

THE MILITARY OCCUPATION OF GERMAN EAST AFRICA AS PART OF BELGIAN COLONIALISM: INTERNATIONAL LAW PRINCIPLES AND BEYOND¹

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This article proposes to explore the Belgian occupation experience in the German East Africa region alongside the evolution of international legal norms. It will use this specific experience, together with the related Belgian-British interaction, to highlight the way factors such as competing interests and war aims, ideological perceptions, and political and military balance of power influenced the development of legal notions and principles. While the objective here is not, and cannot be, an examination of the global contribution of the First World War to the colonization-decolonization dynamics, the discussion below is however placed within such a framework and is therefore linked to the fate of the Belgian Congo as well.

When, in August 1914, Belgium suggested declaring neutrality for all colonial territories situated within the conventional basin of the Congo, it met with French and British opposition along with armed attacks by German troops on its Colony's Eastern border. The armed force of the Belgian Congo, the *Force Publique*, then started a series of armed cross-border activities. With the declared objective of protecting the Belgian Congo², it entered onto German and allied colonial territory: in Cameroon and German East Africa on one hand, and in Rhodesia and French Equatorial Africa on the other. In order to meet these challenges, the *Force Publique* needed to be transformed from what was mainly a set of locally organized entities exercising police functions into a more centrally organized, better disciplined, well-equipped force capable of projecting itself at a regional level. Active on several fronts, Belgian colonial troops, however, only participated in the administration of territories located in German East Africa.

While previous studies have often focused on military events characterizing the British-Belgian campaign in German East Africa³, we will relegate feats of arms to the background and look instead at issues related to the military administration of occupied territories, the principles it rested upon,

the way it came to an end and its relationship to developing trends at international level, particularly in the field of international law. Hence, this study will only refer to elements of geopolitics to the extent that they relate, directly or indirectly, to such legal developments⁴. In the same vein, it will also leave aside interesting but unrelated considerations linked, for instance, with choices made regarding the administration of territories under the mandate system⁵, or with the relationship between foreign politics and internal factors of a political, economic or social nature⁶. This study draws primarily on material available in the diplomatic and African archives of the Belgian Ministry of Foreign Affairs, which contain most notably the written exchanges between the two main Belgian ministries involved (Foreign Affairs and Colonies) and their official correspondence with foreign counterparts (amongst which were, most importantly, the British Foreign Office and the Colonial Office)⁷.

Before approaching the issues connected to the evolution of international law, the essential component of this study (part II), it is important to consider, if only briefly, some elements of context surrounding the matter of the military occupation of German East Africa within the wider picture of international relations (part I).

1. This research received funding from the Belgian Science Policy under the Interuniversity Attraction Poles programme.
2. War objectives of the involved Powers, which varied over time, were not identical on the European and African fronts.
3. For example: CHARLES STIÉNON, *La campagne anglo-belge de l'Afrique orientale allemande*, Paris, 1918, 292 p.; PIERRE DAYE, *Les conquêtes africaines des Belges*, Paris, 1918, Royaume de Belgique, *Les Campagnes Coloniales Belges. 1914-1918*, Bruxelles, 1929, 3 volumes; CH. TERLINDEN, "Les Campagnes Belges dans l'Est Africain Allemand (1914-1917)", in *Revue d'Histoire des Colonies*, vol. 20, 1932 (1), p. 77-98; GEORGES DELPIERRE, "Tabora 1916: de la symbolique d'une victoire", in *Revue Belge d'Histoire Contemporaine*, no. 32, 2002 (3-4), p.351-381; HEW SIRACHAN, *The First World War in Africa*, Oxford, 2004.
4. On geopolitical elements more generally, see for example: INGEBORG VIJGEN, *Tussen mandaat en kolonie. Rwanda, Burundi en het Belgische bestuur in opdracht van de Volkenbond (1916-1932)*, Leuven, 2004.
5. *Idem.*
6. In this direction, see for example: COLETTE BRAECKMAN, *Terreur africaine: Burundi, Rwanda, Zaïre, les racines de la violence*, Paris, 1996, p. 11-48.
7. A few other documents, official or unofficial, are also enclosed, such as maps, press clippings, personal notes or reports. Files consulted include in particular: Federal Public Service Foreign Affairs ("FPS FA"), *Diplomatic Archives*, AF 1.2, AF 1.4 and AF 1.5; and FPS FA, *African Archives*, AE 371, AE 373 and JUST 31. Only references to the main (set of) documents from these files are made thereafter. Useful references to British official sources could be found in: Wm. ROGER LOUIS, *Great Britain and Germany's lost colonies. 1914-1919*, Oxford, 1967, 160p.; BRIAN DIGRE, *Imperialism's New Clothes: The Repartition of Tropical Africa, 1914-1919*, New York, 1990.

I. The military occupation of German East Africa (1916 - 1925): a peripheral and bothersome affair for world powers

The campaign and occupation of German East Africa never constituted a central issue on the global agenda during the war or in its aftermath⁸. While also engaging in armed activities in Africa in order to ensure allied forces there did not enter into combat in Europe, Germany fought hard to keep its colonial possession, and even fostered hope of taking the Congo from Belgium. For Germany, however, it was only one of a number of colonial issues and its reactions over the nature of this occupation or the way in which it was conducted were limited⁹. France and the United States, with limited direct interest in the area, were also not vocal during the war but then had a greater role to play when the case of German East Africa was discussed in Versailles¹⁰. Before turning to post-war negotiations, however, we should first briefly look at the interaction between Belgium and Great Britain during the war, and at the military occupation of German East Africa from the angle of an eroding sense of European prestige, a sensitive subject for both colonial powers¹¹.

A point of tension between Great Britain and Belgium (1916 - 1918)

Although allied in the fight against German forces, Belgium and Great Britain periodically encountered difficulties in their diplomatic relations due to incongruent details of their respective plans

and activities in Africa¹². A detailed account of the interaction between the two powers, their colonial troops and representatives, may be found in First World War histories dedicated to the African context¹³. The emphasis here on points of tension is justified by their particular role in the evolution of legal ideas and principles.

Tensions between the two colonial powers arose as early as October 1914, with events in Northern Rhodesia. At the request of Rhodesia's local authorities, Belgian colonial troops had crossed the Congolese border to support British troops against German attacks coming from German East Africa (and hence to protect the Congo as well). There was regular protest from London on this matter until German attacks stepped up, at which point Belgian support became welcome.

Belgian hopes of launching a joint British-Belgian campaign against German East Africa in 1915 did not materialize. Great Britain postponed it for lack of sufficient available troops and material. In spite of repeated requests from Belgium, Great Britain also turned down the suggestion made in August 1915 to carry out a naval demonstration on German East Africa's Indian Ocean coast, arguing that it would not provide the alleviation Belgium expected on this colony's South Western frontier.

Tension then became related to the occupation of territory at a very early stage. Letters from the British government in April 1916 particularly upset Belgian authorities. As troops began to enter Ger-

8. BRIAN DIGRE, *Imperialism's New Clothes...*, p. 133, 144 and 167.

9. Diplomatic relations between belligerents were broken and Germany's reaction (covering for example the issue of the treatment of prisoners) came out mainly through the press or official publications. Knowledge of what was actually happening in her colony was also limited because of distance and war activities.

10. As for Portugal, another colonial power present in the area, Belgium never quite officially discussed its positions and objectives although these occasionally related to bordering Portuguese possessions (see next section below).

