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Entanglements in Legal History: Conceptual Approaches

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Discovering Legal Silence: Global Legal History and the
Liquidation of State Bankruptcies (1854–1907) | 461–487



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Discovering Legal Silence: Global Legal History and the Liquidation of State Bankruptcies (1854–1907)

Global legal history offers diverse tools to deal with cross-border issues, e. g., comparative studies, models of cycles or stage models.¹ The way these tools are used differs a lot; the mode, the meaning, and the consequences are analyzed in this volume in depth. To me, their usage seems absolutely plausible when examining an international legal issue. The liquidation of state bankruptcies in the 19th century represents such an international issue. Nonetheless, global legal history has hardly dealt with that problem until today. How can such an absence be explained and what consequences does it have for the science of global legal history?

This phenomenon is seen in light of the liquidation of state bankruptcies during the 19th and early 20th century.² The number of bankruptcies and their impact on foreign citizens had grown enormously since the 1820s.³ This was due to the fact that states started to issue state bonds in other countries; especially British private citizens invested heavily in foreign bonds traded at the stock exchange in London. Interests for such credits were very high; consequently, investors could realize a profit. Their speculative risk was very high, too. Many debtor states did indeed become bankrupt soon after the issuance of state bonds. As an international insolvency regime for states did not exist, actors had to deal with such situations on a case-by-case basis.

Such “liquidations” differed a lot. This was mainly due to the number of involved actors: the debtor state, third states, private investors, creditor protection committees, stock exchanges, and banks. Interested participants formed a heterogeneous group of different legal natures; they were entangled in other words. However, only parts of this group were of a sovereign nature.

1 OSTERHAMMEL (2001) 151.

2 HEIMBECK (2013).

3 REINHART/ROGOFF (2009) 91, Table 6.2.

Even though international law in the 19th century is mainly seen as being state-centered,⁴ the liquidation of state bankruptcies demonstrates that non-state actors played quite a decisive role, too. They were not able to generate norms in public international law themselves, but they were able to influence their governments to generate or to not generate norms. Yet governments could also take decisions contrary to their citizen's interests.

The importance of private actors in such a state-centered legal regime like public international law is probably one reason that led to the fact that global legal history has neglected the liquidation of state bankruptcies. Moreover, the problem of the liquidation of state bankruptcies is placed at the crossroad between law and economy as well as between public and private international law. This unclear allocation might have also lead to global legal history's ignorance regarding this issue. Furthermore, even today the "History of International Law" usually does not form a separate subject at universities.⁵ It forms part of legal history or international law and is "only a poor cousin of legal history."⁶ Yet, when the general subject which encompasses the problem of the liquidation of state bankruptcies is still not dealt with in national legal history discourses, it is hardly surprising that an area like global legal history does not deal with the topic as well. Moreover, analyzing the liquidation of state bankruptcies from global legal histories perspectives causes quite practical problems: Firstly, the variety of involved states leads to multiple languages in which sources will be found. Secondly, most past authors who published on single bankruptcies (mostly historians) were usually citizens of one of the European creditor states (Great Britain, France or Germany). Thus, when using historical material as a basis for the application of global legal history, we need to be very careful not to "Europeanize" the units of comparison in how they are chosen. Or – if we choose such units – we have to be aware of that fact.

4 The growing role of individuals in public international law in the 20th century has usually been seen with the rise of the human rights movement. However, in the 19th century, non-state actors increasingly tried to influence public international law, too. They therefore aligned with others to create specific interest groups, e. g., creditor protection committees but also the peace movement. With regard to the liquidation of state bankruptcies, their role should not be underestimated even though it was still short of the power such interest groups gradually received in the 20th century.

5 See VEC (2011).

6 VEC (2011) 29.

However, the question of whether we then especially need to use *global* legal history to analyze historical liquidations of state bankruptcies needs to be affirmed. Because the current lack of application by global legal history's analytical tools can only be seen when using exactly those tools by examining and comparing case studies. It is as important to discover and interpret which issues a legal regime does not cope with as it is to analyze which aspects are dealt with and in what way.⁷

Thus, the lack of an (international) insolvency regime led to a lack of global legal history engaging with the problem and offering analytical tools to analyze the situation or even to introduce problem solving mechanisms. This effect was further strengthened by the fact that the History of International Law – in so far as such a discipline did or does exist – has also hardly dealt with the topic.

Even though private and state actors increasingly had to deal with state bankruptcies, they did not introduce an international insolvency regime. They did not even form single conventions or treaties dealing with formal and, or substantive questions regarding such liquidations until 1907. International lawyers as well as governments rather dealt with a debtor state's bankruptcy on a case-by-case basis using legal, military or political tools to solve the situation in the easiest way.

However, some of the modes actors used to liquidate debt found their way into public international law, e. g., the debt commissions in Egypt and the Ottoman Empire. Yet, global legal history did not even “discover” these legal mechanisms, as the entire question of the liquidation of state bankruptcies had not been dealt with.

In the following three case studies will be examined to show how norms in public international law were both introduced and not introduced and how and why global legal history has not yet provided tools to understand this overwhelming legal silence. Firstly, Egypt (1862–1904) and the Ottoman Empire (1854–1907) will show how single mechanisms of debt liquidations were used by international lawyers to justify the extension of public international law as a legal order. Then, the Venezuelan case will demonstrate how an international treaty establishing a general legal principle was

7 Thomas Duve also emphasized in his thoughts on “European Legal History” or the “History of Europe” and its role in today's history that one problem is that lawyers discussing Europe do not clarify what Europe is or rather what it is not. DUVE (2012) 26.

introduced. Only the comparison of these case studies – that means using a tool provided by global legal history – will demonstrate the reasons exactly why this legal field has not yet engaged with this issue.

