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The Consultative Litigation Committee of the French Ministry of Foreign Affairs: A Study in Constitutional and International Legal Entanglements

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“Vous m’avez fait l’honneur de me demander... si je croyais utile au service public d’attacher à votre ministère une ou plusieurs personnes qui, à l’instar des avocats de la Couronne en Angleterre, puissent donner au gouvernement sur les questions de droit public des avis qui serviraient à l’éclairer, et dont au besoin il peut se prévaloir... aussi l’idée d’avoir dans les questions de Droit Public un Conseil spécial, et distinct des bureaux, a-t-elle prévalu pendant et depuis la Restauration – avant 1830 M. de Haller... avait la charge de Publiciste des affaires étrangères... En 1835... M. le duc de Broglie en rétablissant cette place... et la confiant à M. Desmousseaux de Givré, avait en même temps organisé un Comité Consultatif du Contentieux au Département des affaires étrangères. Les avis de ce Comité dont j’ai constamment été le rapporteur, ont paru utiles au Gouvernement car il les a tous adoptés...”

Gabriac to Guizot, Paris, March 25th 1845, AMAE 393QO/1718

1. Introduction

1 Some of the most discussed aspects on the history of international law are its “birth” and interconnected themes such as institutionalization and professionalization. The “birth of the discipline” is traditionally said to have occurred around 1870 with the foundation of the *Institut de Droit International* (1873). Additionally, the founding of the International Law Association (*Association pour la réforme et la codification du droit des gens*) and the *Revue de droit international et de législation comparé* are also credited with the rise of international law as scientific field.¹ It is striking that the *Revue de droit international*, the first scientific journal devoted to international law was comparative, demonstrating an intertwining of constitutional and international law. In fact, as I will argue herein, the institutionalization of international law after the Congress of Vienna (1814-1815) was intrinsically linked with the foundation of comparative legal studies. Furthermore, analogies between international and national orders formed the core of theories of international law, increasing the extent to which international law intertwined with other normative legal orders with such entanglements, thus serving as the bread and butter of international lawyers’ practices.²

2 In this paper, I will study the foundation of one institution: the Consultative Litigation Committee (CLC) of the French Ministry of Foreign Affairs, which stood at the forefront of the

1 M. KOSKENNIEMI, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*, Cambridge, 2002, pp. 11-97; L. NUZZO, M. VEC (eds.), *Constructing International Law: The Birth of a Discipline*, Frankfurt/M, 2012; V. GENIN, *Le laboratoire belge du droit international: une communauté épistémique et internationale de juristes (1869-1914)*, Bruxelles, 2018, pp. 53-74; J.-L. HALPÉRIN, “L’histoire du droit international est-elle compatible avec les théories positivistes ?”, in P.-M. DUPUY, V. CHETAIL (eds), *The Roots of International Law/Les fondements du droit international*, Leiden, 2014, pp. 365-386.

2 T.-M.-C ASSER, G. ROLIN-JAEQUEMYS, J. WESTLAKE (eds.), *Revue de droit International et de législation comparée*, Bruxelles, Paris, New-York et al., 1869-1935; L. NUZZO, M. VEC, “The Birth of International Law as a Legal Discipline in the 19th Century”, in L. NUZZO, M. VEC (eds.), *Constructing International Law. The Birth of a Discipline*, op. cit., p. xii; M. VEC, “Sources of International Law in the Nineteenth-Century European Tradition: The Myth of Positivism”, in S. BESSON and J. D’ASPROMONT (eds), *The Oxford Handbook of the Sources of International Law*, Oxford, 2017, pp. 19-36.

professionalization of international law.³ Although I will concentrate on the French case, I will also draw comparisons with similar contemporary legal departments in other Ministries of Foreign Affairs. As we will see, the Office of Litigation (*Bureau du contentieux*) of the French Ministry of Foreign Affairs was established by the French revolutionaries and the CLC came into force in April 1835 and lasted until 1929. The founding of the Office of Litigation and the CLC are linked with the Office (*charge*) of Legal Adviser (in France, Legal Advisers employed by the Foreign Office were called either “jurisconsulte” or “publiciste du ministère des Affaires étrangères”).⁴ The latter existed already in the *Ancien régime* and was suspended and re-established several times during the long nineteenth century.⁵ Thus, contrary to well-established common knowledge which says that from the French revolution until the end of the nineteenth century legal advisers were no longer employed by the French Ministry of Foreign Affairs, the function of *jurisconsulte* in France did in fact not disappear, until Louis Renault (1843-1918) took on the role again during his tenure, around the end of the century.⁶

3 Moreover, this study explores the process of the pre-professionalization of the discipline of international law from the Congress of Vienna to the end of the Franco-Prussian War (1870-1871). It is a period often neglected in international legal history and the history of international law studies. Yet, there is academic value in a deep look into that period, as many professional developments of the discipline occurred during that time. Indeed, scientific journals, not exclusively focused on international law, but frequently dealing with it gradually appeared in the 1820s through the 1850s, for example, *Thémis* and *Revue historique de droit français et*

3 See R. CAHEN, “Hauterive et l'école des diplomates (1800-1830)”, *Clio@themis*, 18, 2020, online: <https://doi.org/10.35562/cliothemis.335> (last accessed 15 October 2022); P. RYGIÉL, “De savants juristes au service de la France. Les experts du droit international auprès du Quai d'Orsay, 1874-1918”, in S. JEANNESSON, É. SCHNAKENBOURG & F. JESNÉ (eds), *Experts et expertise en diplomatie. La mobilisation des compétences dans les relations internationales du congrès de Westphalie à la naissance de l'ONU*, Rennes, 2018, pp. 205-222.

4 For the Role of legal advisers today in various countries see A. ZIDAR, J.-P. GAUCI (eds.), *The Role Of Legal Advisers in International Law*, Leiden, 2016.

5 A. GROS, “Origines et traditions de la fonction de jurisconsulte du département des Affaires étrangères”, in *Mélanges Louis Trotabas*, Paris, 1970, pp. 187-195.

6 GROS, *Origines et traditions*, art. cit., p. 190: “Du Premier Empire jusqu'en 1890, il n'y a plus trace du Jurisconsulte dans les archives du Département des Affaires étrangères”; G. GUILLAUME, “Droit international et action diplomatique. Le cas de la France”, *Journal européen de droit international*, 2/1, 1991, p. 136: “La charge ainsi créée resta dans la même famille au XVIIIème siècle. Elle disparut avec la Révolution et il fallut attendre la fin du XIXème siècle pour que la fonction et l'emploi réapparaissent”; F. ALABRUNE, «The Case of the Legal Advisor to the French Ministry of Foreign Affairs», in A. ZIDAR, J.-P. GAUCI (eds.), *The Role Of Legal Advisers*, op. cit., p. 179: «The role of the Legal Advisor to the ministry of foreign affairs dates back to 1722. It was felt necessary at that time to recruit a legal adviser to deal with the legal issues related to the integration of Alsace into the Kingdom of France. During most of the nineteenth century, the function seems to have disappeared. It reappeared in 1890 with appointment of Louis Renaud [sic] who remained in office for more than 20 years».

étranger.⁷ Academic books on both private international law (Foelix and Rocco) and public international law (Wheaton, Bello, Heffter) were also largely printed from the 1830s to 1860s.⁸ Courses at various universities and colleges were taught already in the 1820s in France, in the 1840s/1850s in Spain, Latin America, Italy, in the German speaking universities, in the Russian Empire and the Ottoman Empire.⁹ Here it is important to mention that courses on international law were taught from the 1820s to the 1860s at the French Ministry of Foreign Affairs.¹⁰ Essay-competition on the Law of Nations from various academies have been organized as well, for example at least twice in this period in the French *Académie des sciences morales et politiques*: first in 1835-1840 and second in 1854-1861.¹¹

4 One can argue that the gradual disentanglement of international law from the comparative and constitutional matrix was a very long process. Most of the Founding Fathers of the *Institut de Droit International* were not exclusively international lawyers.¹² Even someone like Charles Henry Alexandrowicz (1902-1975) first specialized in Polish marital law and canon law before devoting his studies mostly to international law.¹³ International lawyers (in my opinion, the term is not anachronistic for the years preceding the generation of the *Institut de Droit International*)

7 A. JOURDAN, H. BLONDEAU, L. A. WARNKOENIG et al. (eds), *Thémis ou Bibliothèque du juriconsulte (et du publiciste)*, Paris, Bruxelles, 1819-1831; Ed. LABOULAYE, R. DARESTÉ, E. DE ROZIÈRE & C. GINOULHIAC (eds), *Revue historique de droit français et étranger*, Paris, 1855-1869; Cahen, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.; I. de la RASILLA, "A Very Short History of International Law Journals (1869–2018)", *EJIL*, 29/1, 2018, pp. 137-168.

8 CAHEN, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.; J.-G. FOELIX, *Traité du droit international privé*, Paris, 1843 (reissued several times and translated in Spanish and Italian before 1875); N. ROCCO, *Trattato di diritto civile internazionale*, Palermo, 1837 (re-issued several times); H. WHEATON, *Elements of international law*, Philadelphia, 1836 (re-issued several times and translated in French, German, Spanish, Italian, Chinese and Japanese before 1875); A. BELLO, *Principios de derecho de jentes*, Santiago di Chili, 1832 (the name changed to *Principios de derecho internacional* in 1844); A. W. HEFFTER, *Das europäische Völkerrecht der Gegenwart*, Berlin, 1844 (re-issued several times and translated in Greek, French, Polish and Spanish before 1875).