11. BRIAN DIGRE, *Imperialism's New Clothes...*, p. 108.

12. For a wider and more detailed picture of the British and Belgian ambitions in Africa and the diplomatic issues these raised during the First World War, see: BRIAN DIGRE, *Imperialism's New Clothes...*, p. 77-118; JEANNICK VANGANSBEKE, "Comrades in arms? Het diplomatieke steekspel tussen België en het Britse Empire in Afrika tijdens de Grote Oorlog", in *Revue belge d'histoire contemporaine*, no. 38, 2008 (1-2), p. 131-158. For a broader picture of war aims relating to Africa see BRIAN DIGRE, "War Aims and War Aims Discussions (Africa)", *International Encyclopedia of the First World War (1914-1918-online)*, available at https://encyclopedia.1914-1918-online.net/article/war_aims_and_war_aims_discussions_africa.

13. For example: BRIAN DIGRE, *Imperialism's New Clothes...*, p. 77-118; HEW STRACHAN, *The First World War...*, p. 93-184.

man East Africa, Great Britain demanded accordance in placing all territories under its sole administration, for the sake of consistency. Belgium refused this, while agreeing to another of Great Britain's suggestions, aimed at considering administration of territories as provisional and temporary. With views to securing a minimum of harmony between administrative practices, Belgium proposed the presence of a limited number of officers within respective headquarters; an idea that was accepted by its counterpart, but the implementation of which invited additional tension.

In October 1916, believing it had been asked to do so, Belgium rather frankly shared her African war objectives, as formulated at the time, with her allies. It underlined the value of the territories it conquered and stated it did not yet know whether it would want to keep these territories or exchange them for political or economic advantage of equal value in Europe or in Africa. Belgium nevertheless clarified that it was interested in the extension of the Congo's Atlantic coast, admitting the realization of such an objective would involve negotiations with either Germany or another power¹⁴. Belgian authorities were astonished, a month later, to meet with reactions of surprise and strong reservation. On 16 September 1917, Belgian colonial troops entered the administrative and commercial center of Tabora and began its administration of the city before the arrival of forces under British command. London then however issued a request, agreed upon by Brussels, which led to the retreat of Belgian colonial troops from the Tabora area. The *Force Publique* still thereafter occupied a substantial portion of German East Africa, northwest of the colony, which included but was not limited

to Ruanda and Urundi. Shortly after the retreat of its colonial troops from Tabora, Belgium was puzzled to receive further requests from Great Britain for support in the form of troops to be placed under British command. Great Britain requested support for the second phase of the campaign that led to the complete ousting of German troops from the colony.

Miscommunication certainly contributed to these tensions¹⁵, taking for example the matter of Belgium having shared its colonial agenda or the reasons behind the temporary nature of the administration. However, a substantial role was played by the clash of interests between the two powers in the area. During the war, and while the longer-term strategy of Belgium was not (and would not for quite some time be) clearly set, its immediate objective was to invade and administer the widest area possible and to attempt to secure access to both Lake Victoria and the largest possible portion of the Kigoma-Dar-es-Salaam railway. This was in conflict with the British ambition of connecting Cairo to Cape Town by rail, on a track that was due to cross this very area¹⁶. Belgium had to face this in an increasingly manifest way up to the Orts-Milner negotiation and the Gisaka affair, which is discussed below.

Additional explanation for Great Britain's defiant stance on Belgium's involvement in the German East Africa campaign may be found both in its suspicion that Belgium was ready to exchange newly invaded territory in Africa for the liberation of its own territory, and in evidence of pressure from high-ranking officials within the British Colonial Office and the South African leadership,

14. Note in three parts submitted to the British ambassador in Le Havre on 10 October 1916 (FPS FA, *Diplomatic Archives*, AF 1.2 (1916), no. 7672); BRIAN DIGRE, *Imperialism's New Clothes...*, p. 113-116.

15. Miscommunications essentially occurred through the diplomatic exchanges between the Belgian ministry of foreign affairs and the British Foreign Office, which constituted the privileged channel of communication. Other actors, such as the ministries in charge of colonies or local authorities or commanders, however also participated in the emergence of misperceptions at diplomatic level, in particular through their feeding of information and sharing of analysis (or lack thereof) with the ministries in charge of foreign affairs.

16. On the importance of the Cape to Cairo railway project in the matter, see: WM. ROGER LOUIS, *Great Britain...*, p. 144 and 150.



Entry of the Force Publique in Tabora, © Musée royal de l'Armée et d'Histoire militaire, no. inv. KLM-MRA: 201070298.

who generally saw Belgium as a rival in the battle for African land¹⁷. Tensions occasionally also originated from critical British views on Belgian troops' behaviour and colonial administration¹⁸ and from the sensitivity of the two powers regarding perceptions of racial hierarchy. More significant in relation to the evolution of legal ideas and principles, this latter element will now be briefly discussed.

A contribution to the erosion of the sense of European superiority

The German East Africa campaign and military occupation were, in the eyes of the British Colonial Office, likely to contribute to the needed restoration of British prestige in East Africa¹⁹. However, the British also feared "that the fighting might undercut the foundations of colonial rule throughout the region"²⁰. Military operations and occupation in German East Africa indeed certainly contributed to the generation or reinforcement of questions in the minds of European and African populations and authorities in terms of perception of racial hierarchy, whereas the image of Europeans as nearly invincible and superior to Africans was one of the aspects on which European colonial rule rested.

Some of the above-described events relating to the relationship between Belgium and Great Britain generated fears in Belgian minds in terms of the negative image they might project onto local populations. Governmental authorities shared these fears with their British counterparts. They undoubtedly used this element as an additional

argument to try and convince the latter to moderate their claims, but it also seems that Belgian officials were truly worried about the possible impact on Belgian prestige and status in the minds of local populations, including that of the Congo.

A major event in this regard took place in April 1916, in the framework of the discussion on who, between Belgium and Great Britain, would actually administer invaded territories. Belgian authorities underlined that the country's prestige would be seriously undermined in the eyes of invaded populations and in those of the Congolese soldiers forming the bulk of its *Force Publique*, should it accept that territories "conquered" by this force alone be then placed under exclusively British administration. This constituted one of the arguments that Belgian authorities brought forward when they refused the British offer. National prestige was also invoked by Belgium in relation to the staging of its retreat from Tabora and neighbouring areas, which took place in February 1917²¹.

After the war, Belgian delegates managed to avoid the humiliation of a total transfer of the occupied territories to British mandate and to compensate in the best possible way the reduction in size of the territories to remain under Belgian administration (i.e. Ruanda and Urundi). Although the way in which negotiations unfolded at the Paris Peace Conference in 1919 would not reinforce Belgium's stature, the image projected onto African populations did not then seem to be a matter of major concern to Belgian delegates. Admittedly, the presence of President Wilson and the weight of his ideas about self-determination on the Con-

17. See for example : JEANNICK VANGANSBEKE, "Comrades...", p. 139; Wm. ROGER LOUIS, *Great Britain...*, p. 62-68. Great Britain's justification for the request to be the sole administrator of the occupied territories in German East Africa apparently also rested on a genuine wish to avoid the multiplication of administration systems. *Idem*, p. 65.

18. BRIAN DIGRE, *Imperialism's New Clothes...*, p. 103-106; SALLY MARKS, *Innocent Abroad : Belgium at the Paris Peace Conference of 1919*, CHAPEL HILL, 1981, p. 316-317.

19. HEW STRACHAN, *The First World War...*, p. 131-132.

20. BRIAN DIGRE, *Imperialism's New Clothes...*, p. 82.

21. Correspondence in FPS FA, *Diplomatic Archives*, AF 1.2 (1916 and 1917 respectively).

ference were not inviting²². When organizing the retreat from territories to be placed under British mandate, however, a request was again made to the British to ensure that Belgian dignity would not be encroached upon²³. Humiliation before an indigenous king was also, at the time, an element that motivated Belgian officials to act in the Gisaka affair.

