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OFFENCES AGAINST THE FRENCH STATE COMMITTED ABROAD¹

Jean Barbey²

Preface by the Translator:

Since the following article was written, a new law was passed on July 29, 1939 (Lois Nouvelles, 1939, p. 934 *et seq.*), which consolidated all previous legislation on the subject, made some important changes and formulated a new text of sections 75 to 86 of the Penal Code. References in the article are therefore to the former sections of the Code. The new law divides crimes and delicts against the external safety of the State into three categories: (1) crimes committed by a Frenchman, which constitute treason (sections 75, 76), (2) crimes committed by a foreigner, which constitute espionage (section 77), and (3) minor offences which, whether committed by Frenchmen or foreigners, constitute a delict when committed in peace time, and a crime when committed in time of war (sections 79-82). Two new crimes of treason are established: acts committed by a Frenchman for purposes of espionage, and sabotage of national defence (section 76). Art. 78 defines the term "secrets of national defence." Art. 83, para. 6, puts into effect a change advocated by M. Barbey (*supra* p. xxx), by providing that all delicts against the external safety of the State committed abroad shall be punished in the same way as delicts committed in France. The new law also puts the crimes and delicts with which it deals under the jurisdiction of the military tribunals, with a few exceptions only (new sections 553-569 of the Code of Criminal Instruction).

Introduction

Crimes and delicts³ directed against the French State are subject in France to special rules different from those governing crimes and delicts against private individuals. For the latter, prosecution can be had only in the two

following cases: first, by virtue of the principle of territorial jurisdiction, if they were committed on French territory, and second, by virtue of the principle of personal jurisdiction, if they were committed by Frenchmen abroad. Crimes and delicts against the State,

¹ Translated by Dr. Magdalene Schoch, Harvard Law School, from *Revue de Science Criminelle et de Droit Penal Comparé* (published under the auspices of the Institute of Criminology and the Institute of Comparative Law of the University of Paris), April-June number, 1939.

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³ Translator's note: French penal law divides offences into "crimes," which roughly correspond to felonies, "delits," which approximately correspond to misdemeanors excepting police offences, and "contraventions," which may be rendered by police offences. The classification is determined by the penalty provided for in the Penal Code. "Crimes" are offences threatened with a "peine

afflictive ou infamante," such as the death penalty, life-long forced labor, deportation, detention, banishment; "délits" are offences punishable by "peines correctionnelles," such as imprisonment, loss of civic rights, fines; "contraventions" are punished by police penalties (see articles 1, 6, 7, 8, 9 of the Penal Code). The organization of the criminal courts corresponds to the distinction: the Justice of Peace has jurisdiction over "contraventions," the Tribunal of First Instance has jurisdiction over "délits," and "crimes" fall under the jurisdiction of the Assize Courts (see articles 138, 179, 231 of the Code of Criminal Instruction). In order to preserve the technical meaning of "crimes" and "délits" as used by the author, the translator has rendered them by the terms "crimes" and "delicts."

however, can be punished even if they were committed by a foreigner in a foreign country.

This distinction rests on the seriousness of offences against the State, affecting the French social order as a whole and which, therefore, must be repressed even if they are acts of a foreigner and committed in foreign territory.

It is true that normally prosecution should be undertaken in the tribunals of those countries where the offences were committed. In the actual state of positive law, however, it may be asked whether foreign tribunals do in fact guarantee the effective punishment of crimes and delicts committed in their territory against the French Government? This is highly doubtful, since effective protection of foreign interests is secured in the legislation of only a few countries.⁴

It would seem that the general adoption of provisions for mutual protection would result from the application of Art. 10 of the Covenant of the League of Nations, according to which "the members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." This clause imposes on the members of the League an obligation to prevent their territories

from being used for the preparation of crimes which would injure the most valuable legal interests of other member States.

