Epilogue: The Early and the Long End of the Mixed Arbitral Tribunals, 1920-1939

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More than a century after the conclusion of the post-World War I peace treaties that provided for the establishment of Mixed Arbitral Tribunals, many aspects of these institutions remain elusive. One such aspect is the material conditions of their establishment and operation, including the actual duration and ultimate termination of their activity. Based on the assertion that following the 1929 Young Plan and the 1930 Hague Agreement, the Allies and Germany had decided to dissolve their mutual MATs,[1] most prominent accounts assume that all MATs were discontinued sometime after this date.[2] The fact that the *Recueil des décisions des Tribunaux arbitraux mixtes*, the MATs' semi-official case law collection, ceased to be published after 1930 further reinforces this impression. However, a closer examination of archival and lesser-known published sources, covering both the MATs with Germany and those with the other former Central powers, reveal a much more complex picture. Whereas some MATs provided for by the peace treaties ultimately never saw the light of day, others continued to operate until 1939 or even beyond that date. Moreover, at the beginning of the 1930s, ie at the very moment often presented as marking the end of the MATs, several lawyers within the MAT system were actively trying to make them permanent, and almost succeeded in doing so.

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1 Agreement regarding the Complete and Final Settlement of the Question of Reparations (with Annexes) (signed 20 January 1930) 104 LNTS 243. It should be noted that this agreement did not include any provisions on the MATs.

2 See, in particular: Carl Friedrich Ophüls, 'Schiedsgerichte, Gemischte', in Hans-Jürgen Schlochauer (ed), *Wörterbuch des Völkerrechts* (vol 3, Walter De Gruyter 1962) 173, 176. 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) 274.

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Providing the reader with a more granular view on the demise of the MATs, this epilogue includes six sections. The first two sections describe how the main former Central Power, Germany, tried to avoid the establishment of MATs in the first place and to impose deadlines limiting the number of claims submitted to MATs that had already been established. The third section examines the efforts made by governments during the 1920s to phase out various MATs. The fourth section shows how government officials derailed the attempts made by some actors within the MAT-system in the 1930s to establish permanent MATs. The last two sections cover the liquidation of the last remaining MATs – arguing that the start of the Second World War in 1939 should be considered as the endpoint of the MATs' judicial activity – as well as the fate of the MATs' archival records after the war.

1. *Avoiding Mixed Arbitral Tribunals Altogether, 1920/21*

Two conflicting political goals stood at the baseline of the interpretation of the Paris peace treaties and their future purpose. On the one hand, Allied governments intended to come at least close to popular political demands that were inscribed in the wartime slogan '*Le Boche paiera tout!*' (which could be translated as 'the Hun shall pay everything!'). Accordingly, Germany and the other former Central Powers were to be held liable for as long as 'all' the damages the World War had caused were 'paid'. In Germany and among the other former Central Powers, on the other hand, the 'destructive minimal consensus' of 'the rejection of the peace treaty'[3] was translated into concrete politics by the call to modify or even destroy the 'status quo established in [Versailles]'.[4] Avoidance of the execution of individual provisions of the peace treaties was one of the means employed for this purpose by German, Austrian, Hungarian, or Bulgarian politicians and civil servants.

Germany, therefore, intended to avoid the establishment of MATs altogether and to thwart all the provisions referring to them, like Articles 297, 298, 304, and 305 Versailles Peace Treaty (VPT). Through its diplomats, Germany tried to convince governments with whom MATs were supposed

3 Eckart Conze, transl. in Alaric Searle, 'An Armistice without Peace? The "Failed" Versailles Settlement in Europe, 1919-23' (2021) 141 Historisches Jahrbuch 188, 221.

4 Eberhard Kolb, *The Weimar Republic* (2nd edn, PS Falla and RJ Park tr, Routledge 2004) 189.

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to be established to find alternatives. They offered bilateral agreements on lump-sum reparation payments or negotiated the major claims diplomatically rather than solving them through arbitration. This diplomatic manoeuvring was met with some success. Only eleven Mixed Arbitral Tribunals were, in fact, established with Germany pursuant to the Treaty of Versailles, even though the latter had provided that MATs should have been established 'between each of the [27] Allied and Associated Powers on the one hand and Germany on the other hand' (Art 304(a) VPT). For example, in the case of a (future) Portuguese-German MAT, the parties had already agreed, according to Art 304(a) VPT, on their MAT president in 1921.[5] But then this envisaged MAT found an early end when the parties desisted from continuing the preparatory works. Instead, they agreed to arbitrate all Portuguese claims against Germany not by a MAT but through a different arbitration mechanism provided for by the Treaty of Versailles (§ 4 of the Annex to Art 298 VPT, 'neutrality damages'). Here, too, the Germans put – in vain, though – much pressure on the Portuguese to avoid these formal arbitration proceedings altogether.[6]