The risk that Belgian authorities sought to avoid in the above-mentioned situations was that of giving the impression that there could exist a form of hierarchy between European nations and their respective citizens. They were, it seems, rather successful in this regard.

The German East Africa campaign and military occupation, however, also participated in the forging of an understanding in African populations that white nations and their high state of development had been overvalued, irrespective of the issue of any perceived hierarchical relationship between these nations. A few elements that contributed to such an understanding will be briefly mentioned here.

First, the invasion and military occupation of German East Africa territories involved African personnel in the taking over and administration of a European colony. This implied a minimum of contact with a form of reversed hierarchy between such personnel and white populations. African personnel were, for instance, used to escort German prisoners being sent back to Europe via the Congo. Perhaps more significantly, locally recruited military personnel and porters (from the

Congo or from German East Africa) proved essential to the military campaign. This crucial contribution, which came at a particularly heavy cost for the local populations, did not go unnoticed²⁴. Whereas France had been using African troops in Europe since 1914, Belgium consistently avoided doing so. In 1917, after the German East Africa campaign, Renkin argued against it on grounds linked with prestige of the white race²⁵. Belgium, again in contrary to France, used no African troops to occupy portions of Germany after the armistice and after the entry into force of the peace treaty. This cautious approach was also due to the discernment of a danger in terms of racial perception, which was no doubt reflective of the fact that mentalities were already evolving²⁶.

The military occupation of German East Africa brought Belgian officials to face a peculiar and intellectually challenging situation in which the main part of the occupied population was not quite viewed as an enemy, whereas most of its European component was.

Lastly, the establishment of a Belgian mandate over Ruanda and Urundi, as an outcome of the military campaign and occupation, created two different kinds of “native-European” relationship in neighbouring territories under Belgian administration. There were now two mandated territories alongside the Congo, with a difference in terms of status based on purely contingent elements. Notions of progressive development and emancipation were in a way knocking at the Congo’s backdoor²⁷. The institution of the mandate system, which crystalized and was consecrated in the framework of the Paris Peace

22. For recent analysis on Wilson and the principle of self-determination see: ALLEN LYNCH, “Woodrow Wilson and the principle of ‘national self-determination’: a reconsideration”, in *Review of International Studies*, no. 28, 2002, p. 419-436; TRYGVE THRONVÆIT, “The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination”, in *Diplomatic History*, no. 35, 2011 (3), p. 445-481.

23. Letter from Bassompierre to Milner of 27 November 1919 (FPS FA, *Diplomatic Archives*, AF 1.4 no. 9213 (Annex 13)).

24. BRIAN DIGRE, “Colonial Warfare and Occupation (Africa)”, in *International Encyclopedia of the First World War (1914-1918-online)*, available at https://encyclopedia.1914-1918-online.net/article/colonial_warfare_and_occupation_africa.

25. DICK VAN GALEN LAST, *Des soldats noirs dans une guerre de blancs (1914-1922). Une histoire mondiale*, Brussels, 2015, p. 46.

26. *Idem*, p. 9-10 and 123-139. The impact of the First World War on the way Africans and French looked at each other, for example, is examined in detail in MARC MICHEL, *Les Africains et la Grande Guerre: L'appel à l'Afrique (1914-1918)*, Paris, 2003.

27. Although not linked specifically with the Congo, see: GIOVANI DISTEFANO, “Article 22”, in *Commentaire sur le Pacte de la Société des Nations*, Brussels, 2015, p. 980-981.



Belgian occupation of German East Africa: Guards parade, © Musée royal de l'Armée et d'Histoire militaire, no. inv. KLM-MRA : 201070286.

Conference of 1919, will be further discussed in part II. We will first examine the course of events relating to the destiny of German East Africa in the framework of the Paris Peace Conference and what it reveals about the treatment given to small powers in this context²⁸.

The condescending treatment given to small powers at the Paris Peace Conference (1919)

Discussions about the future of German colonies began well before the 1919 Paris Peace Conference, where peace terms were discussed between the Allies and the defeated Central Powers. While it became increasingly clear that the Allies would not agree to the return of German rule over the colonies, and while a series of secret treaties had been signed between a number of them, their fate was still uncertain on the eve of the conference. Belgium had been particularly nervous over suggestions from a number of individuals, but also those coming from within the British Labour Party regarding the internationalization of Central Africa, which in addition to the new territories placed under its administration, might have concerned the Congo as well²⁹.

The sequence of events preceding the placement of formerly German and Ottoman territories under the League of Nations' mandate system was far from predictable. Ideas put forward by President Woodrow Wilson were shared in their main features by other influential personalities of the time, including General Smuts³⁰, who commanded the British Army in East Africa from 1916 until early

1917. They met with initial resistance from several allied powers and reservations on the part of Great Britain and its Dominions, which were actively involved in the discussion of this matter³¹. The evolution of the negotiations that led to the formalization of the mandate system, enshrined in Article 22 of the Covenant of the League of Nations, was difficult to foresee and, for small powers like Belgium also hard to capture, given factors that included the vastly predominant role played by the great powers of the time (France, Great Britain, Italy, the United States and – though it decided to stay in the background – Japan), the complexity of the conference's machinery and the limited availability of comprehensive and up-to-date information³².

To some extent, Belgium was in a position similar to that of Portugal, as both were small powers amongst the Allies, with colonial possessions. In 1919, however, Belgium was, contrary to Portugal, administering new territories. Although its delegation in Paris, headed by the minister for foreign affairs, Paul Hymans³³, spared no efforts in its attempt to be an active participant in the decision-making process surrounding the fate of German East Africa, Belgium was never completely allowed to do so. It was occasionally invited to present its views and positions before the four main powers and managed to obtain a one-on-one discussion with Great Britain, which led to the Orts-Milner agreement at the end of May 1919, but was regularly excluded from the actual decision-making. Even the agreement with Great Britain needed to be endorsed by the great powers. Belgian representatives felt seriously disesteemed, if not humiliated.

28. For a broader discussion of Belgium's aspirations and actual role at the Paris Peace Conference see: SALLY MARKS, *Innocent Abroad...*, 402 p.

29. Throughout FPS FA, *Diplomatic Archives*, AF 1.2 (1918-1936).

30. South African and British Commonwealth statesman, military leader and philosopher (1870-1950). WAVERLEY ROOT, *Jan Christiaan Smuts. 1870-1950*, (Obituary Notices of Fellows of the Royal Society), London, 1952, vol.8, no. 21, p. 271-273.

31. On Great Britain and the Dominions' position, see: WM. ROGER LOUIS, *Great Britain...*, p. 117-160.

32. Throughout FPS FA, *Diplomatic Archives*, AF 1.2 (1918-1936) and AF 1.4 (1919-1920). See also: CHARLES G. FENWICK, "Organization and Procedure of the Peace Conference", in *American Political Science Review*, no. 13, 1919 (2), p. 199, 204, 206-207.

33. Belgian statesman (1865-1941). ROBERT FENEUX, "Hymans (Paul)", in *Biographie Nationale*, vol. 29, 1956, col. 712-718.

With very short notice, the Belgian delegation was offered a first opportunity to present its government's views on 29 January 1919. Barely prepared, Pierre Orts³⁴, *ad interim* Secretary General at the ministry of foreign affairs, expressed before the Supreme Council³⁵ Belgium's desire to be granted free disposal over the territories it was provisionally administering in German East Africa. No decision had yet been made when, on 1st May 1919, the Belgian delegation learned that a draft provision of the peace treaty with Germany provided for the transfer of all extra-European German possessions to the five major powers. Belgian representatives felt that Belgium was being somehow dispossessed, and insisted on their contribution to the war and their administration of part of former German East Africa. They received assurance from French representatives, including that of Georges Clemenceau as head of the Supreme Council, that the wording of the treaty would not prejudice Belgium's position, and were then happy to see a change in the draft provision, which now referred to the "principal allied and associated powers"³⁶.