This selection of case studies also raises a problem global legal history is often confronted with: the (underlying and often unspoken) territorial conceptions we have. Especially regarding International law in the 19th century, when lawyers were often blamed for being “Eurocentric.”⁸ Yet this problem of arguing from a certain (often) European perspective is not only one which arises in International law but also in global legal history. Regarding the liquidation of state bankruptcies in the 19th century this accusation cannot be avoided: At this time creditor states were from Europe (mainly Great Britain and France) and debtor states were mostly non-European nations.⁹

I. Historical Background and Terminology

The 19th century is said to be a period of globalization, in which people, traditions, languages, goods, and money crossed state borders back and forth.¹⁰ Especially the volume and significance of international financial transactions had grown enormously since the 1820s.¹¹ This was due to several reasons; amongst others, due to industrialization the number of people able and willing to invest money in cross-border transactions had increased enormously. On the other hand, many young republics, especially but not limited to the Latin American ones, needed capital to finance their state building processes. Hence, they emitted state bonds on European financial markets, mainly in London.

However, after only a few years several state bankruptcies followed.¹² Those were often not caused by the sovereign’s prodigality but by border defense costs and military activities as well as by big investments in infrastructure. Such state bankruptcies created severe difficulties for private investors as well as foreign banks, stock exchanges, and their respective

8 See, e.g., ANGHIE (1999); BECKER LORCA (2010).

9 See REINHART/ROGOFF (2009) 91, Table 6.2.

10 See, e.g., OSTERHAMMEL (2009); BAYLY (2009).

11 QUITTNER-BERTOLASI (1936) 603–605.

12 See REINHART/ROGOFF (2009) 91, Table 6.2.

home states as an international insolvency regime did not exist. Therefore, they had to negotiate and try to find acceptable solutions against the backdrop of political, economic and social considerations. Thus, the failure of international financial transactions caused the need for regulation between the said different actors whose legal characters differed fundamentally. Therefore, several normative spheres – not only an international one – were automatically affected. Thus, entanglements on a subjective level (regarding the quantity and quality of involved actors) caused entanglements on an objective level (regarding the different normative spheres).

An analysis of the said plurality of normative spheres presupposes some thoughts about norm creation processes.

The expression “juridification” is neither defined by lawyers, nor by political scientists or sociologists. Terms like normatization, juridification, *Verrechtlichung*, *Normierung* or *Verregelung* are used rather differently.¹³ Regarding the question whether norms in public international law were introduced by and in the context of the liquidation of state bankruptcies, three forms of juridification might be possible: the ratification of international treaties and conventions, the introduction of customary international law, and the acceptance of specific state practice as part of public international law by jurists.

A state is bankrupt if it is not willing or unable (or both) to fulfill its financial obligations towards its creditors.¹⁴ In contrast to private individuals or companies a state’s decision to declare its bankruptcy depends not only on financial but also on social, economic, and political reasons.¹⁵ Yet for foreign private creditors the state’s motive for the decision did not really matter: Even if the debtor state still had financial means at its disposal, it needed them to uphold its administration and its infrastructure to a minimum degree.

As public international law was a legal regime between states¹⁶ (the Holy Sea was an significant exception), the participation of third states was very important. Third states could have been involved in three different ways: they could have granted loans to the debtor state themselves, they could

13 See a brief summary: VOIGT (1980) 16–18.

14 PFLUG-NÜRNBERG (1898) 1.

15 REINHART/ROGOFF (2009) 51.

16 MARTENS/BERGBOHM (1883) 231 et seq.; LISZT (1902) 34–40; OPPENHEIM (1905) 3 et seq.

have guaranteed the debtor state's loans *vis-à-vis* banks or they could have protected their citizens diplomatically. Whether a creditor state protected its subjects diplomatically was a question of its digression.¹⁷ However, forms of such actions varied enormously: sea blockades, trade embargos, the establishment of international debt administrations, (partial) occupation of the debtor state's territory or military attacks were some acts undertaken by creditor states.¹⁸ As an international insolvency regime did not exist, the legality of such measures depended on general norms in public international law, namely the principle of non-intervention.¹⁹

II. International Problems, Multiple Normative Responses and Global Legal History's Neglect

A. Egypt (1862–1904): International Debt Commission

Egypt had been a part of the Ottoman Empire since 1517. In the 19th century Egypt slowly received more sovereign rights. From the early 19th century the Egyptian Khedive undertook financial investments, in order to build canals, streets, irrigation systems and dams.²⁰ In the long run those measures did indeed improve the country's economic and financial situation. However, they first necessitated huge financial investments which were amortized only slowly.

Thus, Egypt's debts grew progressively. In 1862 the Khedive Muhammad Saïd (1854–1863) started to issue bonds on European financial markets. Between 1862 and 1870 Egypt issued new bonds in Europe amounting to £33,204,060. In 1862 state revenues were roughly £3,799,000, and expen-

17 In 1848 Lord Palmerston announced: "I have to inform you, [...] *that it is for the British Government entirely a question of discretion, and by no means a question of international right*, whether they should or should not make this matter the subject of diplomatic negotiation." [original emphasis] FISCHER-WILLIAMS (1929) 268–269.

18 LIPPERT (1929) 924.

19 See, e.g., VEC (2010); BERNER (1860); CARNAZZA-AMARI (1873); ERBER (1931); FLOECKHER (1896); ROLIN-JAEQUEMYS (1876–1877).