However, as became clear by 1921, when many of the MATs had in earnest begun their work, these attempts at avoiding the MATs could no longer be maintained. Rather than escaping their obligations under Article 304 VPT (or its equivalents in the other peace treaties), the former Central Powers' governments had to face the incoming mass claims for reparations by Allied nationals. They set up administrative branches in the Foreign and Justice Ministries to support their MAT staff in Paris, London, Geneva, or Rome. In particular, for the German government, this 'policy of fulfilment' ('*Erfüllungspolitik*') meant not only the (reluctant) payment of reparations according to payment schedules. German officials were ordered to work with the Treaty of Versailles and to execute its provisions with the least possible damage to Germany, thereby aiming to 'expose the impossible and unjust nature of the [Treaty] terms'. Within the political framework of a 'policy of fulfilment without [the German] will to fulfil ['*Erfüllungswillen*']', the defence of German (financial) interests before

5 Otto Göppert, 'Zur Geschichte der auf Grund des Versailler Vertrages eingesetzten Schiedsgerichte' (unpublished typoscript, Berlin, March 1931, on file with the authors) 1.

6 On the example of Portugal see Jakob Zollmann, *Naulila 1914. World War I in Angola and International Law: A Study in (Post-)Colonial Border Regimes and Interstate Arbitration* (Nomos 2016) 267 sq.

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the MATs with the tools of international law was merely one aspect of this policy.[7]

2. Setting Deadlines for Making MAT-Claims

The Paris peace treaties did not stipulate when the MATs would have to terminate their work. The MATs' Rules of Procedure (RoP) that were drafted by the MATs' members and their national administrations, mostly over the years 1920 and 1921, however, attempted to set clear – and rather short – deadlines for all prospective claimants. Putting their sections on 'time for presentation of claims' (Rule 1 Anglo-German RoP, September 1920) or '*délais de présentation des requêtes*' (Art 3 Franco-German RoP, April 1920) prominently at the beginning, these Rules of Procedure left no doubt that the involved governments had no intention that the rights to claim compensation from former contractual partners or former 'enemy governments' should last forever. The general principle was that different classes of claims were being submitted to the MATs within six, 12, to 18 months 'of the publication of these rules' (claims under Art 297) or within 30 days of a decision of the clearing offices (Art 296 VPT).

These original deadlines for claims more or less coincided with the deadline set by Article 233 VPT that set up a Reparation Commission to determine the amount of damage and to announce the total amount to the Germans, by 1 May 1921.[8] Hence, these deadlines indicate an expectation that throughout 1921 to (latest) 1923, most claims should have been filed. And it would have then been the task of the MATs to speedily process these claims to finalise their work. The head of the German MAT administration pointed out 'the objective … to make the duration of the MATs' existence as short as possible'.[9] There was, however, always room left for exceptions. Rule 1(d) of the Anglo-German RoP stipulated: 'After the expiration of the times prescribed by this rule, no claim will be accepted without the special leave of the Tribunal'. Referring to principles of 'equity', a similar provision was included in Art 5 Franco-German RoP and the Tribunal used this competence 'repeatedly'. The Franco-German MAT

7 Kolb (n 4) 193; Wolfram Pyta, *Die Weimarer Republik* (Leske + Budrich 2004) 58.

8 On the Reparation Commission, see: Jean-Louis Halpérin, 'Reparation Commission (Versailles Treaty)' in Hélène Ruiz Fabri (ed), *Max Planck Encylopedia of International Procedural Law* (OUP 2022).

9 German original: '*das Bestreben … die Existenz der Schiedsgerichte auf möglichst kurze Zeit zu beschränken*'. Göppert (n 5) 11.

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also formally decided again and again to extend the deadlines mentioned in its 1920 Rules of Procedure to enable more individuals to file their claims.[10]

Furthermore, it seemed impossible to calculate in advance when the national Clearing Offices would have made their last decisions about (pre-war) debts – against which subsequently an appeal with the MAT would have been possible within 30 days. In fact, with regard to the time available to the clearing offices to settle different classes of debts, Article 296 VPT – again – set rather narrow deadlines, stipulating that such settlements be implemented 'within three months of the notification' required following 'the deposit of the ratification of the present Treaty by the Power'. Also, para 21 of the Annex to Article 296 VPT mentioned a timely execution of its provisions as an explicit goal: 'With a view to the rapid settlement of claims, due regard shall be paid in the appointment of all persons connected with the Clearing Offices or with the Mixed Arbitral Tribunal to their knowledge of the language of the other country concerned.' And yet, neither the MAT nor the clearing offices could possibly predetermine when the last potential claimants would file their last claims. With regard to the overall workload, the head of the German MAT administration for the Italian-German MAT in Berlin, Lorenz Krapp, conceded 'that the work [of the MAT branch in Berlin] is not easy, with 12- to 14-hour workdays, including on Sundays, being the rule'.[11] With a view to the future, he surmised in 1923: 'The Rome [MAT] is likely to last another 2 years; should I be granted reinforcements, I could hopefully reduce its lifespan to 1 ½ or 1 ¼ years'.[12] However, in 1925 the MAT-related workload had,

