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Regulation of the first international railroads in Belgium as an early example of international administrative law

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'History […] *is no subject for purists.'*[1]

[1] S. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press 2008, 164.

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Abbreviations

MPW: minister of Public Works

MFA: minister of Foreign Affairs

AMFA: Archives of the Ministry of Foreign Affairs

Summary

This dissertation aims to sketch the international regulatory framework of the construction and the policing of the first international railroads to France, Prussia and the Netherlands in Belgium in light of international administrative law. With regards to construction of the railroads, we will show that international law was very much present in the case of France and the Netherlands: treaties were signed between both countries by engineers of the departments of Public Works. The construction of the railroad to Prussia did not have a basis in international law, as the construction was carried out by a private company, the Rhenish Railway Company. Conventions were signed between Belgium and this company, but these could not be considered treaties under international law. Rules with regards to customs and policing on the international railroads were issued by so-called mixed commissions, consisting of representatives of the national customs administrations. A commission was not set up for the railroad to Prussia, as the Prussian government deemed this unnecessary.

In light of the controversy around the field of law, we identified three core elements that we deem foundational to the field: a solidarist base, the introduction of expertise on the international plane and a focus on international regulatory institutions. If we analyse the international regulatory framework of the first Belgian international railroads in light of these elements, we can conclude that it shows some resemblance to what authors identified as international administrative law at the end of the nineteenth century. This resemblance should, however, not be exaggerated: it certainly is not a perfect fit, partly due to the fact that literature on the subject seemed to focus on international regulatory institutions such as the Universal Postal Union, institutions that did not yet exist at the time of the construction of the railroads.

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Finally, I once again dedicate this dissertation to my mother. Four long years have gone by since she passed away, but she is still sorely missed. As one of the most formative chapters of my life draws to an end and I embark on a new journey, I hope I have made her proud and that I will continue to do so in the future.

To all: thank you!

Thomas De Paepe, June 8th 2020

1. Introduction

Railroads were one of the most disruptive technologies of the nineteenth century. As such, they have been the subject of extensive research across many different fields. Curiously lacking in this research, however, is the international legal framework of these railroads. It is implausible that these railroads just appeared out of thin air, without any kind of (legal) coordination between states. With this dissertation, we want to shed light on the international law framework of the first Belgian international railroads in light of the literature on international administrative law, a field of law which became very popular at the end of the nineteenth century.

1.1. Research questions

1. What was the international regulatory framework regarding the first international railways in Belgium?
    a. What were the first international railways constructed in Belgium?
    b. Was there an international regulatory framework regarding the construction of these railways? If yes, in what form and how did it come about?
    c. Was there an international regulatory framework regarding the policing of these railways? If yes, in what form and how did it come about?
2. Can the international regulatory framework regarding the first international railways in Belgium be analysed in light of the emergence of international administrative law?
    a. In light of controversy around the notion international administrative law, what are some of the common elements of all interpretations?
    b. Can the international regulatory framework regarding the construction of the railways be seen as an early example of international administrative law?
    c. Can the international regulatory framework regarding customs and policing on the railways be seen as an early example of international administrative law?

1.2.Heuristics and methodology

1.1.1. Heuristics

As the heuristics differ for the two research questions, we will discuss them separately. Because of the outbreak of COVID-19 and the subsequent closures of libraries and archives, we had to drastically alter our heuristics. The reader is kindly asked to bear this in mind when reading this dissertation.

Research question 1

To formulate an answer to the first research question in general, we will rely on a literature review and archival research. The first subquestion will be answered through a review of both contemporary and nineteenth century literature. We will limit ourselves to the lines to Prussia, France and the Netherlands; lines to Luxembourg will not be discussed. The second and third sub-question will be answered by a review of primary legal and historical sources. We triangulated our findings using the following method. First, we consulted the *Recueil des Traités concernant la Royaume belge* (a unofficial collection of treaties signed by the Belgian government) whether there were published treaties on the matter. Where available, we also consulted *Recueils* of other countries, e.g. France. Secondly, we consulted the archives of the ministry of Foreign Affairs to see whether any unpublished treaties on the matter could be found. Thirdly, we searched (where available) the reports the ministry of Public Works published and submitted to parliament as part of its duties under art. 6 of the act of May 1st 1834 for references to conventions signed with other countries or entities. Finally, we consulted primary legal sources (laws and royal decrees) on the matter through the indexes of the *Pasinomie belge*.