20 MANSFIELD (1971) 7. Within ten years the amount of Egyptian exports to Great Britain grew sevenfold: In 1854 it was £3,000,000, in 1858 £8,000,000 and in 1864 £22,000,000. LANDES (1958) 56. See for a detailed description of Muhammad Ali's reform program: ISSAWI (1961) 4–7.

diture £9,089,000.²¹ The debts owed out of the issuance of short-term loans were about £12,000,000 in the same year.²²

When the state's financial situation became more and more tight, the Khedive asked the British government to send a commission to examine the country's administration and make recommendations. As a consequence of the so-called Cave Report, which had exposed massive problems in the country's organization and supervision,²³ the Khedive established an international debt administration in May 1876.²⁴ A commissioner from Great Britain, France, Italy, and Austria-Hungary were members in this body. In 1885 a German and a Russian delegate joined them. Even though the administration's legal basis was under Egyptian law, the body's legal nature was international as the Khedive could only abolish it with the foreign governments' consent.²⁵

The *Caisse de la dette publique d'Égypte* had three functions: It acted as a special representative organ for the foreign creditors, it administered the country's debt service and it controlled the Egyptian financial administration. Therefore, all state revenues were given directly to this international body. The debt administration had then to authorize all payments out of the state budget and had to allow the issuances of new loans.²⁶ The *Caisse* appointed its civil servants and determined its budget autonomously. Yet while the French government (like the Italian and the Austrian one) sent an own representative, the British government refused to become directly involved. Therefore, the British bondholders themselves nominated Sir Evelyn Baring (who later became Lord Cromer) to represent them in the *Caisse*.

In addition to these legal measures, the Khedive had established mixed tribunals which were also in charge of conflicts between foreign investors and the Egyptian state as well as him personally.²⁷ Officially, judgments were only enforceable in the Khedives private estate. However, as the latter had

21 LANDES (1958) 337.

22 LANDES (1958) 131.

23 MCCOAN (1882) Appendix 438–441.

24 Parliamentary Papers, 1876 [C. 1484], Correspondence respecting the Finances of Egypt, Lord Lyons to the Earl of Derby; March 23, 1876; Egypt No. 8 1876, No. 24.

25 DEVILLE (1912) 183.

26 POLITIS (1894) 247.

27 Wilhelm Kaufmann emphasized however that this right to sue was unlawful. KAUFMANN (1891) 61–65; see also REYNAUD-LACROZE (1905) 47.

never differentiated between his own and the state's needs, when using the borrowed money,²⁸ the creditors were *de facto* also able to enforce judgments in Egyptian state belongings.

Later on, Great Britain and France forced the Khedive politically to appoint a British and a French minister to the Egyptian state council. This act increased the domestic tensions in Egypt and led to the growth of the national movement. On the other hand, when Ismaïl Pascha tried to modify the state council into a parliament with more direct powers and when he dismissed the two said foreign ministers, the tensions between him and London increased.²⁹ The Khedive was thus in a quandary between his people and the powerful creditor governments. Even though Ismaïl Pascha finally reinstalled the two foreign ministers and assigned them a veto power, his relationship with the British and French government was rather tense. The latter finally persuaded the Ottoman Sultan to depose the Egyptian Khedive from his position; the Sultan installed Ismaïl's son Tewfiq instead. Both the political and the financial situation within the country and regarding the creditor states remained stiff. In spring 1882 the situation finally escalated so that British troops bombarded Alexandria and occupied the country shortly afterwards.

Even after the beginning of the British occupation (and related to that its administration) in Egypt in fall 1882 – which was officially only an indirect one³⁰ – the Egyptian financial situation worsened. Therefore, Great Britain asked the other European creditor states which were represented in the *Caisse* a) to agree to a new loan issued by Egypt and b) to lower the latter's financial obligations regarding all existing foreign loans. However, when the Khedive temporarily suspended the payment, France threatened to sue him before the mixed tribunals.³¹

Thereupon, in March 1885, at a conference in London, Great Britain, France, Austria-Hungary, Germany, Italy, Russia, and the Ottoman Empire

28 WYNNE (1951) 580.

29 ROTHSTEIN (1910) 82 et seq.

30 Parl. Papers, 1887 [C. 5050] [C. 5110], Further Correspondence respecting Sir H. Drummond Wolff's Mission, Convention between Great Britain and Turkey respecting Egypt, Convention between Great Britain and Turkey respecting Egypt; May 22, 1887 (Sir H. Drummond Wolff to the Marquis of Salisbury; May 22, 1887; Egypt No. 7 (1887), Inclosure in No. 88, Artikel V).

31 DÜLFFER (1997) 276–277.

agreed to guarantee an Egyptian loan of £9,000,000 as well as to lower the interest of the existing loans.³² Furthermore, Great Britain was authorized to administer the country on its own. However, if Egypt had not fulfilled its current interest payments by 1887, the said European creditor states would have established a truly international administration which would have controlled Egyptian state finances.³³

Shortly afterwards Great Britain and the Ottoman Empire agreed to send a British and an Ottoman commissioner to Egypt who should survey the political and economic situation. However, the Sultan never ratified the so-called I. Drummond-Wolff Convention (1885).³⁴ In 1887 the Sultan and the British government negotiated the II. Drummond-Wolff Convention³⁵ which stipulated the withdrawal of British troops from Egypt (unless “extraordinary circumstances” made longer British presence necessary). The Sultan did not ratify this convention, either.

