Buchbesprechungen

***Van Hulle, Inge*: Britain and International Law in West Africa. The Practice of Empire.** Oxford/New York: Oxford University Press, 2020. ISBN 978-0-19-886986-3. 320 pp. £ 80.-

The opening of Inge Van Hulle's book reminded me of how far we have come as historians of international law. Following the table of contents, the book welcomes readers with three maps of the West African places prominent to history 'around 1850': the Bight of Biafra with Old and New Calabar, Bonny, and Andoni; the 'Gold Coast' with Elmina, Cape Coast, and Kumasi (the present-day Ghanaian spelling); and the Bight of Benin with Grand and Little Popo and Ouidah. Ten years ago, when I suggested the inclusion of a map of 'Naulila' and the Kunene river in an article submitted to the *Journal of the History of International Law* (then under different editorship), humbly remarking that perhaps not every reader of the Journal might be familiar with the geography of southern Angola, I received a firm *njet*: only texts were sources for the history of international law. Furthermore, I was corrected and told that Naulila was written with a double 'aa': '*Naulilaa*'. Admittedly, I was disappointed. I emphatically advised my correspondent that no matter how many international law texts on '*Naulilaa*' he showed me, the village in Angola was and is written as Naulila. I recommended that in order to recognise that all the scholarly texts he showed me misspelled the place, he could refer to any historical or present-day map of the region.

Inge Van Hulle knows better – especially with regard to the value of maps and other non-textual sources that are used to increase understanding and ground one's own work, as has now become more generally accepted by international law scholars.[1] Many years ago, Eric Hobsbawm recommended that historians should have some 'personal contact […] with the places about which [they] write'[2] – an insight into the relevance of 'place' that also applies to historians of international law. Van Hulle evidently visited some of the places she writes about. Historians of international law have no reason to shy away from the malleable underbelly of their subject, the political and social histories that contributed to what has become 'international law'. This starts with the sources deemed relevant to one's own research. Too seldom do we see a formidable work on the history of international law, like this one, use

1 See the photographs reprinted in Steven M. Harris, 'Manufacturing International Law: Pre-printed Treaties in the "Scramble for Africa"', JHIL 23 (2020), 439-465 (451, 454); also articles in LJIL 31 (2018) contain photographs which attests to a new openness to sources other than texts.

2 Eric J. Hobsbawm, *Primitive Rebels. Studies in Archaic Forms of Social Movements in the 19th and 20th Centuries* (Frome and London: Butler & Tanner Ltd. 1959), v.

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more references other than those from printed or published sources. Rather, as Inge Van Hulle's book underlines, historians of international law must not be dependent on the publication policies of governments and scholars of the past. One can only encourage future researchers in the field to follow her example, and to directly access archival materials, that is, primary, unpublished sources that have the same or even greater analytical 'value' to the relevant research topic.

As is appropriate to her topic, Van Hulle combines an analysis of the European (or British) international law of the time with an extended historical description of the West African regions affected by British trade and political machinations. Laudably, her research is firmly based on primary sources. Readers will find extensive quotations from the National Archives (London), namely the correspondence of the Colonial Office, the Foreign Office, and the Admiralty; as well as from the Archives Department (Accra), namely the Governors and Colonial Officials correspondence. In addition, printed primary documents are widely used, including parliamentary debates and documents, acts and ordinances, treaties, and some case law. Van Hulle has also mined contemporary travelogues and other forms of European 'memoirs' – with clear awareness that this source material can help her cover merely 'half the story'. However, her solid command of the trends in West African historiography allows her to skilfully entangle her source findings and secondary literature from both the disciplines of international law and the history of West Africa.

