Alexandre Mérignhac (1857-1927), a voice for international peace

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Officer of the Légion d'Honneur, Officer of Public Instruction, Knight of Agricultural Merit, Commander of the Order of Isabella the Catholic, Knight of the Crown of Italy; the decorations are many but the eyes seem melancholic. Alexandre Mérignhac, a forgotten figure, offers a contrasting image. In his time honored both nationally and internationally, he has experienced many disappointments in his constant fight, if not for a total eradication of war, at least in favor of its codification and the establishment of international peacekeeping bodies.

Born in Toulouse on January 21, 1857, this son of a lawyer defended at the age of 20 his doctoral thesis devoted to *the Law of resale by mortgage in Roman and French law*,

before becoming in turn a lawyer at the Toulouse Court of Appeal. He was granted tenure in law in 1884 first in Bordeaux and then in Aix-en-Provence before joining the Toulouse Faculty of Law in 1887. On April 4, 1892, he took up the chair of private international law, then finally occupied that of public international law, from April 4, 1903 until his admission to retirement on November 1, 1924.

In addition to his favorite subject, he taught colonial legislation and economics, provided additional courses in administrative law, political science and economics, and organized “for more than twenty years” conferences “relating to questions of international law” for the officers of the garrison of Toulouse. From a pedagogical point of view, an “abundant speech”, a “rapid flow” “constantly” translating the fear “of not being able to express all the thoughts flowing *en masse* into his mind” were compensated by a “clear”, “loud”, “strongly timbered” voice, audible even in “the largest amphitheaters”. Let us bet, however, that, in spite of “lessons full of ideas”, of “often original conceptions”, his courses could sometimes have been dreaded by students less inclined to take synthetic notes. Elected in 1890 to the Academy of Legislation of Toulouse, he was vice-president in 1904, then president in 1905; he collaborated in the *Revue du droit public et de la science politique en France à l’étranger*, and in 1904 became an associate member of the *Revue générale de droit international public* of which he appeared as one of the “great bosses”. A prolific author, he produced, during the first phase of his career, imposing volumes devoted to private law, a number of articles published until the eve of his retirement, and in 1897 a *Traité théorique et pratique de l’arbitrage international* crowned by the Institut de France; in 1903, a treatise on *Lois et coutumes de la guerre sur terre*; in 1905-1912, a *Traité de droit public international* in three volumes of which, shortly before his death, he was preparing the third edition. As an assiduous observer and analyst of the major international events of his time, he also immediately examined the results of the Hague Conference, which, held from May to July 1899, aimed to “mettre un terme aux armements incessants et rechercher les moyens de prévenir des calamités qui menacent le monde entier [put an end to incessant armaments and seek ways of preventing calamities threatening the entire world]” by adopting various conventions on the law of armed conflicts and the peaceful settlement of international conflicts, including the establishment of the Permanent Court of Arbitration, the prohibition of aerial bombardments, the use of asphyxiating gases, explosive bullets, etc. The final act was signed – quite unnecessarily, as the future will cruelly demonstrate – by the representatives of 27 States in the forefront of which

appear Germany, Austria-Hungary, France, the United Kingdom, Italy, the Ottoman Empire, the United States of America, Serbia, Bulgaria, etc. As early as 1900, Mérignhac published *La conférence internationale de la Paix*, a large volume of nearly 500 pages consisting of a “étude historique, exégétique et critique des travaux et des résolutions de la conférence de la Haye de 1899 [historical, exegetical and critical study of the work and resolutions of the Hague Conference of 1899]”. This work was followed in 1903 by *Les lois et coutumes de la guerre sur terre d’après le droit international moderne et la codification de la conférence de La Haye de 1899*. Mérignhac did not, however, content himself with the detailed study and interpretation of texts. A genuine activist, he also endeavored to scrutinize, and immediately denounce, practices contrary to “the law of Nations”: in 1901, those of England during the Transvaal War or the Boer War, of which young second lieutenant Winston Churchill made himself the reporter to better round up a salary deemed insufficient; while the Toulouse professor pointed out the crimes committed there against women, children, the sick, the wounded and prisoners (“*Les pratiques anglaises de la guerre terrestre*” (Eng. “English practices of land warfare)”, *Revue générale de droit international public*, 1901); in 1904, those of Japan sinking without a prior declaration of war from Russian ships (“*Les Japonais et le droit international*” (Eng. “The Japanese and International Law”, *Journal des débats* of March 4, 1904).