In roughly 20 years under the (indirect) administration of Lord Cromer as British Consul-General in Egypt, the state revenues had increased from £9,000,000 in 1883 to £15,682,500 in 1906.³⁶ Because of his successful management of the country, the European creditor states conferred many competences from the international debt administration back to the Egyptian state in 1904.³⁷

- 32 According to article VII of the declaration each guarantor was liable for the entire amount of £315,000 per annum. However, Russia declared explicitly that it understood itself to be liable for only 1/6. Treaty between Austria-Hungary, France, Germany, Great Britain, Italy, Russia and Turkey, signed in London, March 17/18 1885.
- 33 RICHMOND (1977) 134; MANSFIELD (1971) 99. Lord Cromer announced that such a tendency had materialized during the past years: “National interest tend towards cosmopolitanism, however much national sentiments and aspirations may tend towards exclusive patriotism.” CROMER (1908) 301–302. However, at the same time he doubted that a common international action would be successful: “For all purposes of action, administrative internationalism may be said to tend towards the creation of administrative impotence.” *Idem* 304.
- 34 Convention between Her Britannic Majesty and His Imperial Majesty the Sultan of Turkey, relative to Egyptian Affairs. Signed at Constantinople, October 24, 1885.
- 35 Convention between Great Britain and Turkey respecting Egypt, May 22, 1887; Parl. Papers, 1887 [C. 5050] [C. 5110].
- 36 MANSFIELD (1971) 103. Marlowe enlisted measures taken by Lord Cromer in detail. MARLOWE (1965) 173 et seq.
- 37 REYNAUD-LACROZE (1905) 75; POLITIS (1904); HELD (1925) 629–630. In July 1888, Lord Cromer had established a reserve fund in which all surplus revenues were paid. As soon as the fund contained more than £2,000,000, the surplus was used for the foreign debt

European creditor states became heavily involved in Egypt (the British government a few years after the French one). By manning the international debt commission – which was officially an Egyptian state organ – and having posts in key positions in the country, they did not only influence the Egyptian bankruptcy’s liquidation but they *de facto* carried it out. However, *de iure* they did not introduce norms in public international law by establishing the international debt commission.

The partial development initiated by the Egyptian liquidation, which nevertheless took place in public international law, can be seen only, when also examining the Ottoman state bankruptcy. Comparing both cases – in other words using global legal history’s analytical tools – will show how and in what way international norms were generated or rather were not generated.

B. Ottoman Empire (1854–1907):
Transnational Debt Commission

Nearly simultaneously with Egypt her suzerain, the Ottoman Empire, went bankrupt. However, while creditor states were highly involved in the Egyptian debt settlement, they hardly dealt with the Ottoman insolvency.

The Ottoman Empire had started issuing short- and long-term bonds in London and Paris in 1854 to finance the Crimean war.³⁸ Within a very short time the Sublime Porte³⁹ issued many bonds to European private investors and thereby became more and more indebted. The government used the money to defend the large country against external attacks, to maintain the Sultan’s palace and to pay for the state administration. The latter was, however, highly ineffective and huge sums of money were wasted or misapplied. Reform measures, especially the *Hatt-i Hümayûn* (1856), which stipulated the introduction of a state budget and a central financial admin-

service. Without the creditor states’ authorization, the fund could not be used as collateral for Egyptian loans.

38 SUVLA (1966) 99. Until 1854 the Ottoman Empire had not issued any loans abroad but only with domestic Galata bankers. RODKEY (1958); BIRDAL (2010) 25.

39 In a narrow sense the term “Sublime Porte” described the Sultan’s ministers and their areas of competence. Europeans referred to the entire Ottoman government that way though. YASAMEE (1996) 30, footnote 55; BLAISDELL (1929) 1, footnote 1.

istration, had not been successful.⁴⁰ In the late 1850s state revenues were about £6,661,379, state expenditure roughly £6,861,697.⁴¹

Between 1863 and 1876 the Sublime Porte issued bonds on foreign financial markets worth about £200,000,000;⁴² out of the state revenues of £12,000,000 (in 1874) 55 per cent were used to repay foreign credits.⁴³ Despite the continuous money inflow, the financial situation of the state worsened steadily.

Yet it took five years (after the official Ottoman bankruptcy in 1876) until a transnational debt administration was established through a Sultan's firman, the so-called *Mouharrem Decree*, in December 1881.⁴⁴

In the meantime non-state actors as well as creditor governments had undertaken other actions to deal with the Ottoman financial fiasco. Already in 1876 London banks had stopped lending money to the Ottoman Empire.⁴⁵

Moreover, both the British and the French government had banned trade with Ottoman bonds to protect their citizens of financial harm.⁴⁶ Furthermore, the French government had even prohibited the issuance of a particular bond amounting to £16,000,000 at the Paris stock exchange.⁴⁷ However, all in all European governments had hardly intervened to protect their citizens: they did not want to become legally involved, neither on the domestic nor on the international level. The above-mentioned measures were thus not only exceptions but they also did not have a particular effect

40 Rescript of Reform (February 18, 1856), available on <http://www.anayasa.gen.tr/reform.htm>. The *Hatt-i Hümayûn* extended reforms which had been determined by the *Hatt-i Sherif of Gülhane* in 1839. The latter had initiated the so-called *tanzimat* era in the Ottoman Empire. Therefore, the *Hatt-i Hümayûn* is also called "continuation of the human rights declaration of the French revolution," as it stipulated individual's rights. KREISER/NEUMANN (2008) 337.

41 ROUMANI (1927) 15.

42 BIRDAL (2010) 28; CLAY (2000) Appendix. Roumani discussed all loans in detail. ROUMANI (1927) 23–52.

43 MANZENREITER (1975) 99.

44 Parl. Papers, 1911 [Cd.5736], Turkey: Imperial Ottoman Debt; The Decrees of 28 Muharrem, 1299 (December 8 (20), 1881), Turkey No. 1 (1911).

45 FEIS (1961) 18–19.

46 See BIRDAL (2010) 43.

47 This event was called "l'affaire Mirès." PLESSIS (1985) 213–214, footnote 590. KÖSSLER (1981) 43; WYNNE (1951) 398–399.

on the juridification of the liquidation of state bankruptcies. Thus, on other normative levels (not in public international law) actors did indeed create norms.

