to lead under certain conditions, as regards families, to unreasonable or manifestly unjust consequences, the silence of the Convention cannot be construed as depriving the Mixed Commission of its right to consider how far the Convention must be presumed to give to the criterion of establishment, according to the conditions of time and place laid down in Article 2, preponderance over the family ties in question.

No restriction as to place of origin is mentioned in Article 2, so that it is clear that Greek inhabitants of Constantinople, no matter where they come from, are exempt from the compulsory exchange, provided they fulfil the conditions laid down in Article 2 of the Convention.

The Turkish Delegation claimed in the Mixed Commission that, under Article 3, Greeks of Constantinople coming from districts to which the exchange applies, who arrived at Constantinople after October 18th, 1912, are exchangeable.

This contention - if indeed it is to be regarded as maintained after the statements made in Court by Dr. Tevfik Rouchdy Bey - is based on a misinterpretation of the meaning of Article 3 and of the provisions of Article 2. [25]

It is evident that October 30th, 1918, is the determining date fixed by Article 2 for all Greek inhabitants established at Constantinople. It would therefore be contrary to any rational interpretation indirectly to modify, as concerns some of them, this positive condition according to a date fixed in another article dealing with a different situation. This would be still more inadmissible because - according to statements submitted to the Court on behalf, of the Greek Government which have not been contradicted - the application of the date October 18th, 1912, to Greek inhabitants of Constantinople who established themselves there between that date and October 30th, 1918, would deprive Article 2, which was the subject of long discussion at Lausanne, of a great part of its practical value.

The same conclusion is reached - ruling out the Turkish argument regarding the connection between Articles 2 and 3 - if Article 3 be interpreted, as the Court considers justifiable, in the light of Article 10 which expressly refers to persons "who have already left the territory of the High Contracting Parties", i.e., persons who have emigrated to a foreign country. Now, it is precisely Article 3 which contains the definition of an emigrant and therefore the expression "to leave the territories" in this article does not refer to a movement of population within the State, but to emigration to other countries.

The Court does not feel called upon to stop to consider the question of the manner in which the existence of the conditions which, under Article 2 of the Convention, must be fulfilled in order that a person may be considered as established and exempt from exchange, is to be proved before the Mixed Commission. This question has not been discussed before the Court and it does not appear from the dossier that it has given rise to serious difficulties in practice. It will suffice to say that, having regard to the very wide powers possessed by the Mixed Commission, that body may decide in each case as to the manner in which the fulfilment of the conditions above mentioned is to be established.

FOR THESE REASONS,

The Court is of opinion:

1. That the purpose of the word "established" in Article 2 of the Convention of Lausanne of January 30th, 1923, regarding the [26] exchange of Greek and Turkish populations, is to indicate the conditions in point of time and place on which depends the liability to exchange of Greeks and Moslems who respectively inhabit Constantinople or Western Thrace ; that this word refers to a situation of fact constituted, in the case of the persons in question, by residence of a lasting nature ;

2. That, in order that the persons referred to in Article 2 of the Convention of Lausanne as "Greek inhabitants of Constantinople" may be considered as "established" under the terms of the Convention and exempted from the compulsory exchange, they must reside within the boundaries of the Prefecture of the City of Constantinople as defined by the law of 1912; have arrived there, no matter whence they came, at some date previous to October 30th, 1918 ; and have had, prior to that date, the intention of residing there for an extended period.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-first day of February, nineteen hundred and twenty-five, in two copies, one of which is to be deposited in the archives of the Court, and the other to be forwarded to the Council of the League of Nations.

(Signed) Maxhuber,

President.

(Signed) Å. Hammarskjöld,

Registrar.

[27] Annex.