With this in mind, one can hope that Van Hulle did not have to struggle to get the three, rather unspectacular, modern maps printed in her book. Had she used historical maps of the three coastal regions (in fact, her book covers at least two more, namely The Gambia and Sierra Leone/Liberia) this could have served as an important reminder of the fact that there is no intrinsic disciplinary reason to limit sources for the history of international law exclusively to texts. Disputes over borders, or spheres of influence around the world were, for example, fought argumentatively, and also with lines drawn on (often rather 'fantastic' or simply falsified) maps, or even with reference to physical constructions that served to 'prove': 'we were here before you'.[3]

At its most basic level, Inge Van Hulle's *Britain and International Law in West Africa. The Practice of Empire* makes clear that it would be an erroneous assumption to think that 'Africa' as a theatre of European power politics, as a geographic term, and as a European narrative concept entered (European) international law's orbit only with the 'Congo Conference' of 1884/85. It is

3 See e. g. Daniel Ricardo Quiroga-Villamarín, 'Beyond Texts? Towards a Material Turn in the Theory and History of International Law', JHIL 23 (2021), 466-500.

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therefore fitting that in Van Hulle's book this conference and the resulting Congo Act (1885) mark the end point of her narrative. It barely needs repeating that over the past years, scholars of the history of international law have also tried to include in their analysis law-making 'on the peripheral grounds' of Europe's Law of Nations. The majority of historians of international law have written a great deal on the history of the academic discipline in Europe and North America, on doctrine, institutions, and biographies of scholars – yet writing about the imperial practice of international law-making has caught up, as the reviewed book impressively shows. It is an original and nuanced study of British actors and their attempts to use international law in West Africa as an argument *and* as practice.

The book is subdivided into five chapters: 1. The Changing Legal Patterns of Anglo-African Relations (1807-1840); 2. British Legal Strategies and the Abolition of the Slave Trade; 3. Extraterritorial Jurisdiction and the Dawn of the Protectorate; 4. Benevolent Aggression and Exemplary Violence in West Africa; 5. International Law and the Settlement of Disputes concerning West Africa on the Eve of the Scramble (1840-1884). As the book's title stipulates, the main actors in all these accounts are British, be they the (at times competing) officials in the foreign office or colonial office in London or 'men on the spot' along the coasts of West Africa. Yet, as far as the available sources permit – and Van Hulle has an eye for a pithy quote –, she also includes in her analysis Britain's interlocutors along the West African coast: the kings, chiefs, rulers, or African merchants who were keen to develop relations with the British to their own advantage. The book thus becomes an important contribution to our understanding of the role international law (understood here not necessarily as the European Law of Nations, but rather as a 'law of encounters') played in Britain's expansion into West Africa from around 1800 to the early 1880 s. At the same time it narrates the economic and political history of the region.

In Africa, the establishment of European trading posts on the western coast marked the start of treaty-making early on in the age of European expansion and the transatlantic slave trade. Some of the considerable number of treaties that lasted until the mid-nineteenth century referred not only to the right of trade or of (temporary) European settlement, but also to war and peace (for example to ease tensions or off-set European competition) as categories of conduct. Here Van Hulle follows the work of Charles Henry Alexandrowicz, who in his *European-African Confrontation* (1973) recognised 'institutions [(protectorates, capitulations/treaties) that] were normal phenomena within the framework of traditional international law'.[4] But she

4 Charles Henry Alexandrowicz, *The European-African Confrontation. A Study in Treaty Making* (Leiden: Sijthoff 1973), 122.

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lays out the 'normalcy' of the treaties (only few of them found their way into the scholarly eternity that C. Parry's *Consolidated Treaty Series* offers) agreed upon between African rulers and British officials in far greater detail. European merchants are shown to be participants in African customs and the local normative frameworks that, for example, limited their trade endeavours to the immediate coastline and obliged British subjects to accept the power of African rulers to adjudicate their disputes – with Africans or among each other – according to African laws. Still in 1836, Anglo-African treaties recognised such adjudicating rights. Though the Secretary of State for colonies, Glenelg – conscious that such provisions were 'strictly consistent with the rules of international law' – was concerned that British subjects would have to suffer what he assumed to be 'cruel' punishment at the hands of African authorities (p. 64). These concerns then materialised in the form of British 'extraterritorial jurisdiction' being written into new treaties at the insistence of the Colonial Office. In laying out the developments and changes that occurred during the early decades of the nineteenth century of instruments that became 'characteristic of British legal strategies in West Africa: treaties of protection, extraterritoriality, mediation, and coercion' (p. 72), the book brings back into the focus of the history of international law the subject of African statehood(s), as well as so-called 'tribal chiefs'. This is in contrast with most legal treatises of the nineteenth and twentieth century, which excluded these actors from the realm of 'international law'.