Meanwhile private European investors had continuously asked their governments' to protect their financial interests diplomatically by establishing an international debt administration in Constantinople which was meant to be comparable to the one in Egypt.⁴⁸ Especially after the Ottoman defeat in the Russian-Ottoman war and the harsh terms of the treaty of San Stefano in March 1878, European creditors complained that the Sublime Porte was no longer able to fulfill its financial obligations. The Sublime Porte did not only have to pay an enormous war indemnity to Russia (£149,095,907), but it also lost large parts of the territory which served as securities to foreign loans. The major European powers – especially Great Britain and France – were strongly opposed to the regulations of the said treaty and thus appointed another international conference where those issues should be discussed. However, their main concerns did not apply to those financial questions but to the maintenance of the fragile *balance of power*.⁴⁹ They were rather afraid that Zarist Russia would gain too much direct political influence in the South East of Europe. Hence, in July 1878 Otto von Bismarck invited European diplomats to the Berlin Conference where they discussed the distribution of the Balkans and the Ottoman war indemnity.

The financial situation of the Ottoman Empire and its obligations to European private investors hardly played a role in the diplomats' negotiations. However, the Italian delegate officially propounded the creation of an international debt administration manned with representatives of the creditor states:

“The Powers represented at the Congress desire to recommend to the Sublime Porte the establishment at Constantinople of a *Financial Commission*, composed of specialists, *named by their respective Governments*, which Commission shall be charged to examine into the complaints of the bondholders of the Ottoman debt,

48 Parl. Papers 1876 [C. 1424], Correspondence respecting the various Ottoman loans, Mr. Corfield to the Earl of Derby; October 9, 1875; Turkey No. 1 (1876), No. 9; Parl. Papers 1876 [C. 1424], Correspondence respecting the various Ottoman loans, Mr. Parnell to the Earl of Derby; October 13, 1875; Turkey No. 1 (1876), No. 19.

49 HEIMBECK (2011).

and to propose the most efficacious means for satisfying them as far as is compatible with the financial situation of the Porte.”⁵⁰

Yet, European governments valued their political aims, especially the stabilization of the *balance of power*, higher than the enforcement of their citizens’ private financial claims. Therefore, they refused to establish an international debt administration.

Hence, private purchasers started direct negotiations with the Sultan regarding Ottoman debt payments.⁵¹ Especially after the latter had signed an agreement with the domestic Galata bankers on bond conversion which was highly detrimental to the European creditors the atmosphere between the latter and the Sublime Porte worsened.⁵² As a consequence, the British government temporarily stationed its fleet off the Ottoman coast.⁵³ Finally, foreign private creditors and the Sultan agreed on the introduction of a debt administration in Constantinople which was implemented by the *Moubarrem Decree*.⁵⁴

Seven delegates were present in the *Conseil d’Administration de la Dette Publique de l’Empire Ottomane*: a British, French, German, Italian, and Austrian representative as well as one of the Ottoman creditors, and one employee of the Ottoman state bank (Banque Impériale Ottoman).⁵⁵ In contrast to the Egyptian debt administration, European national creditor groups nominated their representatives; the administration had thus a transnational legal character. Out of the 5,704 employees of the *Conseil* only 88 were Europeans.⁵⁶ The overwhelming manning by Ottoman employees was supposed to strengthen the administrations acceptance by the population.

The *Conseil* possessed broad competences: It administered the revenues which had been assigned to it by the Sublime Porte and used them to repay

50 Parl. Papers 1878 [C. 2083], Correspondence relating to the Congress of Berlin with the Protocols of the Congress, Lord Odo Russell to the Marquis of Salisbury; July 16, 1878; Turkey No. 39 (1878), No. 40 [emphasis by author].

51 DU VELAY (1903) 412–419.

52 ROUMANI (1927) 104–108.

53 *Ibidem*.

54 The Sultan also reduced the remaining long term loans which amounted to £191,000,000 in 1881 to £106,000,000.

55 National creditor groups claims were composed as follows: Great Britain 29%, France 40%, Belgium 7,2%, Netherlands 7,59%, Germany 4,7%, Italy 2,62%, Austria-Hungary 0,97% and Ottoman creditors 7,93%. KÖSSLER (1981) 53.

56 BIRDAL (2010) 105.

foreign claims; furthermore, it prepared an annual budget. Lastly, the Ottoman Empire could abandon taxes which were used for the foreign debt service only with the *Conseil's* authorization.⁵⁷ The Sublime Porte had appointed a civil servant to control the *Conseil*; however, this employee only had consultative competences.

The work of the *Conseil* was quite successful, not only regarding the debt service it had to fulfill according to the *Mouharrem Decree* but also regarding the Ottoman financial administration and tax system in general.⁵⁸

In contrast to the Egyptian bankruptcy, creditor states were hardly involved in the liquidation of the Ottoman bankruptcy. States did not create any norms in public international law. State practice did not develop.

However, only a decade after the establishment of the debt commissions in Cairo and Constantinople, international lawyers started to mention *both* of them in their textbooks and articles. Jurists did not expound the legal problems connected with such liquidations in the context of state sovereignty and the principle of non-intervention, but they discussed them as examples in their writings on “international commissions.”⁵⁹ They referred to both debt commissions in their explanations on international commissions, even though they differed fundamentally regarding their legal nature, composition and competences.

