



The Mixed Arbitral Tribunals of the Interwar Period

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“Un grand procès international: The inaugural hearing of the deportees’ case before the German-Belgian Mixed Arbitral Tribunal on 7 January 1924 at the Hôtel de Matignon in Paris. In the background, from left to right: Alfred Lenhard, Richard Hoene, Paul Moriaud, Albéric Rolin and the Belgian State Agents Henri Gevers and Georges Sartini van den Kerckhove. In the foreground: the German Secretary Walther Uppenkamp (left) and his Belgian colleague Jean Stevens (right)”¹

How a former international media phenomenon became one of international laws’ spaces of collective amnesia“ – and how its recent rediscovery could change our understanding of transnational mobilisation

On the morning of 7 January 1924, a photographer from the Meurisse news agency went to the Hôtel de Matignon in Paris. Not to attend an official declaration by the Prime Minister – the townhouse only became the official residence of the French head of government in 1935.

¹ Photo: Meurisse news agency, gallica.bnf.fr / Bibliothèque nationale de France.





Rather, the press photographer was to photograph a spectacle that was novel at the time and which the Brussels daily newspaper *Le Soir* had announced to its readers as "un grand procès international" – a "great international trial".²

The proceedings were to take place before the German-Belgian Mixed Arbitral Tribunal established pursuant to the Treaty of Versailles and whose permanent members were the Geneva legal scholar Paul Moriaud, his renowned Belgian colleague Albéric Rolin, and Richard Hoene, a senior judge ("Senatspräsident") from Germany. The plaintiffs were ten Belgians who had been deported by Germany as forced labourers during the war and were now demanding compensation from the *Reich*. One of the claimants, 38-year-old Jules Loriaux, who was still scarred by his imprisonment, had travelled to Paris. He and his fellow deportees were represented by the 33-year-old Brussels lawyer Jacques Pirenne and his mentor, the former Belgian Foreign Minister Paul Hymans. For its part, the German Reich not only had recourse to its state representative, *Senatspräsident* Alfred Lenhard, but, as usual in particularly important cases, also to a lawyer – in this case Max Ilch from Berlin, who would later be driven into exile by Nazi racial policy and whose accent-free French earned him some recognition from the press.

The Belgian deportees' case was what Karen J. Alter and Mikael Rask Madsen today refer to as "the international adjudication of mega-politics".³ If Germany had lost this case at the time, it would have faced tens of thousands of such lawsuits and claims for compensation adding up to around five million francs, i.e. ten times the sum it had already agreed to pay to Belgium for its civilian war victims.⁴

The German-Belgian Mixed Arbitral Tribunal was just one of seventeen Mixed Arbitral Tribunals (MATs) that were housed in the Hôtel de Matignon. They were an altogether new kind of international court. With the exception of the short-lived and little-used Central American Court of Justice, which dealt with just ten cases between 1907 and 1918, they were the first actually functioning international tribunals before which individuals could sue a foreign – and sometimes even their own – state. In contrast to their Central American predecessor, the MATs were a mass phenomenon: all in all, there were 39 of them, which would deal with roughly between 90,000 and 100,000 cases – some of them even after the outbreak of war in 1939. The (Kaiser Wilhelm) Institute for Comparative Public Law and International Law (1924), just as the one for Comparative and International Private Law (1926), owed at least part

² Un grand procès international: Les déportés belges contre le Reich, in: *Le Soir*, 9 January 1924.

³ [Karen J. Alter/Mikael Rask Madsen, The International Adjudication of Mega-Politics, Law and Contemporary Problems 84 \(2021\), 1.](#)

⁴ See, on this subject: [Michel Erpelding, An Example of International Legal Mobilisation: The German–Belgian Mixed Arbitral Tribunal and the Case of the Belgian Deportees, in: Hélène Ruiz Fabri/Michel Erpelding \(eds.\), The Mixed Arbitral Tribunals, 1919–1939: An Experiment in the International Adjudication of Private Rights, Baden-Baden: Nomos 2023, 309-362.](#)





of its existence and continued state support to this mass of often highly sensitive disputes, particularly for Germany.⁵ In view of these facts, it seems all the more surprising that the MATs disappeared almost completely from the collective memory of international law scholars in the second half of the 20th century.

The reasons for this are likely manifold. The discredit to which the international structures of the Paris peace order, which had been declared a failure, had fallen, was probably one of them, as was the bad aftertaste that the MATs in particular had left behind not only among the former Central Powers, some of whom had been discriminated against before them, but also among various Allies – particularly in Central and South-Eastern Europe. The desire to place the European reconstruction and unification process after the Second World War under the sign of a new beginning and to focus on international reconciliation would also hardly have been served by lengthy references to the rather mixed record of the MATs. Moreover, historians are likely to have been deterred not only by the sheer volume but also by the technical complexity of the (then) still abundant archive material.

