

## SETTLING RUSSIA'S IMPERIAL AND BALTIC DEBTS

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### ABSTRACT

*The 1918 Soviet default is the longest and most complex sovereign debt dispute in history. The first settlement with a major Western power came with the United Kingdom in 1986. It followed a settlement almost twenty years earlier for claims arising from the Soviet annexation of the Baltic states. We show how the two negotiations became intertwined and prompted both states to take pragmatic positions on international law. Whereas the Soviet Union showed little interest in legally justifying its inconsistent positions on debt succession, the United Kingdom developed contested legal arguments on state recognition to justify using gold belonging to the Baltic States to settle Soviet claims. In addition, we document how UK government lawyers admitted internally that Britain's involvement in the Russian Civil War had been illegal, which in turn justified very limited compensation to British claimants.*

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## I. INTRODUCTION

After the Russian Revolution, the Soviet socialist government inherited an astonishing £3.3 trillion public debt from the Tsarist regime—most of which had been incurred to fund a war the Bolsheviks had opposed and then a war against the Bolsheviks themselves. After starting its large-scale expropriations in 1917, the Soviet government proceeded to annul all of Russia's Imperial debts in February 1918, including “all foreign loans, without exception.”<sup>1</sup> This sparked condemnation from Western powers and a dispute that lasted the entire period of Communist control of Russia. The first settlement with a major Western power was reached in 1986 with the United Kingdom. Here, the Soviet Union allowed the British government to use frozen Imperial Russian assets held in British banks to compensate private claimants. This was only about 2 percent of what was owed to British investors and bondholders, but in return the Soviet Union agreed not to pursue billions in damages for the illegal British intervention in the Russian Civil War. The Agreement followed a separate—and controversial—lump sum settlement almost twenty years before, in which the UK settled £15 million in private claims resulting from the Soviet annexation of the Baltic States by using gold worth £6 million transferred by the Baltic central banks to the Bank of England for safekeeping.

The two disputes became closely intertwined and this Article documents, for the first time, the negotiations resulting in their settlement. Based on extensive archival resources now open to the public, our focus is on the perspective of the UK.<sup>2</sup> We fill important gaps in the historical record of the Soviet default—the longest and most complex sovereign debt dispute in history<sup>3</sup>—as well as the economic fallout from the Baltic annexation. In addition, we provide a rare insight into the role of international law in sovereign debt negotiations during the Cold War<sup>4</sup> and the role of lump sum agreements as important, but underappreciated, instruments to settle complex international claims.<sup>5</sup> Two conclusions stand out.

First, the interstate nature of the disputes affected the length and outcome of the negotiations. Eliezer Yolles, an engineer, wrote to the Foreign Office in 1951: “Is there any court of

<sup>1</sup> Decree of January 1918, in 2 DOCUMENTS OF SOVIET-AMERICAN RELATIONS (Harold J. Goldberg ed., 1995).

<sup>2</sup> A total of almost three hundred files from the National Archives of the United Kingdom were consulted. These included files from the Law Officers (LO) along with the two lead agencies, the Treasury (T) and Foreign Office (FO), which in 1968 became the Foreign and Commonwealth Office (FCO). A range of other files were used for background—including the Cabinet Office (CO), Bank of England (BOE), the Ministry of Power (POWE), the Prime Ministerial Private Office Files (PREM), and the Board of Trade (BT)—but in practice the two lead agencies dominated discussions on the disputes.

<sup>3</sup> Prior work on the Soviet default has focused almost exclusively on inter-war negotiations: ODETTE LIENAU, *RETHINKING SOVEREIGN DEBT: POLITICS, REPUTATION, AND LEGITIMACY IN MODERN FINANCE*, ch. 3 (2014); JENNIFER SIEGEL, *FOR PEACE AND MONEY: FRENCH AND BRITISH FINANCE IN THE SERVICE OF TSARS AND COMMISSARS* (2014); ÉRIC TOUSSAINT, *THE DEBT SYSTEM: A HISTORY OF SOVEREIGN DEBTS AND THEIR REPUTATION*, ch. 12 (2019).

<sup>4</sup> Few works have documented sovereign debt negotiations during the Cold War. Notable exceptions include LIENAU, *supra* note 3, chs. 5–7; *SOVEREIGN DEBT DIPLOMACIES: RETHINKING SOVEREIGN DEBT FROM COLONIAL EMPIRES TO HEGEMONY* (Pierre Pénét & Juan Flores Zendejas eds., 2021).

<sup>5</sup> Richard B. Lillich & Burns H. Weston, *Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims*, 82 AJIL 69 (1988). On the benefits of diplomatic settlement in complex investor-state disputes, see Jason Yackee, *Investor-State Dispute Settlement at the Dawn of International Investment Law: France, Mauritania, and the Nationalization of the MIFERMA Iron Ore Operations*, 59 AM. J. LEGAL HIST. 71 (2019); Jason Yackee, *Expelling the “Sinister Vilgrain”: Nationalization, Diplomacy, and Sugar in Congo-Brazzaville, 1970–1978*, 44 FRENCH HIST. STUD. 119 (2021).

justice to hear my claim?? What steps could I take to bring the case before an international court?"<sup>6</sup> There was no such option at the time. With the Soviet state immune from lawsuits in national courts<sup>7</sup> and modern investor-state arbitration yet to take off,<sup>8</sup> British investors and bondholders were dependent on their government to espouse their claims. Yet, creditor rights were never that important to the British government compared to other domestic and international interests—such as reinvigorating trade with the Soviet Union. Also, while holders of Baltic debts benefited from a Labour government willing to expropriate Baltic gold reserves stored in the Bank of England, fear of Soviet retribution and of setting a damaging precedent meant that no British government was willing to confiscate Imperial Russian assets in British banks to compensate holders of Imperial debts. With limited levers against the Soviet Union and limited appetite to escalate the dispute, the UK was unable to force through a settlement.

Not only was a single-minded pursuit of investor interests politically unacceptable to the United Kingdom, it would also have resulted in an unbalanced position on compensation. With the claims belonging to the British government, rather than individual bondholders and investors, the UK had to take its own liabilities into account. We document how UK government lawyers acknowledged internally that the prolonged and destructive British involvement in the Russian Civil War had been illegal even under the limited international law rules on intervention that existed in 1919. This meant that while the compensation paid to British claimants after the 1986 Agreement did not satisfy the customary international law standard of “promptness,” it was probably “adequate” given the merit of the Soviet counterclaim.<sup>9</sup>

Second, both the UK and the Soviet Union took flexible positions on core questions of international law, driven by economic and political expedience. On its part, the UK quickly dropped early principled legal objections to the Revolution claims and instead focused on how to reach a pragmatic and forward-looking solution. London showed even greater flexibility in the context of the Baltic claims, where the government ended up using “assets of three innocent countries to pay the claims of a wrongdoing fourth.”<sup>10</sup> Doing so risked the UK conferring *de jure* recognition of the Baltic annexation, forcing senior government lawyers to develop contested arguments to provide legal cover for the agreement.<sup>11</sup>

The Soviet Union proved equally flexible. In addition to the nationalizations, the repudiation of the Imperial debts was a core plank of the Bolshevik challenge to international

<sup>6</sup> FO 371-94889.

<sup>7</sup> The UK codified restrictive sovereign immunity in the State Immunity Act 1978 for matters that occurred on or after November 22, 1978. Since then, issuers of bonds containing a waiver of sovereign immunity were no longer immune. See generally HAYK KUPELYANTS, *SOVEREIGN DEFAULTS BEFORE DOMESTIC COURTS* (2018).

<sup>8</sup> See Stratos Pahis, *BITs & Bonds: The International Law and Economics of Sovereign Debt*, 115 *AJIL* 242 (2021); Michael Waibel, *Opening Pandora's Box: Sovereign Bonds in International Arbitration*, 101 *AJIL* 711 (2007).

<sup>9</sup> See generally RICHARD B. LILLICH & BURNS H. WESTON, *INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS* 222 (1975) (“To the extent that these ‘counterclaims’ have merit, their waiver naturally confers benefits upon the claimant State, if not directly upon its eligible claimants under the particular lump sum settlement in question. Accordingly, these benefits must be taken into account in determining the adequacy of the compensation received.”).

<sup>10</sup> Richard B. Lillich, *The Anglo-Soviet Claims Agreement of 1968*, 21 *INT'L COMP. L. Q.* 1, 13 (1972).

<sup>11</sup> See generally Christopher Borgen & Aziz Saliba, *Recognition/Non-recognition in International Law*, 76 *INT'L L. ASS'N REP. CONF.* 424, 429 (2014) (“The UK’s approach to issues of recognition and non-recognition has traditionally been, and remains, essentially pragmatic.”).

economic order.<sup>12</sup> Yet Moscow showed little interest in reshaping international legal doctrine on debt succession. Rather than advancing a principled and sustained challenge to established international law, Moscow was ultimately opportunistic. While objecting to being a successor to the Imperial debts, on the grounds that the Russian population had neither consented to nor benefited from those debts, Moscow soon indicated willingness to provide partial payment in exchange for loans. Moreover, Soviet negotiators showed little interest in assessing the odious nature of individual debts and took the original legal position that while the Soviet Union was not a successor to Imperial debts it was a successor to external Imperial assets—such as the gold sitting in British bank accounts. Negotiators never elaborated on this argument or made a serious effort to claim the assets through British courts, suggesting they were aware of the inconsistency of their position. As seen from the perspective of the entire seventy-year period, the notion of odious debts served less as a legal principle, and more as a vague and ad hoc bargaining lever—in line with Lenin’s “principled opportunism” toward matters of law.<sup>13</sup>

In what follows, we document the negotiations chronologically from the initial Revolution claims and counterclaims (Part II) to early multilateral and bilateral negotiations (Parts III–VI) and attempts to settle the Imperial and Baltic claims after World War II (Parts VII–VIII). After the Baltic settlement in 1968, discussions shifted back to the Imperial debts, which were settled almost seventy years after the Revolution (Parts IX–X). Finally, we describe the decision of the UK government to repay the Baltic States after they regained their independence (Part XI).

## II. 1917–1919: THE REVOLUTION CLAIMS

Most of Russia’s debt to Britain took the form of government-to-government war loans totaling £500–600 million. In addition, Russia repudiated private external debts and confiscated some £200 million worth of British industrial and private property, resulting in 38,000 private claims against the Soviet government registered by a new Russian Claims Department set up in the Foreign Office (later transferred to the Board of Trade). British investors and bondholders were fully dependent on their government to resolve their claims. Whereas private bondholder groups had been very influential in sovereign debt disputes during the nineteenth century due to London’s importance for the international sovereign bond markets and Britain’s broader hegemonic trade and economic status, this bargaining power waned after World War I and the groups had no leverage over the Bolsheviks.<sup>14</sup> Ultimately, it was for the UK government to respond.

<sup>12</sup> HASSAN MALIK, *BANKERS & BOLSHIEVICS: INTERNATIONAL FINANCE & THE RUSSIAN REVOLUTION*, ch. 5 (2018); JEFF KING, *THE DOCTRINE OF ODIOS DEBT IN INTERNATIONAL LAW: A RESTATEMENT* 82–84 (2016).

<sup>13</sup> Robert Knox, *Marxism, International Law, and Political Strategy*, 22 *LEIDEN J. INT’L L.* 413 (2009). Knox cites Lukács in 1920: “The question of legality or illegality reduces itself then for the Communist Party to a mere question of tactics . . . . In this wholly unprincipled solution lies the only possible and practical rejection of the bourgeois legal system . . . .” *Id.* at 433 (emphasis in original). See also Owen Taylor, *Law and Socialist Revolution: Early Soviet Legal Theory and Practice*, in *REVOLUTIONS IN INTERNATIONAL LAW: THE LEGACIES OF 1917* (Kathryn Greenman, Anne Orford, Anna Saunders & Ntina Tzouvala eds., 2021). In this respect, our conclusion departs from that of Lienau who focuses solely on the inter-war period. LIENAU, *supra* note 3.

<sup>14</sup> See Paolo Mauro & Yishay Yafeh, *The Corporation of Foreign Bondholders* 8 (IMF Working Paper No. 03/107, 2003); Trish Kelly, *Ability and Willingness to Pay in the Age of Pax Britannica, 1890–1914*, 35 *EXPLORATIONS ECON. HIST.* 31 (1998); Marc Flandreau, *Sovereign States, Bondholders Committees, and the London Stock Exchange in the Nineteenth Century (1827–68): New Facts and Old Fictions*, 29 *OXFORD REV.*

The government had to balance a series of competing economic and political objectives. The economic calculus favored pragmatism. With millions unemployed at home, British manufacturers pushed for a clean break and to reestablish trade and investment links with the Soviet economy.<sup>15</sup> While private creditors holding Russian securities tried to organize through a panoply of organizations,<sup>16</sup> Lloyd George reminded his Cabinet that “the pressure from the Midlands is all the other way.”<sup>17</sup> Moreover, the Russian market was not of major importance for the British private capital market. Although Shell and its shareholders were badly affected,<sup>18</sup> Russian private debt was mostly held by a small number of banks—typically to fund retail investors—and small-time investors (private claimants included servants, barbers, and tailors).<sup>19</sup> They were dwarfed by capital interests within the British Empire, and many times smaller even than British investments in Latin America.<sup>20</sup> The government had an option of bailing out the private investors, of course, but that was regarded as a dangerous precedent.

The political calculus, by contrast, dictated a robust response. Churchill and UK Foreign Secretary Lord Curzon—both senior members of the Liberal Prime Minister David Lloyd George’s cabinet—were deeply concerned about communism at home and abroad, and as a matter of principle had little time for Soviet economic and legal arguments. They did not buy Lloyd George’s argument that “the ‘moment trade was established with Russia,’ ‘Communism would go.’”<sup>21</sup> Curzon even refused to shake hands with the Russian Commissar for Foreign Trade; a man Churchill referred to as “the hairy baboon.”<sup>22</sup> The UK was also under considerable pressure from France—its close ally—to take a hard line. France had become the principal creditor of the Russian Imperial government before the war with about 4.5 percent of the total French national wealth lent to the Russian Empire.<sup>23</sup> Private French investors were particularly enmeshed in the Russian economy and Paris was the largest market for Russian securities, resulting in 1.6 million individual debt claims registered with the French government after the war; totaling more than eleven billion francs, nine billion of which was directly owed by the Russian government.<sup>24</sup> Keen to lend to an ally against Germany, the French government had actively encouraged small savers

ECON. POL’Y 668 (2013); Juan Flores Zendejas, Pierre Pénét & Christian Suter, *The Revenge of Defaulters: Sovereign Defaults and Interstate Negotiations in the Post-War Financial Order, 1940–65*, in SOVEREIGN DEBT DIPLOMACIES, *supra* note 4, at 167–72.

<sup>15</sup> STEPHEN WHITE, *BRITAIN AND THE BOLSHEVIK REVOLUTION: A STUDY IN THE POLITICS OF DIPLOMACY 1920–1924*, ch. 1 (1979).

<sup>16</sup> SIEGEL, *supra* note 3, at 176.

<sup>17</sup> Cited in WHITE, *supra* note 15, at 20.

<sup>18</sup> POWE 33/349.

<sup>19</sup> KIM OOSTERLINCK, *HOPE SPRINGS ETERNAL: FRENCH BONDHOLDERS AND THE REPUDIATION OF RUSSIAN SOVEREIGN DEBT 179–85* (2016). After lodging its claims with the Russian Claims Department of the Board of Trade in 1927/28, records suggest Shell was hardly in touch about these with the Foreign Office and had no expectation of a settlement. By 1982, Shell had given up receiving compensation and was winding up the four minor companies with claims. Shell’s claims remained one of the largest and most complex when compensation was paid out subsequent to the agreement four years later. FCO 28-3137; FCO 28-5130; FCO 28-9661. See also *Capitalist Connection That Lies Behind the Lenin Legacy*, *TIMES*, July 18, 1986.

<sup>20</sup> LIENAU, *supra* note 3, at 81; SIEGEL, *supra* note 3, at 174.

<sup>21</sup> Cited in WHITE, *supra* note 15, at 3.

<sup>22</sup> *Id.* at 5–6.

<sup>23</sup> OOSTERLINCK, *supra* note 19, at vii.