Unfortunately, in the present state of law, article 10 of the Covenant seems to have had little influence as regards our subject. The majority of national legislations do not provide in any manner for the repression of crimes and delicts against foreign States, and those which do, confine themselves to measures safeguarding their national interests,⁵ as for instance articles 84 and 85 of the French Penal Code.⁶

This state of affairs has been justly criticized. It is contrary to the development of an ever increasing solidarity between the various countries. But as long as it exists national tribunals will practically have to rely on their own law for the punishment of offences committed abroad against their government.

Thus, since early times, national legislations have attempted to repress offences menacing the safety of the State.⁷ In ancient Rome certain crimes which seriously endangered public order, such as counterfeiting Roman currency, or leze majesty, were punishable regardless of the place of the crime or the person of the offender.⁸ In Italy, in the 13th and 14th centuries, various provisions in the statutes of the

⁴ Cf. Preuss, *La répression des crimes et délits contre la société des Etats étrangers*, *Revue gén. de droit intern. public*, 1933, p. 606 et seq.

⁵ Cf. Preuss, *op. cit.*, supra.

⁶ Translator's note: Art. 84 provides as follows: "Whoever, through hostile acts not approved by the Government, makes the State liable to a declaration of war, shall be punished by banishment, and, if war should ensue, by deportation."—Art. 85: "Whoever, through hos-

tile acts not approved by the Government, makes French nationals liable to reprisals shall be punished by banishment."

⁷ For the historical development, see H. Donnedieu de Vabres, *Introduction à l'étude du droit pénal international*, Sirey, 1929.

⁸ Translator's note: Cf. P. M. Schisas, *Offences against the State in Roman Law* (London, 1926), esp. p. 13 et seq.

Lombard cities established jurisdiction over and threatened punishment to foreigners who committed hostile acts against the City outside its territory.

Today, the repression of crimes and delicts against the safety of the State is established in most national legislations.⁹ It has likewise been confirmed in the *Codigo Bustamente*¹⁰ and the resolutions of the Institute of International Law.¹¹

It is the object of this article to outline the attitude of French law towards offences directed against the French State which are committed in foreign countries. We shall first consider the scope of the acts punishable, and second the rules governing prosecution of these acts in the French courts.

I. WHAT ACTS ARE PUNISHABLE.

There are crimes and delicts against the French State which, though punishable when committed in France, are free from any penal sanction if they are done abroad. The reason is that French public order is less directly affected by offences committed outside France than it is by criminal acts done within the foreign country. Our first problem therefore is to determine what crimes against the French State are punishable when committed abroad.

After having answered this question, we are immediately faced with the

second and much more delicate problem to determine whether all of these offences are punishable irrespective of whether they are committed by French nationals or by foreigners. A solution which pays no attention to the nationality of the offender certainly has the advantage of simplicity. But is it a just solution? Are there not certain distinctions between the position of the French and the foreign offender which must be recognized? This will be the second question which we shall have to examine.

1. *The Role of the Locality.*

Art. 7 of the French Code of Criminal Instruction, as amended by the law of June 27, 1866, specifies the crimes punishable. It provides as follows: "Any foreigner who, outside French territory, has rendered himself guilty, either as principal or as accomplice, of a crime against the safety of the State, or of counterfeiting the State Seal, the current national coin, the national paper money or bank notes authorized by law, can be prosecuted and sentenced according to the provisions of French law."

This provision, to which Art. 5 of the Code of Criminal Instruction refers (which establishes rules governing offences committed by French nationals abroad¹²) covers two categories of offences. First, offences against the

⁹ For the texts of the principal foreign laws see Travers, *Le droit pénal international et sa mise en oeuvre en temps de paix et en temps de guerre*, vol. 1, 1920, p. 510 et seq.

¹⁰ See art. 306 of the *Codigo Bustamente*. (Translator's note: The article provides as follows: "Every national of a contracting State or every foreigner domiciled therein who commits in a foreign country an offence against the independence of that State remains subject to its

penal laws." See *International Legislation*, Manley O. Hudson ed., vol. IV, 1931, p. 2279 et seq.)