A second major shock for Belgian representatives came when, on 8 May 1919, those in Paris read in the newspapers that, according to the then released preamble of the treaty, this wording covered the five major powers exclusively and that the repartitioning of the former German colonies had been decided upon, with German East Africa being placed under British administration only.

Belgium reacted immediately and strongly, and on the following day was offered an opportunity to be heard by the members of the Supreme Council (Woodrow Wilson, David Lloyd George, Georges Clemenceau and Vittorio Emanuele Orlando³⁷), who admitted in turns not being in the position to properly understand the issue presented by Belgium. Lloyd George however agreed to call the head of the Colonial Office, Lord Alfred Milner³⁸, to Paris to discuss the matter with Belgium³⁹. Long and difficult negotiations then took place between Orts and Milner, until an agreement was reached on 30 May 1919. The preferred option of both governments was a Belgian retreat from German East Africa in exchange for Portuguese territories on the left bank of the lower Congo, to be obtained through the intercession of Great Britain and the attribution to Portugal of compensatory territories north of Mozambique. However, negotiations with Portugal appeared very likely to fail and, most importantly, Great Britain refused to pay the financial compensation which Belgium made a prerequisite for such an arrangement⁴⁰. Confident that the matter would primarily be for them to settle should they manage to find an agreement, the two colonial powers therefore decided, as a result of their private negotiations, to present to the Supreme Council what was from their colonialist perspective the second best option. This, paying no lip service at all to the emerging idea of a duty to ensure the progressive development of local populations, was to split German East Africa in

34. Belgian diplomat (1872-1958). FERNAND VAN LANGENHOVE, "Orts (Pierre-Charles-Auguste-Raphaël)", in *Biographie Nationale*, 1967, vol. 34, col.628-634.

35. This council, which was composed of the heads of government and the ministers for foreign affairs of the five major powers (France, Great Britain, Italy, Japan and the United States), was the highest decision-making organ of the conference (sometimes referred to as the Council of Ten). It was later superseded by the Council of Five, composed of the heads of government only, which became the Council of Four, when Japan withdrew. On the various bodies and the general functioning of the Peace Conference see: CHARLES G. FENWICK, "Organization...", p. 199-212.

36. Various documents in FPS FA, *Diplomatic Archives*, AF 1.4 (1919-1920), including the letter from Hymans to Clemenceau of 1st May 1919 (no. 8828) and that from Clemenceau to Hymans of 3 May 1919 (no. 8831).

37. Respectively: President of the United States, British, French and Italian Prime Ministers. The latter was present, but Hymans did not discuss the matter with him.

38. British public servant and politician (1854-1925). JOHN EVELYN WRENCH, *Alfred Lord Milner. The Man of No Illusions. 1854-1925*, London, 1958.

39. The report drafted the next day by Hymans himself on this meeting is of particular interest (FPS FA, *Diplomatic Archives*, AF 1.4, no. 8851).

40. For a recent, concise discussion of this and related issues see BRIAN DIGRE, "War Aims...", available at https://encyclopedia.1914-1918-online.net/article/war_aims_and_war_aims_discussions_africa.

two, with Ruanda and Urundi – adjoining the Belgian Congo – placed under Belgian administration and the remaining (and largest) part under British administration. Belgium would also be granted by Great Britain communication and transport facilities through East Africa, the details of which were left for later negotiations between the two powers⁴¹. The precise demarcation of borders was temporarily sidelined, but the Belgian representative was pressured to accept the removal of parts of Ruanda and Urundi in the Gisaka region from the current administrative delineations, as these were, according to Great Britain, essential for the future construction of the Cape to Cairo railway line.

The Supreme Council failed to examine and endorse this agreement for quite some time. Whereas the fate of all other former German possessions had been decided, this issue was still pending when President Wilson left the conference at the end of June 1919. A Mandate Commission was created at this point to discuss model mandates, as well as pending issues relating to the fate of German East Africa. This commission discussed the Orts-Milner agreement on 17 July 1919. The American colonial representative, Georges Louis Beer, raised questions regarding the geographical, economical and ethnological appropriateness of the agreement, but did not oppose the transmission of a favourable decision to the Supreme Council. However, Belgium, whose representative was asked to leave the room during the commission's deliberations, was informed thereafter of America's reservations and launched a persuasion campaign to avoid the eventuality of an unfavorable outcome at the Supreme Council's level. This body's final decision was once again slow to come, due in part to Beer's departure

for the United States, contributing to the general feeling of Belgium having suffered unjust treatment throughout the process. The approval of the Supreme Council was officially communicated to Belgium in a letter sent by the General Secretariat of the conference on 23 August 1919⁴².

Three more observations must be made here. First, the interpretation of the Peace Treaty which prevailed was that, while it was for the Supreme Council to operate the distribution of former German colonies, it was the League of Nations which would then formally grant the mandates. However, a considerable length of time again passed before this system was fully implemented. The delay was due in good part to an intervention by the United States, who challenged the fact that, following their decision not to ratify the Peace treaty, decisions on mandates could be made without their involvement. Their primary focus was the Mesopotamia mandate, and more specifically access to petroleum resources in this area. Belgium and its mandate-to-be were indeed not especially targeted here⁴³.

Second, whereas diplomatic relations between Belgium and Great Britain were often strained when it came to colonial issues, both powers endeavoured to maintain friendly relations throughout the course of events⁴⁴.

Lastly, it should not be overlooked that these events also gave rise to occasional tensions between the most concerned Belgian ministers, in charge of colonies or foreign affairs. Their respective positions were not always in complete harmony, with the minister of colonies, Jules Renkin⁴⁵, often supporting a firmer or harder line

41. These negotiations, which proved lengthy and difficult as well, led to a convention signed on 15 March 1921.

42. FPS FA, *Diplomatic Archives*, AF 1.4, no. 9094.

43. Throughout FPS FA, *Diplomatic Archives*, AF 1.5 (1918-1922).

44. See for example the confidential instructions sent by Renkin to General Tombeur on 27 March 1916 (FPS FA, *African Archives*, AE 371 (608), no.2).

45. Belgian lawyer and politician (1862-1934). F. DELICOUR, "Renkin (Jules-Laurent-Jean-Louis)", in *Biographie Coloniale Belge*, vol. IV, 1955, col. 747-753.

than his counterpart. In the beginning of 1917, a period during which Baron Beyens⁴⁶ presided over the Belgian ministry of foreign affairs, the two ministers even came to blame each other for difficulties experienced in the relationship with Great Britain⁴⁷. One should also bear in mind that with a new minister of colonies in charge in 1919 (Louis Franck⁴⁸), a transfer of key staff from the colonies to foreign affairs (Orts (1917), followed by Octave Louwers⁴⁹ (1919)), and the center of gravity's geographical shift to Paris, the role of the Belgian ministry of colonies became almost non-existent in the 1919 discussions. Great Britain's Colonial Office, however, which also pushed for the adoption of a harder stance by the British government⁵⁰, remained very present throughout the process. Lord Milner even headed the Mandate Commission created at the end of June 1919 to follow-up on mandate related issues after the signature of the Treaty of Versailles.

The above-mentioned discussions implied recourse to a series of new legal notions and arguments, which had potential for long-term impact and to which we will now turn our attention.

