CHAPTER 10

Intellectual Property Rights in Belgium and in the Congo: Between Internationalism and Colonialism

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1 Introduction

Belgium was among the first signatories of both the Paris Convention for the Protection of Industrial Property of 1883 (signed by Belgium in 1884) and the Berne Convention for the Protection of Literary and Artistic Works (in 1886). At this point in its history, Belgium was among the most industrialized countries in the world and an epicenter for the arts and literature, where artists and politicians had developed a strong commitment to internationalism. This internationalism has been the topic of studies addressing the history of political socialism, peace activism, artistic exchanges, and scientific networks.[1] Two prominent figures of progressive peace activism were Paul Otlet and Henri La Fontaine (the latter a recipient of the Nobel Peace Prize in 1913), founders of the Mundaneum, who aimed to make the availability of the entirety of the world's knowledge a peace-building tool.[2]

During this era, Belgium was the center of a colonial empire founded by Leopold II during the Scramble for Africa. It was widely expected in the Belgian parliament that colonizing the Congo would cost large sums of money. Facing opposition, Leopold II decided to pursue the colonization of the Congo as a private enterprise and made the Congo his personal colony, which remains unparalleled in the history of nineteenth-century colonization.[3] Following several enquiries that brought to light the atrocities perpetrated in the Congo Free State, notably in support of the extraction of wild rubber, Leopold II was

1 Laqua, Daniel, *Age of internationalism and Belgium, 1880–1930: Peace, Progress and Prestige* (Manchester: Manchester University Press, 2015) 9–12.

2 Levie, Françoise, *L'homme qui voulait classer le monde: Paul Otlet et le Mundaneum* (Brussels: Les Impressions Nouvelles, 2006 [2020]); Wright, Alex, *Cataloging the World: Paul Otlet and the Birth of the Information Age* (Oxford: Oxford University Press, 2014).

3 Hochschild, Adam, 'Introduction'. In *Lord Leverhulme's Ghosts: Colonial Exploitation in the Congo,* Jules Marchal, ed. (New York: Verso Books, 2017), xi.

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forced to cede the colony to Belgium, and in 1908 it became the Belgian Congo. Two territories resulting from losses incurred by Germany during World War I were subsequently added to the Congo: Rwanda and Burundi, first under military occupation from 1916 to 1922, then as the mandates of Ruanda-Urundi, which gained independence two years after the Congo, in 1962. In practice, the mandates were managed under the same rule as the colony.

Focusing on the interwar period, this chapter examines Belgium's system of intellectual property, examining both the harmonization of intellectual property at the international level and the extension of intellectual property to Belgium's colony.[4] It examines the work of Belgian lawyers including Albert Guislain, Henri La Fontaine, Paul Otlet, and Jules Destrée, who worked in the international organizations that pursued the goal of unifying intellectual property, and Théodore Smolders, Daniel Coppieters, and Paul Vander Haeghen, who wrote the decrees and laws implemented in the Congo. By bringing together the international and the colonial dimensions of intellectual property, the chapter discusses Belgium's extension of its regime internationally.[5]

Were there any links between the Belgian intellectuals who traveled and discussed internationalist conceptions of intellectual property, and the situation in the Congo? In his book on Paul Otlet, Alex Wright has shown that Otlet had personal ties to the colony and that he viewed the colonization of the Congo as a civilizing mission. Recent works show more complex facets of Otlet's links to the Congo. For example, he had a long-term intellectual relationship and correspondence with one of the pioneering intellectuals in Belgian Congo, Paul Panda Farnana, who was also one of the earliest supporters of the further extension of rights to intermediary levels of government in the colony, a vision he came to defend in Brussels.[6] Furthermore, the legal works cited here were written by lawyers who were acquainted with the situation of the colony in various matters, and who entertained different views on colonialism. I have tried to indicate these views when they resulted in remarkable observations and comments, even though this is not the central theme of this chapter.

Two understandings of intellectual property – an internationalist one and a colonialist one – were already present during the late nineteenth century

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4 Ricketson, Sam, and, Ginsburg, Jane, 'The Berne Convention: Historical and Institutional Aspects'. In *International Intellectual Property: A Handbook of Contemporary Research,* Gervais, Daniel, ed. (London: Edward Elgar Publishing, 2015).

5 Bonyi, Mukadi, dir. *Cinquante ans de législation postcoloniale au Congo-Zaïre: quel bilan?* (Brussels: Centre de Recherche de Droit Social, 2010).

6 Kongolo, Antoine Tshitungu. *Visages de Paul Panda Farnana: Nationaliste, Panafricaniste* (Paris: L'Harmattan, 2011) 23–25; Wright, *Cataloging the World,* 50–55.

and matured during the interwar period.[7] Protection of industrial design, for example, was strengthened in order to address the commercialization of artistic forms, with changes at both the international and the colonial level. An important development that took place during the interwar period was the writing of the customary laws of the people of the Congo into the colonial legal system of the Congo and the mandates of Ruanda-Urundi. This was intended to reinforce indirect rule in governing the colony, but created some difficulties for its subjects, who were compelled to try to make two cultures coexist.[8] At the international level, the 1928 revision of the Berne Treaty in Rome and the preparations for the Brussels Conference, initially planned during the 1930s, resulted in productive exchanges in the international legal milieu, even though the Brussels meeting was eventually postponed to 1948.

The chapter starts with an examination of the involvement of Belgian experts in the international intellectual property organizations. The following sections are organized according to the varieties of intellectual property rights in the colony, outlining the relations between the legal systems of the metropole and of the colony in the fields of patents, trademarks, and country-of-origin labels, industrial designs, copyrights, and trade secrets. The research in this chapter is based on primary sources kept at the Bibliothèque Royale Albert Ier in Brussels, and at the Africa Museum in Tervueren, in the archives of the League of Nations (SDN) kept in digitalized repositories by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and in the archives of lawyers (Albert Guislain in particular) kept at the Archives Générales du Royaume (AGR) in Brussels.

2 Belgian Experts and the Internationalization of Intellectual Property

Paul Otlet and Henri La Fontaine had a formative role in the creation of two important institutions for intellectual property: the International Committee on Intellectual Cooperation (hereafter ICIC) in 1922, and the International Institute of Intellectual Cooperation in 1926.[9] La Fontaine's role as an

7 Wirtén, Eva Hemmungs, 'Colonial Copyright, Postcolonial Publics: The Berne Convention and the 1967 Stockholm Diplomatic Conference Revisited'. *SCRIPTed* 7 (3) (2010) 532.

8 Ncube, Caroline, 'Three Centuries and Counting: The Emergence and Development of Intellectual Property Law in Africa'. In *The Oxford Handbook of Intellectual Property Law* Dreyfuss, Rochelle, and Pila, Justine, eds. (Oxford: Oxford University Press, 2016) 411.