Such associations had been increasingly established after 1815, when the Central Commission for the Navigation of the Rhine was founded at the *Congress of Vienna*. During the next decades the internationally-manned commissions for the Danube followed as did the International Telecommunication Union or the Universal Postal Union.⁶⁰ In other words, during the course of the 19th century a process of institutionalization had taken place in state practice which was mirrored in public international law's legal doctrine. The number of international treaties in this area (as well as in many others) and their legal character had changed dramatically as treaties started to have an inherent norm creating power.⁶¹ International commissions started to become a slowly recognized institution in public international law.

57 Reynaud-Lacroze discussed the debt administration's competences in detail. REYNAUD-LACROZE (1905) 90.

58 BIRDAL (2010) 8, 106, 174; WUARIN (1912) 423.

59 ULLMANN (1898) 142–143; GAREIS (1901) 144–147; LISZT (1902) 134–138.

60 See, e.g., HERREN (2009) 15–18.

61 VEC (2006) 104–147.

Yet, as public international law was a young legal discipline,⁶² lawyers tried to strengthen it *vis-à-vis* other legal disciplines or even to expand its scope. Therefore, they used the international debt administrations in Egypt and the Ottoman Empire – which differed so fundamentally – as justification narratives⁶³ to legitimize the existence and the usage of international commissions as a legal institute in public international law. This phenomenon of instrumentalization becomes clear when examining major contemporary textbooks.

Famous German international lawyer Franz von Liszt, for example, did not distinguish between both debt administrations when enlisting samples for international commissions:

“Es gehören ferner hierher [zu den ständigen Staatenvertretungen, LH] die Internationalen Kommissionen, die zur Überwachung der Finanzverwaltung einzelner Staaten eingesetzt worden sind.

Die öffentliche Schuld der Türkei wird verwaltet durch eine Kommission, in der England, Deutschland, Frankreich, Österreich, Italien vertreten sind.

Zur Überwachung der ägyptischen Finanzverwaltung [...] wurde bereits 1876 eine Commission de la caisse de la dette publique eingesetzt. Sie erhielt den Charakter eines eigentlichen internationalen Organs durch das Liquidationsgesetz vom 17. Juli 1880.”⁶⁴

The same goes for Emanuel von Ullmann who was a cosmopolitan and defended the ideas and projects discussed on the Hague Conferences by heart:⁶⁵

“Derlei Kommissionen bestehen derzeit [...]

Die Finanzkommissionen zur Wahrung der Interessen der auswärtigen Gläubiger einzelner Staaten.

a) Die internationale Kommission zur Verwaltung der türkischen Staatsschuld, bestehend aus Delegierten folgender Staaten: Deutschland, England, Frankreich, Österreich-Ungarn und Italien.

b) Die internationale Kommission zur Verwaltung der ägyptischen Staatsschuld.”⁶⁶

However, this usage as a justification narrative only becomes clear when comparing both cases. Thus, only such an analytical tool as comparing units

62 Public international law only became a separate legal science at the turn of the century when special chairs at universities were introduced. NUZZO/VEC (2012).

63 See Forst's and Günther's discussion of the term “narrative.” FORST/GÜNTHER (2010) 9.

64 LISZT (1898) 94; LISZT (1902) 137–138.

65 In memoriam: Emanuel von Ullmann (1914) 346.

66 ULLMANN (1908) 236–237.

as provided by global legal history can demonstrate such a normative development in public international law. At the same time, however, the comparison will illustrate that this juridification happened within a vast area of legal avoidance: states and international lawyers hardly formed norms in public international law. They wanted to avoid legally binding themselves now and in the future. The fact that international law hardly existed regarding such an international matter as the liquidation of state bankruptcies led to the fact that global legal history did not analyze this very ‘legal silence.’ Yet, global legal history as a methodological tool reduces its own value by not dealing with such problems of an inherent cross-border nature.

C. Venezuela (1902–1907): Drago-Porter Convention

A major development regarding the liquidation of state bankruptcies was initiated by the Venezuelan insolvency which occurred in 1901. The Venezuelan financial misery had started after the country’s independence in 1821 and the state budget had never recovered since. Due to domestic political tensions during the entire century, as well as a civil war, the respective governments could not follow a coherent economic policy. Moreover, a financial administration including a working tax system did not exist, as did a functioning infrastructure.⁶⁷ The growing export of raw materials did not lastingly support the country’s economy. Even after Venezuela had started issuing bonds on European financial markets in the 1820s, she did not recover financially.

In the beginning of 1901, Venezuelan president Cipriano Castro stated that from then on only Venezuelan courts were allowed to check whether and to what amount financial claims of foreign investors and states existed against Venezuela. Simultaneously, he did not recognize the validity of Venezuela’s financial obligations *vis-à-vis* European private creditors arising out of the issuance of state loans. Furthermore, all diplomatic protests against these determinations were unlawful.⁶⁸

After failed negotiations between European banks, European creditor states and the Venezuelan government, Great Britain, Germany and Italy

67 ZEUSKE (2007) 75–76.

68 FIEBIG-VON HASE (1986) 850. Castro also declined all financial obligations which had arisen before 1899. HERSHEY (1903) 261.

threatened Caracas that they would intervene militarily, if Castro did not change his mind. However, Castro let the ultimatum expire, so that the three above-mentioned countries started to bombard the Venezuelan coast.⁶⁹

Against this backdrop of European military intervention the Argentine secretary of state and international lawyer Luis María Drago had proclaimed that the use of force to collect state debts was unlawful.⁷⁰ Investors had willingly speculated and thus accepted potential financial losses.⁷¹ His note became known as the Drago Doctrine.⁷² The key parts of the doctrine read as follows:

“The collection of loans by military means implies territorial occupation. [...] Such a situation seems obviously at variance with the Monroe Doctrine. [...] The principle which it [Argentina] would like to see recognized is: *That the public debt cannot occasion armed intervention nor even the actual occupation of the territory of American nations by a European power.*”⁷³

Drago himself emphasized that his doctrine neither formed part of international law nor constituted an abstract academic principle. He rather wanted to introduce a principle of diplomacy valid *vis-à-vis* South American states.⁷⁴

Furthermore, he asked U.S. president Theodore Roosevelt to support his position because every intervention in Latin America would constitute an unlawful occupation and thus infringe the Monroe Doctrine. Roosevelt declined Drago’s additional request to act as an arbiter and referred the state parties to the newly established Permanent Court of Arbitration in The Hague.