¹¹ See art. 4 of the Resolutions in conflict of laws in matters of competence, adopted by the Institute of International Law, on August 3, 1931, *Annuaire de l'Institut de droit international*, 1931, vol. 8, p. 235.

¹² Translator's note: The full text of Art. 5 of the Code of Criminal Instruction is as follows:

safety of the State, i.e. the crimes contemplated by Articles 75 to 102 of the Penal Code,¹³ to which must be added those established by Articles 104 to 108 of the Code of Military Justice¹⁴ and finally those offences which are created by special legislation, as for instance the law of January 26, 1934, concerning espionage.¹⁵ In the second place, it includes offences against the State credit, as enumerated in articles 132 and 139 of the Penal Code: crimes of counterfeiting the State Seal, the national money, bonds or notes issued by the Treasury.

This list is strictly exclusive. Offences which do not figure in it, cannot be punished in France. This applies to delicts against government administration which consist in serious breaches of duty of certain public servants, and which are punishable in other countries, such as England, Germany, the United States. The same is true of certain acts injurious to the credit of the State other than those

"Any Frenchman who, outside the territory of France, has rendered himself guilty of a crime punishable under French law, can be prosecuted and tried in France.

"Any Frenchman, who outside the territory of France, has rendered himself guilty of an act characterized as a delict in French law can be prosecuted and tried in France, if the act is punishable by the law of the country where it was committed.

"In either case, whether a crime or a delict has been committed, no prosecution may be brought if the accused shows that a final judgment was rendered in the matter by a foreign court and, in case of conviction, that he has undergone his punishment or that it has lapsed, or that he has obtained a pardon.

"In the case of a delict committed against a French or foreign private individual, prosecution cannot be begun except upon the request of the Public Ministry; it must be preceded by a complaint of the injured party or by an official denunciation to the French authorities by the authorities of the country where the delict was committed.

contemplated in Articles 132 and 139 of the Penal Code,¹⁶ which, though resulting from more subtle manoeuvres, are not less damaging to French interests. A recent example is offered by the law of August 18, 1936, which provides punishment of imprisonment and fines for any person who, by any means, spreads among the public false rumors destined to cause the public to withdraw funds or sell government bonds.¹⁷ The offences created by this law are not punishable in France if they were committed in a foreign country. Thus, the criminal character of an act varies according to the place where it is done.

It varies likewise according to the nationality of the actor. As we shall see now, certain acts declared criminal when committed by Frenchmen are not punishable when done by foreigners.

2. *The Role of Nationality.*

At first sight, one might believe that no distinction should be drawn between French and foreign nationals

"No prosecution can be had until the accused returns to France, except for the crimes listed in article 7 *infra*."

¹³ Translator's note: Articles 75 to 85 deal with offences against the external safety of the State, such as carrying arms against France, acts of treason and espionage; articles 86 to 102 deal with offences against the internal safety of the State.

¹⁴ Translator's note: The articles referred to deal with treason, espionage and soliciting soldiers to desert.

¹⁵ Translator's note: "An act for the repression of delicts of espionage and delictual acts endangering the external safety of the State." For the text and an abstract of the "travaux préparatoires," see *Les Lois Nouvelles*, 1934, p. 136 *et seq.*

¹⁶ Translator's note: Article 132 deals with the counterfeiting of money, article 139 with the counterfeiting of the State Seal and banknotes.

¹⁷ Translator's note: "An Act for the repression of attacks on the credit of the Nation." For text and "travaux préparatoires," see *Les Lois Nouvelles*, 1936, p. 902 *et seq.*

with regard to the criminal character of an act. According to this view, whenever an offence has been committed against the safety or the credit of the French State, punishment should result irrespective of the nationality of the offender.

