Conclusion

Can African history, European legal history, and the history of memory speak to each other, enrich each other? The history of an African region laid out in the previous chapters points to this possibility. The region's fate was dominated by a contested borderline that bore witness to political machinations between colonial powers, to a border war, and to the "rebellion" of African peoples. These events gave rise to seemingly unending legal disputes. Also, the divided and shared memories of the First World War in the region of southern Angola and northern Namibia and its impact on the peoples living there can be analyzed from several perspectives; four national contexts have been chosen here, whose entanglement is just as evident as are the differences. Portuguese and German narrations about the war and its pre-history were informed by a colonial *zeitgeist* that assessed and justified events from a moral standpoint putting the rights of 'the nation' in Africa at the forefront. With the change of the *zeitgeist* towards the consent of the unjustifiability of colonialism, these justifications are no longer upheld. The focus of memorial practices in independent Angola and Namibia has shifted to questions of national unity.

The long pedigree of the Luso-German dispute about the regions of southwestern Africa, commencing with Bismarck's announcement that Germany would not recognize Portuguese "pretentions" on the Congo region (1884), played an important role in the ensuing arguments that finally led to the assumption of a German invasion in 1914. The weakness of colonial presence in the areas that had become since 1886 a Luso-German "border" region invited not only for transgressions by private individuals such as trafficking in alcohol, guns, slaves, or ivory. It also accommodated and accelerated the development and spread of rumors, false information, and insinuations about alleged plans and intentions of the colonial competitor. The decision of the Portuguese government to step up the occupation of southern Angola after 1900 increased the colonial presence north of the borderline and led to German concerns about alleged Portuguese border violations. But it only went so far to alleviate Portuguese anxieties about German pretensions on southern Angola that grew steadily since Germany had pressed for the borderline along the Kunene River. These anxieties were not necessarily based on facts on the colonial ground – be-

fore 1914, growing German (economic) presence was felt in many places around the globe and was not limited to Portuguese possessions. Also, the Germans did not respond in kind to the Portuguese expansion of their military network near the border. Only one, somewhat symbolic police station manned with three Germans was erected at Kuring-Kuru, Kavango. However, the impression the Anglo-German negotiations of 1898 and 1913 created among Portuguese politicians and the public at large was unmistakable: The Germans would do their utmost to rob Portugal of its colonial sovereignty. This impression was further confirmed due to numerous German voices that were not shy in their denouncement of Portugal's colonial rule as 'archaic' and 'incapable'. In retrospect, the presence of the rather Germanophobe governor-general Norton de Matos since 1912, who took German expansionism for granted, aggravated the situation when in 1914 he allowed the German invasion of Angola to become a self-fulfilling prophecy. The occurrences at Fort Naulila in October 1914 remain difficult to establish. All witnesses were representing one party or the other and did not even claim to be impartial. The arbitrators of 1928 attempted to be salomonic when they found that the death of the three Germans was entirely due to a misunderstanding; it seemed bad luck in a moral sense. Given these conflicting accounts it is comprehensible when historians of international law have warned that history "is not unequivocal in producing answers."[1]

Considering this background, the German war efforts in late 1914 against Angola did not come as a surprise to the Portuguese. Given Roçadas' expeditionary corps, they were exceedingly well prepared to repel any intruder. While the Germans under Franke had a clearly offensive task, the Portuguese were bound by their defensive orders from Lisbon. It remains one of the conundrums of this case, why the Angolan administration did not undertake to clarify Portugal's neutrality when it became evident that Franke was marching against them. Was it the aversion of Norton de Matos to start any negotiations with the Germans? He later stated that he would not have been competent to deal with foreign administrations. Was it the confidence of Roçadas that he would defeat Franke's small regiment in case he dared to attack? Was it the intention to demonstrate to the British allies that Portugal, too, was a victim of German expansionism and that Portuguese colonial troops could overcome an adver-

1 *Grewe* 1999: 90.

sary as reputable as Franke's *Schutztruppe*? It ended differently. Given the number of soldiers available to both military leaders, the Portuguese defeat came as a surprise. Baericke's assessment of a German "piece of luck" is convincing. The catastrophic retreat of the Portuguese troops, however, was unrelated to any German action; it was the result of years of rumors, poor intelligence and sheer panic.

King Mandume, who had since 1911 repeatedly expressed his desire to expel the Portuguese once and for all from the territories east of the Kunene River, used this opportunity in late 1914 to exert his dominance in the region. The 100 guns possibly delivered by Franke to Mandume were less decisive for this undertaking than the thousands of guns that had been bartered with Portuguese (and to a lesser extent German) traders over the previous decades. Mandume's defeat at Mongua after one of the longest and largest battles of colonial Africa was possible for two reasons: 1) the Portuguese under General Pereira de Eça were equipped for a different adversary, the Germans; 2) the drought and famine had weakened the capacities of Ovambo to resist. In the end, de Eça had achieved what the Germans had never dared to do: direct occupation of Ovamboland.