9 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-33; Extrait d'un Rapport présenté en juillet 1927, par l'IICI, à la Sous-Commission des Droits Intellectuels

avant-garde pacifist made him a president of the Bureau International de la Paix.[10] Indeed, during the interwar period Otlet's and La Fontaine's roles centered increasingly on peace building. Among the Belgian politicians and intellectuals involved in the ICIC, Jules Destrée, a Walloon lawyer and socialist politican, distinguished himself by his activity, including numerous interventions on intellectual property matters. Destrée was the Belgian Minister for Sciences and Arts in 1919–1921 and then worked on the ICIC until his death in 1936, when he was replaced by the Flemish intellectual Auguste Vermeylen. A major chapter of Destrée's work was dedicated to the Rome Conference for the revision of the Berne Convention of 1928,[11] for which he prepared the text presented by the ICIC. The main Italian delegate Eduardo Piola-Caselli penned the text adopted in Rome as the final revision of the Berne Convention, but Destrée's text was strongly influential in shaping the international future of intellectual property.

The Rome conference gathered 69 countries, of which 39 were, at that time, members of the Berne Union, the others being observers. Destrée and Piola-Caselli defended measures in favor of strong moral rights of the author, aligned with the French and Belgian laws that defined authors' right as the moral right of the author over his or her work, rather than a right based on a utilitarian definition of public access to the work. Both Destrée and Piola-Caselli defended the integrity of the work after the death of the author, and the representatives of three member countries, France, Belgium, and Czechoslovakia, insisted on the importance of granting copyright revenue after the death of the author to the heirs.[12] Destrée had written the Belgian law of 20 August 1921 on the *droit de suite*, itself inspired by the French law signed the previous year. Destrée's ongoing concern, noted some of his contemporary critics, was to secure rights

de la SDN, sur les premiers résultats d'une enquête relative au Statut des Associations Internationales (Proposition de M. le Sénateur Lafontaine), 1928 (Création), E.33.1920; Laqua, *Age of internationalism*, 194–195.

10 Thyssens, Jeffrey, 'Henri Lafontaine et l'idée de paix internationale'. In *Cent ans de l'office international de bibliographie,* Despy-Meyer, Andrée, *et al.* ed. (Mons: Editions du Mundaneum, 1995) 106–108.

11 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-36, Convention de Berne pour la Protection des Œuvres Littéraires et Artistiques du 9 Septembre 1886 révisée à Berlin le 13 Novembre 1908 et à Rome le 2 Juin 1928, 1928.

12 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, « Aperçu sur les travaux de la Conférence Diplomatique de Rome pour la Protection des Œuvres Littéraires et Artistiques (Révision de la Convention de Berne, Mai 1928) Présenté à la Réunion des Délégués d'Etats du 19 Décembre 1928 par M. Raymond Weiss, … » , 1929, Société des Nations. Institut International de Coopération Intellectuelle, 1–2.

for the artists that took precedence over the socialist vision of the redistribution of wealth.[13]

Lively discussions in Rome were duly transcribed in reports that show the issues at stake for intellectual property. Among them was the right of reservation, which some countries could require for specific parts of the Berne Convention. The Rome participants preferred to reduce the right of reservation as much as possible, but it was agreed to keep it for translations, after a delegate of the Kingdom of Siam (now Thailand) mentioned problems of access to works for distant countries.[14]

Another thorny issue was raised by press articles, over which the extension of intellectual property remained a subject of debate. Some conference participants argued for the widespread character of the medium and others for the need to keep access to information open in a democratic context. Among further challenging questions was that of radio performance. The medium was very recent and raised numerous questions. It seemed logical that artists broadcasting their works on the radio should be compensated by the collection of fees for intellectual property rights in radio just as in concert halls, but on this topic, too, some conference members argued for the importance of the medium in providing information, especially in distant countries. A New Zealand delegate noted that the radio was vital for information in remote regions and that it was daunting to seek permissions from artists and composers who lived in sometimes very distant countries. The discussion that took place in Rome on the topic thus showed important contradictions posed by the medium of radio, a new technology that challenged the boundaries between creativity and dissemination. In these debates, the need to compensate composers and performers was regularly pitted against the desire to make popular culture accessible to the masses. The revised version of the Berne Convention tried to reconcile these points of tension by affirming the principle of exclusivity of the author over his or her works and by ensuring the payment of the authors and composers through obligatory licenses.[15]

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13 Dumont, Georges-Henri, 'Le Ministre des Sciences et des Arts'. In *Jules Destrée le multiple,* Trousson, Raymond, ed. (Brussels: Académie de Langue et de Littérature Françaises, 1995) 71.

14 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, Aperçu sur les travaux de la Conférence Diplomatique de Rome, 4.

15 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, Aperçu sur les travaux de la Conférence Diplomatique de Rome, 5–6; Archives Générales du Royaume, Brussels, Fonds Albert Guislain, nr. 2700, Rapports de l'Institut International de Coopération Intellectuelle, Berne. Rapport sur le droit d'auteur et la presse.

The topic of the rights of mechanical reproduction was treated again at a Congress in Vienna in 1932. There the ICIC developed a collaboration with the Federation for the Rights on Mechanical Reproduction, the latter being integrated in the French Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM). The Belgians also participated in the Vienna Congress, sending delegates of the Société des Auteurs belges – Belgisch Auteurs Maatschappij (SABAM), a collective management society founded in 1922 on the model of the SACEM. The SABAM would play an important role in Congolese music authorship during the postwar era.[16]

The influence of technological change on intellectual property was a connecting thread between several topics discussed in Rome. Initially, as the reports from Rome reminds us, the Berne Convention protects artistic and literary works. Creations considered to be mixed products of arts and inventions enjoyed only industrial protection, as per provisions in the Paris Convention. This meant that industrial designs needed to be registered with the relevant bureau (nationally or internationally) for protection. In Rome, the ICIC defended the idea that arts and crafts should be protected under both industrial design and copyright regimes, in line with the thesis of the unity of the art that supported the idea of similar rights for the high arts and for industrial arts, but the Italian and Japanese delegations opposed the thesis of the unity of the art. The signatories of the Berne Convention were, as a consequence, left to choose their own manner of protection, to be implemented nationally.[17] France and Belgium decided to grant the double protection of industrial design and copyright to the arts and crafts. As we will see below, industrial design remains interesting, as the regimes of protection offered in the metropole and in the colony diverged.

The rights over the resale of artistic works, the *droit de suite*, was one of Destrée's particular preoccupations. An issue of debate in Rome was the disparity in the lengths of protection granted to works after the death of their author. Destrée supported a 50-year term of protection, but the British system allowed only half of this. In the end, the 50-year protection was maintained, but without becoming an obligation for all the signatories of the Berne convention;[18] however, the ICIC planned to revisit this discussion at the next

16 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-CFCE-B-A-8.45, Congrès de la Confédération internationale des sociétés d'auteurs et compositeurs dramatiques, Vienne, 6–12 juin 1932, 'Au Congrès de Vienne', in *L'Ecran*, 18 juin 1932, 4.

17 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, Aperçu sur les travaux de la Conférence Diplomatique de Rome, 6–7.