With regards to customs on these international railways, we have chosen to limit our research to the international regulations issued or agreed upon before or shortly after the opening of these railway lines. This choice was necessary to ensure feasibility of the research. In the 1840's and 1850's, a dazzling amount of conventions were concluded with regards to customs on

international railways. It would simply be impossible to discuss them all. Finally, as this thesis focuses on questions of international law, we have not studied conventions signed between states and the companies constructing and exploiting the railways.

Research question 2

For the second research question, we will rely on literature research. In light of the controversy around the scope and precise content of international administrative law, we will try to distil three core elements of the field that enjoy universal or near-universal recognition. We will then apply these three core elements to the situation surrounding the construction and policing of the first international Belgian railways to see whether the endeavour can be considered a precursor of international administrative law.

1.1.2. Methodology

How does one 'do' legal history?[2] There is no one size fits all methodology in legal history. There are roughly two types of legal historical research: traditional and contextual. The difference between both has been explained elsewhere.[3] For this thesis, we will align ourselves with the contextual legal historians, mainly because of the nature of the research. Contextual legal history becomes less of a choice and more a necessity when there is little to no (published) legislation, case law or doctrine on the researched subject. This seems to be the case for a large chunk of our research.

There is no clear-cut, one size fits all methodology for archival research.[4] Nonetheless, there are certain principles researchers have to adhere to in all archival research. The first one is the principle of selectivity.[5] All archives are the result of selectively preserved (and discarded)

[2] J. BAKER, 'Reflections on 'doing' legal history' in A MUSSON, C. STEBBINGS (eds.), *Making legal history: approaches and methods,* Cambridge, Cambridge University Press 2012, 7 – 17.
[3] D. HEIRBAUT, 'A tale of two legal histories' in D. MICHALSEN (ed.), *Reading past legal texts*, Oslo, Unipax 2006, 91 – 112.
[4] B. E'PLATTENIER, 'An argument for archival research methods' *College English* 2009, 67.
[5] K. TIRABASSI, 'Journeying into the archives: exploring the pragmatics of archival research' in A. RAMSEY, W. SHARER, B. E'PLATTENIER en S. MASTRALENGO (eds.), *Working in the archives. Practical research methods for rhetoric and composition,* Southern Illinois University Press 2010, 172.

documents. Valuable information can also be lost during the building and maintenance of the archive, because of sloppy archival practices or necessity (keeping all records can make an archive an impenetrable wall of paper). Researchers must therefore acknowledge the fact that information found in archival material can be wildly incomplete. We have tried to counter this selectivity through the heuristics mechanism as explained above.

A second principle is cross-referencing.[6] Researchers have to keep in mind that, as with literature, archival documents were written by a certain actor, with a certain purpose and for a certain audience. Archival material is a vessel for a certain message; if that message is influenced by the subjective views or goals of the writer, the vessel will not magically correct the message as to make it more objective. Researchers and readers need to be keenly aware of this: the fact that something appears in archival material does not make it the whole and objective truth.

A third principle is categorization.[7] Inventories of archives can be misleading, as they are often not made with the specific research subject of the researcher in mind. Knowing the structure of the archive is essential to uncover important documents that are hidden behind misleading inventory titles. This was evident in the archives of Foreign Affairs. Although separate dossiers were created for railway affairs, it is not unthinkable that documents about railways ended up in the collections of diplomatic correspondence between the ministry and its legations in France, Prussia and the Netherlands.