10 See the decision of the Franco-German MAT of 17 October 1921 to extend the deadline mentioned in Art 3 (c) of the Franco-German MAT Rules of Procedure (20 April 1920), in Karin Oellers-Frahm and Andreas Zimmermann, *Dispute Settlement in Public International Law: Texts and Materials*, vol II (2nd edn, Springer 2001) 1627; Göppert (n 5) 12.

11 German original: '*daß die Arbeit [der MAT-Dienststelle in Berlin] nicht leicht ist und der Zwölf- bis Vierzehnstundentag auch Sonntags der Normaltag ist'*. Dr. Krapp to Bavarian Ministry of Justice (14 March 1923) Hauptstaatsarchiv München, Bavarian Ministry of Justice, MJu 10952, Ausführung des Friedensvertrags Artikel 302 und 304. Gemischte Schiedsgerichtshöfe. Besetzung der Gemischten Schiedsgerichtshöfen. Dr. Lorenz Krapp.

12 German original: '*Der [MAT] Gerichtshof in Rom dürfte wohl noch 2 Jahre bestehen; wenn ich jetzt Verstärkung bekomme, hoffe ich, daß wir seine Lebensdauer auf 1 ½ oder 1 ¼ Jahre zurückschrauben können*' ibid.

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from a German perspective, just reached its 'climax', when altogether 304 civil servants, 79 of them legally trained, were employed for this task.[13]

3. *Phasing Out the Mixed Arbitral Tribunals*

The political principle to avoid formal MAT awards, favouring instead diplomatic settlements about payments for war-related Allied claims, was upheld by former Central Powers' governments throughout the 1920s. Once such settlements were found for a majority of claims, the entire MAT including its secretariat could be dismantled. Already in April 1922, with the German-Soviet Treaty of Rapallo,[14] Germany had agreed with the Soviets that the latter, unlike the Allies under Article 116 VPT, would not claim 'from Germany restitution and reparation based on the principles of the present Treaty', thus avoiding a potential Soviet-German MAT. On the other hand, Germany would not demand compensation for German property in Russia expropriated after 1918 by the Bolshevik government.[15]

The first MATs that ceased their activities through the governments' agreement were the Siamese-German MAT and the Japanese-German MAT in 1926. In 1927, the Anglo-Bulgarian MAT was 'provisionally dissolved',[16] and the Yugoslav-German MAT and the Yugoslav-Austrian MAT followed suit in 1929 (however, the former would be revived following a case filed in 1931 by the prince of Thurn and Taxis against Yugoslavia; as we shall see later, it would even prove to be one of the most enduring MATs). In 1929, the Germans also tried to convince the French government to end the liquidation of German properties and to set a final deadline for claims to the Franco-German MAT. But the resulting liquidation agreement implemented only a number of changes that aimed at bringing the liquidation principles in line with the the Hague Agreement of 20 January 1930[17] ('Young Plan') and limiting the filing of ever new claims with the MAT

13 Göppert (n 5) 34.

14 See: Ilona Stoelken-Fitschen, 'Rapallo Treaty (1922)', in Rüdiger Wolfrum (ed), *Max Planck Encylopedia of Public International Law* (OUP 2009).

15 Pyta (n 7) 61.

16 Agreement between His Majesty's Government and Bulgaria relating the Provisional Dissolution of the Anglo-Bulgarian MAT, London (17 June 1927) Cmd. 2928; Treaty Series No. 21 (1927).

17 Agreement regarding the Complete and Final Settlement of the Question of Reparations (with Annexes) (signed 20 January 1930) 104 LNTS 243.

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in view of 'allowing the Tribunal to cease its activity in the foreseeable future'.[18]

The Young Plan introduced a new payment schedule for German reparation annuities. The German diplomats and the German MAT personnel insisted that these negotiations about the 'final liquidation of the war' did include all other claims based on the Treaty of Versailles (including the liquidation of German property in Allied territories and thus the material base for the MAT proceedings). These claims were to be considered as replaced by the payments according to the Young Plan. In addition, Germany and Austria concluded several treaties with the neighbouring 'new States', agreeing that the remaining claims and counterclaims were to be settled or withdrawn from the MATs. By the late 1920s and early 1930s, governments throughout Europe and beyond had become tired of the cumbersome and costly MAT apparatus that, it seemed, contributed little to the welfare of Allied claimants. In its preamble, the Anglo-German agreement of 1932 to dissolve the Anglo-German MAT explicitly mentioned that the 'maintenance of that Tribunal would impose upon [the governments] … unnecessary expense'. However, the parties, similar to the earlier Anglo-Bulgarian agreement, stipulated that this dissolution was only 'provisional' and left them with the option to 'reconstitute the Tribunal' should 'any case arise' that should have been tried by this MAT.[19]