The fact is that after a veritable flood of publications in the interwar period almost nothing was published on this topic between 1947⁶ and the late 2010s. In this regard, their fate contrasts with that of the Mixed Commissions created during the 19th century and the first half of the 20th century, with which the MATs have often been compared. Whereas the Mixed Commissions have always enjoyed great popularity, especially among supporters of international investment arbitration, the MATs turned into an example of what the French socio-historian Gérard Noiriel described as a “*non-lieu de mémoire*”,⁷ a “space of collective amnesia” – in this case, of the international legal community. Just how real this loss of memory was, becomes clear when one considers that the archives of the Paris and several other MATs, consisting of 40 large boxes and weighing several tonnes, which had survived the Second World War almost intact, were discarded by the Peace Palace Library sometime in the late 1970s or early 1980s.⁸

Even if large parts of the legacy of the MATs are thus probably lost forever, there is at least renewed interest today in an in-depth reappraisal of these institutions. Jakob Zollmann’s research has been particularly ground-breaking in this regard.⁹ In addition, several publications

⁵ [Jakob Zollmann, Mixed Arbitral Tribunals: Post-First World War Peace Treaties](#), in: [Hélène Ruiz Fabri \(ed.\), Max Planck Encyclopedia of International Procedural Law](#), Oxford: Oxford University Press 2022, para 32.

⁶ [Charles Carabiber, Les juridictions internationales de droit privé](#), Neuchâtel: La Baconnière 1947 (with a preface by Georges Scelle).

⁷ [Gérard Noiriel, Le creuset français: histoire de l’immigration, XIXe-XXe siècle](#), Paris: Seuil 1988, 19.

⁸ Email exchange between the author and the Peace Palace Library, August–September 2020.

⁹ See notably: [Jakob Zollmann, Reparations, Claims for Damages, and the Delivery of Justice: Germany and the Mixed Arbitral Tribunals \(1919-1933\)](#), in: [David Deroussin \(ed.\), La Grande Guerre et son droit](#), Paris: LGDJ 2018, 379-394; [Jakob Zollmann, Un juge berlinois à Paris entre droit public international et arbitrage commercial](#). Robert Marx, les tribunaux arbitraux mixtes et la Chambre de commerce internationale, in: [Philipp Müller/Hervé](#)





on the occasion of the 100th anniversary of the Paris Treaties, notably those by Marta Requejo Isidro and Burkhard Hess¹⁰ as well as August Reinisch,¹¹ have at least to some extent allowed the MATs to make their way back into the consciousness of the international law mainstream. Further strengthening and expanding this trend was also the aim of the anthology that I edited together with H el ene Ruiz Fabri in April 2023 and which is the first book on this topic since 1947.¹²

The approaches already represented in this publication can certainly be expanded on. Five general themes seem particularly promising to me in this respect – partly because they can also offer a broad field of activity for newer methodological orientations, especially in the area of socio-legal history. Here I am thinking in particular of the work published by Natasha Wheatley¹³ and Jessica Marglin¹⁴ on the mobilisation of international law and international institutions by both elites and grassroots movements. But more classical legal-historical and biographical approaches, drawing on archival material, would also be possible here.

Joly (eds.), *Les espaces d'interaction des  lites fran aises et allemandes. 1920-1950*, Rennes: Presses Universitaires de Rennes 2021, 63-77.

¹⁰ [Marta Requejo Isidro/Burkhard Hess, International Adjudication of Private Rights: The Mixed Arbitral Tribunals in the Peace Treaties of 1919-1922](#), in: Michel Erpelding/Burkhard Hess/H el ene Ruiz Fabri (eds.), *Peace Through Law: The Versailles Peace Treaty and Dispute Settlement After World War I*, Baden-Baden: Nomos 2019, 239-276.

¹¹ *August Reinisch*, The Establishment of Mixed Arbitral Tribunals, in: Soci t  fran aise pour le droit international (ed.), *Le Trait  de Versailles: Regards franco-allemands en droit international   l'occasion du centenaire / The Versailles Treaty: French and German Perspectives in International Law on the Occasion of the Centenary*, Paris: Pedone 2020, 267-288.

¹² [H el ene Ruiz Fabri/Michel Erpelding \(eds.\), The Mixed Arbitral Tribunals, 1919–1939: An Experiment in the International Adjudication of Private Rights](#), Baden-Baden: Nomos 2023.