Given the costs of the "expeditions" in Africa, the humiliations at the hands of the Germans (and to a lesser extent by several African adversaries), and the general discourses in Allied Europe about Germany's obligation to repair the damage she had caused from 1914 to 1918, the intention of the Portuguese government to recoup the losses, if not by direct reparations then by claiming damages in legal proceedings, seems intelligible. During the arbitration, Portugal proved wrong all those who had solely observed the republic's "administrative chaos". Thousands of documents were compiled and a massive case was prepared against Germany. The argumentation used during the procedure, as has been shown in the previous chapters, was deeply rooted in historical claims and factual occurrences. Legal arguments were less central for the government representatives. Despite the professional preparation of the case, the outcome for the Portuguese party was disappointing, firstly, considering the division between direct and indirect damages (1928), secondly, considering the "minuscule" amount conceded (1930), and finally considering the non-execution of the award (1933).

The German party, on the other hand – seeing the arbitration as part of the puzzle posed by the foremost goal of German (foreign) policy, namely the revision of the Treaty of Versailles – was not satisfied with the 1928-award's legal interpretation of the facts (an illegitimate excess of the

1914-military reprisal). While the German government lawyers remained attached to the point of view of their predessessors since the Brussels Conference (1874) who "had developed military necessity into a more principled … and explicit legal cover for [Germany's] stance on the laws of war", the world had changed. "Public opinion and most jurists had been moving towards limiting the writ of military necessity." Nevertheless, the end result proved to be a German victory. While successive Portuguese governments had, since 1920, hoped that they could obtain by legal means the redress Portugal had neither won militarily in Africa, nor diplomatically in Versailles, the outcome of the arbitration proved wrong the assumption that international law would reverse diplomatic setbacks. This conclusion, however, was very much in the eye of the beholder. For the German lawyers, some of whom had personally witnessed the 'humiliation' at Versailles, international law proved to be Germany's most vital tool to counter the Allied claims for reparations they so despised. For them, the outcome after thirteen years of legal reasoning was indeed a victory for 'right over might'.[2]

The constellation of the end of this arbitration was just as linked to contemporary history as was the background of the dispute in 1914. The Luso-German arbitration was decided based on political considerations that had little to do with the problems and questions at the origins of the case. The government in Lisbon had pushed for the arbitration expecting that, based on the Treaty of Versailles, the violation of Portuguese sovereignty could be punished and hoping that damages could be claimed by the state and its nationals for "acts committed by the German Government … since July 31, 1914, and before [Portugal] entered into the war [in March 1916]." The award of 1933, however, referred to the agreement made in the Young Plan that Germany was not obliged to make payments to Portugal separate from all the other obligations accepted under the Young Plan. The amount mentioned in the award of 1930 thus came under the general reparation payment for war damages, limited to the annuities of 2.05 billion *Reichsmark* according to the Young Plan. While the Allied experts had in view the capacity of the German budget that was not to be thrown out of its "equilibrium" by additional, separate payments outside of the national budget (award 1933, p. 1379), the Germans considered the Young

2 *Hull* 2014: 67; cf. *Isay* 1923: preface to the third edition. 'Das Vertrauen auf Deutschlands staatliches Fortbestehen und die Zuversicht auf seinen Wiederaufstieg können heute lediglich auf dem Vertrauen in die Macht des Völkerrechts beruhen'.

Plan a "success" since it "reconstituted [German] sovereignty in the economic realm" and led to the evacuation of the Rhineland by Allied troops.[3] The financial interests of smaller nations such as Portugal that aimed at enlarging their minuscule percentage of the general reparation payments, on the other hand, were cast aside. The arbitration tribunal set up according to the Young Plan proved to be a protection tool against particular interests. For the arbitrators of 1933, the original case of 'Naulila' and the campaign against King Mandume did not play any significant role.

While the handling of the Luso-German arbitration underlined the substantial and procedural judicialization of international tribunals, the award of 1928 acquired relevance later on for the development of the doctrine of public international law. With regard to the legitimacy of (forceful) reprisals, the Lausanne award articulated a set of principles that continue to be formative for present-day international legal order: Reprisals are only legal (1) if there is a previous act by the original wrongdoer in violation of international law; (2) if the reprisal taker pursues, prior to any reprisal, non-violent means to demand satisfaction; (3) if there is proportionality between the original offence and the reprisal. Even though the requirement of proportionality of the use of force has developed over the years into the most famous principle of the *Naulilaa* award, also other stipulations of the award, like the question of direct and indirect damages under international law, or the requirements of causality, remain central to public international law. As to the requirement of proportionality, it needs to be emphasized once more that – beyond the comparison between three men shot and six forts destroyed – the award of 1928 did not stipulate any proportionality-test, thus indirectly acknowledging the complexity of the term 'proportionality. While the German memorandum, when discussing the alleged proportionality of the German reprisal against Angola, more or less argued that neither the decision to resort to reprisals nor the extent of its execution could be determined by law, the Portuguese countered in a more substantial way.[4] They used the term 'proportionality' to correct the asymmetrical power relationship with Germany. Portugal, as the weaker party was eager to claim disproportionality as a shield from the stronger party.

