Concluding Remarks*

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I would like to conclude the conference by referring to its title: *The Mixed Arbitral Tribunals: an International Experiment in the Adjudication of Private Rights*. Was this conference a successful experiment? It was. Let me highlight the following four issues:

(1) *The innovative nature of the Mixed Arbitral Tribunals*: many speakers and discussion participants have stressed the legitimacy and enduring importance of the standing of the individual at the international level before the Mixed Arbitral Tribunals. This is certainly true. However, state agents were heavily involved in the proceedings conducted by private individuals.[1] We have to be aware that individual standing or representation by the national agents was mainly a political and not a legal issue – Michel Erpelding demonstrated these limitations yesterday quite convincingly.[2] And I would like to recall that most Mixed Arbitral Tribunals of the 1919 Peace Treaties were dissolved when the Young Plan was adopted in 1930: The state parties terminated the pending cases by espousing and waiving the claims of the individuals.[3]

(2) Without doubt, the Mixed Arbitral Tribunals stand in *the tradition of the so-called* '*colonial era mixed courts*' as we learned yesterday with regard to Turkey.[4] From this perspective, the debate about the former 'convention courts' in the negotiations of Lausanne Peace Treaty was quite compelling. However, the underlying idea of the Peace Treaties closely followed the

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1 Burkhard Hess and Marta Requejo Isidro, 'International Adjudication of Private Rights: The Mixed Arbitral Tribunals in the Peace Treaties of 1919-1922', in Michel Erpelding, Burkhard Hess, and Hélène Ruiz Fabri (eds), *Peace Through Law The Versailles Peace Treaty and Dispute Settlement After World War I* (Nomos 2019) 251 s.

2 See Erpelding (ch 9).

3 ibid, 252.

4 See Muslu (ch 2). See also Theus (ch 1).

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paradigm of the colonial courts: It was about privileging private claimants vis-à-vis defendants coming from the defeated Central Powers. The Mixed Arbitral Tribunals implemented and enforced the privileges and rights of Allied nationals under the Peace Treaties by replacing the domestic jurisdictions of the Austrian, German and Turkish Courts.[5] In these states, their imposition was perceived as discrimination. In the defeated states, private rights affected by warfare were not compensated. Still, as we all know, the issue of legitimacy of courts which privilege a specific category of creditors/individuals is a significant issue in modern investment arbitration.[6]

(3) One overarching topic of this Conference was the reception of the Mixed Arbitral Tribunals' case-law in both private and public international law. Here, one should remember that the Permanent Court of International Justice in '*Certain German Interests in Upper Silesia*' *(No 6)* clearly stated that the Mixed Arbitral Tribunals were not international courts, but assimilated them to the domestic courts in Poland.[7] In this judgment, the Permanent Court of International Justice explicitly decided that a parallel claim before the Germano-Polish Mixed Arbitral Tribunals in Paris did not bar its jurisdiction. Pendency did not apply between the PCIJ and the Mixed Arbitral Tribunals. Therefore, the modern classification of the Mixed Arbitral Tribunals as 'international courts' does not correspond to their classification in the 1920's and 1930's and was certainly an impediment to the reception of their case-law after WWII.[8] However, as we learned this morning the function of the PCIJ as an appellate body for the Trianon Mixed Arbitral Tribunals has not been sufficiently discussed.

(4) If one looks at *the procedures of the Mixed Arbitral Tribunals*, their initial design was similar to 19th century civil procedural codes. This phenomenon has been described by the famous proceduralist *Calamandrei* who served as a judge at the Germano-Italian Mixed Arbitral Tribunals.[9] There were, of course, strong similarities between the different procedures.

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5 Burkhard Hess, *The Private-Public Law Divide in International Dispute Resolution,* (Collected Courses of the Hague Academy of International Law, vol 388, Brill 2018) 39 para 89.

6 Cf. Daniel Behn, Ole Kristian Fachault, and Malcolm Langford (eds), *The Legitimacy of Investment Arbitration* (CUP 2022) 1.

7 *German Interests in Polish Upper Silesia (Germany v Poland)*, Permanent Court of International Justice, 25. May 1926 (ser. A) No. 7, 33.

8 For an early assessment cf. Charles Carabiber, *Les juridictions internationales de droit privé* (La Baconnière 1947) 163 ss.

9 Piero Calamandrei, 'Il tribunale Arbitrale Misto Italo-Germanico e il suo Regulamento Processuale' (1922) Rivista del Diritto Commerciale 293, 305-306.

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Initially, the procedure of the Germano-French Mixed Arbitral Tribunal served as the basic model for others. However, there was one big difference which related to the practice and style of the British Mixed Arbitral Tribunals. As their judgments show, the Mixed Arbitral Tribunals were influenced by the cultural differences between civil and common law, between the Continent and the UK.[10] Cultural and language barriers were additional impediments for the defendants in these proceedings.[11] However, the unequal treatment of private rights in the Peace Treaties did not prevent the Mixed Arbitral Tribunals from developing a practice based on standards of procedural fairness. And these tribunals developed and used modern forms of mass claim settlement: by streamlining parallel cases, taking up 'pilot cases', developing accelerated proceedings and by achieving mass claim settlement.[12] In other aspects also, the Mixed Arbitral Tribunals were a successful experience in the settlement of private claims.

Let me conclude by affirming that this two-day conference has convincingly demonstrated the enduring legacy of the Mixed Arbitral Tribunals as a precursor of modern dispute settlement before domestic and international courts and within the interfaces of private and public international law. This conference has profited from the diversity of its presenters and participants: historians, legal historians and jurists from private and public international law. The conference took up different perspectives: it looked at the institutions, the jurisprudence, the political background and impediments and, last but not least at the persons involved. We all have learned much and I am greatly looking forward to the publication of the conference volume. My special gratitude goes to Michel Erpelding, the *spiritus rector* behind this project. We all owe him a lot. This conference has opened up an additional valuable historical and cultural perspectives on dispute resolution.

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10 Marta Requejo Isidro and I demonstrated this in our presentation on the Mixed Arbitral Tribunals in December 2017. See also Burkhard Hess and Marta Requejo Isidro (n 1) 239, 253-58.

11 This was different in the Trianon Mixed Arbitral Tribunals where French was used as the 'neutral' language of the proceedings.

12 Burkhard Hess (n 5) 49, para 91. The Mixed Arbitral Tribunals of the 1919-20 Peace Treaties handled more than 70 000 cases: Burkhard Hess and Marta Requejo Isidro (n 1) 239, 247. If one adds the cases handled by the MATs established with Turkey pursuant to the 1923 Lausanne Treaty, this figure might reach more than 90 000 cases (see the Introduction of this volume).

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