<sup>24</sup> LIENAU, *supra* note 3, at 79.

all over France to make these investments. French papers were initially banned from discussing rumors of their repudiation<sup>25</sup> and the French government allowed French security holders to partially exchange their Russian Bonds for French ones bearing 4 percent. British bondholders, by contrast, had few expectations that their government would bail them out.<sup>26</sup> Still, a commitment to the UK-France alliance would require London taking a tough stance against the Soviets, at least on private property claims.<sup>27</sup> And indeed, the UK joined the French government in March of 1918 to declare that:

The obligations of the Russian Imperial government cannot be repudiated by any authority in Russia. . . . Such an act would violate the foundation of modern International Law. . . . No principle is better established than that according to which a nation is responsible for the acts of its government, without any change of authority affecting the incurred obligations. . . . The obligations of Russia subsist: they are binding upon the new State or the new States which will represent Russia.<sup>28</sup>

The Soviet government had its own set of competing objectives. Nationalization and repudiation of the Imperial debt were central economic pillars of the Revolution and to bolster its moral position, Moscow freed Persia, Turkey, China, Finland, Poland, and the Baltic States from claims to property and loans of the former empire.<sup>29</sup> Yet Lenin faced a devastating economic crisis with agricultural and industrial assets demolished and millions threatened by drought, famine, and starvation. He was therefore keen to export agriculture and raw materials to the Allied Powers in exchange for medicine, clothing, machinery, and infrastructure.<sup>30</sup> Russian exports had dropped dramatically during the war and throughout the 1920s, Russia's share in world trade was less than a third of what it had been in 1914.<sup>31</sup> Moscow therefore signaled a willingness to recognize some of its pre-war debt with Western states if this could re-establish commercial links and achieve diplomatic recognition.<sup>32</sup>

The Allied Powers acknowledged the Bolshevik government was in no position to actually repay much of its debt for decades.<sup>33</sup> Some suspected that despite invitations to negotiate, the Soviets did not have "the slightest intention of observing such undertaking or carrying out such agreements. This attitude of disregard of obligations voluntarily entered into they base upon the theory that no compact or agreement made with a non-Bolshevist government

<sup>25</sup> *Id.* at 170–73; OOSTERLINCK, *supra* note 19, at 129–30. The odious nature of one Tsarist loan, used mainly to crush revolutionary movements, even became a theme in the 1906 French presidential election. Stephanie Collet & Kim Oosterlinck, *Denouncing Odious Debts*, 160 J. BUS. ETH. 205 (2019).

<sup>26</sup> Oscar Bernal, Kim Oosterlinck & Ariane Szafarz, *Observing Bailout Expectations During a Total Eclipse of the Sun*, 29 J. INT'L MONEY & FIN. 1193 (2010).

<sup>27</sup> LIENAU, *supra* note 3, at 82.

<sup>28</sup> M. H. Hoeflich, *Through a Glass Darkly: Reflections Upon the History of the International Law of Public Debt in Connection with State Succession*, 1982 U. ILL. L. REV. 39, 61–63.

<sup>29</sup> ERNST FEILCHENFELD, PUBLIC DEBTS AND STATE SUCCESSION 539 (1931); KING, *supra* note 12, at 76–78, 84; Alexander N. Sack, *Diplomatic Claims Against the Soviets (1918–1938)*, 15 N.Y.U. L. Q. REV. 507, 511, 520 (1937–1938).

<sup>30</sup> OOSTERLINCK, *supra* note 19, at 3–4; SIEGEL, *supra* note 3, at 180.

<sup>31</sup> RONALD FINDLAY & KEVIN H. O'ROURKE, POWER AND PLENTY: TRADE, WAR, AND THE WORLD ECONOMY IN THE SECOND MILLENNIUM 442 (2007).

<sup>32</sup> See also Sack, *supra* note 29, at 522–24. During the Civil War when the White Armies were assisted by the Allies (see below), the Soviets had also indicated a willingness to pay some of the Imperial debts.

<sup>33</sup> LIENAU, *supra* note 3, at 75.

can have any moral force for them.”<sup>34</sup> Moscow, however, had counterclaims that would reduce, remove, or even reverse the repayment burden. The first involved the large Russian gold reserves held abroad, including in the United Kingdom. Following the 1918 Treaty of Brest-Litovsk, ending Russia's participation in World War I, the Russian government shipped 121 million gold rubles to Germany as part of a six-billion-mark payment to cover Germany's pre-war claims against Russia. Those payments were interrupted when Germany capitulated later that year and the gold was ultimately transferred to the Allied Powers as part of German reparations under the Treaty of Versailles. Moscow argued this gold had to return to Russia.<sup>35</sup> In addition, Moscow demanded that the Allied Powers return the considerable gold reserves they had held for safekeeping for the Russian Imperial government during the war (by 1914, the Imperial government held the world's largest gold reserves).

On its part, the UK received about £8 million of the Brest-Litovsk gold (transferred from the Bank of France in 1921) and £60 million of the Imperial gold.<sup>36</sup> Suggesting that this belonged to Russia, however, required Moscow to argue that while the Soviet government was not a successor to the Imperial government as far as Russian debt obligations were concerned, it was a successor government as regards external state assets. While a departure from customary international law,<sup>37</sup> the justification appears to have been that the Soviet government was a successor to the Tsarist government *when it benefitted the Russian people* so it had no obligation to pay (odious) Imperial debts but did have a claim to external Imperial assets not connected with exploitation.<sup>38</sup> This argument was however never presented in any detail to the UK, or even in those terms, by the Soviets.

The second, and more substantial, claim concerned the foreign military intervention in Russia. Allied intervention was first justified as an effort to try to keep Russia as an ally in the war against Germany. France, Japan, Greece as well as the United States contributed

<sup>34</sup> Note by U.S. Secretary of State to the Italian Ambassador in Washington, Aug. 10, 1920, *cited in* Sack, *supra* note 29, at 524 n. 80.

<sup>35</sup> The Treaty of Versailles terminated the Treaty of Brest-Litovsk and allowed Russia to obtain restitution and reparation from Germany (Articles 116, 259, and 292). Russia never did this, in line with Lenin's 1917 Decree on Peace calling for an end to the war based on a people's right to self-determination but without indemnities. In the 1922 Treaty of Rapallo, Russia and Germany renounced their war claims and losses and Germany renounced compensation for nationalized property. It is unclear if any German bondholders received some of these funds. See OOSTERLINCK, *supra* note 19, at 60–62; Lord Bullock & William Deakin, *The Missing Party: The Soviet Union and the Post-War Settlements*, in *THE LIGHTS THAT FAILED: EUROPEAN INTERNATIONAL HISTORY 1919–1933*, at 131 (Zara Steiner ed., 2005).

<sup>36</sup> The Imperial gold did not come to London but was shipped to Ottawa and Japan in exchange for bonds deposited with the Bank of England payable in gold to the Imperial Russian Government. FCO 28-3505.

<sup>37</sup> Oppenheim's *International Law* states categorically that “it is well established that the new regime takes the place of the former regime in all matters affecting the international rights and obligations of the state. In such situations the new government may, or course, wish to depart from the path set for the state by its predecessor, but it can only do so in accordance with the applicable rules for, eg denouncing treaties or withdrawing from organisations.” 1 OPPENHEIM'S INTERNATIONAL LAW 234–35 (Robert Jennings & Arthur Watts eds., 9th ed. 2008). In 1907, Keith noted that if “property is situated outside its jurisdiction no legal rule of succession exists.” ARTHUR BERRIDALE KEITH, *THEORY OF STATE SUCCESSION: WITH SPECIAL REFERENCE TO ENGLISH AND COLONIAL LAW* 57, 64 (1907).

<sup>38</sup> See also DANIEL P. O'CONNELL, *STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW: INTERNATIONAL RELATIONS 19–20* (1967). O'Connell relies on JOHANNES KIRSTEN, *EINIGE PROBLEME DER STAATENNACHFOLGE [SOME PROBLEMS OF STATE SUCCESSION]* (1962). The Soviet argument was to be repeated by later incoming Communist governments.

actively to support this objective. Yet, military activities by the Allies continued after the end of the war against Germany, without any evidence of either individual or collective reappraisal. The United Kingdom sent some 40,000 troops to support the White Russian army—second only to Japan—and Lloyd George told the House of Commons in 1919:

There is no country that has spent more in supporting the anti-Bolshevik clement in Russia than this country has, and there is no country approaches [sic] this in the sacrifices that have been made—not one. France, Japan, America—Britain has contributed more than all those Powers put together, and I boast of it because I consider it is an obligation of honour on our part.<sup>39</sup>

The Civil War resulted in upward of ten million casualties and in the destruction of Russian industrial capacity and agriculture. The Emmott Committee reported to the British government that “We doubt . . . whether so much human misery as has existed in Russia during the last three years has ever been the lot of any people within so short a time in the history of the modern world.”<sup>40</sup> Although most of the blame was put on the Soviet government itself, the Committee acknowledged that the blockade, civil war, and intervention were responsible as well. The Soviets claimed to hold extensive records of damage inflicted by unjustified intervention and their counterclaim against the UK was expected to be double the amount of the British claim.

### III. 1920–1921: TRADE AND RECOGNITION TAKES PRIORITY

The initial UK-France alignment did not last long. Dire economic circumstances in the UK meant even Liberal Foreign Secretary Lord Curzon eventually had to put his personal loathing of the Bolsheviks aside: “For the sake of Russia herself and of employment in England during the winter, everyone of us would be glad to see commercial relations established.”<sup>41</sup> The British Union of Russian Bondholders also supported the resumption of trade relations as an enticement for the Soviet government to recognize its debt.<sup>42</sup>

In order to initiate trade negotiations with the Soviet state capitalist economy, the Liberal government led by Lloyd George recognized the Soviet government *de facto* in 1921. Governments today generally do not issue formal statements of recognition but instead leave recognition to be inferred from dealings—usually the establishment of diplomatic relations—and the distinction between recognition *de facto* and recognition *de jure* is now rarely employed. In the 1920s, however, the distinction was often used for the recognition of both states and governments which had assumed control through unconstitutional change. *De facto* recognition implied either that the change was not fully established or that the recognizing state did not approve of it and so might withdraw recognition in the future. Further legal

<sup>39</sup> 121 Parl Deb HC (5th ser.) (1919) col. 721 (UK).

<sup>40</sup> COMMITTEE TO COLLECT INFORMATION ON RUSSIA, REPORT (POLITICAL AND ECONOMIC) OF THE COMMITTEE TO COLLECT INFORMATION ON RUSSIA, 1921, HC 1, at para. 381 (UK).

<sup>41</sup> SIEGEL *supra* note 3, at 181–82; see also Kate Miles, 1917: *Property, Revolution and Rejection in International Law*, in *REVOLUTIONS IN INTERNATIONAL LAW: THE LEGACIES OF 1917*, *supra* note 13, at 282–83.

<sup>42</sup> OOSTERLINCK, *supra* note 19, at 73. The Union coordinated its efforts with the Russian Railway Bondholders Committee, a similar initiative. *Conditions More Settled*, FIN. TIMES (Nov. 18, 1929). Both seemingly disintegrated.

distinctions were unclear at the time, but for the UK, *de facto* recognition conferred the capacity to conclude or terminate international agreements, to establish diplomatic relations, to assume the benefits and responsibilities of membership of international organizations, and to enact internal legislation which would be accepted or enforced elsewhere. This was established by the 1921 case of *Luther v. Sagor*, which upheld a 1919 Soviet decree expropriating a timber factory—giving retroactive effect to the *de facto* recognition.<sup>43</sup>

The *de facto* recognition thereby paved the way for the two governments to conclude a 1921 Trade Agreement. The agreement did not deal with the Revolution claims except for loans held in Barings Bank raised on European markets on behalf of the Tsarist regime—referred to as the “Tsarist assets” and “Baring Balances.” With the Imperial gold shipped abroad in exchange for bonds<sup>44</sup> and the Brest-Litovsk gold having been remelted, the Baring Balances were the main Russian government assets held in the UK. The largest portion resulted from advances made by the UK government to assist Imperial Russia while it was prosecuting the war against Germany as one of the Allies. As early as 1918, Litvinov had tried to withdraw the balances himself when sent to London as a potential ambassador. At that time the Soviet government had yet to be recognized, so Barings contacted the UK government for advice, which demanded that the deposits be handed over to the UK government. Barings objected. Internally, the Treasury later agreed with Barings and noted that although other UK banks had handed over their Imperial deposits it “had no right to take the money and any recognised succession of the Imperial Government would be entitled to claim it.”<sup>45</sup> Because of the law on banking confidentiality, the detail of the accounts was not fully known to the UK government (this uncertainty remained up until 1986), but the outcome of the negotiations in 1921 was to freeze the balances. The Soviet government agreed not to claim the Tsarist assets, and in return the UK agreed not to use them as compensation to private claimants. The hope was this would encourage Moscow to enter into a comprehensive settlement at a later date.

Overall, the 1921 agreement was a major achievement for the Bolsheviks: it ended the British blockade of the Soviet economy while Moscow only had to acknowledge liability for certain trade debts—a fraction of the tsar’s pre-war and wartime debts.<sup>46</sup> Recognition of the other private debts was left on the table for future negotiations, however, if the UK could provide sufficient inducements. And indeed, the Trade Agreement was explicitly framed as a stepping-stone to a future peace treaty settling all claims. Support for such a treaty was growing among the Allied Powers (except France) and in late summer of 1921, the Bolsheviks indicated they would be willing to discuss the debt provided they could receive loans to help with the economic crisis and the Volga famine along with *de jure* recognition.<sup>47</sup> The latter was important for the fledgling Communist government, as *de facto* recognition was seen as conferring only limited benefits.

Chicherin, People’s Commissar for Foreign Affairs, set out the Russian position to the UK, France, Italy, Japan, and the United States. His memorandum claimed that the Soviet

<sup>43</sup> [1921] 1 KB 456. On the distinction between *de jure* and *de facto* recognition, see further in Parts V, VII, and VIII.

<sup>44</sup> See note 36 *supra*.

<sup>45</sup> Cited in WILLIAM CLARKE, *THE LOST FORTUNE OF THE TSARS* 252 (1995).

<sup>46</sup> M. V. Glenny, *The Anglo-Soviet Trade Agreement, March 1921*, 5 J. CONTEMP. HIST. 63, 68–69 (1970).

<sup>47</sup> SIEGEL, *supra* note 3, at 192.

government had sought close economic cooperation with the Allied Powers, but that the Powers' demand for the recognition of the Tsarist debts had prevented such cooperation. And while the Soviets acknowledged no legal obligation to recognize the Tsarist debts, they were nevertheless willing to recognize some of them "under certain conditions" even if it meant giving up on a core principle:

no people is bound to pay for the chains it had borne in previous centuries—in other words that a people that has freed itself from despotism need not pay the debts of the previous despotic Government which utilises loans against its own people. . . . In view of this opinion of ours, as to Tsarist debts, we consider it a very important concession on our part to declare our willingness to recognize prewar debts, and the real purpose of this concession is to open the way for complete mutual understanding and for economic cooperation and joint work in the domain of production and exchange.<sup>48</sup>

Parts of the Soviet government began to backtrack soon after, however, and implied war debts should not be included in the talks. This was unacceptable to the French, who wanted all the debts recognized by Moscow.<sup>49</sup> The UK Foreign Office responded along the same lines: "The accepted rule among civilized states is that contracts made by and debts incurred by a government are to be regarded as the obligations of the nation it represented and not as the personal engagements of the ruler. Although the form of government may change the people remain bound."<sup>50</sup> The UK and France were not alone in attacking the "uncivilized" Bolshevik behavior. Although Alexander Sack's notion of "odious debts" is the starting point for most modern discussions of debt repudiation in the context of succession, Sack himself regarded the Bolshevik default as an attack on the capitalist system by a lawless government.<sup>51</sup> At the same time, however, the UK did not want to insist on the debt question if doing so would prevent pragmatic negotiations to restore Europe's paralyzed economic relations. Ultimately, the UK won the argument among the Allied Powers and preparations for an international conference began.

#### IV. 1922: MULTILATERAL DIPLOMACY FAILS

The Genoa Conference in the spring of 1922 was dominated, and ultimately undermined, by the Tsarist debts.<sup>52</sup> The Soviets refused to recognize the debts, yet also noted willingness to pay some of them, such as contracts of public utility companies guaranteed by the Imperial government. The special correspondent sent to Genoa for the *Manchester Guardian*, John Maynard Keynes, noted how Moscow's position revealed how "Bolshevik doctrine is cheap"<sup>53</sup>—recognition of the debts was on the table if sufficient economic inducements

<sup>48</sup> T 160-32-12; see also LIENAU, *supra* note 3, at 74–76.

<sup>49</sup> SIEGEL, *supra* note 3, at 194.

<sup>50</sup> T 160-32-12.

<sup>51</sup> Sarah Ludington & Mitu Gulati, *A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debts*, 48 VA. J. INT'L L. 595, 613–16 (2008); see also Anna Gelpern, *Odious, Not Debt*, 70 L. & CONTEMP. PROBS. 81 (2007).

<sup>52</sup> LIENAU, *supra* note 3.