II. Military occupation, conquest and mandate in German East Africa: international law evolving and innovating

Three legal concepts or institutions – all related to the notion of sovereignty – were discussed in the above-described context: military occupation, conquest, and mandate. We will therefore look at how the legal concept of military occupation

was mobilized in relation to German East Africa, continue with a discussion of legal developments linked with the idea of conquest and end with a section devoted to the new legal institution termed “mandate” that emerged with the Covenant of the League of Nations.

The law of military occupation also applied in the colonial domain

Once Great Britain and Belgium had agreed on the temporary character of their administration of parts of German East Africa and on the harmonization of principles in this regard, both endeavoured to apply the rules of military occupation of territories enshrined in the annex to Convention IV adopted in The Hague in 1907 (Articles 42 to 56). These rules, forming the essence of the law of military occupation, had been adopted by states in order to regulate the exercise of military authority by one over the territory of another, or over parts thereof, in the context of armed hostilities.

On the Belgian side, the instructions given to agents in Africa were imbued from the beginning with principles contained in these rules. An explicit order to implement them – to the extent applicable in Africa – was then sent to General Tombeur on 23 September 1916⁵¹. On the other side, the British government informed Belgium on 9 November 1916 that the Civil Administrator would “be directed to guide himself, so far as practicable, by the provisions of Section III of the Annexe to the Convention of The Hague of October 18, 1907 [...]”⁵².

46. Belgian diplomat (1855-1934). FERNAND VAN LANGENHOVE, “Beyens (Eugène-Napoléon, baron)”, in *Biographie Nationale*, 1967, vol. 34, col. 71-79.

47. Correspondence between Renkin and Beyens (BMFA, *Diplomatic Archives*, AF 1.2, no. 7873, 7890 and 7896).

48. Belgian lawyer and politician (1868-1937). P. KAUCH, “FRANCK (Louis-Marie-François)”, in *Biographie Nationale*, 1965, vol. 33, col.335-354.

49. A Belgian specialist on African issues (1878-1959). JACQUES WILLEQUET, “Louwers (Octave-Jacques-Joseph)”, in *Biographie Nationale*, 1977, vol. 40, col. 624-626.

50. WM. ROGER LOUIS, *Great Britain...*, p.63.

51. FPS FA, *African Archives*, AE 371 (607), unindexed.

52. Letter from de Villiers to Beyens of 19 November 1916 (FPS FA, *Diplomatic Archives*, AF 1.2, no. 7730).

Thereafter, in their diplomatic exchanges regarding German East Africa, the two allied powers referred to the law of military occupation on several occasions, for instance in relation to the way monetary issues should be dealt with or, even several years after the war had ended, when it came to settling the Africa campaign accounts between them. During the war, Belgian officials dealing with colonial issues learned how to compose themselves with the law of occupation and even discovered that they could use it to, for instance, oppose unwanted British requests related to the second phase of the campaign⁵³. Legal advisers within the ministry of colonies also insisted on its applicability when they were asked, in February 1922, to provide advice on a request from Belgian local administration authorities to be allowed to reform the justice system in occupied territories. They concluded that the law of military occupation did not allow for such a structural change and invited their colleagues to await the territories' upcoming change in status, that is for a mandate to be attributed to and accepted by Belgium. In its 1922 report to the Council of the League of Nations, Belgium confirmed that, although it had been officially granted the mandate by this Council on 20 July 1922, the legal regime in place during the war was still applicable, as the Belgian Parliament had not yet voted an act on the status of the territories. Such an act was passed on 20 October 1924.

The applicability of the law of military occupation to the situation in German East Africa might at first sight seem an obvious conclusion reached by the two powers, as the situation was indeed one of a non-consensual exercise of authority on the territory of another State, and as the parties had already invoked the Hague Regulations in relation to conduct in matters of hostility that arose in

the region⁵⁴. However, one must recall here that at the time that the rules of military occupation were drafted and inserted into the Hague Regulations, the general agreement was that they were only meant to apply between "civilized nations", clearly leaving aside, in the minds of international law experts and statesmen of the time, the colonial world. These new rules, mostly drafted by European States, were not meant to impact colonization activities⁵⁵.

A sign that this body of law was not initially meant to apply to the colonial domain and that both parties were aware of this may be found in the need they felt to specify that this body of law was to be applied with the accommodations that African circumstances necessitated.

Several factors probably played a part in the shared decision to apply the law of military occupation, influencing either both powers or one of them individually.

First, as they agreed on the temporary character of the administration they would put in place and on the need for harmonization, they also wished to avoid setting in place a system that was too elaborate or intrusive. The law of military occupation provided a handy and readily available set of rules based on a conservationist principle, commanding the occupier to leave things untouched unless otherwise required by military necessity.

Applying the law of occupation in German East Africa was also a way for the two allied powers to show clean hands. Germany would be barred from justifying measures it might take in occupied Belgium in violation of the Hague Regulations in terms of retaliation to events unfolding in Africa.

53. Renkin based his refusal to perform military recruitment for the British in occupied territories on arguments that included rules of international law. Note from the Minister of Colonies to the Minister for Foreign Affairs, 30 March 1917 (FPS FA, *Diplomatic Archives*, AF 1.2, no. 7954).

54. Including those in relation to the alleged unlawful use of barbarian hordes by Germany.

55. YUTAKA ARAI-TAKAHASHI, "Preoccupied with occupation: critical examinations of the historical development of the law of occupation", in *International Review of the Red Cross*, no. 885, 2012, p. 72-79; EYAL BENVENISTI, *The International Law of Occupation*, Oxford, 2012, p. 31 and 41-42.

As for Belgium, it was in a way also dragged into the application of the Hague Regulations by an argument it used in October 1916 to claim, in a note to Great Britain, a position as the occupant of parts of German East Africa. It argued: "Occupation is a fact created by conquest. As a consequence, each of the parties occupies the territories conquered by its troops⁵⁶". This was a rather bewildering way of alluding to the definition of military occupation enshrined in Article 42 of the Hague Regulations: "Territory is considered occupied when it is actually placed under the authority of the hostile army. [...]"⁵⁷. A link with the law of military occupation was latent.

For Great Britain, the application of the law of military occupation also had a significant advantage in relation to its colonial objectives. It made it substantially more difficult for Belgium to project into the long term its presence in important territories, as it side-lined the idea of conquest.

Another step towards the disappearance of the right of conquest

The very existence of the law of military occupation as it was conceived and codified in the last decades of the 19th century, relied on the rejection of a right of conquest. The way in which the final provisions from the Hague Regulations were drafted, dealing with the issue of military authority over enemy territory, presupposed that gaining control over new territories through military operations was not to be equated with a transfer of sovereignty. Although the former ruler was no longer able to exercise it, sovereignty remained with him. Only a formal transfer by way of a treaty drawn up at the close of hostilities was

admissible. As previously noted, this did not however apply to colonization.

Predominantly positivists, international lawyers of the 19th century were constrained by their Western conception of the State, to which they reserved the applicability of the concept of sovereignty, "a gift of civilization"⁵⁸. They generally considered territories that were uninhabited or with populations they labelled "uncivilized" as open to European annexation. Only in a restricted sense, with implication of a clash between two sovereign entities, did conquest become unlawful when the first treaty provisions relating to the law of occupation were adopted. Conquest *sensu lato* was however still permissible with regard to so-called *terrae nullius*. The increasing rarity of these due to acute colonization activity in the last decades of the 19th century led to a situation where, at the time of the First World War, one might have concluded that the "right of conquest", to the extent that it still existed, had actually died by its own hand. The discussion, however, remained open in relation to the possible lawful annexation of colonial territories. There, sovereignty – in its Western definition – had already been established by another power. Encroachments on areas of influence or territories claimed by other (European) States had indeed taken place, but cases were made, when conflict had surfaced, around the lack of sovereignty of the other party over the disputed territory. One well-known case, the 1898 Fashoda crisis, deserves particular attention here.