On top of his writings, Alexandre Mérignhac joined in on the action. Without being embarrassed by the risk of possible diplomatic repercussions and, incidentally, negative consequences for his career, against England, which in southern Africa “violated […] all the rules of common international law”, he founded and chaired the Midi Regional Committee for the Independence of the Boers. Initiator, in 1900, of the Toulouse Peace Association, he convened, in his capacity as president, a national congress which, in October 1902, brought together in Toulouse “more than 50 French peaceful societies and over 100 groups of adherents of various orders”. The objective was, by uniting them, to make their voice better heard by initiating international congresses. Indeed, it was “because their moral authority is preponderant” and “international law lacks solid bases in many regards” that jurists had the duty to exert pressure on governments, as “law can and must exert relentless action on politics”. And where would it find a better audience than in arbitration treaties? Moreover, the latter must not limit themselves to settling, on a case-by-case basis, this or that dispute, as was traditional practice. The construction and maintenance of a peace as durable as possible required the

“arbitration clause”, which should not be limited to being special, and therefore should concern only the difficulties that a treaty can generate. It had to be “general”, submitting “to arbitration of all future disputes, without distinction”. In addition, it was also necessary to “set up permanent arbitration treaties” which were “nothing other than the general arbitration clause”. Ultimately, what remained “only accidental and optional” had to be generalized and “called upon to transform itself into an international body”. Moreover, in the event of a violation of the law, an international court would be called upon, subject to appeal, to issue enforceable awards after the expiry of a period followed by a summons and then a second period. Only at the end of the latter would the State in whose favor the international judges had ruled be “authorized to declare war […] with its own forces increased by a contingent provided by the other States and strong enough to make any resistance impossible”.

In recognition of his multifaceted commitment at the beginning of the 20th century , he was knighted by Professor André Weiss, who, after the war, was vice-president of the Permanent Court of International Justice in the Hague and already saw him as ” l’un des chefs du mouvement pacifique dans notre pays [one of the leaders of the peaceful movement in our country]”. His fame so far exceeded the circle of his peers that he appeared in 1909, then again in 1913, among the personalities proposed for the Nobel Peace Prize. This does not mean that he should be placed among the radical pacifists. Advocating for the limitation of armament and in favor of any legal path that may avoid violence, he still rejected the “purely utopian projects” aiming for total disarmament: ” Là où la raison a échoué, il ne reste plus que la force, qui devient parfaitement légitime, quand elle se met au service du droit [Where reason has failed, there remains only force, which becomes perfectly legitimate when it puts itself in the service of law]”. However, he placed various limits since it must “be proportionate to the attack” and “not become the pretext for ambitious demands”. There was a just war, a legal war and “the most legitimate is that which has as its objective the preservation of the national territory or its resumption when it has been unjustly removed”. Inevitably, the matter of Alsace-Lorraine comes to mind here. While most pacifists saw a viable solution in granting the *Reichsland* of *Elsaß-Lothringen* full autonomy within German states, according to him, only the plebiscite was “humanely, rationally and legally permissible.” This, taking into account the foreseeable results in the case of a direct consultation of the Alsatians and Lorrains, would amount to a return to France of the territories lost in 1871, which one could doubt would be accepted by Germany. Therefore, “France cannot disarm” and

“must refuse to take this path as long as the question […] is pending”, because “disarming in this situation would be a […] crime against the fatherland”.