French legislation has not, however, adopted this solution. It distinguishes between Frenchmen and foreigners. This distinction is just, for there exist offences for which Frenchmen alone can be held responsible. They are offences consisting in a breach of a duty of loyalty towards the State, such as the crime of carrying arms against France as viewed by Art. 75 of the Penal Code. The text of the Article runs thus: "Any Frenchman who has carried arms against France shall be punished by death." Other examples of offences confined to French nationals are those dealt with in Articles 80 and 81 of the Penal Code.¹⁸ Here, too, the text implies that they are punishable only when committed by French nationals.

On the other hand, there are offences for which foreigners can be punished as well as Frenchmen. These are crimes against the internal safety of the State according to Articles 86 *et seq.* of the Penal Code, and the crimes against the State credit according to articles 132 and 139 of the same Code.

This results from the text of the articles referred to, and the explanation is, that these are acts of high treason.

In all the cases mentioned so far, the results are indisputable. Other cases are open to doubt, or at least were so until the law of January 26, 1934. The new law deals with the offences covered by articles 76 *et seq.* of the Penal Code which consist in "engaging in machinations or holding intercourse with foreign powers or their agents, with the object of inducing them to commit hostilities or to wage war against France." Before it was enacted, the question whether the above article was applicable to foreigners was highly controversial.¹⁹ One opinion maintained that these acts should only be punishable when committed by Frenchmen, because they consisted in the violation of a duty of loyalty which was binding only on French nationals. A considerable number of authors, however, were inclined to treat foreigners domiciled in France, and even non-domiciled foreigners, on an equal footing with Frenchmen as regards the crime in question. The latter opinion, which was also shared by the Courts,²⁰ was adopted by the law of January 26, 1934.

In imitation of certain foreign laws, and particularly of the German law of April 24, 1934,²¹ the French law estab-

¹⁸ Translator's note: Art. 80 provides the death penalty for "any public officer, Government agent, or any other person" who has delivered an official secret to the agents of a foreign power or of the enemy. Art. 81 provides the same penalty for "any public officer, any agent or employee of the Government," who delivers to the enemy plans of fortifications, arsenals, etc., of which he is in charge.

¹⁹ For further details see H. Donnedieu de

Vabres, *Des crimes et délits contre la chose publique, Cours de droit pénal spécial*, 3^e année, p. 33 *et seq.*

²⁰ For application of art. 77 of the Penal Code to foreigners, cf. *Cass. crim.*, August 23, 1917, *Clunet*, 1917, p. 1748 (*Sedano c. Leguizano*); for application of art. 78, cf. *Cass. crim.*, January 15, 1920, *Clunet*, p. 195 (*Urios*).

²¹ Translator's note: The Law amending certain provisions of the Penal Code and the Code

lishes the principle of uniform treatment of foreigners and Frenchmen.²² This is done expressly with regard to acts of espionage, and indirectly and *a fortiori* as regards crimes against the security of the State, as enumerated in Articles 76 *et seq.* of the Penal Code.

Thus the law of January 26, 1934 marks an important stage in the development of punishment of offences committed abroad against the French State. Until the promulgation of that law, simple delicts were punishable only when they were committed by Frenchmen. In cases where they were attributable to foreigners, the silence of the law assured immunity for those guilty. The new law has abolished the distinction between foreigners and Frenchmen in matters of espionage. The change is the more striking as a decree-law of June 17, 1938, has imposed the death penalty for acts of espionage.

But the law of 1934 did not stop there. It also considerably modified the general rules governing the prosecution of crimes by the French courts.

II. PROSECUTION IN FRENCH COURTS.

In order that a person can be convicted of a crime, it is not sufficient that the acts committed constitute a criminal offence under French law. Certain additional conditions must be fulfilled, which may be divided into three groups.

of Criminal Procedure (Reichsgesetzblatt, 1934, vol. I, p. 341) provides in article II that a German or a foreigner who has committed abroad an act of treason against the German Reich can be prosecuted in Germany; in the case of a

In the first place, there exist rules referring to the criminal law of the place of the crime. For certain offences prosecution and trial cannot be had in France unless the acts in question are punishable under the law of the country in which they were committed. We shall have to consider, therefore, to what extent the law of the place of acting is taken into account.