The final principle is closure.[8] Archive research is time consuming, especially if the archival consultation policies do not allow photographs to be made.[9] It is of vital importance to have a

[6] Ibid.
[7] Id, 175.
[8] Id, 176.
[9] Which is the case in the archives of Foreign Affairs. Visitors can only manually copy documents or ask for photocopies at an eye-watering rate of 0.25 euro per photocopy. We had spent a considerable amount of money on archival documents before we got permission to make photographs of the documents. Paired with the fairly

plan of what dossiers one wants to consult and to stick to it. A certain degree of flexibility is of course necessary, but it cannot end up being a wild goose chase looking for yet another document or lead, as this might compromise the feasibility of the research. For this research, we have adhered to this principle rather strictly, consulting only the documents present in the dossiers regarding railways and not, for example, the general diplomatic correspondence.

1.3.Structure of the dissertation

This dissertation will go as follows. In the second section, we will discuss the rise of international administrative law and line up three core elements we have distilled from the literature (Section 2). In the third section we will discuss the inception of the Belgian railroad project (Section 3). In the fourth section we will discuss how the construction of the Belgian railways to France, Prussia and the Netherlands was regulated under international law and formulate the main conclusions of this exercise (Section 4.1.). We will do the same for the framework regarding policing of said railroads (Subsection 4.2.). In the fifth section, we will analyse the Belgian situation in light of the three core elements we have distilled in the second section (Section 5). In the final section, we will formulate the main conclusion of our research (Section 6).

1.4.Additional remarks

Because of the outbreak of COVID-19, our access to libraries was severely restricted. This means that certain primary (legal) sources, such as the *Moniteur belge*, were unavailable to us. This means that we were not able to give the official publications of both treaties and legislation. For treaties, we have instead opted for the already mentioned *Recueil*, an unofficial but prestigious collection of treaties signed by Belgium. For legislation, we have opted to use the *Pasinomie belge*, the unofficial but much more user-friendly spin-off of the *Moniteur*.

restrictive hours of the archive (9h – 12h; 13h – 16h) this makes consulting the beautiful and rich archive somewhat frustrating. A protocol has been signed between the ministry and the State Archives to transfer documents, but it might take a while before all documents have been transferred.

2. International Administrative Law

2.1. Introduction

2.1.1. The rise and fall of international administrative law

By the mid-19th century, global interactions had grown to such an extent that they could only be supported by new technologies like telegraphs, trains and steamships.[10] Interactions between nations multiplied and intensified, which in turn called for technology to sustain and improve this unprecedented rise. It was the beginning of what Hobsbawm called 'the age of capital', where the world became more and more unified through globalizing capitalism.[11] International trade boomed: total value of imports and exports quintupled between 1850 and 1900.[12] It was the age of the can-do railway tycoons, challenging destiny (and each other) to construct the largest international railway network ever seen; the age of daring infrastructure works, such as the construction of the monumental Suez canal; the age of the industrialist-explorer, exporting his wares to the four corners of the world and importing luxurious exotics at the same time, all while applying the Rothschild mantra: 'buy cheap, sell dear'. Technology, so it seemed, had subjugated and annihilated time and space.[13]

This 'communication revolution'[14] made the world a smaller place. The tightening of the international economy drew countries into direct relations with one another.[15] Certain social and economic interests no longer operated primarily on the national level, but transcended national boundaries. As goods and capital flowed from one country to another with an ever-increasing intensity, national authorities realised that regulation of these interests confined to state territory just did not cut it anymore. Effective regulation would require international efforts in order to unleash their full potential. The practice of states and their national authorities in

[10] P. N. STEARNS, *Globalization in world history*, New York/London, Routledge 2009, 93.
[11] E. HOBSBAWM, *The age of capital (1848 – 1875)*, London, Abacus 1995, 64 – 87.
[12] P. N. STEARNS, *Globalization in world history*, New York/London, Routledge 2009, 98.
[13] W. SCHIVELBUSCH, *The railway journey: the industrialization of time and space in the nineteenth century*, Oakland, University of California Press 2014.
[14] R. ALBION, 'The communication revolution', *The American Historical Review* 1932, 718 – 720.
[15] E. HOBSBAWM, *The age of capital (1848 – 1875)*, London, Abacus 1995, 78.

regulating and facilitating these transnational social and economic interests would later be called international administrative law.