9 I. DE LA RASILLA DEL MORAL, *In the Shadow of Vitoria: A History of International Law in Spain (1770-1953)*, Leiden, 2018; V. E. GRABAR (tra. W. E. Butler), *The History of International Law in Russia 1647-1917*, Oxford, 1990; E. MURA, *All'Ombra di Mancini. La disciplina internazionalistica in Italia ai suoi albori*, Piza, 2017; G. BARTOLINI (ed.), *A History of International Law in Italy*, Oxford, 2020; M. PALABIYIK, "International law for survival: Teaching international law in the late Ottoman Empire (1859–1922)", *Bulletin of the School of Oriental and African Studies*, 78/2, 2015, pp. 271-292.

10 CAHEN, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.

11 F. DHONDT, "Portalès le jeune et le droit des gens", in R. CAHEN and N. LAURENT-BONNE (eds.), *Joseph-Marie Portalès (1778-1858): diplomate, magistrat et législateur*, Aix-en-Provence, 2020, pp. 153-182; R. CAHEN, "L'Académie des sciences morales et politiques et le droit international (1832-1914)", in P. ALLORANT, W. BADIÉ, R. CAHEN & P.S. MORRIS (eds.), *Relations internationales et droit(s)/Law(s) and international relations*, Paris, 2023, forthcoming.

12 P. RYGIEL, *L'ordre des circulations? L'institut de Droit international et la régulation des migrations (1870-1920)*, Paris, 2021, pp. 42-44.

13 D. ARMITAGE, J. PITTS, "This Modern Grotius' An Introduction to the life and thought of C.H. Alexandrowitz", in D. ARMITAGE, J. PITTS (eds.), *The Law of Nations in Global History. C.H. Alexandrowitz*, Oxford, OUP, 2017, pp. 3-4.

were not necessarily specialists in international law. Although, already in the 1820s evidence from archives shows that lawyers were first and foremost specialists in different branches of international law such as international maritime law.¹⁴ Moreover, legal entanglement cases coming before the litigation sections of the various Ministries of Foreign Affairs by international lawyers were clearly growing in numbers in the years 1830-1860. In fact, for the French Ministry of Foreign Affairs, its cases concerned a plurality of subjects from public international law (mostly maritime law) to constitutional and administrative law and after 1850's mostly with private international law such as the *Mahmoud Ben Ayad* or the *Samama* cases.¹⁵

5 To begin with, most recent historiography tends now to agree that a new European international order emerged in 1814-1818. A new governance architecture was established, which is recognised after a vivid historiographical debate, as a semi-successful experience of an international peace and security system.¹⁶ This new European international order was systematically challenged by internal revolutions as well as constitutional controversies. This was most vivid during the 1820s with Spanish, Italian, Greek as well as Latin American revolutions. Then, in the 1830s, challenges became increasingly complex as a result of the Belgian and Polish revolutions; and, during the 1840s with the *printemps des peuples*.¹⁷ By the mid-nineteenth century, the German and Italian unifications, along with the Crimean and various Balkan wars, hastened the spread of international law in different foreign ministries across Europe.¹⁸ In that period, international lawyers acted as “legal mediators” between constitutional and international entanglements and challenges.¹⁹

14 See for example, Pierre Boulouvard (1752-1823) who (after having worked for the Office of Litigation of the French Ministry of Foreign Affairs in 1794-1796) was frequently consulted for international maritime law cases already in the 1820's and introduced himself with a “business Card” as a “spécialiste de droit maritime international”, AMAE, Contentieux 165.

15 R. CAHEN, “The Mahmoud ben Ayad case and the Transformation of International Law”, in I. VAN HULLE, R. LESAFFER (eds.), *International Law in the Long Nineteenth Century (1776-1914): From the Public Law of Europe to Global International Law?*, Leiden, 2019, pp. 126-139; J. MARGLIN, (translation G. Calafat) “La nationalité en procès: droit international privé et monde méditerranéen”, *Annales. Histoire, Sciences Sociales*, 73/1, 2018, pp. 83-117.

16 R. CAHEN, *Friedrich Gentz (1764-1832): Penseur et acteur du nouvel ordre européen*, Berlin, 2017, pp. 283-313; M. JARRETT, *The Congress of Vienna and its Legacy: War and Great Power Diplomacy after Napoleon*, London, 2014; J. KWAN, “The Congress of Vienna, 1814-1818: Diplomacy, Political Culture and Sociability”, *The Historical Journal*, 60/4, 2017, pp. 1125-1146; B. DE GRAAF, I. DE HAAN and B. VICK (eds), *Securing Europe after Napoleon: 1815 and the New European Security Culture*, Cambridge, 2019; B. DE GRAAF, *Fighting Terror after Napoleon: How Europe became Secure after 1815*, Cambridge, 2020, pp. 17-24.

17 JARRETT, *The Congress of Vienna and its Legacy*, op. cit., pp. 248-369; M. ŠEDIVÝ, *The Decline of the Congress System: Metternich, Italy and European Diplomacy*, London, 2018; S. GHERVAS, *Conquering Peace from the Enlightenment to the European Union*, Cambridge, Massachusetts, 2021, pp. 116-147.

18 G.-H. SOUTOU, “Concert européen, système européen, ordre européen”, in R. FRANK (ed.) *Pour l'histoire des relations internationales*, Paris, 2012, pp. 565-572.

19 NUZZO, VEC, *The Birth of International Law as a Legal Discipline*, op. cit., pp. xii.

6 Recently, scholars have shown that internationalism and cosmopolitanism and the *esprit d'internationalité* were not due exclusively to liberal internationalism.²⁰ On the contrary, conservative inclined lawyers and political thinkers have also played a role in the development of the discipline of international law as we will see in this paper. It is also important to stress that in the years 1815-1870 conservative and liberal positions were often not so different from each other for example regarding the Freedom of the Press.²¹

7 In France, legal questions and doctrinal debates, like the relationship between international and national legal order, have been discussed by international lawyers involved within the Ministry of Foreign Affairs. From 1835 onwards, this was done especially in the CLC. The members of the committee were also involved in transnational networks, scientific academies, teaching, and thus shaped the socio-cultural frameworks of international law.²² The aim of this paper is to analyse how the committee perceived and legally argued on legal conflicts and constitutional changes. We will first present the CLC and its members and then some cases of entanglements.

2. The French Consultative Litigation Committee: A laboratory of international law in practice

8 Most legal departments of European Ministries of Foreign Affairs were created after World War I. Such was the case, at least, for Germany, Austria, France and Belgium. Yet, legal cases had already been intensively discussed within Ministries of Foreign Affairs during the nineteenth century. In the case of Belgium, the predecessor of the legal department is to be found in the Department of Accountancy formed in 1831 and after 1896 also in the Litigation Section.²³ The King of Belgium dealt with many arbitration cases between 1857 and 1914.²⁴ However, no specific committee or department devoted to legal questions existed in Belgium before World War I. The

20 See M. LOK, F. PESTEL & J. REBOUL (eds.), *Cosmopolitan Conservatism. Countering Revolution in Transnational Networks, Ideas and Movements (c. 1700-1930)*, Leiden, Boston, 2021.

21 B. VICK, "Transnational Networks, Salon Sociability and Multilateral Exchanges in the Study of Conservatism during and after the Revolutionary Era", in LOK, PESTEL & REBOUL (eds.), *Cosmopolitan Conservatism*, op. cit., pp. 197-218; B. VICK, *The Congress of Vienna: Power and Politics after Napoleon*, Cambridge, London, 2014, pp. 233-277; see also CAHEN, *Friedrich Gentz*, op. cit., pp. 315-412.

22 J. K. COGAN, "A History of International Law in the Vernacular", *Journal of the History of International Law / Revue d'histoire du droit international*, 22/2-3, 2020, pp. 205-217; I. DE LA RASILLA, *International law and History: Modern interfaces*, Cambridge, 2021, pp. 252-338.

23 C. ROOSENS, «Deel I, 1830-1914 », in R. COOLSAET, C. ROOSENS and V. DUJARDIN (eds.), *Buitenlandse Zaken in België. Geschiedenis van een ministerie, zijn diplomaten en consuls van 1830 tot vandaag*, Tielt, 2014, pp. 17-83; SPFAE (Brussel, Belgium), 10.998, Notes historiques. Organisation du Ministère des affaires étrangères du Royaume de Belgique.