18 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, Aperçu sur les travaux de la Conférence Diplomatique de Rome, 5–6.

revision conference in Brussels. More generally, during that era, the ICIC asked the International Labor Organization (ILO) to conduct a broad enquiry into intellectuals' labor and careers. Destrée was one of the supporters of this enquiry, denoting his general interest in the revenue of the intellectual professions beyond the question of copyright revenue.[19]

Another proposal, made by the Swedish and the Norwegian delegations to the Rome Conference, was for the establishment of an international court for the treatment of cases of infringement of intellectual property rights. The issue of infringements across national borders was a long-standing problem that motivated the organization of conferences on intellectual property in the nineteenth century. But the motion proposed by Sweden and Norway enjoyed very little support in Rome. It was put aside, where it has remained until the present day.[20]

Overall, the results of the Rome Conference were quite limited.[21] Destrée was active in promoting the Belgian view, which aligned with the French, of strong authors' rights, rather than an utilitarian understanding of copyright.[22] The moral right of the author was, according to Destrée, to be defined as an inalienable right, which ensured that the author would retain great control over his or her work in the long term, including resale rights and the right to protect the integrity of the work after the death of the author. In Belgium, Destrée founded a national representation of the ICIC in 1923 that gathered prominent Belgian academics and politicians: Ernest Mahaim, Henri Pirenne, Paulin Ladeuze, Henri La Fontaine, Prosper Poullet, and Paul Hymans. At the international level, Destrée was among the ten most-mentioned names in the files of the ICIC; in other words, he was one of the most active members of the organization.[23]

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19 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927.1931.35.d (Point 5 de l'ordre du jour), Rapport à la Sous-Commission des Droits Intellectuels sur la Condition Juridique et Sociale des Travailleurs Intellectuels, 1928, 1–2.

20 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-40, Aperçu sur les travaux de la Conférence Diplomatique de Rome, 8–9.

21 Dommann, Monika, *Authors and Apparatus: A Media History of Copyright* (Ithaca NY: Cornell University Press, 2019) 109; Ladas, Stephen, *Patents, Trademarks, and Related Rights: National and International Protection*, vol. 1 (Cambridge MA: Harvard University Press, 1975) 834.

22 Ngombé, Laurier Yvon, *Le droit d'auteur en Afrique* (Paris: L'Harmattan, 2009) 19–20.

23 Grandjean, Martin. Les réseaux de coopération intellectuelle. La Société des Nations comme actrice des échanges scientifiques et culturels dans l'entre-deux-guerres. (PhD thesis, Université de Lausanne, 2018) 62, 231.

The ICIC worked on a variety of topics during the following years. Discussions of the incentives given to scientific work were taken up in Belgium, and in 1928 a National Fund for Scientific Research was created.[24] An idea widespread among the members of the ICIC was the need to equally protect scientific research with intellectual property along the same lines of protection afforded to the arts, literary works or inventions.[25] Historian Gabriel Galvez Behar has discussed two rival understandings of intellectual property in the scientific domain, one promoted by the Confédération des Travailleurs Intellectuels (CTI), which saw property rights as pertaining to individual scientists, and another promoted by Paul Langevin, which made intellectual property a collective right of the scientists to demand funding by the industry.[26] The ICIC members considered that the domain of the authors' rights was more advanced than other domains of intellectual production, such as patents, in protecting rights at the international level. The Belgian delegates to the international congresses for intellectual property kept insisting on a strong moral right of the author, rather than for example on more utilitarianist views on intellectual property rights, during the whole interwar period.[27]

24 UNESCO Archives, Paris, digitalized funds, Fonds IICI, 1921–1954, FR PUNES AG 1-IICI-E 1927-1931-35.b (Point 2 de l'ordre du jour), Rapport sur l'Etat Actuel des Travaux concernant le Droit à accorder aux Savants sur l'utilisation lucrative de leurs découvertes. Rapport soumis à la Sous-Commission des Droits intellectuels, 1928, 4.

25 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-44, Résumé d'un Exposé Verbal présenté par M. Raymond Weiss, chef du Service Juridique de l'IICI, sur l'Aspect International de la Protection des Droits Intellectuels. (Sous-Commission des Droits d'Auteur de la Chambre des Députés) Séance du mercredi 26 Juin 1929, 1929, 2.

26 Galvez-Behar, Gabriel, 'L'impossible institutionnalisation de la propriété scientifique, 1919–1939', *L'échelle des régulations politiques, XVIIIe–XXIe siècles: L'histoire et les sciences sociales aux prises avec les normes, les acteurs et les institutions* (Lille: Presses Universitaires du Septentrion, 2019) 9.

27 UNESCO Archives, Paris, digitalized funds, FR PUNES AG 1-IICI-E 1927-1931-44, Résumé d'un Exposé Verbal présenté par M. Raymond Weiss, chef du Service Juridique de l'IICI, sur l'Aspect International de la Protection des Droits Intellectuels. (Sous-Commission des Droits d'Auteur de la Chambre des Députés) Séance du mercredi 26 Juin 1929, 1929, 2–4; Löhr, Isabella, *Die Globalisierung geistiger Eigentumsrechte: neue Strukturen internationaler Zusammenarbeit, 1886–1952*, Kritische Studien zur Geschichtswissenschaft (Göttingen: Vandenhoeck & Ruprecht, 2010), 43; Löhr, Isabella, *Auf dem Weg zu einer global governance kultureller Güter: die Globalisierung geistiger Eigentumsrechte in neuten Strukturen internationaler Zusammenarbeit (1886–1952)* (Leipzig: Universität Leipzig, 2008); Demeulenaere, Pascale, *L'Organisation internationale de coopération intellectuelle et la Belgique, 1922–1939* (Louvain: Université catholique de Louvain, 1994).

3 Convergences and Divergences in the Law between Belgium and Its Colonies

Belgium adhered to the Paris Convention for the protection of industrial property of 1883, and to the Madrid arrangement of 1891 on the international registration of trademarks. The Congo Free State did not adhere to these agreements. Lawyers were unsure at first whether these laws and regulations were applicable to the Congo and, after 1908, Belgium did not immediately specify whether its colony would become a signatory of those treaties.[28]

According to the lawyer Daniel Coppieters, the law stipulated that, in these domains, there was no difference between the Belgians, the Congolese, and people of other nationalities living in the Congo.[29] The laws of the Congo were modified to reflect more colonial forms of governance.[30] For Belgian jurists the coexistence of colonial laws and the customary laws of the Congo attributed to the Congolese people who often preferred the customary practices while colonial administration were thinking in forms of legal governance as per the laws of Belgium.[31] The colonial courts could intervene in cases that contradicted the colonial order – for instance, those involving acts of sorcery,[32] and those on property. Such issues were particularly important as far as landed property was concerned.[33]

The applicable law to Belgians, other foreigners, and registered Congolese in civil and commercial matters was the Belgian Civil Code. In any event, only few Congolese obtained registration rights equivalent to the Europeans (the matriculated status, called the *immatriculés*). Most Congolese were instead ruled by the customs that were especially significant in terms of the status of

28 Coppieters, Daniel, *Le régime de la propriété industrielle au Congo belge* (Brussels: Etablissements Emile Bruylant, 1909) 13.