Allied governments that were faced with German claims for the compensation of liquidated property, on the other hand, appeared to have slowed down the MAT proceedings.[20] Poland and Germany, for example, signed a so-called 'liquidation agreement' on 29 October 1929 that provided for the discontinuation of further liquidation of German real estate in Poland by Polish authorities and Poland, in turn, obtained from Germany a waiver of the claims of German citizens for compensation due to an allegedly insufficient valuation of their liquidated assets or any other claims (Articles 92,4; 297b; 304; 305 VPT). However, the political opposition against such an agreement and the end of the Polish-German

18 German original: '*dass das Gericht innerhalb absehbarer Zeit seine Tätigkeit beenden könne*'. Göppert (n 5) 218; 220; 88 on the Franco-German 'Abkommen über die Einstellung der Liquidation deutschen Vermögens' (31 December 1929) RGBl. II, 562.

19 Agreement between His Majesty's Government and the German Government regarding the Dissolution of the Anglo-German MAT, London (26 July 1932) Cmd. 4160; Treaty Series No. 26 (1932).

20 Göppert (n 5) 195 alleging a '*Verschleppungstaktik*' by the Polish party in the Polish-German MAT.

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MAT was adamant in both Poland and Germany. Seeing the agreement as too favourable towards Polish interests (Germany undertook to indemnify its own citizens), in the *Reichstag*, German members of parliament insulted the German Foreign Minister Curtius with the question: 'are you a Polish minister?' ('*Sind Sie denn polnischer Minister?*') and claimed the agreement would be an unconstitutional expropriation of Germans. Similarly, the Polish *Sejm* ratified the 'liquidation agreement' only after fierce debate in 1931.[21]

Such bilateral intergovernmental agreements, which indirectly reaffirmed the privileged position of states as primary subjects of international law, somewhat undermined what contemporaries saw as the 'most radical characteristic' of the MATs, namely the fact 'that not only States but also private individuals may appear before them as parties'.[22] This major limitation on the procedural rights the MATs had offered to individuals and companies was not lost on contemporary observers, sometimes leading them to question the legal position of private persons within the MAT system. For instance, in a letter written to Hersch Lauterpacht in 1935, one of the legal advisers of the British Foreign Office, WE Becket, referring to agreements concluded following the 1930 Young Plan, voiced his scepticism regarding the impact of the MATs on individual rights in the following terms:

> The Government who set up Mixed Arbitral Tribunals can, and in some instances have abolished them, changed their original jurisdiction, agreed that certain judgements delivered by them shall not be effective or shall be subject to appeal etc., etc. How is all this action by the Government, taken without the consent of the individual concerned, consistent with the view that the individual had legal rights in this respect?[23]

The diplomat and lawyer thus underlined that the individual, for all his/her war-related claims, remained at the mercy of his government and that, irrespective of any 'rights', the traditional notion of 'diplomatic protection' could be reinstated any time.

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21 Verhandlungen des Reichstages, 138. Sitzung (10 March 1930), vol 427, 1930, 4316; Polish Journal of Laws 1931, no 90, items 704; 705.

22 Paul de Auer, 'The Competency of Mixed Arbitral Tribunals' (1927) 13 Transactions of the Grotius Society xvii, xvii.

23 Cited in: Hersch Lauterpacht, *International Law: Collected Papers of Hersch Lauterpacht, Vol 5: Disputes, War and Neutrality, parts IX-XIV* (CUP 2004) 740.

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By 1930, it seemed to those involved as if the MATs would 'soon disappear as institutions of the peace treaties, insofar as they [had] not already disappeared'.[24] Research literature as well has argued that 'by the beginning of the 1930s, the work of these tribunals had come to an end'.[25] The fact that the semi-official *Recueil des décisions des Tribunaux arbitraux mixtes* was discontinued after 1930 further reinforces the impression that the 'abrupt termination of most of the MATs by the Young Agreement in 1930'[26] meant that this experiment had ended by that date. However, a look at lesser-known publications and archival records reveals a more complex picture.