24 SPFAE, B 152 II. The King of Belgium was Arbitrator in many cases: Between Persia and Great-Britain in 1857, Great-Britain and Brazil in 1863, Argentina and Chile in 1878, for examples.

main legal adviser to the King was the Secretary-General of the Foreign Ministry.²⁵ The same can be said about Austria and Germany. In the case of Prussia and then Germany, the *Rechtsabteilung* would, in fact, have already been created as far back as 1885 and would be steadily growing until the reform of 1919/1920.²⁶ In Austria, the Legal Section was placed within the Department of Internal Affairs in 1848 and would be moved across several departments in 1872 and 1882.²⁷ In 1913, an Austrian Department of Legal Affairs was created and confirmed by the reform of 1918-1920.²⁸ As for Great Britain, the Foreign Office Legal Adviser was already established in 1876. Before that, all legal matters were referred to the Queen's Lawyers.²⁹

- 9 Beyond Europe, connections between the Ministry of Foreign Affairs and the academic study of international law can be illustrated with Japan and the Ottoman Empire, since legal advisers (foreign or local) were employed both in the Japanese Ministry of Foreign Affairs as well as in the Ottoman Ministry of Foreign Affairs from 1870 onwards.³⁰ In Latin-American republics much earlier, Andres Bello (1781-1865) had been duly consulted in the case of the *Jeune Nelly* with France already in the 1830s.³¹ In the US, the Legal Adviser of the State Department was formally created nearly 100 years later, in 1931. Previously, several clerks had been appointed since 1848 and after 1870 Examiner of Claims from the Department of Justice (like Francis Wharton) to deal with legal issues of US foreign Affairs. In 1891 the Office of Solicitor General was established.³² In

25 ROOSENS, *Deel I, 1830-1914*, chap. cit., pp. 17-33; see Jean-Baptiste Nothomb (1805-1881) Secretary General from 1831 to 1837; Emile de t'Serclaes de Wommersom (1809-1880) from 1837 to 1844; Jean-François Constant Materne (1807-1860) from 1845 to 1859; Auguste Lambermont (1819-1905) from 1859 to 1903. But also Emile Banning (1836-1898) served as Legal Adviser or Guillaume Arendt (1808-1865) and his son Louis Arendt (1843-1924) see F. DHONDT, "La neutralité permanente de la Belgique et l'histoire du droit international: quelques jalons pour la recherche", *C@hiers du CRHiDI*, 41, 2018, online: DOI: 10.25518/1370-2262.614 (last accessed 15 October 2022).

26 E. CONZE, *Das Auswärtige Amt: Vom Kaiserreich bis zur Gegenwart*, Munich, 2013, pp. 19-23, pp. 29-34.

27 E. MATSCH, *Der Auswärtige Dienst von Österreich (-Ungarn)*, Vienna, 1996, pp. 59-62, pp. 98-102.

28 MATSCH, *Der Auswärtige Dienst*, op. cit., pp. 96-101, pp. 165-170.

29 K. JONES, "Marking Foreign Policy by Justice: the Legal Advisers to the Foreign Office 1876-1953", in R. MCCORQUODALE, J.-P. GAUCI (eds.) *British Influences on International Law, 1915-2015*, Leiden, 2016, pp. 28-55; G. OTTE, *The Foreign Office Mind*, Cambridge, 2013.

30 For Japan see H. OGURI, "Inseparable Pairs for Modernizing Japan? Japanese Ministry of Foreign Affairs and Academia 1880-1914", in ALLORANT, BADIÉ, CAHEN & P.S. MORRIS (eds.), *Relations internationales et droit(s)*, op. cit., forthcoming; for the Ottoman Empire, see A. M. GENELL, "The Well-defended Domains: Eurocentric International Law and the Making of the Ottoman Office of Legal Counsel," *Journal of Ottoman and Turkish Studies*, 3/2, 2016, pp. 255-275.

31 AMAE Contentieux 230 Affaire de la Jeune Nelly; A. BECKER LORCA, *Mestizo International Law, A Global Intellectual History 1842-1933*, Cambridge, 2015; See also N. KELLER-KEMMERER, *Die Mimikry des Völkerrechts. Andrés Bello's 'Principios de Derecho Internacional'*, Baden-Baden, 2018.

32 R. B. BILDER, "The Office of the Legal Adviser: the State Department Lawyer and Foreign Affairs", *AJIL*, 56/3, 1962, pp. 633-684 (pp. 634-635).

colonial and imperial contexts, many legal advisers were also employed such as Rolin-Jaequemyns for the Kingdom of Siam.³³

2.1 Formation of the French Consultative Litigation Committee

10 This comparative overview indicates that the French CLC was rather *avant-gardiste* in the juridification of Ministries of Foreign Affairs. The Committee was a result of the French Revolution and the transformation of international relations, as well as the internal organisation of the French Ministry of Foreign Affairs.³⁴ In April 1793, the *Convention Nationale* established an Office of Litigation which oversaw all issues related to “the delimitation of borders between countries, public law in general and the validity of maritime captures”³⁵ and “all issues related to the law of nations either public or private”, as we learn from a report dated the 14th November 1794.³⁶ This Office of Litigation would be abolished in 1798. In one of the reports about the Office of Litigation, it was noted that “the office of litigation was fulfilling the function of national legal adviser entrenched under the *Ancien Régime*... [and in charge of] all cases for which the judgement needed a deep knowledge of the public Law of nations and of the Germanic body which had complicated laws and customs”.³⁷ Indeed, the function of the Legal Adviser (*Jurisconsulte*) had been embodied by Christian-Frédéric Pfeffel (1726-1807) at the end of the *Ancien Régime* and his successor Henri Charles Rosenstiel (1751-1826) was the head of the first Office of Litigation.³⁸ At the beginning of the *Consulat* in 1799, there was no longer an Office of Litigation but Rosenstiel was still officially “legal adviser”. Yet, he was called “publiciste” and not “jurisconsulte”.³⁹

33 BECKER LORCA, *Mestizo International Law*, op. cit., pp. 107-111.

34 M. BÉLISSA, “De l’ordre d’Ancien Régime à l’ordre international: approches de l’histoire des relations internationales”, in J.-C. MARTIN (ed.) *La Révolution à l’œuvre*, Rennes, 2005, pp. 217-222; V. MARTIN, “Devenir diplomate en révolution: naissance de la “carrière diplomatique” ?”, *RHMC*, 63/3, 2016, pp. 110-135; J. BAILLOU (ed.), *Les affaires étrangères et le corps diplomatique français*, Paris, 1984, t. 1.

35 AMAE 264QO/1 Etat du personnel en avril 1793, 111-112; AMAE 264QO/1 Création d’un bureau de contentieux politique et consulaire, 113.

36 AMAE 264QO/1 Rapport sur l’organisation du travail attribué à la commission des relations extérieures (24 brumaire an III), 196-205.

37 AMAE 264QO/1 Observations sur le nombre de personnes employés à la commission des relations extérieures, 220-221: “le bureau des contentieux remplit la fonction de jurisconsulte national établi sous l’ancien régime... Toutes les affaires dont la décision exige une connaissance profonde du droit public des nations et surtout du corps germanique dont les lois et les coutumes sont très compliquées”.

38 On Johann Konrad Pfeffel (1684-1727) the Father see J. ULBERT, (tra. C. Lebeau), “Les Affaires étrangères françaises et la constitution du Saint-Empire. La création de la charge de jurisconsulte du roi pour le droit germanique et son premier détenteur Johann Konrad Pfeffel (1723)”, in C. LEBEAU (ed.) *L’espace du Saint-Empire*, Strasbourg, 2004, pp. 215-224; AMAE 266QO/57 Pfeffel; AMAE 264QO/2 Notice sur établissement et les attributions de la place de (jurisconsulte ou de publiciste du ministère des affaires étrangères depuis 1722 jusqu’à nos jours (1834), pp. 309-320; AMAE 264QO/1 Création d’un bureau de contentieux politique et consulaire, 113, “Rosenstiel, chef”.

39 AMAE 264QO/1 Etat composition des bureaux (1 vendémiaire an VIII/23th September 1799), 314-330; AMAE 266QO/61 Rosenstiel, “Nommé publiciste” 23th September 1799.

11 Between 1800 and 1835, many proposals were made in order to create a special committee dealing with all issues related to international law. In fact, the founding of a “Board of Foreign Affairs” (*Conseil des relations extérieures*) in charge of the “Application of the principles, the laws and the maxims of the public Law of Europe” had been approved by Napoleon I at the beginning of the year 1812.⁴⁰ But, it is likely that the wars of the Sixth Coalition had prevented the Board to meet.⁴¹ In 1825 a new proposition was made again by Hauterive (1754-1830) to establish a “consultative litigation office”. This new Office would have had as its members the legal advisers from the Ministry of Foreign Affairs. These include Charles Louis de Haller (1768-1854), Ferdinand Eckstein (1790-1861) and François Marie Guerard (1774-1859). Other potential members of the Office were famous jurists such as Jean-Marie Pardessus (1772-1853) and diplomats like Alexandre Dezos de la Roquette (1784-1868) or Antoine Laforêt (1756-1846), and Hauterive since he acted as a legal adviser on a number of occasions.⁴² However, the idea of the Board was rejected by the Minister of Foreign Affairs Baron de Damas (1785-1862) and thus did not come into force.⁴³ In fact, at the end of the year 1810, a Subsection of Litigation in the Archival Department (lead by Hauterive) of the Ministry of Foreign Affairs was created by Napoleon I. In the end, it was the Archival Department that was tasked with solving legal questions.⁴⁴ Later on, with the change of the regime in 1830, the departure of Haller and Eckstein, and the death of Hauterive, the Ministry was left only with Guerard as legal adviser.⁴⁵ He retired in 1831, and soon thereafter the Ministry was reorganised.⁴⁶ So, in 1834, Desmousseaux de Givré (1794-1854) was appointed Legal Adviser and, in 1835, an Office of Litigation as well as the CLC were both finally formally established.⁴⁷

12 The Office of Litigation (*bureau du contentieux*) was founded by Decree on the 21st of April 1835.⁴⁸ It was composed of a chief (*un chef*), a redactor (*un rédacteur*), a clerk (*un commis*) and

40 AMAE 264QO/2 Projet de décret pour établir ce conseil des relations extérieures, 56-69.

41 AMAE 264QO/2 Projet de décret pour établir ce conseil des relations extérieures, 56-69. For the context see T. LENTZ, *Nouvelle histoire du Premier Empire. La France et l'Europe de Napoléon 1804-1814*, Paris, 2007.