<sup>53</sup> JOHN MAYNARD KEYNES, *THE COLLECTED WRITINGS OF JOHN MAYNARD KEYNES, VOL. 18: ACTIVITIES 1922–1932: THE END OF REPARATIONS* 422 (Elizabeth Johnson ed., 1978). Still, Keynes had little time for the attention given to bondholders: "Private investors who lend money to a foreign government take a risk, and there is no

could be made. This was arguably inconsistent with the decree of January 28, 1918, though possibly consistent with the idea that only Imperial debts with public benefits could be recognized.<sup>54</sup> Seemingly uninterested in bolstering a robust legal argument, however, the Soviet delegation was unclear whether its refusal to acknowledge the debts relied on discontinuity or—more traditionally—changing circumstances.<sup>55</sup>

The Russian Delegation are still of the opinion that the present economic condition of Russia and the circumstances which are responsible for it should fully justify the complete release of Russia from all her liabilities . . . (Letter from Russian Delegation, April 20th, 1922).

. . . revolutions which are a violent rupture with the past carry with them new juridical relations in the foreign and domestic affairs of States. Governments and systems that spring from revolution are not bound to respect the obligations of fallen Governments. (Letter from Russian delegation, May 3rd, 1922).<sup>56</sup>

Irrespective of the justification, the Allied Powers objected in strong terms—led by France—saying that the Bolsheviks must acknowledge all its debts before formal recognition or loans for famine relief. The Soviet government argued that full recognition would have to come first and even if it acknowledged some of the debts, they would be outweighed by its own demand for damages for the Allied intervention. Here, the Soviets reminded the Allied Powers that they too had sought compensation for similar acts in the past:

In law, the Russian counterclaims are infinitely more justified than the claims of the foreign Powers and their nationals. Practice and theory agree in imposing the responsibility for damages caused by intervention and blockade upon the governments which instituted them. Without citing other cases, we shall limit ourselves to recalling the decision of the Court of Arbitration at Geneva of September 14th, 1872, condemning Great Britain to pay to the United States 15½ million dollars for the damages caused to that country by the privateer “Alabama” which in the Civil War between the Northern and Southern States gave help to the latter.” (Letter from Russian Delegation, May 3rd, 1922).<sup>57</sup>

As noted by the Chief Editor in the first issue of *Foreign Affairs*,

If Great Britain had once had to pay more than fifteen million dollars damages (the case had been specially studied up in Moscow) for having allowed the Alabama to sail from England to prey on commerce during the American Civil War, how much did the Allied and Associated Powers owe for their continual intervention in the Russian one?<sup>58</sup>

principle of international law which guarantees them.” *Id.* at 391. He suggested that the Allies and Bolsheviks should set off their claims and counterclaims together with a commitment for long-term loans and possibly restore expropriated properties to their original owners.

<sup>54</sup> KING, *supra* note 12, at 84.

<sup>55</sup> Chen and Lauterpacht suggest the latter. TI-CHIANG CHEN, *THE INTERNATIONAL LAW OF RECOGNITION* ch. 4, at 101 n. 20 (1951); HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 111 n. 2 (1947).

<sup>56</sup> PAPERS RELATING TO INTERNATIONAL ECONOMIC CONFERENCE, GENOA, APRIL–MAY, 1922, Cm. 1667 (UK).

<sup>57</sup> *Id.*

<sup>58</sup> K [Archibal Coolidge, chief editor], *Russia After Genoa and the Hague*, 1 FOR. AFF. 133, 139 (1922).

The damages presented by Litvinov, First Deputy People's Commissar of Foreign Affairs, were indeed colossal: "The Allies claim 65,000,000,000 gold francs from us. We claim 125,000,000,000 gold francs. We cannot make peace and go back with less than 20,000,000,000 gold francs."<sup>59</sup>

The Soviet attempt to compare its claim with the award made by the Arbitral Tribunal in respect of the extensive damage caused by the *Alabama* to United States shipping was not justified. Early in the American Civil War, on May 13, 1861, Britain had made a formal proclamation of neutrality. The Arbitral Tribunal found that the failure to prevent the original sailing of the *Alabama* or to arrest it when subsequently it entered British ports implied a lack of due diligence in the performance of its neutrality obligations.<sup>60</sup> By contrast, the British government's intervention in the Russian Civil War was made in support of the imperial regime with which it was an ally and ended before recognition *de facto* in 1921 of the Communist government. There was never any formal position of neutrality in this conflict. The Allies, including the UK, were responsible for violating a norm of customary international law prohibiting intervention in foreign conflicts—but the rule was less precise than that resulting from a formal declaration of neutrality.

While not engaging on the Soviets' flawed parallels to the *Alabama* arbitration, the British government and the other Allied Powers rejected the Soviet counterclaims out of hand, particularly the notion that they could be balanced against private claims. But because there was no expectation that the Tsarist debts could actually be paid, Lloyd George was open to a compromise. In exchange for partial cancellation of the war debts (a significant concession for the UK), the Soviets would enter into lump-sum settlements with the Allied governments and pay compensation for expropriated property and its pre-war debts with a ten-year delay. Disagreements about amounts in the intergovernmental claims would be subject to arbitration, taking into account Russia's ability to pay as well as Russian losses during the War and Civil War (the UK stressed this did not imply legal recognition of actual liability for damage caused during the Civil War). As long as the Russian government acknowledged its debts, Lloyd George expected that the British business community would accept future dealings with the Bolsheviks—irrespective of whether they actually paid the debt in the foreseeable future.<sup>61</sup>

The Soviets rejected the proposal. Arbitration was unacceptable for claims that were ultimately about the conflict between two types of property right regimes and the Soviets instead suggested giving former owners preferential treatment when issuing new concessions. This followed Lenin's 1921 decision to reintroduce concession agreements, which he acknowledged required a restoration of private rights.<sup>62</sup> Yet an unspecified promise of future concession rights from a leader who saw state capitalism as a temporary stage on the path to socialism was unacceptable for the Allied Powers. France also rejected the British proposal and considered pulling out of the conference altogether fearing that the bartering over debt obligations was undermining the principle of international creditor protection.

<sup>59</sup> Cited in SIEGEL, *supra* note 3, at 202.

<sup>60</sup> Decision of Arbitral Tribunal established by Treaty of Washington of 8 May 1871, REPORTS OF INTERNATIONAL ARBITRAL AWARDS VOL. XXIX, at 129–34.

<sup>61</sup> WHITE, *supra* note 15, at 6.

<sup>62</sup> Andrea Leiter, *Contestations over Legal Authority: The Lena Goldfields Arbitration 1930*, in REVOLUTIONS IN INTERNATIONAL LAW: THE LEGACIES OF 1917, *supra* note 13, at 315, 321.

The five-week conference ended in failure. The parties agreed only to resume negotiations among “experts” in The Hague a few months later. Here, the allies sent mainly representatives of private creditors—the UK delegation included the president of the Association of British Creditors of Russia, Leslie Urquhart, who had also been an advisor to the British delegation in Genoa.<sup>63</sup> Talks continued on private debts and property but there was no compromise in sight and attempt at a multilateral settlement was abandoned. For the bondholders and nationalized industrialists, this proved to be the last real chance to receive compensation for more than half a century.<sup>64</sup> And while the Conferences did result in other European states recognizing the Soviet Republic *de facto*—a diplomatic success for the Bolsheviks—the Soviet economy would remain for many years largely shut off from international capital markets and loans.<sup>65</sup>

#### V. 1923–1929: BILATERAL DIPLOMACY FAILS

With a multilateral solution off the table, the UK considered bilateral alternatives as major British manufacturing firms and their bankers were concerned about what a new rupture in relations could mean for export contracts in the context of skyrocketing unemployment. Some London banks still denounced the 1921 Trade Agreement as “an agreement which legalized the robbery of British nationals,”<sup>66</sup> but before long even the City and the London Chamber of Commerce came around to supporting *de jure* recognition of the Soviet government in the hope this could help sustain and deepen trade links. This was granted in 1924 by the Labour government led by Prime Minister Ramsay Macdonald.<sup>67</sup> The specific legal relevance of moving from *de facto* to *de jure* recognition remained unclear at the time. Some later commentators regarded the distinction as purely diplomatic with no legal consequences.<sup>68</sup> It soon emerged, however, that one crucial implication in the UK was that the Bolshevik regime was now legally entitled to Russian government assets held in the UK. This was confirmed by the English High Court the same year when ruling that *de jure* recognition implied that the Soviet government had the right to archives and other properties

<sup>63</sup> The Association was founded in June 1921 after the Trade Agreement and represented the bulk of British industrial and commercial firms with losses in Russia as well as many individual holders of Tsarist bonds. It included thirteen members of Parliament. See Andrew Julian Lax, *Conservatism and Constitutionalism: The Baldwin Government, 1924–29* (unpublished Ph.D. dissertation, King’s College 1979). Two of the first chief officers of the Association, Richard Tweed and Gwynne Trew, had, like Urquhart, been oilmen in Russia.

<sup>64</sup> SIEGEL, *supra* note 3, at 209.

<sup>65</sup> After returning from The Hague, Urquhart came exceedingly close to a settlement of the £56 million claim by Russo-Asiatic—the largest expropriation claim against Russia by a British company, about a quarter of the total British claims. But while Urquhart was one of the most important Western businessmen in Russia and a personal friend of Krasin, Lenin exploded when he heard about the settlement. He suspected it was a British plot to establish a compensation precedent, directed Stalin to raise the concession in the Politburo and later made sure it was not ratified. On its part, the Foreign Office was suspicious of Urquhart and provided no assistance. Thomas S. Martin, *The Urquhart Concession and Anglo-Soviet Relations, 1921–1922*, 20 *JAHRBÜCHER FÜR GESCHICHTE OSTEUROPAS* 551 (1972) (Ger.). Urquhart’s son-in-law sought some of the compensation made available through the 1986 agreement. T 482-178; *Company Waits for Bolshevik Spoils; Australian Mining Company Beneficiary of Agreement on British Assets Seized During Russian Revolution*, *TIMES* (July 18, 1986).

<sup>66</sup> Cited in WHITE, *supra* note 15, at 175.

<sup>67</sup> *Id.*, ch. 7.

<sup>68</sup> E.g., J. L. BRIERLY, *THE LAW OF NATIONS* 110 (2d ed. 1936); see also Herbert W. Briggs, *De Facto and De Jure Recognition: The Arantzazu Mendi*, 33 *AJIL* 689, 690–91 (1939).

held by the former Consul-General in London appointed by the Russian Provisional Government (Kerensky).<sup>69</sup> The rule was upheld in later English Court decisions and relied upon by Lauterpacht and the British government when setting out the legal implications of *de jure* recognition. It is unclear why the Soviet authorities did not then or subsequently take active steps to claim their assets, but the result of its inactivity was that the assets remained, accruing contractual interest, until they were gathered in and used in the final settlement.

Even with the Soviet government having achieved *de jure* recognition, the prospects of a broader settlement involving all claims remained unlikely. One option could have been to refer the disputes an international tribunal. In 1923, the UK had compelled Costa Rica, another government in default, to agree to international arbitration—in part by sending a gunboat to its shores<sup>70</sup>—but the Soviets would agree to no such thing. Ironically, this may have turned out to be a blessing for the UK. On May 5, 1924, the Soviet government thus set out the broad outline of their claims for war damages against the UK.

[T]he British Government from the beginning of 1918 entered upon a course of systematic co-operation in and direct organisation of armed outbreaks against the Soviet Government, commenced to carry on direct military activities, organised and directed the military operations of the generals, landowners, and officers who had rebelled against the Soviet Government, rendered active help to the States hostile to and in a state of war with the Soviet State, occupied with British troops some of the richest territories of Russia, thus promoting the occupation and direct detachment by force of other Russian territories by third States, took part in the seizure and destruction of property, assisted the illegal export of capital from the country, the naval blockade and isolation of the land frontiers, one of the disastrous consequences of which was the ruin on the country.<sup>71</sup>

In communications with the Foreign Office, the Treasury rejected the premise that the UK had responsibility for those damages:

Presumably we shall disavow all responsibility for loss or damage arising from the wars of intervention. We found ourselves during the great war in alliance with Russia. When the old regime collapsed and the revolutions of 1917 came, it was Russia that changed, not we. We continued to co-operate with those armies and leaders who represented our allies, while a new Russian Government came into being which threatened them and made peace with our enemies.

The war damage suffered by Russia in the period following the armistice was primarily due to the fact that the authority of the Soviet was not effective throughout the whole of

<sup>69</sup> *U.S.S.R. v. Onou* (1925), King's Bench Division, A.D. 1925–6, Case 74. For an up-to-date analysis of the distinction between recognition *de facto* and recognition *de jure*, see OPPENHEIM'S INTERNATIONAL LAW, *supra* note 37, at 154–57. See also the decision of the UK Court of Appeal in *The "Maduro Board" of the Central Bank of Venezuela v. The "Guaidó Board" of the Central Bank of Venezuela*, [2020] EWCA (Civ) 1249 [95] et seq.

<sup>70</sup> See LIENAU, *supra* note 3, ch. 4. William Taft, president of the U.S. Supreme Court, ruled in favor of the UK government as sole arbitrator in the *Tinoco Arbitration*, when he upheld concessions granted by a government of Costa Rica which had never achieved general recognition but which had for two years maintained peaceful administration of the state. *UK v. Costa Rica*, 1923 1 RIAA 369.

<sup>71</sup> T 175-5.

the dominions which it claimed. The resistance of the White armies was not due to the support given them by the British and others. That support was never more than a minor factor. Their resistance proceeded from their own will. At that stage the Soviet had no better right to be regarded as the rulers of Russia than they.

When we offered support it was on account of the moral obligation arising from our relations with our Russian allies during the war.<sup>72</sup>

This assessment was not shared by Sir Cecil Hurst, then Foreign Office Legal Adviser.<sup>73</sup> On May 9, he advised that Britain's prolonged intervention in the Russian Civil War was probably illegal and could be condemned as such if considered by an international tribunal:

For the purpose of resisting the Russian counter claims we are on stronger ground as regards the allied action taken on Russian territory from the date of the Bolshevik revolution up to the moment when it was manifest that Germany was beaten, than we are as regards action taken after that date . . . Intervention during that period [before Germany was beaten] was a matter of self-protection and I think that an independent authority would hold it to be justified.

The Allies' case in respect of intervention in Russia during the second period, ie after it became manifest that the enemy Powers were beaten, is much weaker and in respect of it, it would in my opinion be difficult for the Allies now to make out a good case before an independent authority.

It would, of course, be very dangerous to make any admissions of liability, as the case is one against the Allies generally and any admissions now made by HM Government would weaken the case of the Allies as a whole.<sup>74</sup>

This position was never made public, and the legality of the Soviet counterclaim was not seriously assessed again until 1972.<sup>75</sup> The international law rules regarding intervention in foreign civil wars were more limited than they were to become following developments during the 1920s and 1930s and the entry into force of the United Nations Charter. But the rules of customary international law constraining intervention did exist in the early 1920s, as the Soviets themselves said in their Genoa memorandum. Yet, to our knowledge discussions of the international law of the extensive intervention in the Russian Civil War has been

<sup>72</sup> *Id.*

<sup>73</sup> After his Foreign Office career, Sir Cecil Hurst went on to be a judge of the Permanent Court of International Justice and was president of the Court from 1934 to 1936.

<sup>74</sup> FCO 64-190.

<sup>75</sup> In 1935, the British Embassy in Moscow wrote to the Foreign Office that it had studied arguments in a book about the British intervention in the Russian Civil War written with a view to justify Russia's significant counterclaims, seen (incorrectly) as legally similar to the American claims in the *Alabama* case. T 160-749-1. The book concluded the since neither state would realistically recognize the claims of the other, they should agree to a mutual waiver. W. P. COATES & ZELDA K. COATES, *ARMED INTERVENTION IN RUSSIA, 1918–1922*, at 374 (Victor Gollancz ed., 1935).

omitted from academic literature, even that which deal extensively with interventions in the pre-Charter era.<sup>76</sup>

Shortly after having set out their counterclaims against the UK, the Soviets returned to options for partial repayment in exchange for government loans.<sup>77</sup> But while both sides now favored concrete and pragmatic negotiations, Moscow's offer remained too vague and limited for the UK. As the deadlock remained, the Prime Minister therefore left the government claims to one side when bilateral discussions over renewed trade links began in London. In August 1924, the two parties signed a Treaty of Commerce and Navigation and a General Treaty—both subject to ratification. The treaties left all governmental claims for later discussions while the UK government would extend credits to the Soviet government once some progress was made on the settlement of private claims.<sup>78</sup> The Soviets undertook to continue direct negotiations with expropriated British investors and bondholders. Compensation for expropriation claims were to be examined by a mixed advisory commission—composed of six members appointed by the two governments—and negotiations with bondholders would be based on acknowledgment by the UK government that they could not be fully compensated due to the economic conditions in the Soviet Union. The Soviet counterclaim regarding the UK intervention was reserved for discussions at a later date.<sup>79</sup> On this basis, a further treaty was envisaged which would include Soviet promises of payment and settlement of outstanding private claims in exchange for a UK government loan.