Then it may be that the delinquent is absent or has escaped. The question which then arises is, to what extent a judgment by default can be effective.

Finally, it may happen that the delinquent has been convicted abroad for an act which is punishable under French law. To what extent should such conviction be taken into account? This is the third question with which we have to deal.

1. *When Act Must Be Punishable Under the Lex Loci Delicti.*

Generally speaking, our tribunals adhere to the principle of the exclusive application of the French penal laws, and do not take into consideration the foreign law of the place where the act was committed. The reason is obvious: if the French tribunals made prosecution dependent on whether the law of the place of acting declares the act punishable, the result would be that in the vast majority of cases where an offence against the French State was committed abroad it would be impossible to prosecute in France, since most

foreigner, the consent of the Minister of Justice is required.

²² The expression "any person" (*tout individu*) used by the law makes it clear that it does not take into account the nationality of the delinquent.

foreign laws do not provide penal sanctions for an act directed against the French State. This state of affairs is due to the lack of reciprocal assistance between governments in criminal matters.²³

The principle stated above applies whenever the act done abroad against the French State was committed by a foreigner. A foreigner can be prosecuted in France only for a crime, never for a simple delict. A crime against the safety of the State injures the national interest sufficiently to justify the rule that the French legislator alone is competent to determine the necessary punishment. Hence in such cases the judge is bound to apply French law to the exclusion of any other law.

On the other hand, where the offender is a French national who has committed a simple delict, the situation is different. A Frenchman who has committed a delict against the French State in foreign territory can only be prosecuted in France if the act in question is punishable under the legislation of the country where it was committed. This results clearly from article 5, para. 2, of the Code of Criminal Instruction.²⁴

The underlying consideration is, that a simple delict committed abroad against the French State is not sufficiently grave to call for prosecution in France if it does not fall under the foreign penal law. The rule of reference

to the foreign penal law (*double incrimination*), it should be noted, applies to delicts against private individuals as well as those against the State. The legislature of 1866, which introduced the rule into article 5, para. 2, of the Code of Criminal Instruction, had no intention of drawing any distinction between the two classes of delicts. Yet the application of the rule presents grave inconveniences. The punishment of delicts against the French State is ordinarily not provided for in foreign penal laws, so that prosecution in France is prevented in most cases.

The courts have well recognized the danger and have developed important restrictions on the principle of *double incrimination*. In cases where French public order was concerned, several decisions have admitted prosecution in France for offences which were not punishable under the law of the country in which they occurred.²⁵

Now the law of January 26, 1934, has completely abolished the principle of *double incrimination* for delicts of espionage. This is an important reform. It tends to reinforce the repression of offences against the safety of the French State, by giving jurisdiction to French courts and making them independent of the attitude of the foreign legislator.

2. When Judgment by Default May be Pronounced.

A very clear distinction is drawn in

²³ Cf. in this sense, H. Donnedieu de Vabres, *Application de la loi pénale d'un Etat aux infractions commises par un étranger hors de son territoire*, "Mémoires de l'Académie interna-

tionale de droit comparé," vol. II, part 3, p. 224 et seq.

²⁴ Translator's note: Text see *supra*, note 12.

²⁵ See in particular Cass. crim., June 13, 1917, p. 1920, p. 143, *Intérêt de la loi c. Rivière*.

French law between the position of French nationals and that of foreigners when the question arises whether a judgment may be pronounced against them by default or *in contumaciam*.

As regards a French national, there is no doubt that such a judgment may be rendered. Art. 5, para. 6, of the Code of Criminal Instruction²⁶ establishes an express exception to the general rule that no prosecution shall take place unless the accused has returned to France; it provides that a Frenchman may be prosecuted for a crime against the safety of the State, committed abroad, even during his absence from France.