42 AMAE 264QO/2 Rapport d'Hauterive 16 août 1825, 190-193; AMAE 393QO/1999 Charles Louis de Haller; AMAE 393QO/1932 François Marie Guerard.

43 AMAE 264QO/2, Réponse négative de Damas, 195-196.

44 AMAE Contentieux 118 rapport 23 mars 1835; AMAE 404 INVA/2, Rapport d'Hauterive de mai 1813 (45-50) et rapport d'Hauterive de janvier 1822 (100-146).

45 AMAE 404 INVA/2 Rapport d'Hauterive le 10 novembre 1828, 310-322. See also for the context S. APRILE, J.-C. CARON & E. FUREIX (eds.), *La liberté guidant les peuples. Les révolutions de 1830 en Europe*, Seyssel, 2013.

46 AMAE 393QO/1932 François Marie Guerard. The 28th February 1831 Guerard is officially “publiciste honoraire”.

47 AMAE 393QO/1292 Desmousseaux de Givré. He was attached as “publiciste” the 31th of March 1834; AMAE 393QO/1718 Gabriac à Guizot, de Paris le 25 Mars 1845; AMAE contentieux 118.

48 AMAE contentieux 118.

two expeditioners (*deux expéditionnaires*).⁴⁹ The role of the Office was to receive any complaints before cases were sent to the CLC. The Committee was composed of five members as well as the Section Head of the Office, acting as Secretary to the Committee.⁵⁰ The first members of the Committee were the former members of the Commission in charge of the execution of the Convention of 25th April 1818 (which solved the issue of the indemnities that France had to pay to the allies after the war of 1815).⁵¹ Although the Committee had gathered in 1835, it appeared for the first time in the *Almanach Royal* in 1844.⁵² The Committee had to face the increasing amount of treaties and conventions between states as well as the shift in international relations and law caused by the independence of South American countries.⁵³ During the Second Empire, the activities of the Committee were growing even more. It enlarged from seven members in 1857 to eight by 1858 and then ten from 1864 to 1870.⁵⁴

13 At the beginning of the Third Republic, the Committee ceased to exist, but was re-established seven years later in 1877.⁵⁵ Several reforms were made in 1880 and finally in 1890 the payroll had grown to seventeen members in total, excluding two secretaries.⁵⁶ However, several Ministers of Foreign Affairs of the Third Republic did not trust this Committee given that it was created under the July Monarchy. So, the Committee only convened infrequently until 1909, when a Permanent Commission of Litigation and Chancellery with nine members was set up in addition to the Committee.⁵⁷ After World War I, the Committee would continue its work until 1929, when it was permanently abolished. During the Third Republic, Louis Renault would act as the legal mind of the French Ministry of Foreign Affairs supported by André Weiss (1858-1928) who joined it in

49 AMAE contentieux 118.

50 AMAE contentieux 118.

51 AMAE contentieux 118. For the broader context of the commission and the French indemnities, see C. HAYNES, *Our friends the Enemies: The Occupation of France after Napoleon*, Cambridge, 2018; DE GRAAF, *Fighting Terror after Napoleon*, op. cit., pp. 176, 303-356, 402-407.

52 *Almanach Royal et national*, Paris, 1844, p. 119: "Comité consultatif du contentieux près le Département [des affaires étrangères], Comte Siméon, pair, président; Marquis de Gabriac, pair; Rossi, pair; Baron Desmousseaux de Givré, Dip; Marquis du Bouze [sic]; Buthiau, secrétaire". The committee is to be found also in the *Annuaire diplomatique de l'Empire français* since the first edition in 1858.

53 For the broad context of global legal changes in the nineteenth century see T. DUVE, "Introductory Remarks", in T. DUVE (ed.), *Entanglements in Legal History: Conceptual Approaches*, Frankfurt/M, 2014, online: DOI 10.12946/gplh1 (last accessed 15 October 2022); J. ADELMAN, "Independence in Latin America" in J. C. MOYA (ed.), *The Oxford Handbook of Latin American History*, New York, 2011, pp. 153-180; BECKER LORCA, *Mestizo International Law*, op cit.

54 AMAE contentieux 118; *Annuaire diplomatique de l'Empire français*, Paris, 1858-1870.

55 AMAE contentieux 118 et 120, "Décret du 1er février 1877"; RYGIEL, *De savants juristes*, art. cit., pp. 208.

56 AMAE contentieux 120, "Décret du 26 avril 1880", "Décret du 17 Avril 1882", "Décret du 17 Juin 1890"; RYGIEL, *De savants juristes*, art. cit., pp. 208-209.

57 AMAE contentieux 120, Décret du 16 mars 1909, "Commission permanente des chancelleries et du contentieux".

1902.⁵⁸ Besides them, the lawyer and politician, Léon Renault (1839-1933) had been the longest member of the Committee from April 1880 until 1929.

14 The members of the Committee were not paid. The Committee generally met infrequently, except when there was an important case. For example, during the *Ben Ayad Case* (a dispute between the Bey of Tunis and Mahmoud Ben Ayad, a Tunisian civil servant who made a fortune with the national treasury before escaping to France and becoming a French Citizen in 1852, that was arbitrated by Napoleon III), the Committee met on a weekly basis between 1854 and 1856.⁵⁹

2.2 The main actors of the committee (1835-1870)

15 As previously mentioned, the first members of the Committee were chosen for their earlier work relating to the payment of the debt of the Napoleonic Wars, which was decided at the second peace of Paris in 1815.⁶⁰ This was one of the most important legal cases after the treaty of 1815 and the occupation of France by foreign forces.⁶¹ The five members of the new CLC were in fact the last members of the Commission for the execution of the Convention of 25th of April 1818 concluding the payment of the indemnities by France. The President of the Committee was Edouard Mounier (1784-1843) and the other members were Julien Bessières (1777-1840), Joseph Balthazar Siméon (1781-1846), Ernest Gabriac (1792-1865) who stayed on as a member until his death and finally Louis-César Dubouzet (1768-1860).⁶²

16 It is important to stress here that a very large number of the members of the Committee in the years 1835-1870 had also been members of the *Conseil d'État*, in part due to the fact that two decrees in 1806 and 1810 stated that all newly appointed diplomats would become members of the *Conseil d'État* and vice versa.⁶³ The fact that many members of the Committee had worked previously in different commissions in the *Conseil d'État* can also be seen as a sign of a professionalization as Marc Bouvet showed in his study of the *Conseil d'État* during the July

58 RYGIEL, *De savants juristes*, art. cit., pp. 209-216; P. RYGIEL, "Louis Renault et ses collaborateurs", *Parlement(s), Revue d'Histoire politique*, 27/1, 2018, pp. 41-57.

59 CAHEN, *The Mahmoud Ben Ayad case*, art. cit., p. 135.

60 Archives économiques et financières (Savigny le Temple) française (AEFF) B-0067457/2, Liquidation des créances étrangères et françaises: correspondance de la commission de liquidation des créances étrangères (1815-1817); AMAE contentieux 118.

61 DE GRAAF, *Fighting Terror after Napoleon*, op. cit., pp. 303-356.

62 AMAE contentieux 118; AMAE contentieux 230 Affaire de la jeune Nelly, rapport du comité le 8 juillet 1835.

63 Some fourteen members of the thirty-three members had been at the same time members of the *Conseil d'Etat* and members of the Committee. For the memberships of the *Conseil d'Etat* see M. BOUVET, *Le Conseil d'Etat sous la Monarchie de juillet*, Paris, 2001, pp. 413-639; R. DRAGO, J. IMBERT, F. MONNIER, J. TULARD (eds.), *Dictionnaire Biographique des membres du Conseil d'État 1799-2002*, Paris, 2004, pp. 50-310; V. WRIGHT, *Le Conseil d'État sous le Second Empire*, Paris, 1972; On Julien Bessières see AMAE 393QO/384 Julien Bessières; For Siméon see AN 558AP/2 Folder 1 to 6; on Louis-César Dubouzet (1768-1860) there is not much information, but see AMAE 393QO/1370 and 1373; CAHEN, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.

Monarchy.⁶⁴ From its creation until its first removal in 1870, the Committee had thirty-three members: eleven during the July Monarchy, nine during the Second Republic and eighteen during the Second Empire. Yet, one member (Gabriac) was in the Committee in the three regimes and four (Gabriac, Brénier, Duvergier, Marchand) had been members both in the Second Republic and in the Second Empire. In average the members stayed ten years, giving stability to the Committee from 1835 until 1870.