In a bid to challenge British presence in Egypt, in territories formerly placed under Ottoman rule, France launched a military expedition headed by Captain Marchand that succeeded in reaching and settling in the fort of Fashoda. This position was

56. Original French text: "L'occupation est un fait que la conquête a créée [sic]. En conséquence, chacune des parties occupe les territoires que ses troupes ont conquis." (the word 'fact' is underlined in the original text). Note in three parts of 10 October 1916 (FPS FA, *Diplomatic Archives*, AF 1.2, no. 7672).

57. Original French text: "Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie. [...]"

58. MARTTI KOSKENNIEMI, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960*, Cambridge, 2001, p. 98-178.

located in Sudan, an area which, after the Mahdist revolt, Egypt no longer controlled. The British, while engaged in the recovery of Sudan, came up against the French and a major crisis ensued. The French then argued on an essentially legal level. They confronted the Queen's Government with the following alternative: British presence in the area was justifiable either because Great Britain believed that the Mahdist revolt had transformed it into *terra nullius* or, if it was still to be considered part of Egypt, because their military presence and control over parts of Egypt was lawful. Either way, French conquest of Fashoda was then justifiable in the same way. British authorities, however, refused to engage in any legal argument. Their strong political reaction and the lack of support from other European powers pushed France to recall her mission⁵⁹.

The fact that France had left the possibility open for Great Britain to argue along the lines of the second part of the alternative, as well as the formal establishment of a British protectorate over Egypt in 1914, indicates that it was still possible at the time to consider claiming the legality of military conquest of colonial territories even in cases where they had already been placed under another State's sovereignty. It is therefore unsurprising that Belgian stakeholders, particularly those within the ministry of colonies, occasionally brought such an argument forward. It surfaced regularly in communication between the ministries of foreign affairs and of colonies, and in diplomatic exchanges between Belgium and Great Britain or other allied powers. At the end of 1916, Jules Renkin interpreted Britain's desire to enter into an agreement on the temporary character of the administration of territories, expressed in the April 1916 exchange of letters, as an implicit acceptance of a still existing "right of conquest".

An agreement was sought in order to exclude the exercise of such a right, which would have otherwise been applicable to the situation, Renkin thought. A clearly dissonant voice in this context was that of Ernest Nys⁶⁰, who asserted that such a right no longer existed⁶¹. His reaction did not however discourage the Belgian representatives in Paris from continuing to occasionally refer to a "right of conquest", until finally they realized that the time had passed for this line of argument.

It might be worthwhile to clarify here that the word "conquest" was commonly used to describe the advance of troops in German East Africa and the progressive assumption of control over territories, without being necessarily associated with an idea of transfer of sovereignty. It is therefore important for our purposes to focus on references to a proper "right of conquest" and its essential characteristic connected to the annexation of territory.

Such references were made in particular in the framework of the articulation of the Belgian war objectives in Africa. From the beginning of the campaign, the idea was present that Belgium should endeavour to hold a "gage" as extended and valuable as possible. This did not necessarily imply that Belgium would be in full possession of the invaded territories. However, when it came to refining objectives, there developed the idea that Belgium was indeed in true possession of these new territories, and that it could exchange them for other territories or for money. The British government understood this to be Belgium's stance and always refused to accept it⁶², as they had refused to validate any legal justification of the French claim at Fashoda. References to a "right of conquest" would however disappear altogether soon after the war, in Belgian discourse.

59. ANDRÉ DECENCIÈRE-FERRANDIÈRE, "Essai historique et critique sur l'occupation comme mode d'acquérir les territoires en droit international", in *Revue de droit international et de législation comparée*, vol. 18, 1937 (4), p. 646-651.

60. Belgian lawyer (1851-1920). PAUL ERRERA, "Ernest Nys", in *Revue de droit international et de législation comparée*, 3rd series, no.1, 1920, p. 385-405.

61. "L'ancien 'droit de conquête' n'est plus; à lui s'est substitué la notion de 'l'occupation de guerre'". Answer from Nys to a questionnaire sent by the ministry of colonies, 30 June 1917 (FPS FA, *Diplomatic Archives*, AF 1.2, unindexed).

62. WM. ROGER LOUIS, *Great Britain...*, p. 113.

On 28 January 1919, Belgian representatives in Paris decided to be cautious in the presentation of their government's colonial objectives to the Supreme Council. They based Belgium's claim to free disposal over the territories that it was provisionally administering solely on compensation for damages it incurred by the war in Africa. On 8 February 1919, Louwers, the Belgian colonial delegate, confirmed to his minister, Hymans, that the word "conquest" did not fit the Conference's terminology.

However, three months later, following the shock caused by the announcement of the repartition of mandates attributing German East Africa to Great Britain only, the Belgian delegation drafted a press release and a letter to the head of the Supreme Council. Both included a clear reference to a "right of conquest". Though the press release was issued, the letter was retained, as an opportunity was swiftly offered to Hymans to discuss the matter with the members of the Supreme Council. Following this meeting, held on 9 May 1919, Hymans decided to send the letter in order to leave a written record of his government's reaction of protest. However, the letter sent no longer included reference to a "right of conquest". Louwers, the drafter of the letters, indicates in his personal notes: "I do not speak anymore in this letter of the rights of conquest in order not to offend President Wilson, who, having heard this phrase in the mouth of Mr. Hymans, pointed out to him that conquest does not create rights⁶³."

This constituted a turning point in the Belgian government's line of argument as no reference to such a right appears to have been made thereafter. The document submitted by the Belgian delegation to the Mandate Commission in support of the Orts-Milner agreement discussed at its hear-

ing on 17 July 1919 argued solely on the bases of "equity and political opportunity"⁶⁴. Moving closer to Wilsonian ideas, Belgian representatives also relied progressively on African interests and local requests for Belgian administration to substantiate their claims and counter British ones. They thereby acted in a manner similar to that of the British when the latter proclaimed publicly that African preferences went for their rule, which would justify non-return of the colonies to Germany. Belgian colonial authorities had already received support from the king of Rwanda, Musinga, in June 1918, who had compared Belgian to German rule and praised the former⁶⁵. In November 1918, they had also begun proactively seeking declarations from local leaders in Rwanda and Urundi, as it was felt that wishes expressed by local populations might serve as useful tools, if properly collected, to support territorial claims. The declaration obtained from Ruvezandekwe, chief of Tshingogo (Ruanda), explicitly requests a Belgian presence, to the exclusion of a British, French or German one⁶⁶. Although African interests were progressively invoked as well, particularly to further convince the American representation in Paris in the summer of 1919, the self-expression of African interests never constituted an essential element of argumentation for Belgian representatives (with the exception of later on in the Gisaka affair). It arguably played a lesser role than it did in Great Britain in the argumentation for non-return of territories to German rule – as it combined with other considerations – while the Belgian role in the Allied decision in this regard was also minimal.

The French government, which behaved during the war (particularly with respect to German colonies in Africa) in a manner not incompatible with the idea that a "right of conquest" still existed and

63. Original French text: "Je ne parle plus dans cette lettre des droits de la conquête pour ne pas offusquer le président Wilson, qui, ayant entendu cette expression dans la bouche de Mr. HYMANS, lui fait observer que la conquête ne crée pas de droit." Personal notes Louwers, 9 May 1919 (FPS FA, *Diplomatic Archives*, AF 1.4, unindexed).