4. Advocating and Resisting the Establishment of Permanent MATs

Although the MATs remained controversial throughout their existence, there was at least one serious attempt during the interwar period to transform them into permanent institutions. Emanating from members of the Paris-based MATs and the microcosm of international legal practitioners associated with the MATs and the International Chamber of Commerce (ICC), also based in Paris, it foreshadowed some of the controversies sparked by present-day investor-state arbitration. The origins of this attempt can be said to go back to 1927, when Pierre Jaudon, the French Agent-General before the MATs, apparently acting in agreement with his German counterpart, Robert Marx, who would soon also become an influential member of the ICC,[27] submitted to his government a proposal advocating the creation of permanent international arbitral tribunals. These tribunals should have jurisdiction over transnational disputes between private persons and claims for damages by nationals of one of the state parties against another state party. Initially based on a series of bilateral

24 German original: '*als Institutionen der Friedensverträge demnächst verschwinden werden, soweit sie nicht schon verschwunden sind*'. Walter Schätzel, 'Die Gemischten Schiedsgerichte der Friedensverträge' (1930) Jahrbuch für Öffentliches Recht 378, 455.

25 Norbert Wühler, 'Mixed Arbitral Tribunals' in Rudolf Bernhardt (ed) *Encyclopedia of Public International Law*, vol. 1 (North Holland 1981) 142, 145.

26 Hess and Requejo Isidro (n 2) 274.

27 On Robert Marx, see: 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 Joly Hervé, Müller Philipp (eds), *Les espaces d'interaction des élites françaises et allemandes 1920-1950* (PUR 2021) 63–77.

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treaties, these permanent MATs could subsequently result in the creation of a single multilateral institution, ideally also based in Paris. Eliciting no positive reply, Jaudon reiterated his proposal in 1928, this time with the support of the former Mexican President Francisco León de La Barra, who chaired several MATs, and again in 1929, with the backing of Thor Carlander, the Swedish delegate at the ICC,[28] who later tried to popularise this idea amongst a Scandinavian audience.[29] The French Minister of Foreign Affairs at the time, Aristide Briand, was clearly sceptical of the idea, which he deemed too costly and better suited to be discussed in the multilateral forum of the League of Nations.[30] Nevertheless, his administration was forced to consider it more seriously after the French Chamber of Deputies had voted in 1930 a resolution calling upon the executive to enter into negotiations with foreign governments in order to establish permanent MATs.[31]

This resolution, which had been presented by René Brunet, a right-leaning member of the socialist party who combined his activity as a professor of international law at the University of Caen with a flourishing practice as a business lawyer[32] and counsel before the MATs,[33] ultimately led the Quai d'Orsay to engage in a series of consultations. Over the objections

28 Jaudon to Briand (12 June 1930) French Diplomatic Archives (AMAE), 242QO/2462. Unfortunately, Jaudon's two first messages do not seem to have been preserved. For Jaudon's detailed 1929 proposal, see: 'Note de M. Jaudon, Agent général du gouvernement français auprès des Tribunaux arbitraux mixtes sur la permanence des juridictions arbitrales internationales de droit privé' (June 1929) AMAE, Y593.

29 Thor Carlander, 'Esquisse d'une juridiction internationale de droit privé' (1931) 2 Nordisk Tidsskrift for International Ret 49.

30 Briand to Jaudon (30 June 1930) AMAE, 242QO/2462.

31 The text of the resolution was as follows: '*Le Gouvernement est invité à entrer en pourparlers avec les gouvernements des puissances étrangères à l'effet de créer des tribunaux mixtes internationaux chargés de juger les litiges qui peuvent naître, soit entre États et particuliers, soit entre particuliers ressortissants des États ayant accepté cette juridiction*'. 'Adoption d'une proposition de résolution relative à la création de tribunaux mixtes internationaux' (30 June 1930) 89 Journal officiel de la République française : Débats parlementaires 2802.

32 Roger Pierre and Justinien Raymond, 'BRUNET René, Jean, Alfred, ou RENÉ-BRUNET' in *Le Maîtron : Dictionnaire biographique : Mouvement ouvrier, mouvement social* (uploaded on 3 November 2010, last modified on 7 November 2021 [https://maitron.fr/spip.php?article102879].

33 Brunet acted as counsel before the MATs as early as 1921: Franco-German MAT (4th section), *Société de Pont-à-Mousson c Hasenclever* (31 August 1921) 1 Recueil TAM 407, 409.

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of the Ministry of Commerce,[34] the President of the ICC International Court of Arbitration,[35] its own legal adviser, Professor Jules Basdevant,[36] and the Ministry of Justice,[37] it yielded to Jaudon's arguments in favour of setting up an experimental Franco-Belgian MAT and informally authorised him to further explore the matter.[38] Together with his Belgian counterpart, Georges Sartini van den Kerckhove, also backed by his government, Jaudon set up a preparatory commission staffed by French and Belgian MAT members.[39]

This commission elaborated a draft convention for a permanent Franco-Belgian MAT[40] presented to both governments in late June 1931.[41] However, in early 1933, the Belgian Government rejected the proposal, voicing constitutional concerns. Jaudon, who in the meantime had secured from the French Parliament the creation of a '*Service de l'arbitrage international*' placed under his responsibility within the French Ministry of Foreign Affairs,[42] remained undeterred. He travelled to Brussels with Brunet and Sartini van den Kerckhove to have the Belgian Government reconsider its position and urging the French authorities to let him and his colleagues also engage into negotiations on permanent MATs with Luxembourg, the Netherlands, Sweden, Greece, and Egypt.[43]