For supporters, this showed that the Soviets had accepted the principle of compensation, but with no clear admission of liability or any actual settlement Conservatives denounced the Treaty as a farce. Soon afterward, publication of the infamous Zinoviev letter led to widespread fear of Russian Communist infiltration in Britain and to the fall of the Labour government.<sup>80</sup> The successor Conservative government led by Stanley Baldwin refused to ratify the 1924 treaties, terminated the 1921 Trade Agreement, and suspended diplomatic relations with the Soviet Union. Churchill announced that “We have proclaimed them treacherous, incorrigible and unfit for civilized intercourse,” and Stalin expected the UK was about to go to war with the Soviet Union.<sup>81</sup>

## VI. 1929–1940: RELATIONS RESUME, FOCUS SHIFTS TO SOVIET ASSETS IN UK

When Labour returned to power in 1929, bilateral relations were reset yet again. A temporary trade agreement was concluded, and an Anglo-Soviet Committee was established in 1930 to consider the claims and counterclaims across six subcommittees. In preparation, the

<sup>76</sup> See CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* (3d ed. 2008); CHIARA REDAELLI, *INTERVENTION IN CIVIL WARS: EFFECTIVENESS, LEGITIMACY AND HUMAN RIGHTS* (2020); Maziar Jamnejad & Michael Wood, *The Principle of Non-intervention*, 22 LEIDEN J. INT'L L. 345 (2009).

<sup>77</sup> T 175-5.

<sup>78</sup> For a defense of the 1924 Treaty, see the pamphlet INDEPENDENT LABOUR PARTY, LLOYD GEORGE'S LOANS TO RUSSIA (1924) (available from University of Warwick Library, Maitland/Sara Collection). See also Alexander N. Sack, *Diplomatic Claims Against the Soviets (1918-1938) (Continuation)*, 16 N.Y.U. L. Q. REV. 253 (1938).

<sup>79</sup> See also Sack, *supra* note 78, 268–69.

<sup>80</sup> The Zinoviev letter, generally believed to be a forgery, purported to be a direction from the Communist International (Comintern) in Moscow to the British Communist Party instructing it to carry out seditious acts in order to radicalize the working class. It was published by the *Daily Mail* newspaper four days before the general election and undoubtedly influenced many voters against the Labour Party.

<sup>81</sup> CURTIS KEEBLE, *BRITAIN, THE SOVIET UNION AND RUSSIA* 110 (2001).

UK government had to develop a strategy to deal with the Soviet intervention claim. The Treasury noted internally that the UK could not rule out the counterclaims and expected the Soviets would argue that liability was “admitted in 1924 by our proposal to reserve both War Debt and counter-claims ‘to a later date.’”<sup>82</sup> To this, the British reply should be that the “[i]ntervention was only a subsidiary factor in what was primarily a civil war in Russia” and that attributing specific damages would be impossible. Moreover, since UK was in any event willing to cancel most of the Russian War Debt—some £540 million—this would more than cover “any loss or damage for which British intervention could be regarded as directly responsible.”<sup>83</sup>

Talks about the intervention claim never materialized, however, because negotiations stymied when the Soviets insisted on detail about each individual British claim. This took British negotiators by surprise, who had expected a broad-based discussion toward an equitable and pragmatic settlement. It prompted senior lawyers to draft a legal opinion confirming that the government had made no undertaking to put forward claims by British citizens registered with the Russian Claims Department. Equally, disclosure of information did not imply that claimants had a right to money from a settlement under UK law<sup>84</sup> and discussing the claims with the Soviets did not convert them into diplomatic claims. Support for this position was based on two decisions of the Permanent Court of International Justice *Mavrommatis* (1924)<sup>85</sup> and *Chorzów Factory* (1928).<sup>86</sup>

None of the claims, therefore, have yet become diplomatic claims in the ordinary sense of that expression, viz. claims which His Majesty's Government are formally putting forward against the Soviet Government and for which they have made themselves responsible. His Majesty's Government may in the future adopt this course with regard to all or some of the claims . . . . [If so,] His Majesty's Government will be at liberty in the exercise of His Majesty's prerogative to deal with the claims as they think fit; e.g., they may abandon, compromise or accept payment in settlement for them, and if such a course is followed any payment which may be received in satisfaction therefore will be a payment made to His Majesty's Government, whose property it will be.<sup>87</sup>

<sup>82</sup> T 160-259-11.

<sup>83</sup> *Id.*

<sup>84</sup> Support for this was found in the decisions of the English Courts in the cases: *Rustomjee v. the Queen* (1876), 2 Q.B.D. 69 (CA), 487; *The Civil War Claims Association Ltd. v. the King* (1930), 46 T.L.R. 581; and 47 T.L.R. 102. See also below in relation to the Baltic annexation claims.

<sup>85</sup> *Mavrommatis Palestine Concessions* (Greece v. Gr. Brit.), 1924 P.C.I.J. (ser. A) No. 2, para. 21 (Aug. 30) (“By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law.”).

<sup>86</sup> *Factory at Chorzów* (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 28 (Sept. 13) (“The reparation due by one State to another does not . . . change its character by reason of the fact that it takes the form of an indemnity for the calculation of which the damage suffered by a private person is taken as the measure. The rules of law governing the reparation are the rules of international law in force between the two States concerned, and not the law governing relations between the State which has committed a wrongful act and the individual who has suffered damage. Rights or interests of an individual the violation of which rights causes damage are always in a different plane to rights belonging to a State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical in kind with that which will be suffered by a State; it can only afford a convenient scale for the calculation of the reparation due to the State.”)

<sup>87</sup> BT 13-131-5.

In the end, only the subcommittee charged with the Tsarist debts held substantive discussions, but the Soviets again insisted on specific information about each individual claim. This was not to assess the odious nature of the debts, however, but because the Soviets knew full well that few of the thousands of claimants were able to provide documentation.<sup>88</sup> Moreover, Soviet negotiators refused to list claims they were prepared to consider. The Soviet delegation reiterated that the Decrees of 1918 annulled all Tsarist debts so the committee could not engage in discussion about recognition of obligations but should rather consider possible exceptions that could justify settlement conditional on loans or credits.<sup>89</sup> This was, in essence, the position taken by Moscow up through the twentieth century and it contrasted with the position on property claims, where Russia asserted legality of expropriation but at least did not categorically deny liability to compensate.<sup>90</sup> The UK delegation found it difficult to engage in settlement discussions without clear acknowledgment of the bonds, and saw the Soviets as trying “to establish the exceptions to a rule before the rule itself is laid down.”<sup>91</sup> British negotiators were also not authorized to offer loans or credits and so the talks reached deadlock.

Not only did debt negotiations disappoint, the UK also soon realized it had agreed to a raw deal in the 1930 trade agreement, as Moscow’s trade monopoly allowed the Soviets to manage their trade more or less the way they saw fit without breaching the agreement’s most-favored-nation clause. The UK terminated the agreement in 1932 and negotiated a new agreement in 1934 in an attempt to correct its growing bilateral trade deficit. During these negotiations, the UK government stressed to the Soviets—and repeated in the House of Commons—that a *permanent* trade agreement would require “a satisfactory settlement” of the debts and claims and the Soviets should “therefore regard any commercial agreement which may be negotiated meanwhile as being of a temporary and transitional character pending a final disposal of this question.”<sup>92</sup>

Subsequent attempts to negotiate a long-term loan which together with the Baring Balances could be used to settle the British claims,<sup>93</sup> were opposed by the Association of British Creditors of Russia on the ground that Russia’s oil and gold riches and favorable trade balance “makes Soviet Russia not an impoverished debtor but a deliberate defaulter.”<sup>94</sup> Attempts to settle through bilateral negotiations ultimately came to an end. The exception was a 1935 settlement between the Soviet government and the Lena Goldfields Corporation, involving £3 million to be paid over twenty years—a fraction of the £13 million (plus interest)

<sup>88</sup> Odious debts, following Sack, are those incurred by despotic regimes that did not benefit the population and where investors knew that their credits were likely to have been misused. All three conditions must be met to qualify, which requires analysis about individual loans and lenders. Lee C. Buchheit, G. Mitu Gulati & Robert B. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201, 1222–23 (2007).

<sup>89</sup> T 160-385-2.

<sup>90</sup> FCO 64-183.

<sup>91</sup> BT 13-131-5.

<sup>92</sup> 286 Parl Deb HC (5th ser.) (1934) col. 1298; see also Kenneth M. Starr, *The Framework of Anglo-Soviet Commercial Relations: The British View*, 37 L. & CONTEMP. PROBS. 448 (1972).

<sup>93</sup> Michael Jabara Carley, “A Fearful Concatenation of Circumstances”: *The Anglo-Soviet Rapprochement, 1934–6*, 5 CONTEMP. EUR. HIST. 29 (1996). Maisky told the Foreign Office that Russia “would never directly undertake to pay compensation to the claimants; but that they would pay interest, relatively high interest, on a long loan, i.e. 25 years or so.” T 160-749-2.

<sup>94</sup> T 160-749-3.

arbitration award rendered in 1930 by British courts based on the 1925 concession agreement.<sup>95</sup> But the Soviets later defaulted upon this too.

Bilateral negotiations having failed, the UK government considered taking Soviet assets within UK jurisdiction on a unilateral basis. A 1934 proposal would have expropriated the Tsarist assets in Barings Bank either for the benefit of the UK taxpayer or for the benefit of the private claimants against Russia. UK ministers discussed ways to confiscate these assets over several years, but the principal deterrent to unilateral action was the fear of the damage that action without Soviet agreement would cause to the reputation of London as an international financial center.<sup>96</sup> The Soviet government regarded Russian assets in the UK as property of the Soviet state, and—as explained—*de jure* recognition granted by the UK in 1924 implied the right of the Soviet government to such property. Barings had, however, agreed not to part with the balances without giving the UK government the opportunity to intervene, possibly through legislation.<sup>97</sup>

In March 1939, Robert Hudson, UK Secretary for Overseas Trade, visited Moscow to negotiate a revised Trade Agreement. He proposed to Litvinov, by then the Soviet Foreign Minister, that the claims and counterclaims should be settled by a mutual cancellation, together with acceptance by the Soviet Union that the Baring balances would be used to compensate British claimants. The Soviet Union had agreed a similar arrangement with U.S. President Roosevelt under the so-called Litvinov Assignment of 1933, which foresaw but never achieved a settlement of U.S. claims.<sup>98</sup> But although Litvinov was broadly in favor of such an arrangement with the UK, he resisted the suggestion by Hudson that the Soviet Union should provide additional funds. After the outbreak of World War II, the UK decided to leave the question of claims for the time being, but the 1939 proposal was basically what the UK and the Soviets ultimately agreed almost fifty years later, except that the 1986 deal included it a minor payment to the Soviets rather than the other way round.

## VII. 1945–1957: NEW CLAIMS AND COUNTERCLAIMS

The 1940 Soviet annexation of the Baltic States further complicated the claims and counterclaims (see Table 1).<sup>99</sup> The property and debts of many UK nationals was expropriated in the months before and after the Baltic States became part of the Soviet Union. British assets had also been expropriated in territories ceded to the Soviet Union by Romania, Czechoslovakia, Poland, and Finland. The UK government reserved the right to claim

<sup>95</sup> The Lena Goldfields concession had been one of sixteen granted by the Soviet government to foreign companies between 1924 and 1928. The company filed for arbitration after five years of operations, resulting in the only arbitration in which the Soviet Union ever participated. Andrea Leiter, *supra* note 62, at 315, 316, 323. See also ANDREA LEITER, MAKING THE WORLD SAFE FOR INVESTMENT: THE PROTECTION OF FOREIGN PROPERTY 1922–1959, ch. 3 (2023); V. V. Veeder, *The Lena Goldfields Arbitration: The Historical Roots of Three Ideas*, 47 INT'L & COMP. L. Q. 747, 789 (1988); Daria Davitti, *1917 and Its Implications for the Law of Expropriation, in REVOLUTIONS IN INTERNATIONAL LAW: THE LEGACIES OF 1917*, *supra* note 13, at 302–06.

<sup>96</sup> By this time, international debt markets had frozen and the UK could no longer rely on access to its debt markets as a lever in negotiations with defaulters. Juan Flores Zendejas, Pierre Pénet & Christian Suter, *The Revenge of Defaulters*, in SOVEREIGN DEBT DIPLOMACIES, *supra* note 4, at 170.

<sup>97</sup> CLARKE, *supra* note 45, at 256.

<sup>98</sup> See U.S. v. Belmont, 301 U.S. 324 (1937); U.S. v. Pink, 315 U.S. 203 (1942); Philip C. Jessup, *The Litvinov Assignment and the Pink Case*, 36 AJIL 282 (1942); First Nat'l City Bank of N.Y. v. Gilliland, 257 F.2d 223, 225 (D.C. Cir. 1958); Sills, *op cit*.

<sup>99</sup> See generally LAURI MÄLKSOO, ILLEGAL ANNEXATION AND STATE CONTINUITY: THE CASE OF THE INCORPORATION OF THE BALTIC STATES BY THE USSR (2d rev. ed. 2022).

TABLE 1.  
UK AND SOVIET CLAIMS AS OF 1949, £MN

UK Claims	Soviet Claims
<b><u>PRIVATE CLAIMS</u></b>	<b><u>FROZEN ASSETS IN THE UK</u></b>
<i>Revolution claims; 38,000 claimants: 357</i>	<i>Baring Balances: More than 6</i>
<i>Baltic claims: 9</i>	<i>Baltic assets: 5.5</i>
Estonia: 5	Estonia: 2
Latvia: 3	Latvia: 2.5
Lithuania: 0.9	Lithuania: 1
<i>Lena and Tetiuhe bondholders: 2.5</i>	<i>Assets from Russian companies that ceased to exist as a result of 1918 Soviet legislation: unknown</i>
<b><u>GOVERNMENT CLAIM</u></b>	<b><u>OTHER SOVIET CLAIMS</u></b>
<i>Imperial loans during WWI: 559 + interest</i>	<i>Imperial gold deposited during WWI: 60</i>
	<i>Brest-Litovsk gold: 8.5</i>
	<i>Intervention claim: No separate UK claim had been presented, but it would be the UK portion of total 4,067 mn. claim against all allies put forward in 1922.</i>

**Source:** Compiled from T 236-4799. Very few claims had been scrutinized and verified and a number of estimates were adjusted as more information was gathered (and the pound was revaluated). The issue of interest was also left for future assessment. Minor further claims left out of table.

compensation for these assets in 1940, but the Soviets refused to admit liability. Back in London, the Bank of England held substantial gold reserves transferred to it by the Central Banks of the Baltic States for safekeeping. But in retaliation for the British government's refusal to hand over the gold, the Soviets defaulted on the Lena Goldfields settlement along with bonds of the Tetiuhe mining concession in Siberia. The Central Bank of the Soviet Union claimed to have purchased the gold from the Baltic Central Banks just prior to the annexation and Moscow made clear they would persist in their position until the Baltic gold was released.

The added complexity increased the pressure on the UK government, for whom the Tsarist and Baltic debts henceforth became a bundle of private British claims against the Soviet Union. On the one hand, the new claims increased the number of voices calling for action, including those of members of Parliament.<sup>100</sup> Yet interests among private claimants were divided. Post-Revolution claimants complained that their debts were long overdue and asked for special attention as they were now aging and had suffered hardship having lost most of their personal possessions.<sup>101</sup> The Lena and Tetiuhe bondholders saw their interests as separate from Revolution claims and argued that they could therefore be dealt with independently,<sup>102</sup> while claimants of post-1939 debt expected to be a priority over Lena and Tetiuhe bondholders, as the latter had already been partially compensated. Each of the three groups saw their claims as unique and requiring preferential treatment.

<sup>100</sup> The Association of British Creditors in Russia wanted reassurances that their claims had not in fact been "forgotten" and one bondholder asked the Foreign Office, "are we now, as a Nation, impotent?" FO 371-94889; FO 371-94890.

<sup>101</sup> FO 371-122927. While expropriation claims took up the largest amount of private claims, many were small-time investors. See note 22 *infra* and associated text.

<sup>102</sup> FO 371-122926.