A foreigner, on the contrary, can be brought to trial in France only if he has been arrested on French soil or his extradition has been obtained (Art. 7, para. 1, of the Code of Criminal Instruction).

Thus the French courts have primary jurisdiction over French nationals, since the prosecution is independent of the accused person's presence, voluntary or forced, within French territory; whereas their jurisdiction over foreigners is secondary only.

The distinction has been justified by various arguments. It has been said in particular that conviction *in contumaciam* is more effective against a Frenchman than against a foreigner, because the Frenchman ordinarily owns property in France, while a foreigner as a rule does not.

This argument is, in my opinion, not convincing. A foreigner may in fact

possess property in France, and, in any case, by giving effect to a judgment by default or *in contumaciam* against him, we shall prevent him from returning with impunity into France, which imposes at least some sanction.

In reality, the distinction between French and foreign nationals in this matter appears to me to be most objectionable. No principle of international law would be violated if our legislation permitted the rendering of judgments *in absentia* against foreigners. Numerous foreign legislations have adopted this solution.²⁷

In this respect the law of 1934 has again accomplished a welcome reform, in that it does not require the presence of the accused in French territory, regardless of his nationality. This means that in matters of espionage a judgment *in contumaciam* can be pronounced against French nationals and foreigners alike. The reform should be extended to crimes and delicts against the French State generally. In the meantime, in all matters except espionage, judgments by default are effective only as against French nationals. On the other hand we shall see that as regards the recognition of foreign judgments, French law is more severe towards foreigners than it is towards Frenchmen.

3. Effects of Foreign Penal Judgments.

A. The Position of French Nationals.

A Frenchman can plead a foreign

²⁶ See *supra*, note 12.

²⁷ Cf. H. Donnedieu de Vabres, Application de la loi pénale d'un Etat aux infractions commises

par un étranger hors de son territoire, "Mémoires de l'Académie internationale de droit comparé," vol. II, part 3, 1935, p. 224 et seq., 231.

penal judgment (acquittal or conviction) obtained by him, whenever he is tried for the same offence in a French court. Art. 5, para. 4, of the Code of Criminal Instruction provides that no prosecution may be brought if the accused shows that a final judgment was rendered in the matter by a foreign court, and, in case of conviction, that he has undergone his punishment, or that it has lapsed, or that he has obtained pardon.

This rule, it is to be noted, is not satisfied by the mere existence of a judgment rendered abroad. It requires in addition that in case of a conviction the penalty pronounced has actually been suffered or is extinguished by lapse of time, or that a pardon has been granted. This additional requirement was introduced by the law of April 3, 1903, amending Art. 5 of the Code of Criminal Instruction which had already been modified by the law of June 27, 1866. The amendment of the text of 1866 was necessary. In effect, under the law of 1866, a delinquent who had succeeded in escaping from the country in which he had been sentenced, enjoyed complete impunity in France. This undesirable situation was remedied by the law of 1903.

Both in the former and in the present language of article 5, para. 4, of the Code of Criminal Instruction, no distinction whatever is made as regards the nature of the crime or delict. It applies equally to crimes and delicts against the State and to offences against private individuals.

For the latter offences the solution is satisfactory; for when a crime or

delict is committed against a private individual, the social order of the place of acting is most seriously affected. Where offences are directed, however, against the French State, the contrary is true: here the French social order is primarily interested. Therefore, in these latter cases the offender should not be permitted to plead a foreign criminal judgment. If this solution were adopted, it would have the advantage of harmonizing the position of Frenchmen with that of foreigners.

B. *The Position of Foreigners.*

The Code of Criminal Instruction is silent as to the effect to be given to foreign criminal judgments in cases where a crime was committed abroad by a foreigner. It seems that this should be interpreted as denying any effect to such judgments.

It is true that with regard to crimes or delicts committed in France, article 7, para. 2, of the Code of Criminal Instruction (as amended by the law of April 3, 1903) grants the foreigner the right to plead, in the French courts, a foreign judgment rendered in the matter, and thus to avoid a second prosecution in France.