However, although the activism of Jaudon and other MAT practitioners eventually persuaded the Belgian authorities to re-examine their stance

34 Flandin to Briand (26 July 1930) AMAE, 242QO/2462.
35 Clémentel to Briand (23 August 1930) AMAE, 242QO/2462.
36 Memorandum by Basdevant (22 December 1930) AMAE, 242QO/2462.
37 Bérard to Briand (9 June 1931) AMAE, 242QO/2462.
38 Memorandum by Charguéraud (27 June 1933) AMAE, 242QO/2462. Note by E. Meyers, honorary Director-general at the Belgian Ministry of Justice (December 1933) Belgian Diplomatic Archives (ADB), APC-I-4988.
39 In addition to Jaudot and Sartini van den Kerckhove, the commission included the Belgians Fauquel and Gevers, respectively arbitrator and state agent, as well as Lampérière and Chapuis, both state agents for France. Jaudot to Briand (18 March 1931) AMAE, 242QO/2461.
40 'Rapport présenté aux gouvernements français et belge par la commission préparatoire chargée de rechercher les conditions de l'élaboration d'une convention bilatérale instituant un tribunal franco-belge de droit privé' (undated) ANF, AJ/22/27.
41 'Note pour la Sous-direction d'Europe' (27 June 1933) AMAE, Y593.
42 ibid.
43 'Note sur l'état de la question des tribunaux arbitraux de droit privé' (12 February 1933) AMAE, Y593.

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regarding the alleged unconstitutionality of permanent MATs,[44] they ultimately failed to maintain the necessary political support for their project within the Quai d'Orsay. Ironically, although Brunet's 1930 resolution had largely been associated with the Socialist Party, it was likely the advent of the left-wing Popular Front in 1936 that caused the demise of his call for permanent MATs. In a memorandum written three months after the advent of the new government, the Quai d'Orsay's legal adviser, Jules Basdevant, reiterated his reservations regarding the scheme. Doubting that international tribunals would be 'better composed, more enlightened, more impartial, [and capable of delivering speedier decisions] based on better and less onerous rules of procedure' than French or foreign domestic courts, he concluded that the creation of permanent MATs establishing a jurisdictional privilege for foreigners would be 'particularly ill-timed' ('*particulièrement inopportune … à l'heure actuelle*') for two reasons. On the one hand, such MATs were 'highly reminiscent' ('*ressemblent singulièrement*') of the Mixed Courts of Egypt, whose abolition France had just agreed to; on the other hand, they might prevent France from applying its new social legislation to foreigners and allow the latter to sue the government for damages resulting from plant occupations.[45] These considerations seem to have been persuasive, as the voluminous file on permanent MATs preserved at the Archives of the French Ministry of Foreign Affairs includes no subsequent discussion on this issue.

5. Liquidating the Last MATs

Even though the attempt to establish permanent MATs ultimately failed, several MATs established pursuant to the 1919-23 peace treaties remained operational well into the 1930s and, in some cases, even into the Second World War. While the lacunary state of publications and remaining archival records has prevented us from determining when exactly each individual MAT made its last judicial decisions, it seems safe to say that this was not a marginal phenomenon. The reasons behind the prolonged existence of several MATs varied. In the case of the Franco-German MAT, the number of unsettled claims was such that their quick liquidation

44 Claudel (French Ambassador to Belgium) to Laval (French Minister of Foreign Affairs) (4 April 1935) AMAE, Y593.

45 'Note sur les tribunaux internationaux de droit privé' (14 August 1936) AMAE, Y593. On the similarities between MATs and semi-colonial mixed courts, see Theus (ch 1).

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proved impossible. Therefore, whereas all other MATs established between the major Allied Powers and Germany had been discontinued in 1932,[46] the Franco-German MAT took several more years to wind down. The lengthiness of this process had clearly not been anticipated. For example, in early 1931, the head of the MATs Commissariat established within the German Ministry of Foreign Affairs, Otto Göppert, had written in the subjunctive mode about the unlikely event that the Franco-German MAT should continue its work after October 1931. However, he himself listed that, of the 23 996 claims filed with this MAT, 21 093 claims had been 'liquidated' ('*erledigt*') – thus provoking the question of what would happen to the claimants of the remaining almost 3 000 claims and leaving open how both governments would decide about this question.[47] It was only in November 1936 that the Franco-German MAT could formally entrust its President with organising its administrative winding down after 30 April 1937, the date that had been set as a deadline to deal with all pending cases.[48]