17 After Mounier, Joseph-Balthazard Siméon (1781-1846) became the President of the Committee in 1837 and he would remain in this position until his death in 1846. Both Siméon and Mounier were not only members of the *Conseil d'État* but they had also been diplomats trained by Hauterive at his schools founded in 1800.⁶⁵ Gabriac took over from Siméon as President of the Committee in 1846 and remained president until July 1848. At the same time, the Committee would acquire a law professor for a member, Pellegrino Rossi (1787-1848).⁶⁶ Rossi is an interesting addition, as he was Professor of Constitutional Law and Political Economy in Paris and he might have taught International Law in Geneva. He was also involved in most of the scientific *Revue*s (journals) of the early 1820s and 1830s.⁶⁷ All of these developments constitute clear signs that the discipline of international law was gradually beginning to professionalize in the decades leading up to the 1870s.⁶⁸

18 By the time of the 1848 revolution and the election of Louis-Napoleon Bonaparte as President of the Second Republic the Committee was fully reconstituted. Edouard Drouyn de Lhuys had been President very briefly after Gabriac, but left the Committee since he took the Office of Minister of Foreign Affairs.⁶⁹ Finally, around March 1849 a renewed Committee was established with Louis-Antoine Macarel (1790-1851) as President. Macarel was a law professor and one of the

64 BOUVET, *Le Conseil d'État sous la Monarchie de juillet*, op. cit., pp. 324-327.

65 AMAE 393QO/3043 Baron Mounier; CAHEN, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.

66 AMAE Contentieux 118. Rossi agrees to become a member in May 1837; AMAE 393QO/838 Chaix d'Est Ange, Letter from Siméon to Guizot, 22 June 1846. Siméon is happy that Chaix d'Est Ange will replace Rossi but bemoaned the loss of Rossi. It is interesting to note that Rossi became member as a foreigner since he was not yet naturalized.

67 A. LE QUINIO, T. SANTOLINI (eds.), *Trois précurseurs du droit constitutionnel*, Paris, 2019, pp. 147-272; L. LACCHÉ, "Tra politica e diritto, ovvero Rossi e la Monarchia di Luglio", in L. LACCHÉ (ed.), *Un liberale Europeo: Pellegrino Rossi (1787-1848)*, Milano, 2001, pp. 69-108; P. ROSSI, "Droit des gens. Intervention", in *Archives de droit et de législation*, 1, 1837, pp. 353-379; C. BORGEAUD, *Histoire de l'Université de Genève. T. 3 L'Académie et l'Université au XIXe siècle, 1814-1900*, Genève, 1934, p. 117. According to Borgeaud, Rossi taught "comparative constitutional law" in Geneva, which may have included "international law".

68 CAHEN, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.

69 AMAE Contentieux 118; AMAE 393QO/1365 Drouyn de Lhuys. A scientific biography on Drouyn de Lhuys is not available but see: "Drouyn de Lhuys", in L. BÉLY, G.-H. SOUTOU, L. THEIS & M. VAÏSSE (eds.), *Dictionnaire des ministres des Affaires étrangères*, Paris, 2005, p. 336.

founders of the discipline of Administrative Law (and also member of the *Conseil d'État*).⁷⁰ The new members were Anatole Brénier (1807-1885), Jacques François Dupont de Bessac (1803-1873), Jean-Baptiste Duvergier (1792-1877) and Pierre Cintrat (1793-1880).⁷¹ Brénier and Cintrat were both important figures in the Ministry of Foreign Affairs. Brénier had also been a member of Hauterive's School of Diplomats from 1826 and a Consul. After his membership in the CLC, he became Minister of Foreign Affairs for three months.⁷² Cintrat had succeeded in climbing all the way up the hierarchy of the ministry between July 1840 and March 1849, when he was promoted to Director of Archives as well as member of the CLC.⁷³ Duvergier was a lawyer and the author of the famous Collection of Laws, Charters and Treaties.⁷⁴ Dupont de Bussac, the only leftist member of the Committee, was also a lawyer and a predominant figure of the 1848 revolution as well as a deputy.⁷⁵

19 The new political regime of Napoleon III did not shake up the Committee. Gabriac had regained his membership already in January 1850 when Dupont de Bussac left and acted one more time as President when Macarel died in March 1851.⁷⁶ Finally, Eugène Felix Marchand (1813-1868) became a member in July 1851 and stayed on after the regime changed. Marchand was also a lawyer, Doctor of law and a member of the Committee of Litigation of the *Conseil d'État*. In May 1853, Cintrat was replaced by Armand Lefebvre (1800-1864) a diplomat and historian of the Napoleonic Period. Lefebvre was also a former member of the Hauterive's School of Diplomats and the winner of the *Concours* in 1825-1826.⁷⁷ Cintrat complained that "in my four years as a member of the committee, I have not yet had the chance to acknowledge the contribution of my

70 AMAE Contentieux 118; AMAE contentieux 120, Rapport Desprez (1877): "1848, 1849, 1850, comité entièrement renouvelé". A scientific biography on Louis-Antoine Macarel is missing see J.-J. CLERE, "Louis-Antoine Macarel", in P. ARABEYRE, J.-L. HALPÉRIN, J. KRYNEN (eds.), *Dictionnaire historique des juristes français (XII^e-XX^e siècles)*, Paris, 2015, pp. 525-526.

71 AMAE Contentieux 119, Corsaires colombiens 29 mars 1849 Dupont de Bussac, Cintrat, Macarel (président), Brénier, Duvergier.

72 AMAE 393QO/621 Anatole Brénier.

73 AMAE 393QO/961 Pierre Cintrat. See also A. BASCHET, *Histoire du dépôt des archives des affaires étrangères*, Paris, 1875, pp. 521-533.

74 AMAE Contentieux 118; J.-B. DUVERGIER, *Collection complète des lois, décrets, ordonnances, règlements, et avis du conseil-d'état*, Paris, 1824-1877, 77 vol.

75 AMAE Contentieux 118. There is also not much on Dupont de Bussac but he was probably the only member of the committee from the very left side of the political spectrum in the period (1835-1870) see article "DUPONT Jacques, François, dit DUPONT de Bussac", online: <https://maitron.fr/spip.php?article182689> (last accessed 15 October 2022).

76 AMAE Contentieux 118; AMAE contentieux 120, Rapport Desprez (1877): "1851 pas de président, retour de Gabriac". In AMAE contentieux 118 we do find that Gabriac was again president in 1851.

77 AMAE 393QO/2547 Armand Lefebvre; AMAE contentieux 118; Cahen, *Hauterive et l'école des diplomates (1800-1830)*, art. cit.

presence”.⁷⁸ A slight change was also made with the return of a Secretary of the Committee, Emile Gaudin (1825-1884). He had been the Head of the Office of Litigation of the Ministry of Foreign Affairs.⁷⁹ A report was also written in December 1855 at the time of the presidency of Portalis.⁸⁰ Portalis was not only the president of the *Cour de Cassation* but also a trained diplomat with Hauterive, exactly like Siméon, his cousin, and Mounier, his close friend.⁸¹ The author of the report mentioned that the members of the Committee were “ambassadors, *conseillers d’Etat*, lawyers and judges”.⁸² With Portalis the Committee was composed of Gabriac (officially Vice-president in 1855), Lefebvre, Marchand, Duvergier, Brénier and Gaudin as secretary. Overall, the committee remained relatively stable from 1849 to 1856. From June 1857 onwards the activities of the Committee were growing, and meetings became more frequent. Eventually, the Committee had eight members including a President (Portalis), a Vice-President (Gabriac), a Secretary (Gaudin) and a Vice-Secretary (Jules de Saux).⁸³ From 1861 onwards, the Committee was composed of ten members. Its last two Presidents were Raymond Theodore Troplong (1795-1869), once again a Judge from the *Cour de Cassation*, and Adolphe Vuitry (1813-1885), lawyer and Doctor of law, Governor of the National Bank of France.⁸⁴ Vuitry had joined the Committee already in January 1856 replacing Brénier.

- 20 A notable member of the Committee was Gustave Louis Chaix d’Est Ange (1800-1876), a lawyer and prominent figure of the Second Empire.⁸⁵ Other key members were also Louis de Saint-Aulaire, ambassador in Rome, Vienna and London under Louis Philippe, and the diplomat Alexandre de Clercq (1813-1885), compiler of a treaty collection, as well as a Guide des consulats.⁸⁶ A very important figure of the Committee during the Second Empire was Alfred Villefort (1820-1887). Member since January 1864, Villefort helped to recreate the Committee in 1877 and

78 AMAE contentieux 118, Letter from 16 avril 1853 from Pierre Cintrat: “Depuis 4 ans membre du comité, je n’ai point encore eu l’occasion d’y reconnaître l’utilité de ma présence”.

79 AMAE 393QO/1777 Emile François Gaudin.

80 AMAE contentieux 118, rapport du 5 décembre 1855.

81 AMAE 393QO/3333 Portalis.

82 AMAE contentieux 118, rapport du 5 décembre 1855.

83 AMAE contentieux 118, rapport au ministre juin 1857. See also *Annuaire diplomatique*.

84 AMAE contentieux 118; On Troplong see A. GIUDICELLI, “Biographie expliquée de Raymond-Théodore Troplong”, in *Revue d’histoire des facultés de droit et de la culture juridique, du monde des juristes et du livre juridique*, 20, 1999, pp. 93-120. On Vuitry see “Adolphe Vuitry”, in G. ANTONETTI, F. CARDONI and M. DE OLIVEIRA (eds.), *Les ministres des Finances de la Révolution française au Second Empire (III): Dictionnaire biographique 1848-1870*, Vincennes, 2007, online: <https://books.openedition.org/igpde/1253> (last accessed 15 October 2022).