Already in 1901 Roosevelt had summed up the U.S./American position regarding European financial interventions *vis-à-vis* South American states: “We do not guarantee any state against punishment if it misconduct itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.”⁷⁵ This continuation of the Monroe Doctrine became known as Roosevelt Corollary.

69 See detailed background information: BASDEVANT (1904).

70 DRAGO (1903) 601.

71 CALVO (1903) 599.

72 DRAGO (1903) 597–603.

73 DRAGO/NETTLES (1928) 209 [original emphasis]. See a brief explanation on the Monroe Doctrine: GRANT (2008).

74 DRAGO (1907) 709–710.

75 DRAGO (1907) 718.

The Permanent Court of Arbitration only decided that the financial claims of the three intervening creditor states were to be satisfied preferentially to the ones from all other creditor states.⁷⁶ In addition, Venezuelan (domestic) courts adjudicated upon disputes between foreign companies and the Venezuelan state and an American diplomat also decided some inferior issues. Thus, because a special international judicial body regarding disputes arising out of the liquidation of state bankruptcies still did not exist, a plurality of dispute resolution bodies was established.

Drago's essay initiated vivid discussions amongst international lawyers.⁷⁷ His Argentinean colleague Carlos Calvo – who was a well-know public international lawyer, living and practicing in Europe – sent a circular letter to the members of the *Institut de Droit International* asking them for a legal expert opinion about the above mentioned questions.⁷⁸ Those lawyers, amongst others Frédéric Passy, John Westlake, Ludwig von Bar, and Pasquale Fiore, belonged to the elite of this legal field. Even though their conclusions differed in detail, they generally agreed that the principle of state sovereignty was only of a relative nature.⁷⁹ Francis Charmes, on the other hand, emphasized the relative nature of state sovereignty with regard to military intervention to enforce state debts:

“Je ne parle que du droit strict et je conclus que la même conduite ne saurait être appliquée toujours et partout avec un Etat momentanément embarrassé, mais loyal et ordinairement fidèle à ses engagements, l’abstention militaire doit être pratiquée. Avec un autre Etat qui présente les caractères opposés, il est légitime d’employer les seuls moyens efficaces pour se faire rendre justice.”⁸⁰

Pasquale Fiore was even clearer:

“Toutefois, en supposant qu’un gouvernement abuse de sa position vis-à-vis des particuliers [...], il pourra arriver à créer un état de choses qui pourra légitimer l’ingérence collective des autres gouvernements dans le but de faire cesser un état de choses anormal. [...] L’intervention pour protéger le respect des principes de la

76 See ANDERSON (1995) 531; MALLARMÉ (1906) 496–500.

77 In early 1903 Carlos Calvo had send a circular letter to 12 members of the *Institut de Droit International* (Frédéric Passy, G. Moynier, John Westlake, Ludwig von Bar, Manuel Torres Campos, L. J. D. Féraud-Giraud, André Weiss, J.-E. Holland, Karl d'Olivecrona, F. M. C. Asser, Francis Charmes and Pasquale Fiore). CALVO (1903) 597–623.

78 CALVO (1903) 597–623.

79 See, e. g., John Westlake: WESTLAKE (1903) 607. See also MOYNIER (1903) 606.

80 CHARMES (1903) 620.

justice, pour réprimer la violence, pour empêcher la violation du droit commun n'est pas en tout case illicite."⁸¹

However, most of them emphasized that military intervention in such financial disputes was unlawful (Passy) or at least not desirable (Westlake) and that states should refer the disputes to the Permanent Court of Arbitration.⁸²

However, there was common agreement amongst international lawyers that the enforcement of financial claims against debtor states was not recognized as separate justification of such interventions.⁸³

Simultaneously, Latin American governments discussed the lawfulness of forcible interventions to enforce financial claims *vis-à-vis* debtor states at the Pan-American Conferences in 1901/02 and 1906. Again, politicians' ideas and concepts on this issue differed, yet no one recognized a concept of absolute state sovereignty.⁸⁴ However, especially semi-peripheral lawyers supported the introduction of international norms and thereby defending their new status as civilized states.⁸⁵ Yet, in 1906 at the Third Pan-American Conference delegates chose to refer the question to the Second Hague Peace Conference, which took place a year later, to be decided together with (mostly European) creditor states. By explicitly not following Drago's suggestion they wanted to avoid giving the impression that Latin American states were unreliable debtors because such an impression would have heavily impeded the future issuance of state bonds on European financial markets.⁸⁶

European states did not pay much attention to the question of forcible debt enforcement *vis-à-vis* sovereign states.⁸⁷ Yet, especially due to U.S./ American clever diplomacy, the participating states finally adopted the so-called Drago-Porter Convention. This convention, which constituted a milestone regarding the settlement of state bankruptcies, limited the use force to enforce financial claims against debtor states:

81 FIORE (1903) 622.

82 PASSY (1903) 604–605; WESTLAKE (1903) 607–608; WEISS (1903) 615.

83 *See, e.g.*, FERAUD-GIRAUD (1903) 615.