The Franco-German MAT was not the only one whose existence extended beyond 1930 partly because of its caseload. For instance, the Greek-Turkish MAT, which handled almost 12 000 claims, operated until 1935. However, this was also due to its late establishment in 1926,[49] a feature that it shared with the other Istanbul-based MATs, as Turkey had been clearly reluctant to appoint members and provide premises for institutions that reminded it of the much-resented capitulatory mixed courts.[50] Conversely, the relative longevity of the Belgian-Turkish MAT, which held its last meetings in 1933, seems to have been due to problems with internal organisation. According to the Tribunal's Belgian secretary, it resulted

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46 The MATs with Germany that had ended their activities by 1 June 1932 were: the Belgian-German MAT, the British-German MAT, the Japanese-German MAT, the Italian-German MAT, the German-Polish MAT, and the German-Siamese MAT. 'Übersicht über die Zusammensetzung und die noch unerledigten Aufgaben der Gemischten Schiedsgerichte nach dem Stande vom 1. Juni 1932' (1 June 1932) Political Archives of the German Ministry of Foreign Affairs (PAAA), RZ403-R53267.

47 Göppert (n 5) 90.

48 Franco-German MAT, 'Procès-verbal de la séance plénière du 26 novembre 1936' (26 November 1936) National Archives of France (ANF), AJ/22/NC35.

49 Niels Vilhelm Boeg, 'Le Tribunal arbitral mixte turco-grec' (1937) 8 Nordisk Tidsskrift for International Ret 3, 3-5.

50 William Henry Hill, 'The Anglo-Turkish Mixed Arbitral Tribunal' (1935) 47 Juridical Review 241, 243. On Turkey's attitude vis-à-vis the MATs, see also Muslu (ch 2).

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from the unwillingness of its President, the Dutch law professor Carel Daniël Asser, to attend the Istanbul-based MAT's sessions for more than a few days at a time, thus illustrating one of the potential downsides of resorting to part-time non-professional judges.[51]

Finally, the longevity of many MATs established with the members of the Little Entente (Czechoslovakia, Romania, and Yugoslavia) was largely due to their jurisdiction over agrarian reform cases.[52] This was already true for the Austro-Romanian MAT, which seems to have operated at least until 1936,[53] and the German-Yugoslav MAT, which, after having been provisionally dissolved in 1929 and later revived following a new suit filed in 1931, was definitively disbanded in late July 1939, as both states had decided to settle the two remaining claims.[54] The MATs established between Hungary and the members of the Little Entente pursuant to the Treaty of Trianon proved even more enduring, at least from an administrative point of view. After Czechoslovakia, Romania, and Yugoslavia had applied various dilatory stratagems to avoid decisions in favour of Hungarian claimants,[55] the three MATs were still left with a rather voluminous docket at the outbreak of the Second World War. During the war, the Hungaro-Czechoslovakian and Hungaro-Yugoslav MATs continued to operate to a certain extent. Between 1939 and 1943, based on an earlier proposal by the Secretary-General of the MATs, Antony Zarb,[56] and in agreement with Hungary, the President of these two MATs, Henri Schreiber, issued summary decisions – but not a single award of damages – regarding the vast majority of pending cases from his home near Neuchâtel in Switzerland. However, owing to their summary form and their having been issued

51 Motte to Sartini van den Kerckhove (22 April 1932) National Archives of Belgium (AGR), I590/1071.

52 On this issue, see Papadaki (ch 10) and Stanivuković and Djajić (ch 13).

53 A document from the secretariat of that MAT preserved at the French National Archives mentions a 'judgment on the merits' (*'jugement rendu sur le fond'*) issued on 30 April 1936. ANF, AJ/22/168.

54 It should be noted that this dissolution intervened without the two claimants, the German princely family of Thurn and Taxis and a Yugoslav national named Elias M. Lewy, having formally withdrawn their suits, thereby illustrating the limited standing of individuals before pre-Lausanne MATs. 'Protocole de clôture' (22 July 1939) ANF, AJ/22/169.

55 'Note traitant de diverses questions intéressant la liquidation pratique des affaires dévolues aux T.A.M. roumano-hongrois, hungaro-tchécoslovaque et hungaro-yougoslave' (undated, very likely written in spring 1939 by the Secretary-General of the remaining MATs, Antony Zarb) ANF, AJ/22/NC/33/2.

56 ibid.

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after Germany's occupation of Czechoslovakia and Yugoslavia and without their participation, these decisions were hardly judicial in nature.[57] Although, technically speaking, both the Hungaro-Romanian and Hungaro-Yugoslav MATs survived the war (the Hungaro-Czechoslovakian MAT had been liquidated pursuant to an agreement concluded between Hungary and Germany in April 1942 and later joined by the Slovak puppet state),[58] they never reconvened to resume their activity as international judicial bodies. As noted by Antony Zarb, this would have been pointless in any case, as the factual basis for their decisions had largely disappeared.[59] Even more so than that of the League of Nations, the era of the MATs had definitively ended with the beginning of the Second World War in Europe.