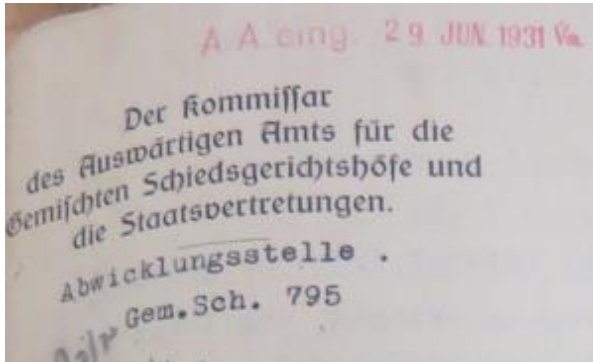
¹³ *Natasha Wheatley*, Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations, Past and Present 227 (2015), 205-248.

¹⁴ [Jessica M. Marglin, Notes towards a socio-legal history of international law](#), *Legal History* 29 (2021), 277-278; *Jessica M. Marglin*, *The Shamama Case: Contesting Citizenship across the Modern Mediterranean*, Princeton: Princeton University Press 2022.





I. The Significance of the Mixed Arbitral Tribunals for the German Foreign Office and the Kaiser Wilhelm Institute



Distinct from the German Foreign Office's Legal Department: Letterhead of Otto Göppert's "Commissariat", also known as the "Department of Arbitral Tribunals" (1931) (Photo: PA AA, RZ 403 53267)

This general theme is, of course, of particular relevance for the history of the Kaiser Wilhelm Institute (KWI) for Comparative Public Law and International Law, which owes its existence in large part to the need of the Weimar Republic for adequate representation before the MATs, both in terms of personnel and arguments. Some KWI members even participated directly. KWI Director Viktor Bruns, for example, was an arbitrator on the German-Polish and German-Czechoslovakian Mixed Arbitral Tribunals from 1927 to 1931. Around the same time, his colleague Erich Kaufmann was a

German state agent before the German-Polish Arbitral Tribunal, among others. Both professors were assisted by [Carlo Schmid](#), who was a research fellow at the KWI from 1927 to 1929.¹⁵ The result of this advisory activity was in part contradictory. As Jakob Zollmann has already pointed out, although the KWI's publications and expert opinions contributed significantly to improving the quality of the arguments on international law put forward by German state representatives, they also reinforced the understanding of the Versailles peace order within Germany as a fundamentally unjust "dictate". In order to shed more light on this dynamic, it would certainly also be appropriate to undertake a study of the "Commissariat for the Mixed Arbitral Tribunals and the State Agencies" (*"Kommissariat für die Gemischten Schiedsgerichtshöfe und die Staatsvertretungen"*), which was created within the Foreign Office in 1923, headed by Dr Otto Göppert, and at times employed over 300 staff members, including over 70 lawyers.¹⁶ Researching the work of this commissariat and its staff in more detail should not only be interesting for understanding German diplomacy in international law in the interwar period, but also allow for continuities and discontinuities with the post-war period to be identified, particularly with regard to the European unification process.

¹⁵ *Carlo Schmid*, *Erinnerungen*, Bern: Scherz 1979, 123-128.

¹⁶ *Otto Göppert*, *Zur Geschichte der auf Grund des Vertrags von Versailles eingesetzten Gemischten Schiedsgerichte und Schiedsinstanzen für Neutralitätsansprüche*, unpublished typoskript, Berlin, March 1931, 34.





II. The Mixed Arbitral Tribunals and Private International Law



Ernst Rabel (1874–1955) did not only hold the position of Director of the KWI for Comparative and International Private Law between 1926 and 1936, but also sat on the German-Italian Arbitral Tribunal based in Rome between 1921 and 1930 (Photo: Eckart Henning/Marion Kazemi: Handbuch zur Institutsgeschichte der Kaiser-Wilhelm- /Max-Planck-Gesellschaft 1911-2011, vol. II/1, Berlin: Archiv zur Geschichte der Max-Planck-Gesellschaft 2016, 881)

As the jurisdiction of the MATs also extended to questions of private international law, some contemporary jurists, such as Jean-Paulin Niboyet, hoped that the case law they developed would lead to a harmonisation of the rules applicable in the various European states.¹⁷ Although this idea was not to be realised, the discussions at the time could still be of interest to today's specialists in private international law. Furthermore, the KWI for Foreign and International Private Law was also founded in 1926 with a view to the legal issues arising before the MATs and with Ernst Rabel – similar to his international law counterpart, with Viktor Bruns – had a director who sat as a MAT member. Research into this co-operation should certainly provide further interesting insights into the relationship between jurisprudence and politics in interwar Germany.