In any case, now and more than ever, “the slightest incident could be the signal for a general war.” It occurred on 28 June 1914 in Sarajevo with the assassination of the heir to the Austro-Hungarian throne. On August 2, France mobilized, and on the 4 entered the war. Having completed his military service in 1882 with the rank of second lieutenant, Mérignhac entered the auxiliary management in 1889, then the supply committee of Haute-Garonne from 1905. Although he was 57 years old, he “swapped his red robes with the horizon blue uniform”, served as a military deputy steward and then, from the end of 1917, in the contentious service of the military stewardship of the 17th region. He could therefore be seen running in the service of his fellow citizens and “pleading himself before all jurisdictions the most thorny questions of requisition, not wanting that, being able to prevent it, unscrupulous businessmen should be easily enriched while our soldiers lay down their lives.” More trivially, he was also “charged by his chiefs to give lectures to the troops to induce them to pour out their gold”. A new facet of an energetic and multifaceted personality, he carried out this mission in favor of war loans so well that he “raised in a few weeks the payment of several tens of thousands of francs.”

The conflict, which he had predicted would constitute “a terrible shock, a gigantic massacre”, obviously led to a hardening of his words as his ideals were flouted. It was no longer a matter of preventing violations of fundamental principles, but of punishing them vigorously. Thus, in 1917, “*De la sanction des infractions au droit des gens commis, au cours de la guerre européenne, par les Empires du centre*” (Eng. “On the punishment of the infringements of the law of nations committed during the European war by the Central Empires”), a lengthy article of more than 50 pages published in the *Revue générale de droit international public*, considered the measures which, at the end of the conflict, would have to be taken against Germany and its allies. As for war criminals, it would be necessary to “prosecute all the perpetrators without exception”, the most important of which must be brought before a court of international composition. A solution that the victors of 1945 would adopt with the constitution of the Nuremberg Tribunal, and that international criminal law would enshrine.

Upon the return of peace, Mérignhac wanted to remain optimistic. He repeated his manifesto. ” Ayons confiance, c’est la bonne cause qui l’emportera […]. Le droit

international aura son heure [Let us trust that the right cause that will prevail […]. International law will have its time,]" he wrote, prefacing a 1918 book entitled *Les crimes inexplicables, civilisation et barbarie* (Eng. Inexplicable Crimes, Civilization and Barbarism). But the*leitmotif* returns immediately: "Its main flaw consists in that it is not sufficiently sanctioned." In the immediate future, he vehemently hammered in *La guerre économique allemande* published in 1919, Germany "has to be held accountable". The Committee for the Defence of International Law, of which he was a member, had a fundamental vocation to "stigmatize the infamies committed by the Germans during the war". However, retrospectively punishing those who were designated as guilty was far from sufficient. It was therefore up to "the victorious Allies" to provide international law with "the necessary sanctions", failing which humanity could only be confronted again with calamities comparable to those it has just suffered. "The War to end all wars", a popular expression, was therefore likely to remain purely incantatory. But the voice of Alexandre Mérignhac, while heard, will not be sufficiently listened to, except with regard to the sanctions to be imposed on Germany; and this, up to and including within the "legal advisory committee" to the work of which his notoriety earned him, in January 1919, to be called upon to contribute by Georges Clemenceau who created this body within the presidency of the Council "to give his opinion on all matters relating to the work of the Peace Conference".