6. Discarding the MATs

The story of the long end of the MATs would be incomplete without an account of their material legacy. After the *de facto* dissolution of the last remaining MATs during and immediately after the Second World War, the only thing that remained to do was to decide what to do with their archives. In 1932, when the dissolution of the Belgian-German MAT was imminent, Sartini van den Kerckhove insisted that the archives of that MAT remain in Paris pending the dissolution of the last MAT. According to the Belgian Agent-General, the international nature of these archives prevented their partition among the relevant state parties, leaving it instead to the MATs themselves to decide where to deposit them, 'obviously at the seat of an international organism, such as Geneva or the Hague'.[60]

However, this solution was not consistently applied. Whereas the archives of the Franco-German MAT were indeed handed over to the Peace Palace Library in the Hague, those of other MATs were either left in the care of individual MAT agents (whether in an official or a private

57 'Note concernant la situation actuelle des Tribunaux arbitraux mixtes' (14 December 1946) ANF, AJ/22/NC/33/2.

58 'Procès-verbal de la remise des dossiers et archives [du TAM hungaro-tchécoslovaque]' (6 August 1943) ANF, AJ/22/163.

59 ibid.

60 French original: '*évidemment [au] siège d'un organisme international, tel que Genève ou La Haye*'. Sartini Van den Kerckhove to the Belgian Minister of Finance (3 February 1932) AGR, I590/1082.

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capacity),[61] or individual states. The latter was for instance the case of the Hungaro-Czechoslovak MAT's archives, which were divided between Germany, Hungary, and the Slovak Republic in 1943.[62] Undoubtedly reflecting his internationalist beliefs,[63] Antony Zarb nevertheless succeeded in having the archives of several MATs reach the Peace Palace Library, both before and after the Second World War. In July 1947, acting in agreement with MAT-President Schreiber,[64] he made sure to transfer the archives of the two last MATs to the Hague, where, as he noted, they 'would be stored amongst those of other judicial bodies already kept at the Peace Palace'.[65] In October 1947, FWT Furnée, who had been neutral secretary to the Belgian-Turkish, the Franco-German, and the Greek-German MATs, gladly confirmed that the eleven boxes containing the archives of the two last MATs, weighing 773 kg, had indeed arrived at the Peace Palace, 'where our other archives are already stored'.[66]

Unfortunately, the content of these archives, comprised of some 40 boxes, including those of the Franco-German MAT, is now forever lost. They were discarded between the late 1970s and early 1980s, at a time when the history of international law was barely considered a relevant part of the discipline, with only compilations of their decisions having been kept.[67] After sparking passionate controversies amongst states, fuelling the hopes of international legal practitioners, contributing to the rise of the individual as a subject of international law and inspiring the creators

61 Zarb to Schreiber (13 June 1939) ANF, AJ/22/169.

62 'Niederschrift betr. die Übergabe der Akten des gemischten ungarisch-tschechoslowakischen Schiedsgerichts' (6 August 1943) ANF, AJ/22/163.

63 After the war, Antony (or Antoine) Zarb would pursue his career as an international civil servant, eventually reaching the position of legal counsel for the World Health Organization, and actively promote international law by holding conferences and chairing Geneva's *Cercle des juristes internationaux*. See, eg: 'Le doyen Graven chez les juristes internationaux' *Le Rhône* (Geneva, 11 March 1960); 'Genève, capitale internationale' *Journal de Genève* (Geneva, 25 May 1961).

64 Zarb to the Dutch Ambassador to France (15 July 1947) ANF, AJ/22/NC/33/2.

65 French original: '*pour être rangées parmi celles d'autres juridictions déjà abritées au Palais de la Paix*'. Zarb to ter Meulen (archivist at the Peace Palace Library) (15 July 1947) ANF, AJ/22/NC/33/2.

66 French original : '*où se trouvent déjà nos autres archives*'. Furnée to Zarb (1 October 1947) ANF, AJ/22/NC/33/2.

67 Email exchange between Michel Erpelding and Peace Palace Library (August-September 2020), on file with the author.

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of the European Court of Justice,[68] the Mixed Arbitral Tribunals of the 1919-23 Peace Treaties had been marked for oblivion. As the chapters in this volume show, forty years after the destruction of the MATs' archives, historians of the MATs are limited to other international, national and municipal archives, which keep, for instance, the MAT-related files from the Ministries of Justice or Foreign Affairs or personnel files. With the renewed interest in the history of international law and international tribunals, scholars will continue to search for additional sources that help to retrace and analyse the internal working processes of the MATs.

68 On this issue, see: Michel Erpelding, 'International Law and the European Court of Justice: The Politics of Avoiding History' (2020) 22 Journal of the History of International Law 446.

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