29 Coppieters. *Le régime de la propriété industrielle au Congo belge*, 14.

30 Congolese intellectuals Paul Panda Farnana and Stefano Kaoze promoted in Belgium the inclusion of intermediary levels in Congolese government in the colony and the development of the customary courts needs to be analyzed from this perspective. Kongolo, Antoine Tshitungu. *Visages de Paul Panda Farnana: Nationaliste, Panafricaniste* (Paris: L'Harmattan, 2011) 28–32.

31 Tousignant, Nathalie, 'The Belgian colonial experience and legal journals (1908–1960): an overview', *C@hiers du CRHiDI. Histoire, droit, institutions, société* 37 (2015) 1–16.

32 Verstraete, Maurice. *Aperçu de droit civil du Congo belge, de la condition de ses habitants et des personnes morales, conflits coloniaux* (Antwerp: Editions coloniales Zaïre, 1946) 9–10.

33 Clément, Piet. 'The Land Tenure System in the Congo, 1885–1960. Actors, Motivations, and Consequences'. In *Colonial Exploitation and Economic Development: The Belgian Congo and the Netherlands Indies Compared,* Frankema, Ewout, and Buelens, Frans, eds. (Abingdon: Routledge, 2013) 88–108.

the people, their family relations, and questions of property, liability, and contracts. Some domains of intellectual property were included in the customary laws, such as traditional know-how and the prerogative to engage in certain arts and crafts, such as making music instruments, which could be a privilege reserved, for example, to a specific gender.[34] This meant that in practice, traditional cultural expressions remained mostly protected *sui generis*, that is, negatively, during the colonial period.[35] Following in the footsteps of the French jurists Arthur Girault, author of the *Principes de colonisation et de législation coloniale*, and Henry Solus, author of a *Traité de la condition des indigènes en droit privé*, Maurice Verstraete, a lawyer active in the courts of the colony, wrote that applying the same law to all in the colony was unrealistic.[36] The customs were applicable only when they were compatible with colonial law and respect for public order.[37]

The Colonial Charter of 18 October 1908 was modelled to some extent on the Belgian Constitution, aside from the principles of constitutional monarchy and representative democracy. The colony was ruled by the Ministry of the Colonies in Brussels and the Governor General in the Congo. The fundamental freedoms of the press, association, education, and religion were not transferred from the Constitution to the Colonial Charter.[38] The colony was governed by decrees, legal dispositions to be applied by the courts as the law. The courts applied the decrees so far as they did not contradict the Belgian law. The Colonial Charter provisioned a double guarantee for the decrees: they were proposed and counter-signed by the Minister of the Colonies and examined by the consultative Council of Congo (*Conseil du Congo*). In difficult cases, the Minister of the Colonies could consult with the Council of State – the supreme administrative court of Belgium – and with the Governor General of the Congo.[39]

A significant difference between the organisation of the colony and of the metropole was the status of the soil and of property. Part of the land of the Congo was reserved to the indigenous people, who had an inalienable right to it. And yet, the Congolese could not, during the interwar period, own land in

34 Verstraete, *Aperçu de droit civil*, 10.

35 Nwauche, Enyinna. *The Protection of Traditional Cultural Expressions in Africa* (New York: Springer, 2017) 2.

36 Verstraete, *Aperçu de droit civil*, 49.

37 Paulus, Jean-Pierre. *Droit public du Congo belge* (Brussels: Institut de Sociologie Solvay, 1959) 141–142.

38 Paulus, *Droit public du Congo belge*, 12, 23.

39 Paulus, *Droit public du Congo belge*, 137–138.

the same manner as codified in the Belgian Civil Code; the ownership of the so-called indigenous land was collective. Pierre Ryckmans, who was Governor of the Congo from 1934 until 1946, argued in the mid-1930s that it was time to grant the Congolese access to property. Ryckmans considered that this access would be challenging in terms of the writing and transmission of contracts. To some extent the Compulsory Cultivation System implemented by the colonial authority aimed to encourage privatization of small land plots for farmers, but it was two more decades of hesitation from the colonial government before property was granted to the Congolese, which came about during the 1950s.[40]

The differences of status in the colony, according to Verstraete, were not morally equivalent to those observed during the absolutist regimes of pre-revolutionary Europe. The difference in the law as applied to the colonized and the colonizers was, he argued, a product of the respect for the traditions of the colonized.[41] But other jurists wrote that it was the "situation" (in their own words) of the Congolese that demanded a special legal regime to govern their everyday lives.[42]

The Belgian jurists who wrote about the legal regime of the Congo observed that, even though it seemed crucial to adapt Belgian laws to the colony, judgments followed the case law of the metropole.[43] The judges in the Congo studied in Belgium and were considered to be part of the Belgian judiciary staff. Most of them took periodical leaves in Belgium, which reinforced the relations between the legal systems of the metropole and the colony.[44]

3.1 *Writing Patent Laws for Belgium and Its Colonies*

The Belgian patent law provided the model for the king's decree on patents for the Congo, dated 29 October 1886, that stated that any discovery or improvement that industry or commerce could exploit could be the subject of a patent. Patents in the Congo were granted without a preliminary examination, at the risks and perils of the patentees, with no guarantee of the merit of the patent, the quality of the description, or the absence of prejudice to third parties. This decree, observed the Belgian lawyer Théodore Smolders, was rudimentary, and

40 Ryckmans, Pierre. *Allo! Congo! Chroniques radiophoniques par Pierre Ryckmans* (Brussels: L'Edition Universelle, 1935) 15–18; Vinez, Margaux, 'Division of the Commons and Access to Land on The Frontier: Lessons from The Colonial Legacy in The Democratic Republic of Congo', Working Paper, World Bank, (2017) 7–9.

41 Verstraete, *Aperçu de droit civil*, 9, 11.

42 Paulus, *Droit public du Congo belge*, 23.

43 *Annales parlementaires, Chambre des Représentants*, 1907, 358; Paulus, *Droit public du Congo belge*, 24.

44 Paulus, *Droit public du Congo belge*, 23–24.

for this reason it was acceptable to use Belgian law as a supplement to the colonial decree.[45]

Belgian and Congolese legislation organized patents within three categories: invention, import, and perfecting (or improvement) patents, all of which were protected for a maximum of 20 years. Anyone could file a patent without limits on the age, gender, or status of the patentee,[46] although, in fact, the filing fee was a deterrent to impecunious innovators; the overwhelming majority of patentees were international firms. The objects of a patent could be material or immaterial, in the form of products, results, proceeds, or series of operations.[47] The decree of 27 June 1913 summed up the conditions for filing a patent, which included the delivery of a patent description in three copies on paper and appendixes in the form of texts, drawings, or samples. The copies had to be delivered to the Ministry of the Colonies in Brussels or to the Governor general in the Congo. The request needed to include the names, profession, and address of the inventor and, in the case of an import patent, the country of registration of the original patent, its date, and duration.[48] The physical description that constituted the patent needed to include the request for patenting, the description of the patent, and, if relevant, drawings, diagrams, or samples. The mention of an object in the patent title was insufficient to file a patent.[49] Upon registration, the person requesting a patent had to pay a fee of 3,000 Belgian francs.[50]

As we have seen earlier, the colonial decree on patents did not include a patent review procedure. The form of the patent demanded created clear restrictions on the filing of patents to begin with. The requirements were stricter for the metropole than in the colony, but in this case, again, the law of the metropole could be used in the colony. Reading the greater restrictions to patent in the metropole as an encouragement to patenting in the colony may therefore be premature.[51]

There were certain restrictions on patenting in the colony which means only few inventions or innovations were eligible for patenting. Raw materials

45 Smolders, Théodore, *Droit civil du Congo belge* (Brussels: F. Larcier, 1956) 8.

46 Coppieters, *Le régime de la propriété industrielle*, 17.

47 Smolders, *Droit civil du Congo belge*, 7–10; Coppieters, *Le régime de la propriété industrielle*, 17.

48 *Législation Commerciale du Congo Belge* (Brussels: Librairie Falk et Fils, 1930), 68; Smolders, *Droit civil du Congo belge*, 27.