64. Internal report on hearing (first annexe), 17 July 1919 (FPS FA, *Diplomatic Archives*, AF 1.4, no. 9016). When the Orts-Milner agreement was later discussed by the Supreme Council itself, it was presented by a British representative only.

65. FPS FA, *Diplomatic Archives*, AF 1.2, no. 8688.

66. Copies of correspondence between Belgian colonial authorities kept by the Belgian ministry of foreign affairs (FPS FA, *Diplomatic Archives*, AF 1.5, no. 9879).

which then tried to avoid the emergence of the mandate system, had less need to argue along this line in the framework of the Paris Conference. As one of the major powers, and holding the presidency of the Supreme Council, it was almost guaranteed control of territories it sought. Whereas Belgium became bound by the Orts-Milner agreement with Great Britain, France later also attempted to have attributed mandates, notably those on parts of Togo and Cameroon, resemble a transfer of sovereignty to the extent possible. Japan did the same in regard to the islands it would receive under the South Pacific Mandate⁶⁷.

When Belgian government officials referred for the last time to a “right of conquest”, they actually did so knowing that what they were fighting for was the attribution of a mandate. If this institution still needed to be clarified, it was already clear that it was not to be equated with mere annexation. Discussing internally Milner’s responses to the options proposed for a Belgian-British agreement, in the last days of April 1919, the Belgian delegation in Paris realized that it was risky to be too insistent on a cash payment (*soulte*) by Great Britain to compensate for the losses Belgium was going to suffer in terms of the size of the territories remaining under its administration. In the absence of an agreement with Great Britain, the situation would have been transmitted “as is” to the Supreme Council, where the idea of such a cash payment would not have fit well into the discussions relating to the mandate system.

Apart from the issue of this new institution’s emergence, Belgium was made to realize that the vanishing of the “right of conquest”, which came with the adoption of treaty-rules on military occupation, had now clearly stretched to the colonial domain as well. Military operations anywhere

could only lead to transfers of sovereignty if and when such transfers were validated through the operation of peace treaties⁶⁸.

The developments faced by Belgium in the framework of its German East Africa experience related to newly controlled territories only and not to formerly established colonies. They impacted however the evolution of ideas and constituted a step towards the complete disappearance of a “right of conquest”, with full rejection of territorial acquisition as a result of the use of force. This was confirmed in 1970 by Resolution 2625 (XXV) of the United Nations General Assembly, a document that also spells out the principle of the right to self-determination of peoples.

The new legal institution of “mandate”: enter the idea of progressive development

Moving back to the aftermath of the First World War, a closer look must be taken at the substance of the mandate institution.

Its appearance constituted a form of makeshift compromise between the main objectives of President Wilson in relation to territories formerly administered by Germany – to prevent territorial annexation – and those of France and Great Britain – to deprive Germany of its colonies⁶⁹. Belgium shared the latter ones, without being in a position to exercise much influence over the outcome.

Even after a commission was named on 25 January 1919 to draft a Covenant for a League of Nations, the issue of the disposal of German (and Ottoman) territories remained in the hands of the Council of Ten given its political and economic importance.

67. The South Pacific Mandate was made up of islands in the Pacific Ocean that had been part of German New Guinea (PALAU, CAROLINE, MARSHALL and MARIANA ISLANDS (except for Guam)) (FPS FA, *Diplomatic Archives*, AF 1.5, no. 9264 and 9466).

68. This option however also extinguished with the Briand-Kellogg Pact of 1928 and the adoption of the United Nations Charter in 1945. Territorial acquisition obtained through the use of force may no longer be considered lawful, as confirmed by the United Nations General Assembly in its Resolution 2625 (XXV) of 1970.

69. GIOVANNI DISTEFANO, “Article22”, p.978.

There, in the last days of January 1919, Wilson made an ardent plea for the mandates. If consultations with French and British leaders had discouraged him fairly early from trying to operate a clear shift to the (future) League of the ultimate title over the territories, his insistence at the end of January 1919 convinced the British and, more reluctantly, the French to accept the idea of the mandates, a concept that began to be broken down into three categories depending on the local populations' evaluated readiness to become independent⁷⁰. The tendency was then for the concerned powers to consider territories they were to be mandated as less likely to soon reach independence than those which would be administered by other powers.

Realizing early in the process that, amongst the major powers, France alone was opposing some meaningful resistance to Wilson's ideas and would most probably not succeed in avoiding some sort of internationalized status for the former German colonies, the Belgian representatives carefully worded their country's colonial claims when presenting them before the Supreme Council on 28 January 1919. They did not want to be openly perceived as not asking for an outright transfer of sovereignty but wished to leave room for some compatibility between their claim and the emerging idea of a mandate system. They therefore opted for a request to be granted "free disposal" over the territories that Belgium was provisionally administering.

Given their limited capacity to influence the course of events as far as the emergence of the mandate system was concerned, Belgian representatives remained discreet on the issue, noting also that Belgium could actually benefit economically from the system, with an open-door principle being generalized to apply to all former enemy possessions.

Belgian representatives however continued to nurse the hope that the institution would never come into actual existence and that "solutions more rational in terms of sovereignty would reappear"⁷¹. The complexity of the nascent institution and the lack of clarity and transparency surrounding its emergence made it particularly difficult for the representatives of Belgium, the only country that would receive a mandate without being one of the five major powers or a British dominion, to always and fully understand what the situation was. They were not involved in the definition of the different mandate classes (A, B and C) and were offered limited opportunities to influence the content of the proposed mandate over Urundi and Ruanda⁷².

The fact that they continually referred to the "final administration" (*administration définitive*) of the territories Belgium would receive as a mandatory power is an example of their misperception or lack of awareness of what was in the making. This conception did not seem to fit with the idea of mandate; certainly not with what would become Class A mandates⁷³ (involving provisional recognition of the territories as independent states), but nor with those to be referred to as Class B (attributing to the mandatory responsibility for the administration under certain conditions) or even Class C (allowing, however, the mandatory to administer the territories under its own laws and as portions of its territory). Furthermore, when Louwers learned in April 1919 that Belgium would receive a Class B mandate over Urundi and Ruanda, he was still thinking in terms of full sovereignty.

To the Belgian representatives' credit, it should be noted that some ambiguity existed and remained even after the mandates had been attributed and officially conferred to the mandatory powers by the Supreme Council and the League of Nations. International lawyers struggled with sovereignty

70. PITTMAN POTTER, "Origin of the System of Mandates under the League of Nations", in *American Political Science Review*, no. 16, 1922 (4), p. 569-571.

71. Note from Louwers to Minister for Foreign Affairs, 13 December 1920 (FPS FA, *Diplomatic Archives*, AF 1.4, no. 9589).

72. In December 1919, Belgium was presented with a draft by Great Britain and had limited time to comment.

73. For formerly Ottoman territories in the Middle East.

related issues and came to disagreement over them⁷⁴. Was sovereignty vested in the mandatory state? Or in the hands of the League of Nations, as the members of the Permanent Mandates Commission commonly thought, or in those of the major powers according to the Treaty of Versailles? Was it transferred to the population of the mandated territories? Or was it shared or divided between several of them?

Whereas the Belgian delegates remained discreet in Paris, those in Geneva – who were in part the same⁷⁵ – rapidly stated before the Permanent Mandates Commission their government's understanding that Belgium did not have sovereignty over the mandated territories⁷⁶. It is not unlikely that there was a link between this recognition and the Belgian government's hopes that the Permanent Mandates Commission would assist in solving the Gisaka affair, a remaining bone of contention with Great Britain.