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3 *Winkler* 2000: 478, YP stellte die 'Souveränität auf wirtschaftspolitischem Gebiet wieder her'.

4 This argument made reprisals a question of *pure politique*. They are thus tools used most of all by great powers against smaller nations that must not be concerned about possible *riposte* of those against reprisals were executed. *Gaurier* 2014: 700.

When, with the centenary of World War I, scholars are currently reconsidering the impact of this war on the modern world, the award of 1928 is a case at point. It is an expression of the "concerted efforts to regulate the resort of States to force" in the aftermath the World War. Thereby, *Naulilaa* and its interpretation by generations of international legal scholars became part of the enduring arguments that "revolve around determining what is a just cause for resorting to armed force".[5] Due to the disproportion of the German action in 1914 and the 'didactic' enumeration of the conditions required for a legitimate reprisal the award of 1928 was destined to become a "landmark case in public international law."

One further aspect of the arbitration should be considered: Even though two European armies fought against each other, *Naulilaa* was also a "colonial case". On the one hand, *Naulilaa* thus seems to be another example that, from a doctrinal standpoint, colonialism has "yielded a generous by-product in international law", as was evident already for contemporaries: "Protectorates, spheres of influence, hinterlands, the position of savage and semi-civilized tribes, nominal and effective possession, territorial lease" – all these terms and the attempts to define them grew out of the discussions that commenced at the latest with the Berlin Congo Conference in 1884/5. In fact, "much of the international law of the nineteenth century was preoccupied with colonial problems".[6] However, the Luso-German arbitration procedure also underlined discursive ruptures that are too easily concealed by sweeping statements about international law's "complete complicity with the colonial project." Such criticism launched by researchers affiliated with the intellectual school of *Third World Approaches to International Law* (TWAIL), who call the "regime of international law…illegitimate"[7], tends to obscure that – from a historical perspective – international lawyers never "developed a fully homogeneous colonial discourse."[8] Differing interpretations of pre-1914 colonial rule, especially notions of 'race' or the (legitimate) involvement of Africans in combat between Europeans, played an important part in the Luso-German arbitration.

On the other hand, and although the award of 1928 lengthily set out the conditions in Angola in 1914, the arbitrators abstained from any notion of

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5 *Gardam* 2004: 57; *Kelly* 2003: 8; *Orend* 2000: 546.
6 *Reeves* 1909: 99; *Anghie* 1999: 5; cf. *Koskenniemi* 2004: 65; 2011; *Galindo* 2012: 86.
7 *Anghie* 1999: 74; *Mutua* 2000: 31 IL 'is a predatory system that legitimizes…subordination.'
8 *Koskenniemi* 2001: 105; 2014: 122; cf. *Fassbender/Peters* 2012: 4; *Pauka* 2013.

the colonies as a lawless space or a "laboratory" that would have exotizingly justified the use of relentless violence (against Europeans). The award thus underlined that the norms of international law were "universal" and consequently binding for governments 'even' in the colonies. The fact that the case arose out of a "colonial dispute" was not only no hindrance for it to develop into a "landmark case". For the legal interpretation of the facts by the arbitrators it was most of all of *no* relevance that the dispute had taken place between GSWA and Angola – and not between Germany and Belgium. The question, whether European (and international) legal systems "have also been the product of colonial experiences"[9] has been rightly posed. For the reasons stated above, however, *Naulilaa* should not be considered an example for the effects colonial rule had on international law.

The sketched juxtaposition of the memorial cultures in the four involved countries raises the "question of which side's interpretation … will be forgotten and which will have a historical impact. This is clearly an important question for historians, since scholarly historical analysis ought to analyze and not duplicate the processes of forgetting and the emergence of the historically significant."[10] As we have seen, *Naulilaa* is certainly "significant" in international law; the history of the Luso-German border war and the defeat of Mandume, however, have barely marked any entries in the latest overviews of World War I for readers in the Northern Hemisphere – not to speak of any interpretation of these mostly forgotten facts. In the historiography and also in politics of Angola and Namibia, on the other hand, the subsequent war between the Portuguese, the Kwanyama, and the South Africans has made a significant "historical impact". The reinterpretation of King Mandume, his "shift from tyrant to hero might be more gratifying and more historically accurate", but it is still a distortion as other social strata are excluded from the accounts, "a characteristic common to all so-called Great-Man views of history." Similar to colonial times, an adversarial interpretation of history still dominates. It remains to be seen how future politicians and historians will consider the challenge of constructing a more encompassing interpretation of the history of "anti-colonial struggle."[11]

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9 *Becker Lorca* 2010: 477; *Conrad* 2003: 188; 199 on 'laboratories'.
10 *Habermas* 2014: 80.
11 *Isaacman/Isaacman* 1977: 39f.; cf. *Heintze* 2008: 185.