49 Smolders, *Droit civil du Congo belge*, 11–12.

50 Smolders, *Droit civil du Congo belge*, 27.

51 Caroline Ncube mentions that the relation between a robust IP framework and development is controversial, and that relation between such a framework and FDI (Foreign Direct Investments) is to be nuanced. Ncube, 'Three Centuries and Counting', 430.

were not eligible for a patent, according to Belgian law, which would effectively rule out, for example, the patenting of untreated plants or minerals, such as the controversial and eventually abandoned idea of patenting turmeric in India.[52] Patents were limited in duration to 20 years, but also by the principle of the common good. Coppieters had, already at the time of the retrocession of the Congo to Belgium, cited article 2 of the Congo decree of 29 October 1886 that mentioned that filing patents should be done without prejudice to third parties (*sans préjudice des droits des tiers*). Patents, added Coppieters, should therefore not be taken out for previously patented inventions that were now within the public domain, since the patentee would then be pretending to have exclusive rights on a common good.[53]

To be patentable, wrote the Belgian jurist Théodore Smolders, a discovery could not, as stated in the legal treaties, be taken out for *immoral* inventions. Thus, for example, patents for unproven remedies[54] that purported to be medicines were rejected. Raw materials were not patentable, as mentioned above, although, as we will see below, mining prospection was subject to special protections in the Congo. Patents also could only be attributed to original innovations, defined as non-similar to previous patents. In the case of patents seeking to improve an invention, a new combination of procedures was considered sufficient to grant a new patent.[55]

Belgian law allowed the voiding of a patent in cases of proven anteriority (state of art) of the exploitation or description. Although trade secrecy could be evoked as an argument in intellectual property cases in Belgian and colonial courts, keeping the secret on an innovation had no value in the courts to prove anteriority, which indicates clear trade-offs in using trade secrets.[56] Should a patentee wish to cede a patent, he or she was required to notify the Ministry of Foreign Affairs. Belgian case law, also applicable in the Congo, was also detailed about the difficulties that could arise when an entrepreneur filed a patent for an invention made by one of his employees. The presumption of ownership, wrote the Belgian jurist Smolders, was in favor of the inventor, but Belgian case law, also in force in the Congo, confirmed that if the employee had

52 Kumar, Sanjay, 'India Wins Battle with USA over Turmeric Patent'. *The Lancet*, 350 (9079) (1997), 724.

53 Coppieters, *Le régime de la propriété industrielle au Congo belge*, 16.

54 Pouillard, Véronique. *La publicité en Belgique, 1850–1975: Des courtiers aux agences internationales* (Brussels: Académie Royale de Belgique, Classe des Lettres et des Sciences Morales et Politiques, 2005) 76–77.

55 Smolders, *Droit civil du Congo belge*, 13–15.

56 Smolders, *Droit civil du Congo belge*, 19.

made the discovery in the framework of his work assignments then the innovation belonged to his boss. Belgian law further stipulated that the employee was supposed to bring his entire capabilities to the workplace.[57]

The unjustified use of the word "patented" to advertise an object or a product that was not patented was subject to restriction (*censure*) in the colony.[58] The courts of first instance in the Congo were in charge of civil and commercial cases, including counterfeiting lawsuits.[59] As far as the repression of counterfeits was concerned, Congolese law was more vague than Belgian law about the nature of counterfeits. In Congolese law, there was an insistence that counterfeits should be interpreted with regard to their similarities to the originals. The seizing of objects suspected of being counterfeit was authorized in Belgium, but the decrees for the Congo did not mention this action, which was thus ruled out in the legal treaties. However, other reasons, especially illicit or unfair competition, were accepted in counterfeiting lawsuits in colonial law. In the eventuality that counterfeiting was proved, both Belgian law and Congolese decrees allowed for damages to be claimed by the plaintiff.[60]

3.2 *Brands and Trademarks in the Metropole and in the Colony*

The creation and use of trademarks and brands in Belgian Congo was strictly modelled on the law of the metropole. Article 1 of the colonial decree of 26 April 1888 reproduced the first article of the Belgian law of 1 April 1879.[61] In principle, any sign or name of a person or of an object could serve as a brand. It was left up to case law to decide whether signs and names were appropriate or not. Some signs, such as the Red Cross, were protected and could not be used as trademarks, and some banal signs could not be registered as brands.[62] Any sign or name adopted as a brand needed to differ from already existing brands.

The product categories permitted to use trademarking, wrote Coppieters, could include all the products of agriculture and minerals for commerce[63] – indicating the specificities of the colonial economy. During the interwar period, an active policy developed towards the trademarking of coffees from the Congo and the mandate over Rwanda.[64] In the case of the Congo, Belgian jurists underlined

57 Smolders, *Droit civil du Congo belge*, 29.
58 Smolders, *Droit civil du Congo belge*, 236.
59 Coppieters, *Le régime de la propriété industrielle*, 21.
60 Smolders, *Droit civil du Congo belge*, 32, 35.
61 Coppieters, *Le régime de la propriété industrielle*, 23–24.
62 Smolders, *Les droits intellectuels au Congo belge*, 45.
63 Coppieters, *Le régime de la propriété industrielle*, 23–24.
64 Melkebeke, Sven Van. *Dissimilar Coffee Frontiers: Mobilizing Labor and Land in the Lake Kivu Region, Congo and Rwanda (1918–1960/62)* (Leiden: Brill, 2020) 50; Mosselmans, Paul.

the importance of origins labeling of quality products.[65] Besides trademarks, country-of-origin labels were an important medium for informing consumers about the quality of products. Such collective labels have played an important role in trade, and their regulation by law has a long history. In the case of the Congo, the question of labels of origins was raised in 1909 by Paul Mosselmans, who theorized on advertising, trademarks, and patents in Belgian Congo. During the interwar period, Governor Pierre Ryckmans noted the importance of creating labels specific to quality products from the colony. Ryckmans evoked in particular the example of the coffees produced in the Belgian colony and mandates.[66] And yet, in their case, the purpose was to strengthen the quality of products that would eventually be advertised as hailing from the colonies of Belgium, reinforcing the image of the metropole.[67] In Belgium and its colonies, the law required that signboards, packaging, and tags were original, without borrowing from other producers' brand names. In addition to these rules, Belgian law provided protection to specific country-of-origin labels, such as on regional alcohols, wines, and water products. This protection for regional labels, however, did not exist in the Congo.[68]