With little Soviet interest in negotiations, the Foreign Office returned to the option of seizing Soviet assets. Once again, however, recognition was a barrier. In 1941, when the UK desperately needed Russia as part of the war effort, Eden had assured Stalin that the Baltic countries formed part of the USSR.<sup>103</sup> By 1945, however, the Foreign Office stated that the Baltic States were not part of Soviet territory. In 1946, the UK recognized the Baltic annexation *de facto* through the certificate of the foreign secretary in the *Tallinna* case relating to the sunk vessel *Vapper*,<sup>104</sup> but it still did not recognize the annexation *de jure*. As explained above, this implied that the UK continued to regard the gold held in the UK as the property of the former Baltic States rather than an asset of the Soviet Union.

Eric Beckett, the Foreign Office Legal Adviser, wrote for advice from the Attorney-General, Sir Hartley Shawcross, in May of 1948. Beckett cited Lauterpacht in Oppenheim's *International Law*,<sup>105</sup> and the 1939 English decision *Haile Selassie v. Cables and Wireless*.<sup>106</sup> The case took place after the invasion of Abyssinia (later Ethiopia) by Italy and required a Chancery court to determine entitlement to money contractually owed to Ethiopia when the conquest by Italy had been recognized *de facto* but not *de jure* by the UK. By the time an appeal was heard, the UK government had recognized the king of Italy as the *de jure* emperor of Ethiopia, the recognition was held to have retroactive effect, and the money awarded to Italy. Beckett noted that this case was "the only actual authority" on this point at the time and justified the result

because the idea is that *de facto* recognition is something provisional and therefore may be withdrawn, and it would be wrong when you have only accorded a provisional recognition to a state of affairs to authorize a succession by the new *de facto* sovereign to assets abroad, seeing that when this has been done the assets cannot be restored to the old sovereign should provisional *de facto* recognition be withdrawn.<sup>107</sup>

By extension, this implied that HMG could not include the Baltic assets in negotiations with the Soviets without suggesting that the Baltics were Soviet territory *de jure*. It did not, however, exclude the possibility that Baltic assets in the UK could be unilaterally confiscated and distributed as compensation for British properties nationalized in the Baltic States.

In doing so we should be saying in effect that the Baltic States got, through the acts of their *de facto* authorities, the proceeds of British property there and we were taking in compensation assets which belonged to the Baltic States in this country. It is true that the acts of nationalisation of British property in the three Baltic States was the action of *de facto* authorities only, but it is equally true that, as stated in the passage which I have quoted from Oppenheim "the legislative and other internal measures of the authority recognised *de facto*" are treated on the same footing as those of a State or Government recognised *de jure*. Further, the very fact that these Baltic claims and Baltic assets are

<sup>103</sup> Evgeny Tikhonravov, *British Policy Towards the Incorporation of the Baltic States in the USSR: A Dilemma of De Facto and De Jure Recognition*, 62 AM. J. LEGAL HIST. 133, 143, 152–53 (2022).

<sup>104</sup> *Tallinna Laevauhisus and Others v. Tallinna Shipping Company and Esthonian State Shipping Line* [1946] 79 Lloyd's List LR 245 ("His Majesty's Government recognise the Government of the Estonian Soviet Socialist Republic to be the *de facto* Government of Estonia, but do not recognise it as the *de jure* Government of Estonia."). For a discussion, see Tikhonravov, *supra* note 103.

<sup>105</sup> Also set out in LAUTERPACHT, *supra* note 55.

<sup>106</sup> *Haile Selassie v. Cable & Wireless Ltd (No. 2)* [1939] Ch. 182

<sup>107</sup> BT 11-3885.

being separated from the rest is only explainable by the fact that *de jure* recognition of this incorporation has not been given, and indeed emphasises this very fact.<sup>108</sup>

The argument appears to have been that even though the expropriation of British assets had been done by the *de facto* Soviet authorities, the Baltic States remained at least partially responsible and had enjoyed unjust enrichment by receiving some of the benefits of the assets.<sup>109</sup> How the Baltic states enjoyed the proceeds of British assets was left unclear.

In the ensuing meeting in July 1948, Shawcross and the Solicitor-General advised that legislation could be drawn up to confiscate the Tsarist assets in Barings Bank to compensate holders of Tsarist debts and the same could be done for the Baltic gold in the Bank of England without recognizing the annexation *de jure* as long as “no claim was made to the Soviet Government on behalf of those with claims in respect of the Baltic States.”<sup>110</sup> Only Baltic claimants could be compensated with Baltic assets so they should not be used to compensate the Lena and Tetiuhe bondholders. A moral case could be made, according to the Foreign Office, as the Soviet default on the Lena settlement had explicitly been linked to the Baltic gold, but legally it could imply the Baltic assets were in fact Soviet assets that could be used to settle Soviet debts, which in turn could be interpreted to imply *de jure* recognition. Here, the Law Officers took the view that:

it was impossible to meet the claims of the Lena and Tetiuhe bondholders out of the Baltic assets. Not only would this imply that the Baltic assets could be used to meet a debt of the Soviet Government and were therefore in some way a Soviet asset, but there would be valid complaints by the holders of Baltic assets.<sup>111</sup>

Upon insistence of the Soviets, however, the Foreign Office still preferred to incorporate the Lena and Tetiuhe bondholders into the Baltic pool, so looked for new arguments that doing so would not mean a *de jure* recognition of the Russian annexation of the Baltic states. Those new arguments, by Fitzmaurice of the Foreign Office Legal Advisers, were twofold. First, the Baltic assets could be taken as an exercise of a right of self-help or retaliation because British nationals had suffered damage and all other means of recourse had failed the UK government. Second, following the *Mavrommatis* case,<sup>112</sup> the claims against the Baltic states belonged to the UK as a state not individual British subjects and following the *Chorzów Factory Case* as well as *Rustomjee v. the Queen* and *The Civilian War Claimants Association v. the King*,<sup>113</sup> a

<sup>108</sup> BT 11-3885.

<sup>109</sup> In 1979, the International Law Commission concluded “that the attribution of international responsibility to a State which has the power of direction or control over a certain area of the activities of another State or which has coerced another State into committing a wrongful act should not automatically preclude the responsibility of the State subject to that power or coercion.” Report of the International Law Commission on the Work of Its Thirty-First Session, 14 May–3 August 1979, UN Doc. A/34/10 (1979), reprinted in [1979] 2 Y.B. INT’L COMM’N 91 (pt. 2), UN Doc. A/CN.4/SER.A/1979/Add.1 (pt. 2), at 105. On unjust enrichment see also, Davitti, *supra* note 95. A legal counsellor in the FCO noted in 1991 that, “I might add that the Baltic States might make the, perhaps political, point that, far from having benefitted from, or being enriched by, the expropriated British assets, fifty years of Soviet centralised economic policies have completely wrecked their once thriving economies.” FCO 28-11134.

<sup>110</sup> LO 3-1424.

<sup>111</sup> *Id.*

<sup>112</sup> *Mavrommatis*, *supra* note 85, para. 5(iv)(a).

<sup>113</sup> See also discussion of the Revolution claims above.

distinction could be made between the *grounds* on which a seizure of foreign assets was effected and the *use* of such assets after they had been taken. How assets were dealt with was solely the concern of the UK government, not the Soviet government or the Baltic States.<sup>114</sup> On this basis, Shawcross was asked to reconsider the issue:

since His Majesty's Government could, in the circumstances which have arisen and so far as international law is concerned, have appropriated all these assets and put them into the general revenues of the country or devoted them to colonial development in Guiana, no implication about recognition and non-recognition can be drawn from the fact that Latvian assets are in fact partly used as the basis of a fund out of which Estonian claimants are paid or as the basis of a fund out of which certain particular Soviet claimants are paid (*viz.* the *Lena* and *Tetiuhu* bondholders).<sup>115</sup>

Shawcross agreed. Provided, the government had exhausted other means of obtaining satisfaction—such as a claim before the International Court of Justice—the government could proceed.

I think that it is legally the case that if a Government takes over claims of its individual nationals against a foreign state and recovers compensation in respect of them, it is not bound in international law or by our own municipal law itself to devote the sums so recovered to satisfying the claims of those on whose behalf it has acted (*Rustomjee -v- The Queen*). No doubt the same principle would apply to a case where a Government became legally entitled to seize assets of the foreign power which happened to be within its jurisdiction in order to satisfy such claims. But it is equally clear that the Government is under a political duty to devote whatever sums it recovers on behalf of claimants to the satisfaction of their claims and I apprehend that no British Government would depart from this duty without Parliamentary authority.<sup>116</sup>

The Foreign Office was pleased. Everyone knew that the Soviet government would resist settlement by the International Court of Justice. As long as the legislation was drafted carefully to avoid implications of recognition the Foreign Office concluded that “the fact that Baltic assets were used to satisfy certain non-Baltic claims would have no legal implications of any kind as regards sovereignty over the Baltic States.”<sup>117</sup>

On this basis, a Foreign Claims and Assets Bill was drafted in 1949, including a Claims Commission to adjudicate private claims. But while the legal justifications behind this initiative were important for the settlement emerging twenty years later—which, in turn, was revisited in 1991—the plan was soon shelved. The UK Embassy in Moscow warned that the Soviets might respond by defaulting on a 1941 Civil Supplies Agreement involving UK supplies to the Soviet Union of capital equipment then worth approximately £40 million for power stations and other infrastructure.<sup>118</sup> It was unclear whether the Russians were aware

<sup>114</sup> Reference was also made to EDWIN M. BORCHARD, *DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 377 (1915).

<sup>115</sup> LO 3-1424.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> T 236-5249; FO 371-86819.

of this source of leverage while the UK was still holding on to the Baltic gold, so it was not communicated publicly.<sup>119</sup> Yet, a Foreign Office memorandum concluded that:

In these circumstances it seems that the possibility of a heavy loss to His Majesty's Government from Soviet retaliation must outweigh the desirability of compensating the claimants. No action should therefore be taken until after 1960, when we shall be less exposed to retaliation . . . It must be recognised that this delay, the reason for which cannot be publicly explained, will puzzle and infuriate the claimants. Many P.Q.s have been asked during the past few years about the possibility of a settlement, and, although it may be possible, by explaining the position in confidence to those M.P.s who are most interested, to diminish the volume of Parliamentary criticism, the situation is bound to become more embarrassing as the delay is prolonged. This, however, must be accepted.<sup>120</sup>

When members of Parliament inquired about the delay, questions were either evaded or answered in the strictest confidence.<sup>121</sup> When questions were asked in Parliament, ministers were instructed to say "as little as possible,"<sup>122</sup> and private claimants became increasingly frustrated—in one case writing: "For 30 years the Kremlin has been laughing up its sleeve at our bourgeois scruples in refusing to distribute the Funds to the claimants."<sup>123</sup>

#### VIII. 1953–1968: A 0–0 BALTIC DRAW?

With Stalin's death in March of 1953, prospects of meaningful negotiations improved. As part of his reset of relations with the West, the Soviet Prime Minister Nikita Khrushchev suggested a trade agreement with the UK, a move welcomed by the British government concerned about persistent bilateral trade deficits.<sup>124</sup> The hope was that the Soviets would consider something along the lines of what had been agreed by the Cabinet in 1939, where both sides would waive their government Revolution claims while British private revolution claimants would receive compensation of £7 million through the Baring balances and an additional £5 million from the Soviet government.<sup>125</sup> This would provide a symbolic gesture for claimants at a time when the UK government and claimants themselves had largely given up on the revolution claims. It would not come close to the £390 million owed by the

<sup>119</sup> FO 371-86820.

<sup>120</sup> T 236-5249.

<sup>121</sup> *E.g.*, FO 371-94890; FO 371-100883. Some members objected: Sir Harold Webbe, for instance, wrote to the Foreign Office that his "patience was exhausted" and noted that if he should succeed in getting the government to move he expected "a very large monument in my honour in some congested part of London." T 236-5250.

<sup>122</sup> FO 371-100884.

<sup>123</sup> FO 371-86821; *see also* FO 371-94891; FO 371-100883; FO 371-100884. Attempts were made in 1953 and 1955 to introduce private bills in Parliament to expropriate the Baring Balances, but the government managed to stop it. FO 371-106572. The only part of the 1949 plan that was not abandoned was the judicial Commissions established by the Foreign Compensation Act 1950, and the Foreign Compensation Commission began its work with the registration of claims against Yugoslavia and Czechoslovakia. All the newly Communist States had followed the USSR precedent of extensive seizure of foreign private properties without compensation—but these other states were to prove readier to conclude intergovernmental agreements providing some measure of satisfaction for dispossessed private claimants.

<sup>124</sup> FO 371-111744.

<sup>125</sup> FO 371-106574; FO 371-111743.

Soviets according to the UK, however, so would preferably have to be in exchange for a more favorable settlement of the post-1939 claims by using the Baltic assets in the UK and the Soviets agreeing to resume payments on the Lena and Tetiuhe bonds. In return, UK would not pursue further public and private post-1939 claims.

In June 1955, UK Prime Minister Eden instructed his ambassador in Moscow to approach the Soviets about a possible settlement along those lines provided the settlement would not constitute *de jure* recognition of the Soviet annexation.<sup>126</sup> With no UK leverage, the initiative went nowhere: although closer Anglo-Soviet trade links were of interest to both governments, Eden's approach about a settlement was explicitly excluded from the prospect of trade negotiations,<sup>127</sup> and unilateral self-help remained off the table because of the Civil Supplies Agreement. Equally, the Soviets had no reason to compromise—safe in the knowledge that the outstanding debts were not sufficiently important for UK's strategic interests to block Khrushchev's new opening to the West, with core discussions about to start on the Soviet nuclear program, German reunification, and Soviet involvement in the Middle East.<sup>128</sup> As a result, the Soviets still refused to acknowledge liability for the Tsarist debts, maintained their counterclaim over intervention in the Civil War,<sup>129</sup> and ruled out any Soviet payments as this could trigger similar demands from other countries as well as most-favored-nation provisions in Soviet agreements with Germany, Denmark, and Japan where the parties had waived their mutual claims on the condition that the Soviets did not satisfy similar claims from third parties.<sup>130</sup> Instead of accepting further bilateral engagement, the Soviets leaked the talks to the press in January 1956 to put pressure on the UK to release the Baltic gold to settle the Lena and Tetiuhe claims.<sup>131</sup> Talks were initiated a few months later, but were soon put on ice again when the Suez intervention led Khrushchev to threaten the UK, France, and Israel with nuclear war if they did not withdraw their forces.<sup>132</sup>

When relations began to thaw again in 1958, Prime Minister Macmillan went to Moscow to finalize a five-year Trade Agreement. It included a commitment to negotiate a permanent trade agreement and thereby ignored the UK's decision in 1934 not to do so without first resolving the revolution claims.<sup>133</sup> On this basis, Moscow agreed to fresh negotiations to consider the post-1939 claims.<sup>134</sup> This was welcome news for the UK, where the debts remained

<sup>126</sup> FO 371-116760.

<sup>127</sup> FO 371-111744 ("We would not press these claims to the point of endangering the trade negotiations and would be prepared to sign a Trade Agreement without securing a claims settlement.")

<sup>128</sup> FO 371-122928.

<sup>129</sup> FO 371-122926.

<sup>130</sup> Most favored nation treatment was only promised by the Soviets to minor creditors, not France, UK, Germany, or the United States. See Sack, *supra* note 78, at 258.

<sup>131</sup> T 236-5254; e.g., *Baltic Gold: Russia Makes New Bid*, NEWS CHRON. (Jan. 11, 1956); *Britain Ignores Soviet Claim to Gold*, EVENING STANDARD (Jan. 11, 1956); *Soviet Will Pay if We Release Gold*, NEWS CHRON. (Jan. 12, 1956); *U.K. Attitude to Soviet Offer of Baltic Gold*, FIN. TIMES (Jan. 12, 1956); *£1,100 Million Bill Sent to Russia*, DAILY EXPRESS (Jan. 12, 1956).

<sup>132</sup> FO 371-122927; FO 371-129087. Initial expectations of a settlement caused a rush to buy Russian 1906 bonds. *Gamblers Rush to Buy Czarist Bonds*, SUNDAY EXPRESS (Mar. 25, 1956); T 312-1462.

<sup>133</sup> FO 950-485; FO 371-152011. In the months before the meeting, Baltic claimants became increasingly optimistic that their claims could be resolved. *Baltic Bond Hopes Revive*, INV. CHRON. (Mar. 13, 1959); FO 371-143503.