¹⁷ Jean-Paulin Niboyet, Les Tribunaux arbitraux mixtes organisés en exécution des traités de paix, Bulletin de l'Institut intermédiaire international 7 (1922), 215-241.





III. The Mixed Arbitral Tribunals and the Emergence of a Transnational Legal Public Sphere



Source gallica.bnf.fr / Bibliothèque nationale de France

An international media event: Plaintiffs and public at the inaugural hearing of the deportees' case in Paris on 7 January 1924. In the foreground: lawyers Jacques Pirenne (left) and Paul Hymans (right). In the background: main plaintiff Jules Loriaux (2nd from the right, with cane)¹⁸

Given the number of cases heard before them and the sometimes considerable financial and political consequences associated with them, the MATs created a new transnational field of activity that was recognised by both members of the legal profession and parts of civil society. Since the hearings before the MATs were public and were also commented on by the press and even attracted onlookers, one can certainly speak of a transnational legal public sphere. This factor made it possible, among other things, for rather unprivileged actors, such as war victims, to use the MATs to assert their interests against former enemy states – or even against their own

¹⁸ Photo: Meurisse news agency, gallica.bnf.fr / Bibliothèque nationale de France.





state – or at least to raise them. Some of these proceedings, such as the deportees’ case before the German-Belgian MAT mentioned above, also received transnational media coverage.

However, the MATs also offered new opportunities to parts of the elite. Paris in particular developed into the centre of a transnational legal community. Lawyers with excellent international networks developed into specialists in Franco German and other transnational disputes. Together with members of the MATs and the International Chamber of Commerce, they even attempted to reform the system of these courts and establish it on a permanent basis. Researching the motivations, arguments and actions of all these actors would certainly contribute to the development of socio-legal history.

IV. The Mixed Arbitral Tribunals and the Reorganisation of Property Relations in Central and Southeastern Europe



Session of the German–Polish Mixed Arbitral Tribunal at the Hôtel de Matignon in Paris in February 1925. In the background, from left to right: Alfred Lenhard, Franz Scholz, Robert Guex, Jan Namitkiewicz, Tadeusz Sobolewski. In the foreground are the Tribunal’s two secretaries, whose precise identity could not be determined.¹⁹

Unlike the Western Allies, Poland and the members of the “Little Entente” did not enjoy extensive immunity from lawsuits brought by members of the former Central Powers before

¹⁹ Photo: Narodowe Archiwum Cyfrowe.





the MATs established with them. On the contrary: the Paris Peace Treaties even expressly provided for their compensation for any liquidation of property, which threatened to hinder the reorganisation of property relations in these states, some of which had just become independent. The disputes between German claimants and the Polish Republic as well as the Romanian-Hungarian optant dispute in particular made international headlines. It would be interesting to examine the influence of these proceedings on the understanding of sovereignty of the states involved and the mobilisation of the actors involved, both in the region and in Western Europe.

V. The Mixed Arbitral Tribunals Beyond Europe

This general theme arises from the realisation that, despite their origins in the Paris Peace Treaties, MATs should not be understood as a purely European phenomenon. They went beyond Europe in three respects. Firstly, when looking at the list of the 39 MATs,²⁰ it is striking that not only European but also two non-European allies were involved in these tribunals, namely Japan and Siam. The archives of these states on their participation in the MATs – which have been preserved, at least in the case of Japan – are still awaiting academic analysis. This would be all the more interesting as it could shed further light on the perception of the Versailles peace order and international arbitration by these states. Secondly, the special value of the MATs established in Istanbul after the Lausanne Peace Treaty of 1923 with Turkey should be emphasised for two reasons. On the one hand, because they treated the participating states and their nationals equally and could thus be presented as a credible model for future courts. On the other hand, despite this difference, they were perceived by Turkey as a new edition of the "mixed courts" typical of (semi-)colonial legal systems and thus also raise the question of continuities and discontinuities between colonialism and internationalism. Thirdly, it should be particularly interesting from a socio-legal-historical perspective to analyse cases with non-European plaintiffs (e.g. allied colonial subjects) or concerning events or subject-matters situated outside Europe.

Translation from the German original: Sarah Gebel

²⁰ [Appendix: Alphabetical List of the Mixed Arbitral Tribunals and their Members, in: Ruiz Fabri/Michel Erpelding \(eds.\), The Mixed Arbitral Tribunals, 1919–1939: An Experiment in the International Adjudication of Private Rights, Baden-Baden: Nomos 2023, 547-581.](#)