Trademark or brand protection belonged to the first user of the brand, but in order to enjoy brand protection entrepreneurs were asked to register their brand, as codified in the Belgian law of 1 April 1879 and, in the Congo, in the Decree of 26 April 1888, modeled on the Belgian law. There was no need to renew the registration of brands.[69] The person who decided to register a brand for the Congo had to file three copies, including a picture of the trademark, to the Ministry of the Colonies in Brussels, the General Secretary in Léopoldville (today Kinshasa), and the Direction of the Economic Affairs in Elisabethville (today Lumumbashi). A small fee was required upon registration.[70]

La Publicité Coloniale. Simple Essai (Brussels: Editions commerciales et industrielles, 1910) 10–15; Pouillard, *La Publicité en Belgique*, 120–4 ; Pierre Ryckmans, *Allo! Congo!*, 97–99.

65 Smolders, *Les droits intellectuels au Congo belge*, 43.

66 Van Melkebeke, *Dissimilar Coffee Frontiers*, 50–55.

67 Stanziani, Alessandro, 'Wine Reputation and Quality Controls: The Origin of the AOCs in 19th century France'. *European Journal of Law and Economics*, 18(2) (2004) 149–167; Guy, Kolleen. *When Champagne became French: Wine and the Making of a National Identity* (Baltimore MD: Johns Hopkins University Press, 2007); Mosselmans, *La Publicité Coloniale*, 5–15; Ryckmans, *Allo! Congo!*, 97–99.

68 Smolders, *Droit civil du Congo belge*, 224, 228.

69 Coppieters, *Le régime de la propriété industrielle*, 24–26; Smolders, *Les droits intellectuels au Congo belge*, 51 sq.

70 *Législation Commerciale du Congo Belge*, 'Dessins et modèles industriels'.

In the eventuality of brand counterfeiting, the Belgian law of 1 April 1879 and the Congolese decree of 27 April 1888 allowed the judge to require the confiscation of the counterfeited products and the publication of the judgments. The Belgian law also allowed the destruction of merchandise judged to be counterfeits, but the colonial decree did not.[71] In the Congo, the law was meant to be applied to the same way for Belgians, Congolese, and foreign merchants, who constituted an important group in the business activities of the colony.[72]

3.3 *The Registration and the Protection of Industrial Designs* (*Dessins et Modèles*)

At the beginning of the interwar period there was no specific law organizing the protection of industrial design in Belgian Congo. Coppieters felt that it was necessary to urgently address this gap in the law, especially so in the case of the importers of printed fabrics – a popular type of consumer good in the Congo – who wished to protect the designs that they imported.[73] Indeed, some importers of wax printed fabrics sued counterfeiters in the courts.[74]

This lack of protection of industrial designs was remedied by the decree of 24 April 1922 that organized the registration of designs and industrial models. Innovators could register designs in the form of a sample or a sketch in a sealed and signed envelope for one, three or five years, or perpetuity, at the Ministry of the Colonies in Brussels, at the General Secretariat in Léopoldville, or at the Directorate for Economic Affairs in Elisabethville. The amount of the registration fee varied.[75]

During the interwar period, the law on the ownership of design was a topic of debate, much of which resulted from problems in defining the contours of arts and industry. Numerous products, such as fashionable garments and interior designs, found themselves, as coined by Dreyfuss and Ginsburg, *at the edge* of art and commerce. Some nations accepted these products as arts, and adapted their law accordingly; in Belgium and France, for example, designs could be protected both by industrial design law and by authors' rights law. But in other countries, such as the United States, fashion designs could not be copyrighted. Belgium protected all designs under authors' rights legislation in 1935, but colonial decrees did not follow suit. Designs thus remained under a weaker regime of protection in the Congo, until a new colonial decree modified

71 Coppieters, *Le régime de la propriété industrielle*, 28–29.
72 Smolders, *Les droits intellectuels au Congo belge*, 75–76, 80.
73 Coppieters, *Le régime de la propriété industrielle*, 10–14.
74 Grosfilley, Anne. *African Wax Print Textiles* (Munich: Prestel, 2018) 101–112.
75 *Législation Commerciale du Congo Belge*, 'Dessins et modèles industriels'.

this state of affairs in 1948.[76] This aligns with what we have seen earlier about the Conference of Rome in 1928, where a stronger protection for the arts and crafts was discussed without immediate results in terms of the international unification of the law.

Despite this state of affairs, during the interwar period protection of industrial designs was provided to entrepreneurs who registered their innovations either in Brussels or in the Congo. Design registrations were of particular interest to the trade of novelty products, such as printed fabrics. The entrepreneurs who protected their wax fabrics, for example, were often international businesspeople who had commercial operations in the Congo, where they sold fabrics produced by the textile industry based in the colony, but also overseas, in, for example, Asia, where a significant part of the wax production was centered. The case law was mostly from Belgium during the interwar period.[77] Building on a growing corpus of case law, a number of cases relating to the counterfeiting of industrial design were judged in the courts of the Congo during the postwar era.

3.4 *Asserting the Moral Right of the Author in the Metropole and in the Colony*

In the realm of authors' rights, the Congo and the mandates of Ruanda-Urundi aligned on Belgium in most matters. In the broader context, Belgium was, like France, a proponent of a protective law composed of two elements: a patrimonial (or pecuniary) right, and a moral right to authorship, the latter being an unalienable right.[78] The definition of the law thus emphasized the moral right of the author and, to some extent, its preeminence over a more utilitarian view that, especially in the Anglo-Saxon realm, tended to emphasize the importance of the audiences.[79] The law on authors' rights in the Congo had, as in other domains of intellectual property rights, to a large extent assimilated to Belgian law, and yet the Belgian jurists who examined the case of the Congo agreed that it presented a lacuna in comparison with the laws in effect in the metropole. Belgium signed neither the Berne Convention nor the revisions of Berlin in 1908 and Rome in 1928 on behalf of the Congo and Ruanda-Urundi,

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76 Dreyfuss, Rochelle, and, Ginsburg, Jane, eds. *Intellectual Property at the Edge: The Contested Contours of IP* (Cambridge: Cambridge University Press, 2014); Smolders, *Droit civil du Congo belge*, 89.

77 Haeghen, Paul Vander. *Répertoire des Droits Intellectuels en Belgique et au Congo* (Brussels: L'Ingénieur-Conseil, 1924) 131.

78 Smolders, *Droit civil du Congo belge*, 118.

79 Smolders, *Droit civil du Congo belge*, 113 ; Ngombé, *Le droit d'auteur en Afrique*, 19–20.

and Théodore Smolders commented that he wished a colonial decree would acknowledge the adoption of the Berne Convention and its subsequent revisions, in order for the Congo to participate in international scientific and artistic life and to protect its authors.