<sup>134</sup> The previous year, Moscow had reiterated its lack of responsibility for the Tsarist debts and flatly rejected a UK proposal of a mutual waiver of the governmental claims and the transfer to the UK government of Tsarist assets

an irritant “if only because of the sustained pressure by the numerous British claimants for further action on their behalf.”<sup>135</sup> But it was also delicate territory. The Baltic claimants kept pushing for the UK to use the Baltic gold in the Bank of England for compensation, whereas the legations of the former Baltic States objected fiercely to such an arrangement and the Foreign Office remained suspicious that Moscow’s main interest in getting the UK to hand over the Baltic gold was indeed to secure *de jure* recognition of the annexation.<sup>136</sup>

The concern went to the heart of East-West tensions in Europe: in 1962, the year after the Berlin crisis, Khrushchev had implied he was seeking two separate German states, so any weakening of UK opposition to Soviet annexation would prompt the Allies “with some justification [to] contend that we had bartered a valuable principle for, at most, a few million pounds.”<sup>137</sup> Already a decade before, the Foreign Office had warned that even rumors of *de jure* recognition would “stultify our propaganda to Eastern Europe and lead to serious difficulties with the Americans, who have not even given *de facto* recognition.”<sup>138</sup> The Foreign Office Legal Adviser suggested that the UK line should be that:

the Soviet Union having taken possession of these assets and having at the same time taken measures to prevent any action for the recovery as against the former Baltic Governments of any indebtedness of theirs, they must assume the responsibility for such indebtedness themselves, at any rate to the extent of the assets which they control. (In this way we would avoid the argument that the *external* assets of the Baltic States should also pass under the control of the Soviet Union). . . the attitude of Her Majesty’s Government did not go beyond recognition of a situation of fact which, coupled with the impossibility (owing to Soviet action) of recovering on these bonds against the original debtors, entitled Her Majesty’s Government to hold the Soviet Government responsible . . . .<sup>139</sup>

The issue was ultimately referred to the Law Officers, who confirmed that it should be possible to enter into negotiations. The criteria for implied recognition were seen as “few and narrowly drawn,”<sup>140</sup> but the general position was that:

recognition can be implied only from an act which is consistent only with an intention to recognise. If that is a true statement of the general position, then the principle would apply to the changing of recognition *de facto* into recognition *de jure*.<sup>141</sup>

This was also the view of Lauterpacht.<sup>142</sup> However, the UK had to avoid an international agreement that recognized Soviet title to the external Baltic State assets, as this would

along with the payment of £10 million by the Soviet Government for distribution to UK private claimants. T 312-1462.

<sup>135</sup> FO 371-129088.

<sup>136</sup> FO 371-143503; LO 2/687. The Lena and Tetiuhe bondholders had even arranged for a member of Parliament to go to Moscow to try and negotiate on their behalf in 1957. FO 371-1209089.

<sup>137</sup> FO 371-171972.

<sup>138</sup> FO 371-106574.

<sup>139</sup> T 312-1462.

<sup>140</sup> FO 371-188961; *see generally* CHEN, *supra* note 55, at 193–96.

<sup>141</sup> FO 371-188961.

<sup>142</sup> LAUTERPACHT, *supra* note 55, at 406–07.

imply recognition of the annexation *de jure*. On the rights to claim external state assets of a *de jure*, but not *de facto* government, the Law Officers again relied on *Haille Selassie* and Lauterpacht's position described above,<sup>143</sup> along with Brierly,<sup>144</sup> O'Connell,<sup>145</sup> and the 1925 English High Court decision in *U.S.S.R. v. Onou*. Even separate waivers of claims might be taken to imply *de jure* recognition,<sup>146</sup> so instead the Law Officers suggested the aim should be for a settlement in the form of an Exchange of Notes in which each side would undertake not to pursue its claims against the other side.

The first step, then, was for both sides to gather information about their claims but gathering and scrutinizing more than 1,000 claims totaling more than £10 million took much longer than expected. Claimants became increasingly frustrated with the lack of progress<sup>147</sup> and the prices on Baltic bonds dropped.<sup>148</sup> The claimants did not know that the Civil Supplies Agreement was about to expire so that if negotiations failed the UK would be in a position to expropriate the Soviet assets as a fallback option.<sup>149</sup> By 1964, it seemed that this would not be necessary, as Russia agreed to compensate Danish firms which had held properties in the Baltic States and other ceded territories seemingly without Denmark recognizing the annexation *de jure*.<sup>150</sup> One month after the Soviet-Denmark Agreement, a UK delegation went to Moscow to hold initial clarifying talks and prospects of negotiations improved further in October with the election of a Labour government under Prime Minister Harold Wilson who was eager to improve relations with the Soviet Union.

As talks began in earnest in 1965, the Soviets refrained from pushing for *de jure* recognition of the Baltic annexation and did not hint, as the Soviet Embassy had done previously, that the Baltic missions in London would have to close in the event of an agreement. Still, the Soviet side repeatedly used the words "recognition" and "succession," which raised alarm bells with the UK delegation.<sup>151</sup> The Soviets also tried to get the UK to agree to the formulation in the agreement with Denmark, making reference to "property rights and other assets, passing to the Soviet Union as a result of nationalization, at present on Danish territory." That language

<sup>143</sup> FO 371-188961. The Law Officers also found authorities describing the distinction as mainly political. SIR ARNOLD DUNCAN MCNAIR, *LEGAL EFFECTS OF WAR* (3d ed. 1948); CHEN, *supra* note 55, at 288. On British legal scholarship on recognition through a historical lens, see Martin Clark, *A Conceptual History of Recognition in British International Legal Thought*, 2018 BRIT. Y.B. INT'L L. 18, 87.

<sup>144</sup> J. L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* (H. Waldock ed., 5th ed. 1955).

<sup>145</sup> D. P. O'CONNELL, *INTERNATIONAL LAW* (1965).

<sup>146</sup> T 312-1462.

<sup>147</sup> FO 371-152011; T 312-189; FO 371-159588. One Mr. Wishaw, for instance, wrote his MP, "My father is now 85 and his needs are few and he has perhaps not many years to go, but meanwhile such funds as he has are virtually exhausted. If only a payment were to be made on his Baltic Claims it would be a tremendous help and might enable him to finish his days without being dependent on charity." FO 950-694.

<sup>148</sup> *The Fate of Baltic Gold*, EVENING STANDARD (May 31, 1962). The following year, the Baltic Creditors' Committee wrote Sir W. Teeling MP: "We are back to Square One, after many years of endeavor, hopes and disappointments. But the *Sunday Express* wrote in 1963 that 'The Baltic bonds are still bought and sold on the Stock Exchange. They are only gambling stocks, of course. . . . [But] if you have any of these bonds hidden in the rubbish at the bottom of your deed box, keep them there. You never know, we might have a diplomatic success.'" SUNDAY EXPRESS (Aug. 25, 1963).

<sup>149</sup> FO 371-171972.

<sup>150</sup> In the agreement, Denmark and Russia waived claims to assets within their respective territories and the Soviets paid Denmark \$385,000 to make up the difference in the form of oil, coal and sugar exports.

<sup>151</sup> FO 371-188961.

was seen by the UK as possibly implying *de jure* recognition.<sup>152</sup> Aware of how the agreement might be perceived, UK negotiators suggested that the Soviets should acknowledge a UK side note to the agreement that

nothing in the Agreement or the conclusion of the Agreement itself may be taken as changing or reflecting a change in the well-known attitude of the Government of the United Kingdom towards the question of *de jure* recognition of the incorporation of Latvia, Lithuania and Estonia into the U.S.S.R.<sup>153</sup>

Such a note could be used publicly, according to the UK delegation, “in order to meet criticisms to the effect that their position had been prejudiced in some way by the Agreement.” In addition, the UK signatory could include this language under his signature to make it more formal. The Soviets balked—it would be “unprecedented in Anglo-Soviet relations”—and said the Soviet signatory in that case would replace the page with a clean one for signature. The idea was dropped.<sup>154</sup>

On bonded debt, the Soviets reiterated that they were not under an obligation to settle. To protect their position on the outstanding Tsarist debts, “they made it quite clear that their acceptance of responsibility was *ex gratia* and that they did not accept that successor states *automatically* succeeded to the obligations of the former states.”<sup>155</sup> Moscow was prepared to reach an agreement on the loans, but only if the UK could provide the originals that established the nationality and title of every holder. This was impossible as many of the bonds had been bought and sold on the British Stock Exchange since 1940.

In general, the negotiations proved far more painful than the UK had expected. Most of the UK's claims were small private claims often less than one thousand pounds, which evolved amid the destruction and confusion in Eastern Europe during the war. These were difficult to back up with documentary records as many claimants had fled when the German and later Soviet armies invaded, which the Soviets exploited in full during thirty-seven acrimonious meetings.<sup>156</sup> By contrast, almost 60 percent of the Soviet claims related to the Baltic Gold. The Soviets changed their position on their claim to the gold, now arguing they had purchased it on the same day from the three Baltic Central Banks shortly before the annexation. No documentation could support this, but at least the gold was a known entity.

The compromise reached in 1966 authorized the UK to expropriate the Baltic gold and use it to compensate claimants whose losses derived from the 1940 annexation and consequent seizures of property as well as certain UK government claims for shipping services. One fifth of the gold was ultimately used to compensate the Lena and Tetiuhe bondholders; i.e. claims from outside the Baltic area. And although the UK had initially suggested a £1/2 million payment by the Soviets as part of the settlement, the agreement ended up the other way round with the UK paying that amount to the Soviet Union to be used for purchase of UK footwear,

<sup>152</sup> Norway eventually admitted that their 1959 agreement with the Soviets could put them in a weak position if their position on recognition were ever to be raised before an international court. FO 371-166259.

<sup>153</sup> FCO 28-422.

<sup>154</sup> *Id.*

<sup>155</sup> T 312-1462.

<sup>156</sup> FO 371-182793. In a comprehensive analysis in January 1966, Anderson distinguished those Soviet claims which could be acknowledged without prejudicing the UK position that the annexation was recognized only *de facto* from other claims where acknowledgment would imply *de jure* recognition.

apparel, fabrics, and other manufactured goods.<sup>157</sup> Compared with other post-war lump-sum agreements, it ended up with a relatively favorable payoff for UK claimants of 43 percent.<sup>158</sup> According to the Foreign Office, the agreement also allowed the UK to resolve the matter without giving *de jure* recognition to the annexation of the Baltic States and presented it as a “0–0 draw.”<sup>159</sup>

Few others saw it this way. Baltic refugees and organizations went on the BBC’s “Money Programme” to air their complaints<sup>160</sup> and addressed a letter to all members of Parliament about what they saw as a betrayal of the Baltic states.<sup>161</sup> In the House of Commons, the opposition took up the cause of the Baltic States and railed against the agreement, seen mainly as an attempt to serve Wilson’s aim of ingratiating his Labour government with the Soviets.<sup>162</sup> Jo Grimond (Liberal) called the agreement “one of the most squalid minor embezzlements ever perpetrated by a British Government”<sup>163</sup> and in the House of Lords, Lord Lansdowne protested that “the banks of the Baltic States . . . have had their gold stolen from the Bank of England, the theft having been perpetrated by Her Majesty’s Government.”<sup>164</sup> Moreover, the payment to the Soviets was described as a humiliating “bribe” even if another Anglo-Soviet trade agreement was reached (which eventually happened in 1969).<sup>165</sup> “I can hardly conceive of a more humiliating end to a negotiation,” said Rawlinson who became Attorney General under the Conservative government in 1970.<sup>166</sup>

Concerns with recognition were flagged as well. Richard Wood (Conservative) suggested the agreement appeared to confer “*de jure* recognition in accepting that the Soviet Union is able to give an undertaking not to support claims made by the Baltic States.”<sup>167</sup> The government denied this,<sup>168</sup> but once the agreement was completed the concern was raised again. Sir Tufton Beamish (Conservative):

<sup>157</sup> T 312-1985. That the UK should pay, rather than the other way around, resulted from ministerial talks in Downing Street; correspondence with David Anderson.

<sup>158</sup> The Baltic gold had been sold by the Treasury in 1967 for £5.8mn to allow it to earn interest and ended up amounting to almost £7m, while private claims were ultimately valued by the 1969 Foreign Compensation Commission at £15mn. Lillich, *supra* note 10; FCO 28-438; FCO 28-11134.

<sup>159</sup> FCO 28-421.

<sup>160</sup> *Id.*

<sup>161</sup> FCO 64-78.

<sup>162</sup> See also Tikhonravov, *supra* note 103.

<sup>163</sup> 782 Parl Deb HC (5th ser.) (1969), col. 1710.

<sup>164</sup> 299 Parl Deb HL (5th ser.) (1969) col. 22.

<sup>165</sup> 782 Parl Deb HC (5th ser.) (1969) col. 1715. The UK had acknowledged internally that a small payment might be necessary to clinch the deal provided it “did not create overwhelming legal or political embarrassment.” FO 371-166259; FO 371-188962. During his February 1967 visit to London, Kosygin announced this was the bare minimum the Soviets would accept. If he returned with anything less to Moscow “he might get beaten up” (to which the UK Chancellor responded “he would come and rescue him”). FCO 28-421.

<sup>166</sup> 782 Parl Deb HC (5th ser.) (1969) col. 1708. It did not come up during the political storm that largely similar plans for the Baltic assets had been approved by the Economic Policy Committee of Churchill’s Cabinet in 1954 and provided the basis for the approach to Moscow made by the Eden government the year after. The position of the then Conservative government was reiterated by the Foreign Office in 1956: “An essential feature of any settlement acceptable, on present policies, to the United Kingdom Government would be the use of the Baltic assets to satisfy claimants in this country without *de jure* recognition by the United Kingdom Government of the Soviet annexation of the Baltic States.” FO 371-122925.

<sup>167</sup> 772 Parl Deb HC (Nov. 7, 1968), col. 1108.

<sup>168</sup> William Whitlock (Under-Secretary of State for Foreign and Commonwealth Affairs): “No implication of *de jure* recognition can flow from the Agreement” (*id.*, col. 1129); Lord Chalfont (FCO Minister of State): “The

Russia will tell the people of the Baltic States that while Britain still pays lip service to the principle of withholding *de jure* recognition of the captivity of their countries, in practice Britain has conceded Soviet sovereignty and the Soviet right to enforce an illegal annexation. . . . By entering into this shameful Agreement the Government have not only robbed the Baltic States of their assets, but of their confidence in this country.<sup>169</sup>

Not just opposition politicians, but also leading lawyers questioned whether the fine distinctions between *de facto* and *de jure* recognition relied upon by the Law Officers and the Foreign Office would be seen the same way by the international community.<sup>170</sup> Irrespective of which view is correct, Tikhonravov accurately notes that the 1968 agreement revealed how “despite its obvious importance, the British policy of granting only *de facto* recognition to the Baltic annexation lost a significant part of its value over time.”<sup>171</sup>

The decision by the Labour government remained controversial. The United States and France did not appropriate Baltic assets kept there and in its Baltic settlements with Denmark and Norway the Soviet Union itself made payments. In other agreements—such as the ones with the Netherlands and Sweden—claims were mutually set off. Only in the Agreement with the UK did the claimant state use blocked Baltic assets as part of the settlement and *The Guardian* newspaper speculated about “the complications which would arise if the Baltic States ever regained independence and demanded repayment of the gold they deposited in good faith. . . .”<sup>172</sup> That was exactly what the Baltic states did following their reemergence as independent states after the disintegration of the Soviet Union, as we return to below.

#### IX. 1969–1984: REVOLUTION CLAIMS REVISITED

Although the Baltic settlement was controversial, there was hope it could lead the way for other outstanding Russian debts. Announcing the deal, the *Daily Mail* wrote that “a lot of people will be taking a fresh look at their lampshades today.”<sup>173</sup> This referred to the Tsarist bonds which by then were widely used as interior decoration due to their fine stiff parchment covered with seals and eagles. Internally, the Foreign Office had hoped that a resolution of the post-1939 claims would provide a stepping stone to engage on Revolution claims, whether through “one last desperate effort”<sup>174</sup> to get some compensation, or a mutual

settlement preserved the point of principle that we did not recognise Soviet title to any part of the assets and it remains our position that the Soviet Government is recognised as the *de facto* but not the *de jure* Government of the area.” 299 Parl Deb HL (Feb. 4, 1969) col. 13 (emphasis added).

<sup>169</sup> 782 Parl Deb HC (5th ser.) (1969) col. 1716 (emphasis added).

<sup>170</sup> Lillich, *supra* note 10, at 12 (“Assuming, then, that the Baltic Assets remained Baltic, it is somewhat surprising that they were used in part to settle claims against the Soviet Union having nothing to do with the Baltic area.”); GEORG SCHWARZENBERGER, FOREIGN INVESTMENTS AND INTERNATIONAL LAW 47 (1969) (“By this Agreement, the previous *de facto* recognition by the United Kingdom of the incorporation of the Baltic States into the Soviet Union has been transformed into *de jure* recognition.”).