Certain authors, basing their argument on the article referred to and on the analogous provision of article 5, para. 4, of the Code of Criminal Instruction, have contended that, by way of analogy and *a fortiori*, the same rule should apply to foreigners who have committed a crime in a foreign country. Why—so they argue—treat this foreigner more severely than a foreigner who has committed the offence

in France? The combined fact of his foreign nationality and the commission abroad should rather place him in a more favorable position.²⁸

This reasoning is open to criticism. In the field of criminal law, strict interpretation is the established rule. The legislation of 1903 has allowed the right to plead a foreign criminal judgment only to French nationals and to those foreign nationals who have committed the offence in question in France. In the absence of an express mention of foreigners who have committed a crime abroad, the statutory provision cannot be held applicable to them.

To adopt the opposite point of view is not only contrary to a reasonable interpretation of the law, but would also lead to regrettable practical consequences. The same considerations of protection of the French social order which, as we have pointed out, would justify the rule that French nationals should not be permitted to plead a foreign criminal judgment are valid in cases where the offence was committed by a foreigner. In the latter case a further consideration may be added: where the crime was committed by a foreigner, the foreign tribunals will be inclined to a certain leniency, so that the sentence pronounced is likely to be inadequate, from the French point of view, for a crime which endangered the French social order.

Thus from whatever angle we view

²⁸ Cf. La Poittevin, Code d'instruction criminelle annoté, 1911-1915, comment on art. 7, vol. 1, p. 125, no. 169. See also Matter, La Compétence pénale des tribunaux français et les conflits de lois, Clunet, 1904, p. 619 *et seq.*

²⁹ See for instance article 4 of the Italian Penal Code, which provides that "An Italian or a

the question, it seems that a foreigner should not be entitled to plead a foreign judgment in a matter which is before the French criminal courts. The same rule should apply to French nationals. In analogy to a number of foreign legislations,²⁹ no difference should exist between the position of Frenchmen and foreigners in this matter.

CONCLUSION

The numerous alterations which articles 5 and 7 of the Code of Criminal Instruction have undergone and the promulgation of new criminal laws such as the law of January 26, 1934, have rendered the question of punishment of crimes and delicts against the French State, committed abroad, highly complex.

Yet the general position of French law in the matter is clear. Our law is directed towards the repression of such offences. This is apparent both in the scope of offences declared punishable and in the conditions for prosecution in France.

We have seen that the scope of offences punishable has generally been widened. Under the Code of Criminal Instruction of 1808, only crimes were punishable. The Law of June 27, 1866, provided for the punishment of delicts committed by French nationals abroad. Finally the law of January 26, 1934, sanctioned the punishment of delicts of

foreigner who commits, outside Italian territory, an offence against the security of the State or an act of counterfeiting the currency of the Kingdom . . . shall be prosecuted in the Kingdom, even if he has been judged for the same act in a foreign country, if the Minister demands it."

espionage, regardless of whether they were committed by foreigners or Frenchmen.

As regards prosecution in the French courts, the tendency is no less marked. Since the law of January 26, 1934, whenever the French government intervenes for the protection of its interests, it no longer subordinates its action to the convenience or the attitude of a foreign sovereign, as it did under the former law. Our law has ceased to take account of either the criminal character of the act according to the law of the place of the crime, or the presence, voluntary or enforced, of the accused in French territory, and it is diminishing the effects given to for-

eign judgments, whether convictions or acquittals. Jurisdiction assumes a defensive character; it has for its sole basis the national interest.

This movement of self-protection in criminal matters is a direct consequence of the nationalism which has prevailed with particular intensity since the war. It is regrettable, because it is contrary to the solidarity which should exist between nations. Jurisdiction should not be based solely on the interests of the State, but on the duties which each State has within the international community. It should be organized not on a national but a universal basis.