This decree was eventually passed in 1948, and contributed to make Congo's intellectual property rights system one of the most extensive on the African continent. During the interwar years, Congo's reliance on Belgian intellectual property law meant that there were few differences between the colony and the metropole,[80] reinforced by the principle written in the Berne Convention that foreigners were assimilated with nationals as far as copyright was concerned (national treatment) – or, in line with the Belgian legislation on authors' rights. Berne's principle of assimilation of the foreigner to the national resulted in a similarity of intellectual property rights between the colonizers and the colonized.[81] This was coherent with the universalism professed by the Belgians intellectuals who participated in the field of international intellectual property rights.

But the apparent symmetry between colonizers and colonized that resulted from the Berne system was not the whole of the existing system of intellectual property. In the colony and mandates the customary courts delivered judgments to the Congolese that were not registered (or matriculated, *immatriculés*). The adoption of the Universal Copyright Convention of 6 September 1952 in Geneva aimed to create a system that reflected more accurately the needs of non-Western cultures, yet, this time, Belgium would not be among its first signatories. It was not until 1960, just after Congo's independence, that Belgium signed this convention.[82]

3.5 *Unfair Competition as a Part of the Belgian System of Intellectual Property*

During the interwar period and afterwards, the treaties that outlined the contours of intellectual property for Belgium and its colonies usually included a few pages on unfair competition. Contemporary international experts on intellectual property tend to propose limits to the intersections between unfair competition and intellectual property.[83] During the interwar period, however,

80 Smolders, *Droit civil du Congo belge*, 113.
81 Smolders, *Droit civil du Congo belge*, 116.
82 Smolders, *Droit civil du Congo belge*, 114.
83 Maggiolino, Mariateresa, and, Zoboli, Laura, 'The Intersection Between Intellectual Property and Antitrust Law'. In *Handbook of Intellectual Property Research. Lenses, Methods, Perspectives,* Calboli, Irene, and Montagnani, Maria Lillà, eds. (Oxford: Oxford University Press, 2021) 121–134.

the legal treaties for the Belgian colonies considered that unfair competition was part of the domain of intellectual property. In the case of the colony, the laws on unfair competition show some peculiarities, notably in regulating the work and the employment of the indigenous populations.

As discussed above, the freedom of the press was not acknowledged in the Belgian colony. The case law for the Belgian Congo contains a series of lawsuits for defamation, a matter taken seriously by the colonial authority, which considered that defamation could stir opposition and revolts. The colonial laws considered attacks to reputation to be a relevant cause for pursuits in cases of unfair competition.[84] Unfair competition cases could also apply to improper or fraudulent labeling of merchandise, relating to, for example, the quality of foodstuffs – despite the absence, as discussed above, of protection for country-of-origin labels in the Congo.[85]

In certain parts of the colonial economy the regulation of competition, especially in terms of the tasks and duties of both the workforce and employers, took on a particular significance. This was the case with the special provisions that the colonial decrees laid out for the mining industries. These rules were different from the laws in force in the metropole, and had been purposefully organized in order to protect the activity of the mining industries in the colony. A decree of 4 October 1930 that regulated the rights of mining labor and research can, in that sense, be considered a complement to the protection of trade secrets.[86] Another decree dated 24 September 1937 regulated the mining regime of the colony, confirming the principle of state ownership property over the mines, with a reservation for the rights that might have been acquired by the Congolese people. The decree stipulated that a prospection permit was required to search for mining fields in any geographical domain. The exploitation of mineral resources was subject to both obtaining a concession permit and administrative authorization.[87] A specific point in regard to authors' rights is complementary to the question of access to research on mineral resources in the Congo:[88] in the case of colonial Congo and Ruanda-Urundi, geographical maps were the object of a specific measure forbidding illegal reproductions.[89]

84 *Les Novelles, Droit colonial*, t. 1, nr. 237.

85 Smolders, *Droit civil du Congo belge*, 181.

86 Institut Royal Colonial Belge, *Bulletin des séances*, IX, 1938, 3, Extrait, Fernand Dellicour, *Un aspect du Droit public et du Droit administratif au Congo belge* (Brussels: Imprimeur de l'Académie Royale, 1938), 603.

87 Verstraete, Maurice. *Aperçu de droit civil du Congo belge, de la condition de ses habitants et des personnes morales, conflits coloniaux* (Antwerp: Editions coloniales Zaïre, 1946) 18.

88 Smolders, *Droit civil du Congo belge*, 143.

89 Smolders, *Droit civil du Congo belge*, 143.

In some regions of the Congo, the colonial administration had supplemented rights on mining with further provisions. For example, the Special Committee for the Katanga controlled mining prospection on its territories, and the mining rights of the National Committee of the Kivu were the object of a convention approved by the decree of 8 May 1928. The Committee retained exclusive control over the exploitation of the mines in that region until 1948.[90]

According to Belgian legal experts, the interwar period was characterized by mounting legal interventionism in the Congo. This observation is coherent with the project of making the Congo a model colony in terms of the management of its resources, the enforcement of health care measures, and the implementation of order and security.[91] Numerous decrees were passed during the interwar period regulating a myriad of aspects of life in the colony. Only some of these decrees were relevant to the theme of this chapter, especially in the domain of the regulation of labor, professions, and employment, which was an important theme of administrative regulations. Questions of (un)fair competition were relevant to the management of some colonial firms. The Belgian legislator aimed to regulate employment, to stabilize the workforce in businesses in the colony, to regulate the relations between leaders and employees, and to protect knowledge and know-how from industrial espionage. The regulation of relations between workers and entrepreneurs received particular attention, with one of the goals of these measures being to control competition and transfers of knowledge.[92]

Following a decree of 31 October 1931, an employer in the Congo could forbid his former employees, for a duration of three years after their departure, from exploiting a mining operation on their own, from acquiring the rights to mine, and from associating with others with an intention to mine, if the activity was to be pursued within a distance of 25 kilometers from the areas where the former employer was exercising his mining rights and exploitation. The case law in both Belgium and the Congo followed these rules. Several cases served to sum up other situations. For example, in the case of the wife of a former mining employee who wanted to engage in her turn in mining operations, the clauses mentioned above did not apply, according to a case judged in the courts of Elisabethville at the very end of the interwar period.[93] The mining

90 Paulus, *Droit public du Congo belge*, 121–123, 131.

91 Institut Royal colonial belge, *Bulletin des séances*, IX, 1938, 3, Dellicour, 602; Stengers, Jean. *Congo: Mythes et réalités* (Brussels: Racine Lannoo, 2007); Reybrouck, David Van. *Congo: The Epic History of a People* (Amsterdam: De Bezige Bij, 2014).

92 Institut Royal colonial belge, *Bulletin des séances*, IX, 1938, 3, Dellicour, 601–606.

93 Smolders, *Droit civil du Congo belge*, 194–197.

law thus extended protective rights over the sites prospected by international firms. It also reserved some exceptions, for example for family members of previous employees, in this case wives or widows, with the objective of extending the rights of one mining entrepreneur to his family.