Yet Mérignhac tirelessly multiplied his warnings. Thus, in "Disarmament. The Peace Treaties of 1919-1920. The Washington Conference of 1921-1922", an article published in 1922, also in the *Revue générale de droit international public*. While the Treaty of Versailles of June 28, 1919 imposed a drastic reduction in German military forces, "the stipulations of disarmament [were] constantly eluded" by the defeated, who nevertheless undertook to comply with them. But "we know what German good faith is worth". Worse still, any informed observer would have little difficulty in realizing that Germany was organizing its rearmament through "various organizations whose purpose were carefully concealed." And we know that the facts confirmed his concern. Thus, deprived of an air force by the Treaty of Versailles, the Republic of Weimar trained war pilots, initially through the schools of civil aviation and then, under a secret clause of the Treaty of Rapallo concluded in 1924 with the Soviet Union, on combat aircraft of the base of Lipetsk, operational until 1933. As for the ground forces, limited to 100,000 men with a ban on the production of heavy artillery, tanks and combat gases, the Weimar Republic, exploiting the agitation that characterized its political life, rapidly increased

their numbers and improve their training: after the 1920 putsch, secret integration of the “Frankish corps”; creation under the name of “safety police” of a real “potential state army”; taking advantage of the shortcomings of the Treaty of Versailles not limiting the number of non-commissioned officers to give 40,000 of them officer training; pretext of the Munich putsch attempt led by Adolph Hitler in 1923 to obtain from the Soviet Union the creation on its territory of two military schools, etc.

The *raison d’être* of the League of Nations desired by President Wilson to henceforth “prevent war and […] unite all nations in good faith in as close a union as possible” was therefore likely to be quickly compromised. The United States did not wish to be a member, while Germany, which has been sidelined by international society, was excluded until it felt “the need to give oneself truly democratic institutions and to renounce all bellicose impulses”. Moreover and above all, the granted means of action seemed too limited, essentially reducing it to impotence. Among these, and not least: the need for unanimous decisions; the “lack of sufficiently clear and precise measures to prevent conflicts from breaking out and to resolve them by peaceful means if they do occur”; in the absence of a competent body “to plan and prepare military and naval means for the fulfillment of the obligations imposed by the Pact and to ensure their immediate effectiveness in the event of an emergency”, in other words an international military intervention force. One will be limited “in the end to simple *recommendations*, to *advice*, without deciding that in the final analysis the State wishing to resort war should be prevented by force in the absence of an amicable resolution”. And economic sanctions alone would be able to overcome the recalcitrant.

Doubtless in the hope of arousing imitators, he exposed his fears at conferences – punctuated by pessimistic “let us wish for it without expecting too much” or “let us hope” – that he pronounced for the benefit of the 167 American soldiers not yet demobilized welcomed at the Toulouse Faculty of Law from February to May 1919. And to reach as wide an audience as possible, he had them published without delay (*Lectures to American Students on International Arbitration. The Monroe doctrine. The League of Nations*). At the League, this “great, beautiful, generous work”, one must obviously ” souhaiter la réussite dans l’intérêt de l’humanité si cruellement éprouvée par le fléau de la guerre [wish success in the interest of humanity so cruelly tested by the scourge of war]”, he said. With moderate conviction, however, as the Pact “lends itself to many critics”. “The thing”, General de Gaulle exclaimed much more abruptly in 1960 about the

UN. And the future would prove both of them right.

Alexandre Mérignhac died in Toulouse on July 20, 1927, at age 70, in a tense international atmosphere. On November 2, Dean of the Faculty of Law Maurice Houques-Fourcade, in the eulogy he pronounced for his colleague, paid tribute to this “« théoricien de large envergure, sachant unir les nécessités de la pratique aux plus hautes conceptions abstraites [great theorist, who knew how to unite the necessities of practice with the most abstract conceptions,]” although he pointed out with a certain bitterness that ” Il manifesta dans ses écrits les illusions les plus généreuses comme celles de la Paix par le Droit dont il se fit de longues années l’un des plus ardents apôtres [he manifested in his writings the most generous illusions such as those of Peace Through Law, of which he made himself for many years one of the most ardent apostles].” In the end, they do not appear to be so chimerical. Indeed, the quote borrowed from from *De l’Esprit des Lois* with which Alexandre Mérignhac chose to open his 1900 essay regarding the Hague conventions, sums them up simply: “To do in peace the most good and in war the least harm as possible”.

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