From Van Hulle's analysis it becomes clear that even once the campaign for the abolition and active (violent) suppression of the slave trade was taken to the West African coastal areas in the 1840s, and was included – through explicit provisions – in Anglo-African treaties, territorial expansion of British 'rule' in West Africa was not (yet) on the British agenda. A 'model agreement' was implemented whose twelve, later only four, sections provided, first and foremost, commercial privileges for British subjects and at the same time obliged African rulers to abolish slave trade in their realms. The abolitionist idea, of course, was to replace slave trade in and with Africa with 'legitimate commerce', and Van Hulle leaves no doubt that the British were satisfied with the 'facade that abolition could offer and excuse [even to use violence and] to augment British commercial influence' (p. 184). She rightfully points out that the model of a standard document was 'novel' (though the content's policy was not) and the notion of a standardised treaty (language) very much expressed the idea of British policy makers that all African communities were 'roughly one and the same' (p. 80).

More and more, British officials resorted to violent means or threats of violence to force upon African authorities the 'necessity' to sign treaties and accept British 'protection'. Based on an increasingly racial attitude during the

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second half of the nineteenth century, such use of violence was rationalised as a 'pedagogical tool' towards the alleged need to 'civilise' and 'educate' slave trading Africans (p. 170).[5] British officials attempted to control adherence to the treaty-provisions (on the abolition of the slave trade, the commercial rights of British subjects, etc.) and, as the case may be, to enforce them through 'exemplary violence' like the blockading of ports or coast lines, the bombardment of settlements, and the burning of slave 'baracoons'. Yet, the British government was reluctant to condone the use of (state) violence for the recovery of (private) debts. It would have been an asset for readers to have read a number of these 'Model Agreements' and the 'Instructions for the negotiators', as well as other documents often referred to in an annex at the end of this book.

With regard to the changing character of the very meaning of 'protection' and 'protectorate', Van Hulle presents a thorough analysis of this fluid concept in its use as a legal tool. Whereas 'protection' used in early nineteenth century Anglo-African treaties could describe a British obligation to militarily assist a British ally against other African polities, it later meant to 'protect' Britons *and* Africans from 'uncivilised' African laws (including what Britons interpreted as 'human sacrifice') and/or control over foreign relations of African polities. At the end of the nineteenth century, during the so-called 'Scramble for Africa', even a 'model treaty of protection' was applied by British officials in the Cameroons that aimed at preventing African authorities from entering into a 'correspondence or treaty with any foreign nation or power', except with the sanction of Britain (p. 150). At the same time 'treaties of protection' became, contrary to earlier usage, associated with the *internal* governance of territories outside of the complete sovereign control of Britain – hitherto mostly limited to the immediate vicinity of trading forts and a number of factories along the coast. The newly minted term 'colonial protectorate', and its relation to the meaning of 'extraterritoriality', was barely apposite to clarifying the situation on the (colonial) ground. For practitioners and legal scholars alike, it remained unclear just what 'the threshold of jurisdiction [over Africans and/or African territory] was in order to speak of a 'colonial protectorate"; Van Hulle underlines that this legal and political 'vagueness' served imperial interests (p. 162).

In sum, Inge Van Hulle has written a compelling account of the historical developments of individual features of international law over the nineteenth century as they related to West Africa and the tendencies of British Empire

[5] See Adaobi Tricia Nwaubani, 'My Great-Grandfather, the Nigerian Slave-Trader' (15 July 2018), available at <https://www.newyorker.com/culture/personal-history/my-great-grandfather-the-nigerian-slave-trader>.

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building at the end of the century. With a keen eye for the requirements of political feasibility and individual actors in their quest for trade advantages and peace terms according to British ideas, she lays out the political and doctrinal contradictions between recognising and denying African statehood during these developments. What becomes evident through her analysis of *The Practice of Empire* is the manner and the legal techniques, in which British policy makers in London and 'on the ground' made use of these contradictions in order to increasingly create hegemony and exclude West African polities from decision making about their own future.

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