1. Introduction

In the recent past, two occurrences have focused sharp attention on the problems deriving from a State’s inability to comply with its financial obligations. The judgment in *Jurisdictional Immunities of the State (Germany v. Italy; Greece Intervening)* of 3 February 2012, which re-affirmed the principle of jurisdictional immunity with regard to acts *jure imperii*, did not have to deal directly with Germany’s financial situation as a consequence of World War II. Nonetheless, the debts caused by the crimes committed during that war constituted the backdrop of the dispute between the two litigant parties where the main issue to be assessed was the jurisdictional power, claimed by the Italian judiciary, to entertain actions brought by civilian victims of such crimes against the German State. Italy as the respondent defended the position taken in particular by the Corte di cassazione in *Ferrini*, a judgment of 11 March 2004. In many comments published shortly afterwards by the daily press it was observed that the judgment might be juridically correct but that it was fundamentally unjust.

This contribution to the essays in honour of Pierre-Marie Dupuy is certainly not the place to re-open the debate that has found its close with the judgment of

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* Professor Emeritus at Humboldt University, Berlin.
4 Pierre-Marie Dupuy acted as a member of the Italian judicial team, fighting hard to have his understanding of *jus cogens* accepted by the ICJ, see his general course at the Hague Academy: “L’unité de l’ordre juridique international: cours général de droit international public”, *Recueil des cours de l’Académie de droit international*, 297, 2002, 354–398.
3 February 2012. Instead, our intention is to inquire into the general problematuque of borderline situations where a State finds itself close to insolvency or has indeed fallen into insolvency, unable to meet its debts. Under domestic laws in all countries, provision is made in such instances for a procedure that seeks to bring about a fair balance between the interests of the debtor and those of the creditors.\textsuperscript{5} At the international level, by contrast, to date no such procedure has taken shape. Obviously, the principle of national sovereignty stands in the way of establishing a regime requiring to be administered by a superior authority that could be viewed as an element of an over-intrusive world government.

The second occurrence to be mentioned in this regard is the financial crisis of Greece which, looking back from March 2012 to the past, has been going on for several years, with no happy end in sight.\textsuperscript{6} On an almost weekly basis, the political leaders of the Euro zone were meeting during 2010 and 2011 in order to find solutions for the excessive indebtedness not only of Greece, but also of other economically weak partners in the Euro project, and their ordeal has continued unabatedly during the first three months of 2012.\textsuperscript{7} When the Treaty of Maastricht in 1993 ushered in the Euro,\textsuperscript{8} provision was made in the relevant provisions for some kind of financial stability and crisis management.\textsuperscript{9} But it has clearly emerged that the drafters were almost naïve in trusting that any major currency problem could be effectively addressed by fixed stability targets and eventually by sanctions that would be imposed on any Member State disregarding the normative guidelines. The same illusions appear to mar the European Fiscal Pact,\textsuperscript{10} signed on 2 March 2012, in which great hopes have been placed. It stands to reason that a heavily indebted country will not be in a position to assume additional financial burdens when it lacks the means to service its scheduled debts. In the midst of the current crisis, no serious chance exists of adjusting the relevant rules of the Lisbon Treaty itself, in order to introduce a better system that may


\textsuperscript{6} A dispute related to Greek financial turmoil in the last century was adjudicated by the Permanent Court of International Justice (PCIJ) in 1939, Société Commerciale de Belgique, Series A/B No. 78, 15 June 1939.

\textsuperscript{7} By 8 March 2012, the private-sector creditors had to declare their agreement with a swap of the Greek bonds held by them, accepting losses of as much as 75% of their face value.


\textsuperscript{9} Under the Treaty on the Functioning of the European Union (TFEU) now Articles 123–126.