85 AMAE 393QO/838 Chaix d’Est Ange.

86 AMAE 393QO/3633 Sainte-Aulaire; AMAE 393QO/975 Alexandre de Clercq.

was also member of the New Committee at the beginning of the Third Republic.⁸⁷ He was also officially *jurisconsulte* of the ministry since August 1857, exactly like Pfeffel before him and Louis Renault after him.⁸⁸ In sum, it has become clear that the members had almost invariably been lawyers trained in the *Conseil d'État*, where they had often also been presidents or members of the Litigation Committee of the *Conseil d'État* (Macarel, Marchand, Vuitry). Sometimes they had also been members of the Foreign Affairs Committee of the *Conseil d'État* (Portalis). A few others had a background at the *Cour de Cassation* (Portalis, Troplong). Many of them were also members of the *Académie des Sciences Morales et Politiques* (Rossi, Portalis, Troplong, Vuitry, Drouyn de Lhuis) or the *Académie française* (Sainte-Aulaire).⁸⁹ Some of them were also professors of law (Rossi, Macarel) as well as authors of articles or books on the Law of Nations and other legal matters (Portalis, Troplong, Macarel, Duvergier, Mounier, Siméon). It is interesting to note that inside the Litigation Committee of the Third Republic we find similar traits among members (except an increasing presence of law professors).⁹⁰ To conclude this part, we can say that the members of the Committee were shaping the legal culture of international law already before it emerged as an autonomous scientific field around 1869-1873.

3. Entangled cases of the Consultative Litigation Committee

21 The CLC had to deal with a great variety of legal cases related to international law. One of the main recurring legal issues in these cases- which should not really come as a surprise- concerned maritime law and related topics, such as neutrality, freedom of navigation, and prize law.⁹¹ The

87 AMAE 393QO/4116 Alfred Villefort.

88 AMAE 393QO/4116 Alfred Villefort, Arrêté du 17 août 1857, "nommé jurisconsulte". Thanks to Villefort the Foreign Ministry received in 1854 a collection of books (around 300) on international Law from Jean-Gaspard Foelix for the Library of the Ministry of Foreign Affairs, see AMAE 109SUP/35, 147-152.

89 In the time of the Third Republic other members of the committee were also members of the *Académie des sciences morales et politiques* : Gabriel Massé (1807-1881); Louis Renault; Léon Aucoc (1828-1910); André Weiss were all members like Portalis and Troplong of the *Section Législation, droit public et jurisprudence*; Félix Voisin (1832-1915); Alphonse Chodron De Courcel (1835-1919); Paul Deschanel (1855-1922) in the *Section général* like Drouyn de Lhuys; Alexandre Ribot (1842-1923) and Paul Deschanel in the *Section morale*; Pellegrino Rossi and Adolphe Vuitry were members in the *Section économie politique*; The *Académie des Sciences morales et politiques* organised several concours related to international law from 1835 to 1914 see Archives de l'Académie des sciences morales et politiques, 146 (*Droit des gens*, 1839), 246 (*Droit des neutres*, 1892), 331 (*Droit des gens*, 1839), 333 (*Droit maritime international*, 1857-1860).

90 See RYGIEL, *De savants juristes au service de la France*, art. cit., p. 208. We can note also a predominant number of *Conseillers d'Etat* in the Consultative Litigation Committee during the French Third Republic. Five members of the Académie Française: Gabriel Hanotaux (1853-1944); Paul Deschanel, Alexandre Ribot, Francis Charmes (1848-1916), Louis Barthou (1862-1934). Many members were also members of the *Société de législation comparée* and of l'*Institut de Droit International*. Two members even became President of the Third French Republic: Emile Loubet from 1899 to 1906 and Paul Deschanel in 1920.

91 See AMAE contentieux 1 to 80. At least 1/5 of all folders in the Archives of the contentieux (1835-1890) are related to maritime Law; S. C. NEFF, *The Rights and Duties of Neutrals: A General History*, Manchester, 2000; E. SCHNAKENBOURG, *Neutres et neutralité dans l'espace atlantique durant le long XVIII^e siècle (1700-1820). Une approche globale / Neutrals and Neutrality in the Atlantic World during the long Eighteenth Century (1700-1820): A Global Approach*, Bécherel, 2015.

Prize Court did not exist anymore from 1815 to the Crimean War but Prize law cases were sent to the *Conseil d'État* or the Litigation Committee of the Ministry of Foreign Affairs.⁹²

22 Otherwise the cases were mostly connected to private international law, especially nationality, extraterritoriality and asylum.⁹³ Much of this naturally necessitated a comparative perspective, which began to be widely adopted in these cases.⁹⁴ For example, one dossier on various nationality laws can be found in the archives, especially those related to citizenship of territories that had seen their legal status change such as in Belgium after 1831.⁹⁵ On these questions of nationality, the Committee used the writing of Paul Albert Royer-Collard (1797-1865), tenured professor of the *droit des gens* at the Paris Law Faculty, who gave an unpublished speech much earlier than the historian and philosopher Ernest Renan (1823-1892) on “What is a nation ?” and had published an edition of Vattel’s *Droit des gens*.⁹⁶ But the Committee also had to deal with the legislative ratification of treaties or reparation questions or French merchants that were expelled from Sevastopol after the Crimean War.⁹⁷ Among this great variety of cases, two of them perfectly encapsulate the constitutional and international entanglements in the nineteenth century: the French claims regarding the debt of 1815 and legislation on the Freedom of the Press in Europe after 1815.

3.1 French claims or the question of the reparation

23 The French reparations claims case is a very interesting one, as the CLC was the successor of the Debt and Reparation Committee from 1815 and 1818 as we have already seen. And in fact, the

92 BOUVET, *Le Conseil d'État sous la Monarchie de juillet*, op. cit., pp. 248-249; F. LE GUELLAFF, *Armements en course et droit des prises maritimes 1792-1856*, Nancy, 1999.

93 See AMAE contentieux 132, 409-412. On the history of international private law, see B. ANCEL, *Éléments d'histoire du droit international privé*, Paris, 2017; R. BANU, *Nineteenth Century Perspectives on Private International Law*, Oxford, 2018.

94 AMAE contentieux 111-117; S. SOLEIL, “Pourquoi comparait-on les droits au XIX^e siècle?”, *Clio@Themis*, 13, 2017, online: <https://doi.org/10.35562/cliiothemis.824> (last accessed 15 October 2022); P. ALLORANT, W. BADIÉ, “La Société de législation comparée: boîte à idées du parlementarisme libéral de l'Empire libéral à la République opportuniste”, *Clio@Themis*, 13, 2017, online: <https://doi.org/10.35562/cliiothemis.844> (last accessed 15 October 2022).

95 AMAE contentieux 131.

96 AMAE contentieux 131, Royer-Collard, Qu'est-ce qu'une nation?, 1844-1845; P.-A. ROYER-COLLARD, *Le droit des gens, ou Principes de la loi naturelle appliquée à la conduite et aux affaires des nations et des souverains, par M. de Vattel. Nouvelle édition, augmentée... précédée d'un Discours sur l'étude du droit de la nature et des gens, par Sir James Mackintosh, trad. de l'anglais par M. Paul Royer-Collard... suivie d'une Bibliographie spéciale du droit de la nature et des gens extraite des ouvrages de Camus, Kluber...*, Paris, Rio, 1830. On the concept of nation by Renan, see R. CAHEN, T. LANDWEHRLÉN, “De Johann Gottfried Herder à Benedict Anderson: retour sur quelques conceptions savantes de la nation”, Sens Public, 2010, online: <https://www.sens-public.org/articles/794/> (last accessed 15 October 2022).

97 AMAE contentieux 9 Demandes de particuliers relatives à des bateaux et des marchandises.

issue of the debt remained with the Committee from 1835 to the first world war.⁹⁸ In 1857 just after the Congress of Paris the “French claims” of the Baron de Bode were sent to the last *Grand chambellan de France*, the Second duke of Bassano, Napoleon Joseph Hugues Maret (1803-1898).⁹⁹ At the same time, Louis Belmontet (1798-1879), a poet, sent several books and essays to the French Ministry of Foreign Affairs seeking compensation from Great Britain.¹⁰⁰ The case of the reparation was raised various times during the nineteenth century, for example in June 1866 with the *Corps législatif* of the Second Empire or through a petition in 1873 in the beginning of the Third Republic.¹⁰¹

24 This case had many components and is rather complex. One of the main issues was the indemnities the French had paid to Britain. The issue was brought before the House of Commons by Baron Bode who had lost property in Alsace in 1792 but did not get any compensation in 1815. The reason was that he had been too late in claiming any indemnities before the British authorities.¹⁰² Afterwards he became one of the most prominent advocates of the fact that Great Britain had not properly used (as written in the 1815 and 1818 agreements) the money that the French authority had sent to the British in 1815-1818.¹⁰³ Another solicitor named “Le Baron” was pleading a similar case.¹⁰⁴ The case was brought up in many debates before the House of Commons (1821, 1824, 1828, 1832, 1834, 1852) as well as of course in the French House of Commons during the July Monarchy and later on in the *Corps législatif* of the Second Empire.¹⁰⁵

25 During the Third Republic, a socialist and antisemitic writer and politician named Auguste Chirac (1838-1910) sent several letters to the Ministry of Foreign Affairs also asking to reopen the case, claiming that Great Britain owed France one billion Francs (equivalent to five billion Euros in 2022 terms).¹⁰⁶ In 1887, the MP Eugène Blandin (1830-1898) proposed a bill at the National

98 AMAE contentieux 128. André Weiss commented the 15th December 1908 on a note claiming that Great Britain owed four billion francs to France regarding the conventions of 20th November 1815 and 25th April 1818.