<sup>171</sup> Tikhonravov, *supra* note 103, at 157.

<sup>172</sup> *The Price of Friendship*, GUARDIAN (Feb. 14, 1967).

<sup>173</sup> Patrick Sergeant, *See What Kosygin Started*, DAILY MAIL (Feb. 14, 1967); see also *Baltic Bondholders to Get Some of Their Money*, TIMES (Feb. 14, 1967).

<sup>174</sup> FO 371-152011.

waiver leaving the UK free to distribute the Tsarist assets. Alternatively, the UK might be able to conclude a tacit understanding without a formal waiver that the Soviets would allow UK to seize and distribute the Tsarist assets in return for the UK dropping its old claims. Some compensation would stop the constant flow of correspondence from Revolution claimants, which had kept trickling in during the previous decade.<sup>175</sup> While it would not amount to much for the claimants, it would at least mark a departure from UK's policy as articulated in 1951, under which even if the Baring Balances were expropriated the proceeds would have gone to the Exchequer.

As the Soviets seemed reluctant to engage on the Tsarist claims—a request for negotiations from October 1968 was left unanswered<sup>176</sup>—the possibility of taking over the Tsarists assets was revisited. The main risk of retaliation had now passed as the payments under the Civil Supplies Agreement had been completed. In addition, the Baring Balances had appreciated to what the government believed to be about £14 million, and recent examination of the largely unsubstantiated private claims suggested they were less than initially estimated—in part because many claimants had died without leaving traceable heirs or successors. This left space for a slightly higher repayment rate. It would also be easier to distribute the funds now that the Baltic claims had been settled. 1969 therefore seemed an opportune moment to appropriate the Tsarist assets and the Treasury saw it as preferable to negotiations that could require extensive scrutiny of thousands of fifty-year old claims and would inevitably raise the Soviet intervention claim.<sup>177</sup>

Advice was sought from the Law Officers. Among its arguments, the Foreign Office recalled that while the Soviets had traditionally claimed it was only a successor to Tsarist assets, not liabilities, the Soviet Union had “never actively sought to obtain possession of the Tsarist assets either through diplomatic channels or in the Courts and it is unlikely that they would do so, whatever the position in domestic or international law, since this would imply that they accepted the liabilities of their predecessors.”<sup>178</sup> The Law Officers responded that while private Russian assets should preferably be left untouched, as their seizure could be difficult to justify when enforcing an international obligation of the Soviet government, the appropriation of the Tsarist assets could be justified as an act of self-help or retaliation under international law as long as the Soviets were notified of what was intended and given a reasonable period to react before legislation was introduced.<sup>179</sup> The UK could also invite the claims to be submitted to the International Court of Justice or an ad hoc tribunal—as also suggested by Shawcross in 1949—but this would only add further delays and was unlikely to be accepted by the Soviet Union. Moreover, if Moscow were to accept such as an offer it might raise its own intervention claim against the UK, the merits of which had not been considered by the Law Officers.<sup>180</sup>

<sup>175</sup> One claimant, Mr. Stewart, referred to Russia's counterclaim made at Genoa and inferred that “we, as private individuals, have been forced to pay for the damage done by the British Armed Forces . . .” FO 371-135336.

<sup>176</sup> FCO 64-106.

<sup>177</sup> T 312-2624.

<sup>178</sup> LO 2-955.

<sup>179</sup> LO 2-955; FCO 28-1138.

<sup>180</sup> *Id.*

Interdepartmental wrangling and concerns about timing delayed notification<sup>181</sup> and the Soviet response to the UK Aide-Memoire of September 8, 1971, came in January 1972 in the following terms:

Such an approach on the part of the British side to the property of a foreign state, in this case to assets belonging to the USSR, is contrary to generally recognised norms of international law, in accordance with which such property enjoys immunity and cannot be appropriated by another state, by its agents or private persons, and ignores the existing problem of reciprocal claims which, in accordance with the norms of international law, should [be] solved by means of negotiations.

It is well known to the British Government that the Soviet Government has never accepted and does not accept any responsibility in relation to obligations which it did not itself undertake, and continues to hold to the decrees of the Soviet State of 1918 concerning the cancellation of pre-war (1914–1918) debts and the nationalisation of property. It (the British Government) is doubtless also aware of the existence of claims of the Soviet Government and also of citizens of the USSR against the British Government, amounting to a total of 20.5 milliard gold roubles, including claims arising out of the participation of the United Kingdom in the military intervention and blockade of 1918–1920.<sup>182</sup>

This was the first time the Soviet government had put an exact value on its intervention claim against the UK—amounting to £2.05 billion—and the strong response led to prolonged argument within the UK government. When consulted again, the Law Officers advised that the decision whether to proceed with the proposed legislation was a political rather than a legal one, but the Legal Adviser to the Foreign Office, Sir Vincent Evans, maintained that the reference to negotiations could not be ignored—not least as the UK had sought a negotiated settlement for fifty years. Proceeding unilaterally could violate international law and would send an awkward signal at a time when foreign property was being extensively expropriated by recently independent states.<sup>183</sup> Even if the Soviet's invitation to negotiate was a bluff, it had to be called out.

Accepting the invitation to negotiate would also involve an element of bluff for the UK, however, because it was reluctant to open the Pandora's box of the Soviet intervention claim. Just as the UK had considered hardly any of the private claims since 1931, the intervention claim had also been left unassessed. The size of the counterclaim left London's position "far more dangerous" if it was to be taken seriously,<sup>184</sup> and even if it ended up with only a small payout to the Soviets no one wanted a repeat of the political storm over the Baltic settlement.

<sup>181</sup> The Minister for Trade expressed concerns that the timing should cause as little damage as possible to trade relations and the Foreign Secretary expressed some reservations about the impact on Anglo-Soviet relations so soon after 104 Soviet spies had been expelled and the imposition of a ceiling on Soviet diplomatic staff in London designed to frustrate their replacement. If a Soviet diplomat was expelled for spying, the ceiling was automatically reduced by one—on the grounds that if the post had been occupied by someone engaged in activities not properly diplomatic a replacement was not required for the purposes of the mission. FCO 64-203; EILEEN DENZA, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 64–65 (4th ed. 2016).

<sup>182</sup> FCO 64-182.

<sup>183</sup> FCO 28-2059; LO 2-955.

<sup>184</sup> FCO 28-2058.

An additional complication was that in its 1972 examination of the intervention claim—the first for many years—the Foreign Office Legal Advisers concluded that there was in fact:

no legal justification for any of the major incidents of intervention by British forces . . . [no] consideration whatsoever was given at the time to the legal aspects of the matter by those in London, or by the army commanders while they were actually in Russia.<sup>185</sup>

This conclusion was in line with Sir Cecil Hurst's conclusion from the 1924 minute—later uncovered by the Public Record Office (now the National Archives). The analysis was written by Denza, then a junior legal counsellor in the Foreign Office. It considered three possible lines of defense for the UK.<sup>186</sup> The first was that the intervention took place at the invitation of a government then recognized *de facto* by the UK. This would cover the intervention in Estonia which the UK helped establish its independence, but not other conduct by UK forces. The recognition given by the UK in March 1917 to the Provisional Government of Russia led by Kerensky did not survive its overthrow in November that year by the Bolsheviks. Consular and other practical relations were being maintained with the Bolshevik authorities even before their *de facto* recognition as the government of Russia. When Kerensky visited London he was received as a refugee and not as leader of a government continuing to be recognized *de jure*.

The second possible line of defense was that intervention took place to protect British lives and property. This had no merit, since there was no significant British community in Russia and the result of intervention was to push the new regime into extreme measures against foreign property and into their position that “no compensation would ever be paid to the Allies in respect of their expropriated property, since it was the necessity caused by external pressures and Allied intervention which had made it necessary to seize foreign property on such a scale.”<sup>187</sup>

The third possible argument—and the one most frequently deployed at the time—was that intervention was directly related to the conduct of the war and to preventing supplies and materiel from reaching the German forces. But the evidence showed that action by UK forces was not limited to preventing supplies from reaching the Germans or even to supporting factions which had stated that they would bring Russia back into collaboration with the Allies. It continued, moreover, well after the end of the war in November 1918 and appeared to an ever greater extent to have the main objective of opposing the new Socialist regime.<sup>188</sup>

<sup>185</sup> FCO 28-2059.

<sup>186</sup> *Id.* Denza's analysis was assisted by RICHARD H. ULMANN, *INTERVENTION AND THE WAR* (1961). The law on non-intervention in 1918 was customary international law and to some extent controversial. See Vaughan Lowe, *The Principle of Non-intervention: Use of Force*, in *THE UNITED NATIONS AND THE PRINCIPLES OF INTERNATIONAL LAW* (Vaughan Lowe & Colin Warbrick eds., 1994), and Jamnejad & Wood, *supra* note 76. In 1986 the International Court of Justice reaffirmed the rule, saying “The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law.” *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 ICJ Rep. 14, para. 202 (June 27).

<sup>187</sup> FCO 28-2059.

<sup>188</sup> *Id.*

This legal appraisal of the merits of the Soviet claim in respect of Britain's role in the intervention was never openly admitted by the UK, but it was another reason that the Soviet invitation for negotiations entailed considerable risks:

the precedent thereby established could have unforeseeable consequences (e.g. in relation to Suez). Secondly, other countries besides ourselves were involved in the intervention and any admission of liability of our part might embarrass our former allies.<sup>189</sup>

Political developments at home and abroad broke the deadlock. After taking office in 1969, Nixon became frustrated with the UK government and by the summer of 1973 he agreed with Kissinger that there was “no more special relations[hip].”<sup>190</sup> Meanwhile, London was concerned that the bilateral U.S.-Soviet engagement was sidelining UK interests and after his reelection as Prime Minister in 1974, Harold Wilson initiated a range of cooperation agreements to reshape the UK's relationship with Moscow (the UK had expelled 105 Soviet diplomats involved in espionage in 1971).<sup>191</sup> This set the stage for revisiting the debt claims.

The UK presented the Russians with a draft Agreement in 1976 that provided for a mutual waiver of claims and counterclaims. The Soviet Union agreed to preliminary talks the following year and the Foreign Office sent Denza on an exploratory visit to Moscow. Here, Denza told the Soviets that the benefit of UK's proposed waiver was that:

neither side had to acknowledge the validity of the claims of the other. We knew that the Soviet Government felt very strongly that our claims were not valid because they were not a successor Government in international law to the former Imperial Russian Government. We could not possibly accept this. Equally we had always felt that the Russian claims based on the intervention were not valid claims in international law, and the Soviet Government would not have to accept our position on this. These were matters on which there were deeply held political views on both sides which could not possibly be resolved by discussion.<sup>192</sup>

The Russians acknowledged that the UK's willingness to consider the intervention claims was a departure from previous discussions and suggested that the dispute could be settled, perhaps in as little as six months.<sup>193</sup> But in a meeting in London in February 1978, the Soviets were no longer ready to accept the mutual waiver but instead preferred a detailed examination of the claims and counterclaims. Negotiations were put on hold.

The Foreign Office next had to assess a new claim introduced by the Soviets relating to the so-called Omsk gold, which was originally part of the state reserves of Russia. During the chaotic fighting in the Russian Civil War it came under the control of a faction based in Omsk that exercised control over much of the eastern part of Russia stretching to Vladivostok on the Pacific coast.<sup>194</sup> The Omsk government sent the gold—worth approximately £200 million—

<sup>189</sup> *Id.*

<sup>190</sup> THOMAS ROBB, *A STRAINED PARTNERSHIP? US-UK RELATIONS IN THE ERA OF DÉTENTE, 1969–1977*, at 88 (2014). Washington's skepticism arose from UK's decision to withdraw “East of Suez,” concerns about inadequate burden-sharing within NATO, and Heath's European aspirations.

<sup>191</sup> KEEBLE, *supra* note 81, at 284.

<sup>192</sup> FCO 28-3137.

<sup>193</sup> *Id.*

<sup>194</sup> The UK government never recognized this faction as a government but came close to doing so in 1919 when stating that: “The authority of the Omsk Government at present extends from Vladivostok to the regions west of

to Hong Kong as security for a large international loan intended to assist its military forces in the civil war. The Omsk government defaulted and the creditors realized their security in full, but there was no record of whether any surplus remained or, if so, what happened to it. According to the analysis by Denza, UK *de facto* recognition of the Soviet government in 1921 may have had some retroactive effect, but it did not have the effect of making the gold an asset of the Soviet government.<sup>195</sup> The Omsk gold should therefore be excluded from negotiations with the Soviet Union; a position later accepted by the Soviets, and there was eventually no mention of the Omsk gold in the 1986 Agreement.

With the Soviet invasion of Afghanistan in late 1979, UK-Soviet relations froze again, and unilateral action was reconsidered. Politically, bilateral relations were at a low, Prime Minister Margaret Thatcher had ousted the Labour government, and confiscating Soviet assets could prove popular given the political climate. Economically, the Soviets were expected to have an interest in returning to normal relations after Afghanistan and thus little appetite for retaliation in trade relations or against UK companies in the Soviet Union. The case for self-help was on more solid legal ground, as the UK had attempted negotiations. Yet the Foreign Office remained concerned about the signal taking over the assets would send to other governments and the plans were put on hold—first in 1982 and then again in 1984.<sup>196</sup>

#### X. 1984–1986: SETTLING THE IMPERIAL DEBTS – AT LAST

Prime Minister Thatcher initiated a shift in UK policy toward the Soviet Bloc in 1983, which was cemented after her successful meeting with Gorbachev in December of 1984 and his election as General Secretary of the Soviet Politburo three months later.<sup>197</sup> His economic reforms opened the doors not just to No. 10, but also international financial markets which were becoming as important for the global economy as they had been before the Russian Revolution. Prompted by a decline in the price of its oil exports, the Soviets increasingly sought loans from Western banks and wanted to issue international bonds as well.<sup>198</sup> London was the global center for international bonds, but the Treasury and the Bank of England rejected the Soviet request based on their long-standing position that sterling bonds could only be raised after a resolution of the Tsarist debts. The Bank of England noted,

We have no illusions that refusal to permit the proposed FRN [(floating rate notes)] issue would persuade the Russians to acknowledge liability for the defaulted debt, but perhaps

Omsk, where hostilities are now proceeding between the forces of Admiral Kolchak and the Russian Soviet Government, and property situated within these areas may be regarded as under the control of the Omsk Government.” FCO 28-4208.

<sup>195</sup> As part of the formal statement of its position, the UK noted that “The British Government have of course never prevented and would not in the future prevent the Government of the USSR from pursuing through ordinary legal channels which they may have to the gold . . . .” FCO 28-4208.

<sup>196</sup> FCO 28-4208.

<sup>197</sup> Archie Brown, *The Change to Engagement in Britain's Cold War Policy: The Origins of the Thatcher-Gorbachev Relationship*, 10 J. COLD WAR STUD. 3 (2008).

<sup>198</sup> C. R. NEU, SOVIET INTERNATIONAL FINANCE IN THE GORBACHEV ERA 47–53 (1991); Tikhonravov, *supra* note 103; Yulia Sinyagina-Woodruff, *Russia, Sovereign Default, Reputation and Access to Capital Markets*, 55 EUR.-ASIA STUD. 521 (2003); John Tagliabue, *31 Western Banks Lend \$250 Million to Moscow*, N.Y. TIMES (May 17, 1984); Steve Lohr, *Britain Settles on Czar's Bonds*, N.Y. TIMES (July 16, 1986).

it is not utterly forlorn to hope that it might make them think again about the desirability of a more positive response to the British proposal tabled in 1976.<sup>199</sup>

With the rise of international finance and the Soviet appetite for a clean credit rating London had new-found leverage and the Soviets suggested new talks in August of 1984.<sup>200</sup> With the Omsk gold issue resolved, UK-Soviet relations warming, and Soviet interest in entering the London bond market the expectation was that the Soviets were, finally, ready to settle. The contours of an agreement had been there for almost a decade—in fact it had been there since 1939—but merely presenting the 1976 UK offer of a mutual waiver was unlikely to succeed without an additional sweetener.<sup>201</sup>

Talks between the two delegations resumed early in 1986. Unlike the taxing negotiations leading to the Baltic settlement, relations between negotiators were friendly—working lunches in Moscow involved copious toasts of vodka—and discussions quickly centered on the precise amount of the sweetener. The UK negotiators implied if an agreement was not reached quickly, the UK claim might be increased to include massive damage done to UK trees, crops, and livestock from the Chernobyl catastrophe. At the final meeting in London on June 6, Denza had authority to offer £5 million but thought it unnecessary to offer this amount. It had been agreed internally that the offer could be distinguished from the Baltic states payment as reflecting the fact that the Baring Balances—in addition to the war loans already mentioned—contained working diplomatic accounts which could be said to enjoy diplomatic inviolability. The accounts were real, though the exact sums they contained were not known to the UK delegation. In the end, Denza suggested an offer of £2.65 million to her team, which the representative from the Bank of England agreed had “a certain spurious authenticity.” When presented to the Soviets, they accepted the offer and the deal was done.<sup>202</sup>

The final Agreement included four main articles, less than 600 words in total. In summary:

*Article 1:* The UK would not pursue pre-1939 private and government bond, debt and property claims against the Soviet Union.