84 BÜCHI (1914) 117.

85 BECKER LORCA (2011) 31, 70.

86 This important concept is called reputation argument. *See, e.g.*, TOMZ (2007).

87 This becomes evident when reading the protocols written by German delegates at the conference.

“The contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals. This undertaking is, however, only applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any “compromis” from being agreed on, or, after the arbitration, fails to submit the award.”⁸⁸

The expression “contractual claims” in the convention also encompasses debts originating in the issuance of state bonds; those were exactly the kind of debts which formed part of absolute state sovereignty according to Drago. However, the convention still did not stipulate any substantive rules regarding the liquidation of state bankruptcies, nor did it stipulate a detailed formal dispute resolution mechanism. Juridification was thus combined with legal avoidance. This combination in the field of public international law – the introduction of norms and non-norms – led to the fact that global legal history neglected the entire issue.

Neither in the 19th nor in the 20th century historical state bankruptcies were compared with regard to questions in the field of public international law, even though the liquidation of state bankruptcies was an inherently trans- and international subject due to the heterogeneity of involved actors. Yet, while economists started to compare such historical bankruptcies in the 20th century,⁸⁹ lawyers did not do the same. Most of them analyzed a single state bankruptcy in depth by illustrating its historical background in detail.⁹⁰

Single historians like Karl Erich Born formed an exception. After describing the historical events which led to the bankruptcies in Russia, the Ottoman Empire and Serbia, he described the way actors had dealt with them; lastly, Born started his conclusion by saying that he wanted to reconsider the experiences which can be made by comparing all cases.⁹¹ He emphasized the relation between banks and governments as one of a mutual nature. Could Born have stated this hypothesis without using such an analytical tool provided by global legal history? Yes, he could have done so. However, his

88 Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, in: *The American Journal of International Law* 2 (1908) 81–85.

89 *See, e.g.*, SUTER (1988); REINHART/ROGOFF (2009).

90 *See, e.g.*, DU VELAY (1903); BASDEVANT (1904); KAUFMANN (1891a, 1891b); ROUMANI (1927).

91 BORN (1988) 25: “Zum Abschluss möchte ich erörtern, welche über den Einzelfall hinausreichenden Erfahrungen diese Schuldenkrisen vermitteln.”

hypothesis only becomes compelling because he backed it with several examples from state practice.

Even though many of the signatory states expressed reservations (18 out of 39) and the scope of the convention was rather restricted, creditor states restrained from intervening militarily against debtor states ever since. This is mostly due to a changed power distribution in the international community. By the turn of the 20th century the United States had become both a major creditor country and a strong political and military power on the American continent. European creditor states could not interfere in Latin America without risking retaliation actions taken by the U.S. government against them.⁹² While public international law had been Eurocentric before, it started to generate universal institutions around the turn of the century.⁹³ Furthermore, public international lawyer's role changed. They increasingly used examples from state practice to justify specific norms in this legal regime.⁹⁴ According to Arnulf Becker Lorca public international law's transformation around the turn of the century was especially due to Latin American lawyers because they wanted to use public international law to justify and defend their sovereign position in the international state community;⁹⁵ they therefore highly supported juridification in international relations.

III. Conclusion

The increasing issuance of state bonds on international stock exchanges and the oftentimes sooner or later ensuing state bankruptcies caused huge challenges for all involved actors. The number of involved actors grew enormously; additionally, their interests and legal nature differed significantly. As a consequence actors were able to deal with a debtor states financial breakdown through norms on different normative spheres: national legal systems (in the debtor or creditor states), self-regulatory regimes (of banks, creditor protection committees or stock exchanges) and public international

92 Suter and Stamm emphasized that debt liquidations were most beneficial for debtor states when an old hegemony (Great Britain) disappeared and a new one (U.S.A.) arose. SUTER/STAMM (1992) 649.

93 KOSKENNIEMI (2011b).

94 KENNEDY (1997–1998) 104.

95 BECKER LORCA (2011).

law. However, the involved groups were not static but changed against the backdrop of political and economic interests. This continuous change (“Binnendifferenzierung”)⁹⁶ led to a new geography of actor groups. The usage of norms (or the avoidance to introduce norms) happened on several legal levels. Thus, two levels of entanglements were formed and further influenced each other mutually.

Especially in public international law, actors avoided the introduction of an international insolvency regime or at least of some rules regulating such issues. The reasons for such a legal avoidance were manifold: During most of the 19th century international jurists did not recognize the problem of the liquidation of state insolvencies as being part of public international law. Furthermore, German investors and banks were hardly involved in such cross-border transactions until the end of the 19th century. Therefore, German international lawyers – who were very active during the 19th century⁹⁷ – did not bother with that topic. What was most important was the fact that governments wanted to maintain their freedom of action after debtor state’s bankruptcies. They wanted to decide on a case-by-case basis and against the background of political and military developments how to act.

However, this decisive meaning of power politics for the introduction – and non-introduction – of norms in public international law also led to the fact that global legal history has hardly engaged in this issue. Or – to be more precise – it engaged itself by refraining from the issue. Lawyers abstained from analyzing and discussing this topic because they considered it as an economic one. Maybe this is also one of the reasons why global legal history has not discovered the global legal value of the liquidation of state bankruptcies in the past. Power politics caused an overwhelming use of the tool of legal avoidance in public international law. Yet using stage models⁹⁸ or comparing case studies is not that obvious when – at least from a legal point of view – nothing is there to be compared. Yet it is exactly this lack of norms, this legal silence, in this inherently international field like the liquidation of state bankruptcies which can only be analyzed by using global legal histories tools.

96 FISCHER-LESCANO/TEUBNER (2007) 43–45.

97 KOSKENNIEMI (2011a).

98 OSTERHAMMEL (2001) 151.

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