99 AMAE contentieux 128; See especially M. LOBBAN, “The Commissioners for Claims on France and the Case of the Baron de Bode, 1815–1861”, in M. GODFREY (ed.), *Law and Authority in British Legal History, 1200–1900*, Cambridge, 2016, pp. 212-249.

100 AMAE contentieux 128.

101 AMAE contentieux 128.

102 LOBBAN, *The Commissioners for Claims on France*, op. cit., pp. 212-230.

103 LOBBAN, *The Commissioners for Claims on France*, op. cit., pp. 212-230.

104 AMAE contentieux 128.

105 AMAE contentieux 128; The full transactions of the debate of the UK Parliament can be consulted online: <https://hansard.parliament.uk/> (last accessed 15 October 2022).

106 AMAE contentieux 128. Auguste Chirac sent several letters to the minister of foreign affairs, Louis Decazes (1819-1886) from 1875 to 1877 and asked for a meeting with William Henry Waddington on the 20th of April 1879. Waddington was himself born English and had been naturalised.

Assembly to officially demand the billion francs from Great Britain.¹⁰⁷ The *Times* newspaper published around this time a long article on the alleged French claims. In the same year, the Undersecretary of State made a speech in the House of Commons after being asked by a Member of Parliament if Britain indeed owed one billion francs (approximately forty million pounds around 1890).¹⁰⁸ Sir James Ferguson (1832-0907) replied:

26 It is not true that the sum mentioned in the hon. Member's Question, or any other sum, is due to France by the British Government under the Convention of November 20, 1815. A statement of the matter was made to the House of Commons by the Secretary to the Treasury on the 8th of June 1869; and a Return of the disposition of the funds received from the French Government is shown in a Paper (No. 239) presented to Parliament in 1872. There is no new feature to be considered. A report of a proposal made in the French Chamber of Deputies has been made in the French newspapers similar to that mentioned by the hon. Member; but Her Majesty's Government are not aware that a Committee has been appointed by the Chamber to inquire into the subject. The statement in question is, no doubt, connected with the legend of the Baron de Bode, which haunted this House for a long period; but which, after being investigated by a Select Committee, was laid to rest.¹⁰⁹

27 Finally, in 1908 the international lawyers André Weiss and Henri Michelin (1847-1912) returned with a claim that Great Britain owed France four billion Francs.¹¹⁰ Yet Great Britain never paid back any indemnities from the 1815-1818 agreements.

3.2 Freedom of the press and new constitutional order

28 Another excellent example of entanglements between international and national legal orders can be found in press regulations. This was one of the key aspects of the new liberal constitutions during the nineteenth century.¹¹¹ The international order from 1815 as well as many national orders (especially Prussia, Austria, Russia) have long been seen as an ultra-conservative order, a dark moment of repressive laws against the freedom of the press.¹¹² This Manichean statement is

107 AMAE contentieux 128. See also "Une vieille dette" in *Le National*, 21th of February 1887. On Eugène Blandin see [https://www2.assemblee-nationale.fr/sycomore/fiche/\(num_dept\)/7902](https://www2.assemblee-nationale.fr/sycomore/fiche/(num_dept)/7902) (last accessed 15 October 2022). A small biography on all "députés" can be obtained on the *Assemblée Nationale's* website.

108 <https://hansard.parliament.uk/> (last accessed 15 October 2022).

109 House of Commons, 17th of March 1887, English Indebtedness to France, Reply of Sir James Ferguson to Dr. Tanner Question, Parliamentary debate, Hansard Archive, vol 312.

110 AMAE contentieux 128.

111 K. GROTKÉ, M. PRUTSCH, *Constitutionalism, Legitimacy, and Power: Nineteenth-Century Experiences*, Oxford, 2014; J. WILKE, "Censorship and Freedom of the Press", *European History Online (EGO)*, 2013, online: <http://www.ieg-ego.eu/wilkej-2013a-en> (last accessed 15 October 2022).

112 See GRAAF, HAAN AND VICK (eds.), *Securing Europe after Napoleon*, op. cit.; SOUTOU, *Concert européen, système européen, ordre européen*, art. cit.; J. WILKE, *200 Jahre Karlsbader Beschlüsse. Zustandekommen, Inhalte, Folgen*, Bremen, 2019.

only partially accurate and recent historiography tend to be more “positive” about the new “international” European order that took place in 1814-1818 without forgetting the security aspects and the many crises that occurred.¹¹³ The conservative powers demanded that Switzerland restrain its freedom of the press domestically, especially concerning the political press by foreigners, though this met with mixed success.¹¹⁴

29 The elevated status of public opinion and freedom of the press had a major impact on international law and diplomacy during the nineteenth century.¹¹⁵ Taking on that great transformation, the French Ministry of Foreign Affairs ordered in 1859 a survey of European press legislation.¹¹⁶ Napoleon III’s diplomats replied very quickly. And reports came back to Paris from the Netherlands, Belgium, Austria, Sardinia, Bavaria, Baden, Wurttemberg, Denmark, Sweden, Spain, USA, Great-Britain, Hannover, Norway, Romania, Saxony, and Turkey.¹¹⁷ Most of the French plenipotentiaries sent an historical-juridical note about the legislation in all these countries.¹¹⁸

30 A specific case was also brought to the Committee which was related to the press in French Language in the Ottoman Empire and more specifically to a French journalist named Baligot de Beyne (1821-1884).¹¹⁹ Baligot was a diplomat and journalist living in Pera (Constantinople) before becoming the Secretary of the Hospodar of Moldavia. After visiting Crimea during the war, Baligot founded, in January 1855, a newspaper called *la Presse d’Orient* which was widely read in

113 GRAAF, HAAN & VICK (eds.), *Securing Europe after Napoleon*, op. cit.; GRAAF, *Fighting Terror after Napoleon*, op. cit.; C. BROERS & A. A. CAIANI (eds.), *A History of the European Restorations: Volume One Governments, States and Monarchy*, London, 2020. See Especially: “Part 1 New Order, New Diplomacy?”, pp. 17-90.

114 C. HUMAIR, *La Suisse et les puissances européennes. Aux sources de l’indépendance (1813-1857)*, Neuchâtel, 2018, pp. 44-50.

115 S. HILLERICH, *Deutsche Auslandskorrespondenten im 19. Jahrhundert. Die Entstehung einer transnationalen journalistischen Berufskultur*, Berlin, 2018; R. MELTZ, “Vers une diplomatie des peuples? L’opinion publique et les crises franco-anglaises des années 1840”, *Histoire, économie & société*, 33/2, 2014, pp. 58-78.

116 AMAE contentieux 124. On the many French laws on the press from 1815 to 1881 see V. ROBERT, “Lois, censure et libertés”, in D. KALIFA et al.(eds.), *La civilisation du journal, Histoire culturelle et littéraire de la presse française au XIX^e siècle*, Paris, 2011, pp. 61-96; see also C. CHARLE, *Le siècle de la presse (1830-1939)*, Paris, 2004.

117 AMAE contentieux 124.

118 AMAE contentieux 124.

119 AMAE contentieux 124; E. BOLDAN, “L’attitude de la Porte ottomane envers l’Union des Principautés Roumaines, telle qu’elle a été vue par Arthur Baligot de Beyne”, *Revue des études sud-est européenne*, 18/4, 1980, pp. 737-755; M. NECOLAU, “Arthur Baligot de Beyne – un collaborateur français du Prince Alexandru Ioan Cuza”, in *Romanian Journal of Modern History*, 1, 2010, pp. 45-58.

the Ottoman Empire and beyond.¹²⁰ It was one of the many French newspapers published in Constantinople, the first being *Le Spectateur oriental* from 1824 renamed *Journal de Smyrne*.¹²¹ In the years 1855-1857, Baligot was heavily critical towards the Ottoman Empire and would be frequently attacked by another French Journalist, François Noguès, owner of the *Journal de Constantinople. Écho de l'Orient*.¹²² Baligot sought reprieve at the *Tribunal consulaire* arguing that one article from 29th December 1856 published in the *Journal de Constantinople. Écho de l'Orient* was defamatory.¹²³ Yet, the tribunal declared itself incompetent and the case came afterwards to the *Cour d'Appel d'Aix-en-Provence* (22 July 1857) and even to the *Cour de Cassation* (28 November 1857).¹²⁴ Both courts stated that the tribunal was indeed competent to judge the case.¹²⁵ Furthermore, the Ottomans were not happy with the interference in their internal affairs by French economic interests and send a protestation to the French Ambassador, Édouard Thouvenel (1818-1866).¹²⁶ The case came to the Committee with a note (December 1857) from the French Minister of Foreign Affairs, Alexandre Walelwski (1812-1868). The Committee quickly submitted its opinion reaffirming the legality of the decisions of both French Courts.¹²⁷ The year after, the Ottomans banned Baligot's publication due to its continuous critical attitude towards the Ottoman Empire. Baligot appealed to the French Ministry of Foreign Affairs for an indemnity, but he never got one in the end.¹²⁸ The war of words by the two newspaper men

120 AMAE 50MD/115, BALIGOT DE BEYNE, *Note sur la situation de la Presse d'Orient*, 25 June 1858; A. BALIGOT DE BEYNE, *La presse d'Orient*, Istanbul, 1854-1859 (with some interruptions). Unfortunately, this Journal has not been digitilised like many others see online: <https://heritage.bnf.fr/bibliothequesorient/fr/presse-francophone-dans-lempire-ottoman> (last accessed 15 October 2022); NECOLAU, *Arthur Baligot de Beyne*, art. cit.; See also R. CAHEN, "Friedrich Gentz (1764-1832): la question d'Orient et les princes de Valachie et de Moldavie", *Revue d'histoire diplomatique*, vol. 2019/2, pp. 141-158; G. LEANCA (ed.), *Edouard Grenier en Moldavie, 1855-1856*, Istanbul, 2015.