When Orts and Milner agreed on a possible repartitioning of the German East African territories, they divided them along the lines of the former Eastern administrative boundaries of Ruanda and Urundi, with the following exceptions: a strip on the West bank of the Kagera river was removed from Ruanda and Urundi lost a small area on its north-eastern border. Milner insisted that this was essential to ensuring the feasibility of the Cape to Cairo railway line. When King Musinga came to learn that the agreement had dispossessed him of part of his territory, he refused to accept the fact. Belgian officials feared uprising and political maneuvers which could go as far as a placement of all parts of a reunited Ruanda under British administration. The Belgian government stepped

up diplomatic efforts to convince Great Britain to accept a revision of the agreement. On the basis of various reports it received and arguments put forward by its Belgian member (Orts), the Permanent Mandates Commission was convinced that a reunification of the Gisaka area with Ruanda was desirable as it was in the interest of the local population given the strong economic and ethnic links. It transmitted the situation to the Council in a report in September 1922, putting added pressure onto the British Government, which finally accepted the transfer back in 1923⁷⁷.

By not insisting on sovereignty over the mandated territories, thereby alluding to the fact that Great Britain, among others, did not have it either, Belgium placed itself in a better position to convince all stakeholders of the well-founded character of the reunification it was asking for. The focus could be placed on the interest of the local population, the progressive development for which a goal was set by Article 22 of the Covenant of the League of Nations.

The institution created by the adoption of this provision further repelled the idea of the lawfulness of annexation, filling a gap created by the ongoing vanishing of the "right of conquest". Although its adoption and scope of application were undoubtedly context-specific, the establishment of the mandate system helped move forward on this track. However, as we have seen with the Gisaka affair, this institution constituted more than a mere compromise. It also introduced another important element: the notion that populations of the mandated territories were at different stages of development and that the mandatories should assist them in their progressive

74. For example: HENRI ROLIN, "La Pratique des Mandats Internationaux", in *Recueil des cours de l'Académie de droit international de La Haye*, no. 19, 1927 (IV), p. 608-623; GIOVANNI DISTEFANO, "Article 22", p. 896-907.

75. Including in particular Hymans (not anymore as minister for foreign affairs, however). Orts was for his part sitting on the Commission.

76. HENRI ROLIN, "La Pratique...", p.614.

77. As for the Bugufi province, the small part of Urundi that became detached as a result of the Orts-Milner agreement, the local impact was considered minimal; it formed a compact entity under a single chief and the authority that the king of Urundi held over it was rather nominal. *Rapport présenté par le Gouvernement belge au Conseil de la Société des Nations au sujet de l'administration du Ruanda-Urundi pendant l'année 1922*, p. 6 (FPS FA, *Diplomatic Archives*, AF 1.5, unindexed).

development. This institution was as much as could transpire in treaty-law from the developing principle of national self-determination in relation to colonies and not yet self-governing territories that had ceased to be under the sovereignty of a vanquished power. Far from enough for some proponents of a more dogmatic approach of the principle, such as William Bullitt, who resigned from the American Commission to Negotiate Peace in Paris after having read the Treaty of Versailles, it was acceptable to Woodrow Wilson, for whom national self-determination was more a creed than a programme or a policy⁷⁸.

If similarities with the legal concept of military occupation come to mind, such as the absence of sovereignty of the administering state and the temporary character of such administration⁷⁹, this element of progressive development is radically different from the conservationist principle that characterizes the law of occupation. Foreign presence was not meant to remain neutral in the mandate system.

Beyond the compromise reached in order to reconcile views within the short-lived framework of the Paris Conference, the institution also indeed aimed at impacting the life of the local populations in the long term. It implied a peculiar way of looking at the relationship between the administering state and the population, with responsibilities for the latter incumbent on the former. While not entirely new, it now became generalized over a series of territories and was accompanied by an international monitoring mechanism. This could have remained pure rhetoric, were it not for the hard work and perspicacity of the Permanent Mandates Commission⁸⁰, as demonstrated in the case of the Gisaka affair.

This progressive development element and the dynamic towards the complete disappearance of the “right of conquest” marked a first move, in international legal thinking at least, towards a true recognition of the principle of self-determination and decolonization. Known as the “Decolonization Charta”, Resolution 1514 (XV) of the United Nations General Assembly, adopted on 14 December 1960, includes references to territories placed under the trusteeship system, a successor in many ways to the mandate system⁸¹. It also, however, extends its scope to a much wider range of not yet self-governing territories. In any event, several decades after its adoption, Article 22 of the Covenant of the League of Nations came to be considered retrospectively as one of the fundamentals of the right to decolonization⁸².

III. Conclusion

The impact of the German East Africa campaign on the fate of Ruanda and Urundi, and less directly that of the Congo itself, should not be underestimated. In terms of social development in the territories concerned, if nothing was to be expected during the time of occupation, it must be acknowledged that Belgian administration during the mandate (and later trusteeship) period failed to produce social stability and ethnic harmony. The invasion and occupation of Ruanda and Urundi however put them on the list of future League of Nations mandates and thereby on the track to independence. As for the Congo, and if impact in terms of social stability was missing there as well, the contagion effect of its small neighbours’ status and the benefit gained from correlated evolution in mentalities was not negligible.

78. TRYGVE THRONVET, *The Fable...*, p. 445; ALLEN LYNCH, “Woodrow Wilson...”, p. 427.

79. The end marker being of course of a different nature: treaty provisions possibly validating a transfer, in one respect, and independence in another.

80. GIOVANNI DISTEFANO, “Article 22”, p. 978.

81. *Idem*, p. 979.

82. PATRICK DAILLER, MATHIAS FORTEAU, ALAIN PELLET, *Droit international public*, Paris, 2009 (8th edition), p. 742.

The conservationist role played by the law of military occupation along with the innovation that characterized the mandate system constituted a pivotal step on the path to the complete disappearance of the “right of conquest”. The level of actual impact that Belgium had throughout the process appeared to have been decreasing, from active participation in decision taking at the beginning of the German East Africa campaign to marginal sway in matters of mandate attribution and definition. Overall, the evolution seemed to have been one more undergone by Belgium than one which it influenced. Able, to some extent, to share views and voice concerns, but unable to resist the momentum, it attempted to understand the changes underway, and to act and adapt in its best interest within the emerging parameters.

German East Africa never was a priority on the main stakeholders’ agenda, including France and the United States, but also Great Britain, Belgium and Germany themselves. Events related to its destiny during and shortly after the war nevertheless participated, through the tensions they originated or let surface, in the emergence of new legal interpretation, notions and principles. These crystallized and found expression in the framework of post-war negotiations, in an attempt to resorb mainly the contradictions between colonialist

views and ideas on self-determination pushed forward by a powerful stakeholder. They framed the discourse of Belgium and other powers, including France and Great Britain.

The point of balance found at that time rested on the positions of colonial powers reluctant to abandon too easily wartime ‘acquisitions’ and that of President Wilson, who was dedicated to the principle of self-determination but convinced this one could not be applied in an absolute or dogmatic way. As it was observed, Wilson admitted indeed that “considerations of national self-determination might in specific instances have to give way to compelling questions of security, diplomacy and economics”⁸³. The equilibrium found in Paris made it therefore still possible for colonial powers to mask expansionist intentions with an altruistic discourse, to play with selected African voices and ignore others which, although few, were available, and to advance parts of their colonialist agenda⁸⁴.

In any event, the emergence of this new set of notions and principles constituted a notable landmark. It provided a new toolbox to be used in attempts to absorb future tensions and acted as a marker susceptible to movement towards a new point of balance. Its importance for future developments should be duly acknowledged.

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83. ALLEN LYNCH, “Woodrow Wilson...”, p. 434.

84. BRIAN DIGRE, *Imperialism’s New Clothes...*, p. 199.