*Article 2:* The Soviet Union would not pursue claims in respect of the UK intervention in the Russian Civil War, Imperial gold reserves transferred to the UK and other Imperial assets held in the UK.

*Article 3:* The UK would transfer £2.65 million to the Soviet Union from money in Imperial bank accounts held in the UK.

<sup>199</sup> FCO 28-6506. The British Embassy in Moscow doubted the importance of this—saying that the recent loans showed the Soviet government was already considered a credible borrower (FCO 28-6507); but the argument was nevertheless invoked by the UK in the negotiations that were about to begin.

<sup>200</sup> T 482-178; FCO 28-6507.

<sup>201</sup> Later assessment by the Foreign Office was that the UK made a strategic error in 1976–1977 by showing its hand so early in negotiations based on a take-it-or-leave-it approach, thereby leaving no space for further negotiation. FCO 28-6507.

<sup>202</sup> Denza took the opportunity during discussions to hand over a copy of the UK Model Investment Promotion and Protection Agreement to Koslovsky, the lead Soviet negotiator. A year and a half afterward, the Soviet Supreme Praesidium voted in favor of a law on the creation of joint ventures where at least 51% of capital was Soviet and announced that it was ready to negotiate investment protection agreements with relevant governments. Press Release No. 5505, Agence Europe (Jan. 18–19, 1988).

*Article 4:* The UK and Soviet governments would have full title to remaining assets in their respective territories and be responsible for the settlement of claims from such assets.

The Soviet Foreign Minister Edward Shevardnadze and the UK Foreign Secretary Sir Geoffrey Howe signed the Agreement in the splendid surroundings of Lancaster House, London on July 15, 1986. The draft Agreement had been kept secret until then to avoid speculation or transfer of foreign-owned bonds into UK hands and trading in Russian bonds had been suspended in London at the start of business that day.<sup>203</sup> Barings Bank had earlier agreed that the Russian diplomatic and official accounts would be adjusted so as contain exactly £2.65 million.

The Law Officers confirmed that distributing the Baring Balances did not require further primary legislation,<sup>204</sup> and the Foreign Compensation (Union of Soviet Socialist Republics) (Registration and Determination of Claims) Order 1986 was accordingly made on December 16, 1986.<sup>205</sup> A full-page advertisement was published in the *Financial Times* inviting eligible claimants to submit claims to the Foreign Compensation Commission.<sup>206</sup> More than 10,000 requested application forms, but only 4,589 were submitted—probably because of the nationality and evidence requirements—and 3,677 claims were successful.<sup>207</sup> Valuations were based on the face value of the bonds and assets—i.e., not accounting for inflation or accrued interest—and in many cases the Commission could rely on estimates made by the Foreign Office and Board of Trade between 1918 and 1939.<sup>208</sup> Price Waterhouse was engaged to assist with the substantial task of distribution. As the first deadline of March 31, 1987 approached, they had already received about 315,000 bonds,<sup>209</sup> and the team leader reported that: “On top of that we have a lorry load of 144 boxes from a City finance house, 30 black dustbin bags packed full and another car load, so I expect we will be up to the 500,000 level when counting finishes.”<sup>210</sup> On the day of the deadline, the *Wall Street Journal* reported that holders were lining up to file by midnight carrying “files, suitcases, cardboard cartons and shopping bags stuffed with old Russian bonds, hoping at last to receive a small fraction of the bonds’ face value.”<sup>211</sup>

<sup>203</sup> The price of the bonds in New York quadrupled from around 2% of face value to somewhere between 7% and 12%. Nancy L. Ross, *Defaulted Imperial Russian Bonds Draw Interest*, WASH. POST (July 25, 1986).

<sup>204</sup> The concern raised was that the 1950 Foreign Compensation Act gave power to effect distribution by Order in Council where the UK government entered into an agreement with another government which provided for the payment of compensation by that other government. The Soviet government had accepted that assets in the UK held by the former Russian provisional government or anybody established under the law of the Russian empire would be used to compensate UK claimants but had not exactly paid compensation. The Attorney-General took the view that this Agreement had effected an assignment of assets which could be regarded as payment of compensation, but insisted on a check that the UK had made no public statement that the assets did not belong to the Soviet Union. Checks confirmed the UK had made no statements that the assets did not belong to the Soviet Union.

<sup>205</sup> S.I. 1986 No. 2222. The Distribution Order was S.I. 1987 No. 663.

<sup>206</sup> *Russian Compensation*, FIN. TIMES (Jan. 29, 1987).

<sup>207</sup> See FO 10004-740.

<sup>208</sup> FO 10004-740.

<sup>209</sup> The bonds were of about 720 different types. Many were originally issued within Russia, probably because Russian exchange control restrictions at that time precluded British nationals from remitting capital or income from the bonds.

<sup>210</sup> *Last Call for Payout of Russian Bonds*, TIMES (Apr. 2, 1987).

<sup>211</sup> *After 70 Years, Russian Czarist Bonds Translate Into Some Hope for Holders*, WALL STREET J. (Apr. 1, 1987). One claimant reported he looked forward to replacing his bond bought in an Oxford antique shop as a decoration

Interim payments were made in 1987 and further payments were made up through 1993 amounting to a total of £62.4 million.<sup>212</sup> This was more than expected at the time of the first advertisement, as substantial sums had emerged from dormant Russian accounts other than those with Barings Bank. It meant successful claimants received 55 percent of the face value of their £114 million in bonds and assets but taking inflation since 1917 into account UK creditor losses were of course far greater: the Soviet Union only ended up paying about 2 percent of Tsarist Russia's debt to UK investors. On its part, however, the United Kingdom achieved settlement of claims for billions of damages resulting from its illegal intervention in the Russian Civil War. After catering for inflation since the UK left the Russian Civil War in 1920, the £2.05 billion in losses claimed by Moscow would have amounted to some £26 billion at the time of the 1986 Agreement. UK ministers never disclosed that the Soviet claim for the intervention had been taken seriously, as acknowledgment of legal liability would have set a dangerous precedent for the UK and caused difficulties for former Allies who had intervened in the Civil War as well.<sup>213</sup>

Unlike the Baltic settlement, the 1986 agreement attracted very little political attention or hostility.<sup>214</sup> In the UK and abroad, the Agreement was presented as a symbolic step for Anglo-Soviet relations that might give Moscow better access to Eurobond markets.<sup>215</sup> A Bank of England official told the *Wall Street Journal* that the agreement "removed an obstacle" to new Soviet bonds in the sterling market and the London director of First Chicago Ltd. said: "If anybody in the capital markets has not yet presented the Soviets with any interesting ideas, they will now."<sup>216</sup> The Agreement also led the way for the 1987 settlement of China's (much smaller) pre-Revolution debts, which in turn allowed Beijing to raise Sterling bonds as well.<sup>217</sup> Moreover, and critically, it opened the door for Soviet negotiations with France—the largest creditor for the Russian Imperial government. These were delayed further by the

piece, "I prefer oil paintings and water colors." For others they were a matter of family honor. One claimant had the bonds thrown at him by his father in disgust in 1949, saying "I have never been able to do anything with these swindling Soviet SOBs. See if you can do any better." Another bondholder's mother was afraid of returning more than a handful of bonds, as she was convinced she was the late tsar's wife and at risk of being shot by the Bolsheviks.

<sup>212</sup> ANNUAL REPORTS OF THE FOREIGN COMPENSATION COMMISSION, 1988, Cm. 444; 1990, Cm. 1140 and 1993, Cm. 2311.

<sup>213</sup> FCO 64-190.

<sup>214</sup> See 101 Parl Deb HC (6th ser.) cols. 439–40. When presenting the agreement to the press, a Foreign Office minister joked that while the vast majority of claims were for bonds "our miles of files [include] many claims for property ranging from a parrot, a shaving stick, a sawmill, a horse, two cows and poultry." He admitted that: "There may be some difficulty in putting a value on a parrot." See, e.g., Robin Gedye, *Tsarist Debts to Be Paid*, DAILY TELEGRAPH (July 16, 1986).

<sup>215</sup> See, e.g., *Tsarist Debts to Be Paid*, supra note 214; *Britain Settles on Czar's Bonds*, supra note 198; *Accord anglo-soviétique: Les emprunts russes . . . frémissent*, MONDE (Fr.) (July 17, 1986); see also *Howe Hands £355 Million to Russia*, DAILY MAIL (July 16, 1986); *Russians to Settle 1917 Bond Debt*, TIMES (July 16, 1986); Peter Montagnon, *Windfall from Imperial Russia*, FIN. TIMES (July 16, 1986). Some investors with large claims complained to the press. See Nick Bunker, *A Dog-Eared Deal Agreed*, WEEKEND FIN. TIMES. *The Times* noted its own claim from investments made by *The Sunday Times* in the North Caspian Oil Corporation as well as the £56 million claim by the Urquhart family (see above). Richard Lander, *Company Waits for Bolshevik Spoils*, TIMES (July 18, 1986).

<sup>216</sup> *Soviets, British Reach Accord on Czarist Debt*, WALL STREET J. (July 16, 1986); see also *Defaulted Imperial Russian Bonds Draw Interest*, supra note 203.

<sup>217</sup> Agreement Concerning the Settlement of Mutual Historical Property Claims, China–UK, June 5, 1987, 1656 UNTS 77; Nick Bunker, *China to Settle UK Debts*, FIN. TIMES (June 6, 1987); Clare Pearson, *Compensation Claims for Chinese Debts Invited*, FIN. TIMES (Feb. 26, 1988); MICHAEL WAIBEL, SOVEREIGN DEFAULTS BEFORE INTERNATIONAL COURTS AND TRIBUNALS 200 (2011).

collapse of the Soviet Union, and only in 1996 did Russia admit liability for Tsarist debts and agreed to pay \$400 million to French bondholders the year after. When payments were complete in 2000, the French Treasury allowed French investors to buy Russian state bonds for the first time since 1918.<sup>218</sup>

## XI. BALTIC CODA

The £2.65 million payment to the Soviet Union used from the Baring Balances was justified publicly as embassy diplomatic and miscellaneous official accounts which enjoyed a special status under international law.<sup>219</sup> This explanation was intended to distinguish the earlier Baltic settlement, when the UK had arguably violated international legal obligations in using Baltic assets to settle claims against the Soviet Union. And indeed, when the Baltic states reemerged from Soviet servitude five years after the 1986 settlement, they demanded restitution of their assets which they had entrusted to British safekeeping. The Foreign Office accepted that the UK did in fact owe compensation under international law. The matter could have been settled through arbitration, but the UK might lose and even if it did not arbitration would “look mean-minded and unhelpful toward the Baltic States.”<sup>220</sup> In the end, UK Prime Minister John Major ultimately repaid the Baltic states for the expropriation of their gold “to correct that smear of dishonor” created by Labour’s 1968 settlement,<sup>221</sup> thus indirectly using government funds to pay for British investors’ losses following the Soviet annexation.<sup>222</sup>

## XII. CONCLUSION

The United Kingdom and the Soviet Union took almost seventy years to settle claims and counterclaims resulting from the Bolshevik revolution. Public international law provided background normative principles against which the two sides advanced their claims and repeatedly steered them toward certain positions, rather than others. Yet, the difficulty in

<sup>218</sup> OOSTERLINCK, *supra* note 19, at 179–85. By contrast, the United States tried but failed to negotiate a similar agreement over the Tsarist debts and German and Belgian bondholders have never been compensated. *See* WAIBEL, *supra* note 217, at 28; *see also* *U.S. Confirms Talks Have Begun with Soviets on Czarist Debt*, ASSOC. PRESS (Jan. 17, 1989); Bradford Trebach, Opinion, *How About Paying Czarist Debt to U.S.?*, N.Y. TIMES (Nov. 15, 1990); Edward M. Sills, Opinion, *Czarist Bond Claims Haven’t Been Settled*, N.Y. TIMES (Jan. 7, 1991).

<sup>219</sup> T 482-178. The inviolability of diplomatic bank accounts under customary international law is now confirmed by cases in many jurisdictions—in particular in Germany, the UK, and the United States. *Philippine Embassy Bank Account Case*, 65 ILR 146 (BVerfG, 1977) (Ger.); *Alcom Ltd. v. Republic of Colombia*, 74 ILR 170 (EWCA (Civ), 1984) (Eng.); *Avelar v. J. Cotoia Construction, Inc.* 11-CV-2172 (RRM) (MDG) (Dist. Ct. E.D.N.Y., Nov. 2, 2011); *see also* DENZA, *supra* note 181, at 128–31.

<sup>220</sup> The Treasury Solicitor did not accept that there had been disregard for international law: “We appear to have acted in good faith throughout; we used the gold to discharge the legitimate claim of British nationals for loss sustained in the territory of the Baltic states, when to maintain the claims against the Soviet Union might have prejudiced our sustained refusal to recognise the Soviet Union as the *de jure* Government; we took the action at a time when there was no foreseeable prospect of independent States emerging.” FCO 28-11134.

<sup>221</sup> 202 Parl Deb HC (6th ser.) (1992) col. 488.

<sup>222</sup> HC Debs 8 May 1990 vol 172 cc 170-4; Exchange of Notes Between the Government of the UK and the Government of Lithuania Concerning the Transfer of Gold from the Government of the UK to Lietuvos Bankas (the Bank of Lithuania) and the Settlement of other Bilateral Claims Matters, Lith.-U.K., Mar. 27, 1992, UK Treaty Series No. 48/1992, and similar Agreements with Latvia and Estonia; 202 Parl Deb HC (6th ser.) (1992) col. 488; *see also* Veeder, *supra* note 95, at 789.

reaching agreement was not because of a clash between capitalist and socialist approaches to international legal doctrines. On the contrary.

The Imperial debts were a particular challenge. Moscow refused to acknowledge the debts up through most of the twentieth century, leaving Soviet government lawyers ample opportunities to develop and refine a coherent socialist international law doctrine in the context of sovereign debt. Yet they never did. Instead, Moscow invoked traditional international legal arguments when helpful, ignored them when not. The concern with odious debts was used as a bargaining lever rather than a sustained challenge to established legal norms. Ultimately, Moscow's "principled opportunism" made it ready to compromise on core international law arguments used to justify the Bolshevik default whenever it was economically or politically convenient.

The British government was flexible as well. Balance of payments difficulties meant that standing up for "civilized" principles of international law on investor protection became less important than promoting trade relations with the Soviet Union. After multilateral talks failed in Genoa, British holders of revolution claims struggled to persuade the UK government to press their claims for the next fifty years. The same eagerness for trade relations with the Soviet Union made the UK agree to a controversial settlement for losses resulting from the Soviet annexation of the Baltic states. Government lawyers here had to develop contested legal arguments that gold sent by the Baltic states to the Bank of England for safe keeping could be used to settle Soviet claims without implying *de jure* recognition of the Baltic annexation.

In addition to informing our understanding of UK and Soviet approaches to core questions of public international law during the twentieth century, the saga illustrates how sovereign debt and investment disputes were resolved after the age of gunboats and powerful bondholder committees, but before the modern age of "legalized" debt and investment diplomacy in which international tribunals and domestic courts have become more important. The British and Soviet governments remained in firm control throughout the dispute, which meant that while investor interests were part of the negotiations, they were not the only one. Trade relations and geopolitics took priority. Moreover, the UK government acknowledged internally that the British intervention in the Russian Civil War had been illegal under the rules of international law in force at the time. This ultimately justified the very limited compensation to British bondholders and investors (ironic in the light of Russia's more recent attitude toward international rules on intervention).

With hindsight, a deal could have been struck much earlier. The 1986 agreement was very close to a compromise suggested by the UK as early as 1939 which failed because of British insistence on a small additional payment by the Soviet Union. That compromise would have disappointed some British claimants, but they would have been better off than they were by waiting another fifty years. An earlier settlement of the Revolution claims would have reduced pressure on the UK to take such extraordinary steps to settle the Baltic claims and might even have triggered serious Soviet negotiations with France after the war, rather than leaving French bondholders waiting until after the 1986 UK Agreement. Although Moscow had little incentive to settle for most of the twentieth century, it was not inevitable that the Russian Imperial debt saga should have become the longest sovereign debt dispute in history.