4 Epilogue

This examination of the status of intellectual property law in Belgium's colonial empire has shown that the colonial administration aimed to organize a comprehensive legal framework for the colony. This included supplementary attention to specific points in the law that mattered to the colonial economy, such as the proper labelling of consumer goods, the extension of patent protection to international firms and innovators present in the Congo, and measures aimed at controlling the dissemination of know-how in specific sectors such as the mining industry.

During the interwar period colonial Congo's intellectual property law was on the way to becoming one of the most complete systems of intellectual property on the African continent, a situation that would be reached at the Brussels revision conference of the Berne Treaty in 1948. The files kept in the archive of Albert Guislain, a Belgian lawyer and a vice-president of the ALAI (International Literary and Artistic Association) during the interwar period, show that Belgian intellectual property specialists put great efforts into preparation for the Brussels conference. The expert committee for the universal status of authors' rights held a preparatory meeting in Brussels on 19 and 20 October 1938, which aimed to lobby newer countries in signing the Berne Convention. The Brussels conference was eventually postponed, however, not only because of the mounting political difficulties during the interwar years but also because it appeared premature to hold a new revision meeting so soon after the 1928 Rome conference if more countries had not yet joined as signatories of Berne.[94] A much scrutinized case was the United States, which would not join until 1989.

Works by Caroline Ncube and Daniel Acquah have demonstrated that intellectual property laws were imposed from the outside on African populations, who had no choice but to accept legal frameworks that rested upon definitions

94 Archives Générales du Royaume, Brussels, Fonds Guislain, 2701: documents préparatoires pour une Conférence diplomatique pour la préparation d'une Convention Universelle sur le Droit d'Auteur, Brussels, 1938.

of innovation decided by the colonizers.[95] A systematical examination of the patents taken out in the colony of the Congo, for example, confirms this point: an overwhelming majority of patentees were colonizers and international firms. In an important article, Eva Hemmungs Wirtén has also shown the enduring limitations that the copyright system posed for countries such as the Congo, where the ever insufficient adaptation of copyrights to the question of translations, for example, contributed to limiting the dissemination of books and of literacy.[96] In that respect, the decisions taken under the aegis of international experts on intellectual property, including Jules Destrée, to keep a right of reservation to member countries in the realm of translation was a relevant decision.

The interwar period was a decisive time for the legislator of colonial Congo, which, in addition to the imposition of a legal framework directly imported from the metropole, formalized in writing the activity of the customary courts. This chapter has traced the broad contours of the activity of these courts to show that some aspects of the protection of innovation and inventions were already covered by the customary law and that the customary laws were mediated by the colonial authority.

This chapter has also shown that intellectual property occupied a specific place amidst the broader legal framework that governed the colony. A contrast appears between the absence of rights for the colonial *subjects*, who had no voting rights and no democratic freedoms, and the framework for intellectual property that was increasingly developed during the interwar period. The Congolese could not vote, but they could, at least on paper, take out a patent for an innovation, register an industrial design for a fabric, and receive copyright fees for writing literary texts or music. Intellectual property was a domain where greater access to citizenship was granted to the subjects of the colony, than was the case in other domains.[97] The principle of reciprocity set out in the Berne convention was coherent with this generalization of the framework for intellectual property rights in the colony.

This situation raises the question of whether the Belgian legislator considered the conditions of innovation for the Congolese. During the interwar period, this may have been the case only in a limited number of instances.

95 Acquah, Daniel Opoku, 'The Unusual Extension of Imperial Intellectual Property Laws to Colonies in Africa'. In *Intellectual Property and the Law of Nations, 1860–1920,* Morris, P. Sean, ed. (Leiden: Brill Nijhoff, 2022) 291–331; Ncube, 'Three centuries and counting', 409–430.

96 Wirtén, 'Colonial Copyright, Postcolonial Publics', 532.

97 Cooper, Frederick. *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005).

The colonial authority aimed to protect firms against unwanted transfer of knowledge, for example in the mining industry. Trade secrecy and unfair competition laws in the colony were designed to protect the entrepreneurs. Furthermore, the patent records show that patents were taken out in the Congo by multinationals and Western innovators,[98] while the role of the Congolese in innovation was limited to areas where the colonizers acknowledged the creativity of the colonized populations. In 1935, the colonial authority in Belgium created a commission for the protection of the so-called indigenous arts and professions (Commission pour la Protection des Arts et des Métiers Indigènes, COPAMI) that aimed to preserve and support the activities of the colonized in these domains. The COPAMI did not include any Congolese in its ranks. It was not directly involved in creating protective legislation, but discussed the topic occasionally and worked on the creation of stamps for the collective trademarking of Congolese artistic productions.[99] The areas where the Congolese were effectively able to support and promote invention remained limited. During the postwar era, the colonized populations of the Congo found some possibilities in the intellectual property rights framework, in, for example, protecting textiles and receiving intellectual property revenue from their musical compositions. The latter became especially effective after the creation of a local branch of the Belgian collective management organization SABAM in Congo and Ruanda-Urundi in 1949.[100]

The legal treaties examined in this chapter show a concern for interests in the resources of the colony, whether they be the products of agriculture, such as coffee, or of mining. In this respect, intellectual property was one of the tools in the arsenal of economic protectionism,[101] and in the trademark, patenting, and unfair competition laws the mining industry appeared as a source of interest and concern. The registered innovations however show a preeminence of Westerners among innovators. This can signify a short-term policy in terms of development, and thus a mitigated conclusion as to the contribution of such a protective system to FDI.[102] This point also aligns with the broader history of the colony, that shows that the colonizer succeeded in educational

98 *Bulletin administratif du Congo belge*, 1920–1939.

99 Beurden, Sarah Van. *Authentically African: Arts and the Transnational Politics of Congolese Culture* (Athens, OH: Ohio University Press, 2015).

100 *Bulletin administratif du Congo belge*, 25 November 1949, n. 18, 803; 25 May 1951, 906–907.

101 Hesse, Carla, 'The Rise of Intellectual Property, 700 BC–AD 2000: An Idea in the Balance', *Daedalus*, 131(2) (2002) 26–45.

102 Ncube, 'Three centuries and counting', 409–430.

efforts at the level of primary school, but did too little and too late to educate local elites for a postcolonial future.[103]

At the international level, the Belgians pursued the tasks they had started during the nineteenth century. Otlet and La Fontaine pursued their pacifist interests, which intersected less with questions of intellectual property, and new experts took over, such as Destrée, who became very active in questions of the unification of intellectual property internationally. His main concern was to secure revenue for the artistic professions, and the internationalism that he pursued was composed of elites. The legal regime of the colony aligned to the Berne principle of reciprocity, creating a framework that was protective of creativity. The internationalization of intellectual property had the potential to be rather insensitive to local differences and needs, showing the limits of a universally imposed system of property rights. The experts sought to mitigate this by organizing a space for the customary laws. The Belgian legal experts remained active in the international conferences for intellectual property. Their work continued the ideas from the previous period of internationalism, socialism, and interest in the arts, pursuing the concept that the arts were an important element in fostering peace between people.

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103 Nzongola-Ntalaja, Georges. *The Congo from Leopold to Kabila. A People's History* (London, Zed Books, 2003) 88–89, 122–123.

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