This collection was transmitted to the Secretary-General of the League of Nations under cover of a letter from the President of the Mixed Commission, dated December 6th, 1924. It is composed of the documents enumerated below:

1. Letter from the President of the Mixed Commission to the Secretary-General of the League of Nations, dated December 6th, 1924, forwarding the dossier relating to the question.
2. Minutes of the 67th Meeting of the Mixed Commission for the Exchange of Greek and Turkish Populations, held at Constantinople on September 4th, 1924. (*With 3 Annexes.*)
 - Sub-Annex 1:* Greek Memorandum.
“ “ 2: Turkish Memorandum.
“ “ 3: Opinions of the neutral members of the Mixed Commission as to the meaning of Article 2 of the Convention concerning the Exchange of Greek and Turkish Populations, signed at Lausanne on January 30th, 1923.
3. Minutes of the 69th Meeting of the Mixed Commission, held at Constantinople on September 8th, 1924.
4. *Idem*, 70th Meeting, September 15th, 1924.
5. *Idem*, 77th Meeting, November 15th, 1924.
6. Greek Memorandum in regard to the question of the *établis*.
 - Sub-Annex 1:* Report by M. Montagna, President of the Sub-Commission for the Exchange of Greek and Turkish Populations (extracts), annexed to the Minutes of the Meeting on January 10th, 1923 (Conference of Lausanne).
 - Sub-Annex 2:* Extract from the Records of the Conference of Lausanne, Series 1, Volume II, 157 (Third Sub-Committee).
 - Sub-Annex 3:* Note on the Turkish Census Law.
“ “ 4: Communication by the Sub-Committee for the Exchange of Greek and Turkish Populations (Stamboul, October 10th, 1924).

Sub-Annex 5: Letter from the 6th Sub-Committee to the Pre-sident of the Mixed Commission (Stamboul, October 30th, 1924).

Sub-Annex 6: Letter from the Greek Delegation to the President of the Mixed Commission (Constantinople, October 6th, 1924).

Sub-Annex 7: Idem, October 18th, 1924.

G bis. - Memorandum by the Turkish Delegation submitted to the Perma-nent Court of International Justice (December 7th, 1924).

Sub-Annex 1: Decision No. XVII of the Mixed Commission (April 4th, 1924).

Sub-Annex 2: Turkish Law of August 14th, 1914, in regard to registration. (*Translation.*)

Sub-Annex 3: Turkish Law of August 14th, 1914, in regard to the census. (*Translation.*)

Sub-Annex 4: Turkish Memorandum.

7.

I. Minutes of the Meeting of the Legal Section of the Mixed Commission, September 16th, 1924.

II. *Idem,* September 17th , 1924.

III. “ , “ 22nd , “ .

IV. “ , “ 23rd , “ .

V. “ , “ 25th , “ .

VI. “ , “ 27th , “ .

VII. “ , “ 29th, , “ .

VIII. “ , October 1st , “ (Morning).

IX. “ , “ “ , “ (Afternoon). [28]

X. Report by the President of the Legal Section of the Mixed Commission (October 1st, 1924).

XI. Minutes of the Meeting of the Legal Section of the Mixed Commission, October 5th, 1924.

8. Minutes of the 31st Session (Extraordinary) of the Council of the League of Nations — Fourth Public Meeting, October 31st, 1924 (*with 3 Annexes*).

Annex 693: Letter from H.E. M. Politis to the Secretary-General of the League of Nations (October 29th, 1924).

Appendix 1 to Annex 693: Opinion of the neutral members of the Mixed Commission.

Appendix 2 to Annex 693: Report of the President of the Legal Section of the Mixed Commission (October 1st, 1924).

Annex 693a: Request submitted by the Greek Government to the Council of the League of Nations on October 21st, 1924.

Annex 693b : Telegram from H.E. Ismet Pacha to the Secretary-General of the League of Nations (October 28th, 1924).

9. Report by Viscount Ishii, adopted by the Council of the League of Nations on December 13th, 1924.
10. Minutes of the 11th Meeting of the 32nd Session of the Council of the League of Nations, held at Rome on December 13th, 1924.
11. Convention concerning the Exchange of Greek and Turkish Populations, signed at Lausanne on January 30th, 1923.