121 *Le spectateur oriental*, Smyrne (Izmir), 1824-1827; *Le courrier de Smyrne*, Smyrne (Izmir), 1828-1831; S. SINANLAR USLU, "Apparition et développement de la presse francophone d'Istanbul dans la seconde moitié du XIX^e siècle", *Synergies Turquie*, 3, 2010, pp. 147-156; J. PIERRE, "La presse française de Turquie, canal de transmission des idées de la Révolution", *Le temps des médias*, 5, 2005, pp. 168-176; AMAE, 50MD/115, BALIGOT DE BEYNE, *Note de la Presse en Orient. Création des journaux en Orient*, 25 June 1858.

122 P. VOILLERY & A. PEEVA. "Russophilie Ou Francophilie Dans La Renaissance Bulgare? A Propos d'un 'Activiste de La Renaissance Bulgare' L'autobiographie d'Alexandre Exarh. 1810-1891", *Cahiers Du Monde Russe et Soviétique*, 22/4, 1981, pp. 414-15.

123 AMAE contentieux 124; "Journal de Constantinople. Écho de l'Orient, n°766, Lundi 29 décembre 1856", see online: <https://archives.saltresearch.org/handle/123456789/129386> (last accessed 15 October 2022).

124 L.-J.-D. FÉRAUD-GIRAUD, *De la juridiction française dans les échelles du levant et de barbarie*, Paris, 1866, vol. 2, pp. 352-356.

125 FÉRAUD-GIRAUD, *De la juridiction française*, op. cit., pp. 354-356.

126 AMAE contentieux 124, Note pour le Comité du contentieux, December 1857.

127 AMAE contentieux 124, Avis du comité, 28 January 1858, signed by Gabriac; To be found also in AMAE contentieux 119: "Le comité est d'avis que la juridiction des tribunaux consulaires n'a point été étendue au-delà de la limite que lui assignent l'esprit et le texte des anciennes capitulations".

128 AMAE contentieux 124, Mémoire de Baligot, 28 October 1859; AMAE Contentieux 124, Correspondence between the French Minister of Foreign Affairs and the French Ambassador in Istanbul between 1859 to 1862.

escalated and finally settled in a duel. Baligot escaped with an injury.¹²⁹ Both the issues of the French claims after 1815 and of press regulations have illustrated the entanglements of constitutional and international law within the context of the Consultative Litigation Committee of the French Ministry of Foreign Affairs.

4. Conclusion

31 In this paper, I have shown the research potential pertaining to the study of the Consultative Litigation Committee of the French Ministry of Foreign Affairs within the context of the professionalization of the discipline of international law as well as the juridification of foreign affairs. Although recent research has been made on the concept of professionalization of diplomacy and on “international lawyers”, this paper fulfilled a research gap for the first half of the nineteenth century.¹³⁰ Indeed, this period is rather often seen as a moment of legal avoidance or even as the era of the disappearance of the law of nations before modern international law was constructed around 1869-1873.¹³¹ A topical case, being the widely accepted falsehood of the suppression of the Office of “jurisconsulte du ministère des Affaires étrangères” in France at the end of the eighteenth century before its supposed rebirth at the end of the nineteenth century. On the contrary, as shown through archival evidence, many legal advisers were employed in the French Ministry of Foreign Affairs during the nineteenth century. Furthermore the Consultative Litigation Committee served as a laboratory of the making of international law. All Committee members were active in a variety of academies, universities, courts, scientific journals and they shaped both the doctrinal and practical construction of international law before its gradual disentanglement from the earlier comparative and constitutional matrix. Lines of continuity can be identified between the international lawyers and members of the Committee for the years 1830-1870 and their successors in the years 1880-1914.

32 Nevertheless, since the process of disentanglement and autonomy of international law has been rather gradual and long, the members of the Consultative Committee dealt with several

129 E. COURMEAUX, *Souvenirs et impressions de voyage. Excursion en Crimée en 1855, pendant la guerre*, Reims, 1886, p. 15; *Catalogue des imprimés du cabinet de Reims*, Reims, 1896, p. 10: “Constantinople et le Bosphore par Arthur Baligot de Beyne, Paris, François, 1845... A la suite de vives polémiques avec le *Journal de Constantinople*, il eut avec le rédacteur de ce dernier, M. Noguès, un duel au sabre où son amie M.E. Courmeaux fut un de ses témoins”.

130 F. INDRAVATI (ed.), *L'identité du diplomate (Moyen Âge-XIXe siècle). Métier ou noble loisir?* Paris 2020; D. KÉVONIAN & P. RYGIEL (eds.), “Profession, juristes internationalistes?”, *Monde(s)*, 7/1, 2015; D. KÉVONIAN & P. RYGIEL (eds.), “Histories of International Lawyers between Trajectories, Practices, and Discourses”, *Jus Gentium*, 5/1, 2020. These three publications contains sixty-two articles and only four articles are partially dealing with the first half of the Nineteenth Century; See also M. KOSKENNIEMI, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300-1870*, Cambridge, 2021. This voluminous work of over one thousand pages contains only few pages for the period 1815-1870.

131 M. VEC, “Intervention/Nichtintervention. Verrechtlichung der Politik und Politisierung des Völkerrechts Im 19. Jahrhunderts”, in U. LAPPENKÜPER, R. MARCOWITZ (eds.), *Macht Und Recht. Völkerrecht in Den Internationalen Beziehungen*, Munich, Paderborn, 2010, pp. 135-160; L. HEIMBECK, “Legal Avoidance as Peace Instrument: Domination and Pacification through Asymmetric Loan Transactions”, in T. HIPPLER & M. VEC (eds), *Paradoxes of Peace in Nineteenth century Europe*, Oxford, 2015, pp. 111-128.

entanglement cases. This paper highlighted two specific cases since they illustrate, both in the area of press legislation and of reparations, the intertwining of international law, constitutional law, political economy and private law. This coincides with the findings of recent research into the relationship between international law and economical concerns. An example of the latter would be Thomas Piketty's recent study into the debt Haiti paid to France, or studies into the history of slavery and the slave trade.¹³² Another example would be the restitution of artwork and archives stolen around 1800.¹³³

33 To conclude, I would like to give some guidelines for a research agenda. First, it will be more than interesting to investigate more closely the networks of the members of the French Consultative Litigation Committee as well as the networks of the legal advisers of other foreign ministries in Europe and beyond. It would also be appealing to search for possible connections, if any, with the growing contemporary 'NGO'-movement, such as the different associations of the so-called 'friends of peace'.¹³⁴ Another aspect will be to look at popular knowledge of international law in the nineteenth century.¹³⁵ Where and how was international law spread outside the classical canals of diffusion (universities, diplomatic correspondences, textbooks)? No doubt that this could also enrich the current dynamic research on the history of international law and give new insight on the professionalization of international lawyers and of the interconnection between international law and constitutional law.

132 T. PIKETTY, *Capital et idéologie*, Paris, 2019, pp. 261-276; M. KOSKENNIEMI, "What should international legal history become?", in S. KADELBACH, T. KLEINLEIN & D. ROTH-ISIGKEIT (eds.), *System, Order and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, Oxford, 2017, pp. 381-397; M. KOSKENNIEMI, "Imagining the Rule of Law: Rereading the Grotian Tradition", *European Journal of International Law*, 30/1, 2019, pp. 17-52.

133 B. SAVOY, *Patrimoine annexé. Les biens culturels saisis par la France en Allemagne autour de 1800*, Paris, 2003; X. PERROT, *La restitution internationale des biens culturels aux XIX^e et XX^e siècles. Espace d'origine, intégrité et droit*, Thèse Université de Limoges, 2005.

134 W. DE RYCKE, "Legislating Utopia: Louis Bara (1821–1857) and the Liberal-Scientific Restatement of International Law in the Nineteenth Century Peace Movement", *JHIL*, 23/4, 2021, pp. 590-630; W. DE RYCKE, "In Search of a Legal Conscience: Juridical Reformism in the Mid-19th Century Peace Movement", *Studia Iuridica*, 80/3, 2019, pp. 355-374.

135 A.-S. CHAMBOST, L. GUERLAIN, F. LEKÉAL, "Enseigner les savoirs juridiques et économiques aux profanes (1814-1914). Un programme de recherche", *Les études sociales*, 173/1, 2021, pp. 11-26; COGAN, *A History of International Law in the Vernacular*, art. cit.