International administrative law appeared for the first time around 1860. The pioneering author on the matter was Lorenz von Stein (1815 – 1890), the German public administration scholar. In his *Die Verwaltungslehre*, he argued that international law, traditionally 'negative' as typified by its focus on war and peace, had transformed into a positive kind of law in the nineteenth century.[16] International administrative law (and the related notion of international administration) quickly found a high degree of acceptance among international lawyers, many of them considering it the latest step in pragmatic cooperation that promoted international peace.[17] The First World War shook the faith of many authors, but jurisprudence on the subject quickly bounced back to an all-time high. The Second World War, however, proved fatal. The discipline largely disappeared, although some authors kept the discipline from extinguishing completely.[18] It has recently resurfaced as global administrative law, most notably in the field of European Union law.[19]

2.1.2. International administrative law in this dissertation and the danger of *hineininterpretierung*

There is no such thing as 'the' international administrative law: the diversity among authors was so big that they couldn't even seem to agree on elements that were (and still are) considered key in every legal field, such as legal sources. The result was an astonishing diversity in interpretations of what the domain, role and actors of international administrative law were. Generally, there were two major 'schools' of thought. On the one hand, there were the authors

[16] L. VON STEIN, *Die Verwaltungslehre*. *Erster Teil : Das Bevölkerungswesen und sein Verwaltungsrecht*, Stuttgart, Cotta 1866, 95.
[17] M. VEC, 'From the Congress of Vienna to the Paris Peace Treaties of 1919' in B. FASSBENDER, A. PETERS (eds.) *The Oxford Handbook of the History of International Law*, Oxford, Oxford University Press 2012, p. 676.
[18] B. KINGSBURY, M. DONALDSON, 'International administrative law' *Max Planck Encyclopaedia of International Law* 2011.
[19] Id.

that considered international administrative law part of international law. On the other hand, there were authors that considered international administrative law to be a part of national administrative law. For this dissertation, we will limit our research to authors of the first school because of practical reasons: we have been unable to access most of the literature of this second school. Arguably the most important author in this interpretation was the German scholar Karl Neumeyer.[20] We could not access his famous books *Internationales Verwaltungsrecht* (four volumes, 1910 – 1936) because of the restrictions imposed on libraries during the COVID 19-outbreak. Other important sources were in Italian[21], a language we are not proficient in.

But even within the first school there are significant differences. That is why we have opted to 'distil' three core elements of the field that enjoyed universal or near-universal recognition in literature. This way, we can check whether the Belgian practice in construction and policing of international railways shows parallels with the views, concepts or beliefs that were at the core of international administrative law.

Finally, the reader must beware of historical anachronism.[22] The Belgian international railways predate even the earliest appearances of the notion of international administrative law by several decades. At the time of construction of these railways there simply was no such thing as international administrative law in legal doctrine. This fact does not invalidate our research. When von Stein drew attention to the new field of law, he 'labelled' an existing practice. While it is undoubtedly so that the actors involved in the Belgian international railways had no knowledge of the discipline, their *modus operandi* could very well be an example of the practice von Stein was talking about. One must be cautious, however, in 'projecting' younger scholarly theories on situations of the past. Normative assumptions associated with those theories can

[20] J. KUNZ, 'Experience and techniques in international administration' *Iowa Law Review* 1945, 40.
[21] For example: P. FEDOZZI, *Il dirrito amministrativo internazionale nozioni sistematiche*, Perugia, Unione cooperativa tipografica 1901.
[22] M. BOONE, *Historici en hun métier*, Gent, Academia Press 2015, 189.

creep into these exercises and severely distort the way we see the past. It is, for this reason, of paramount importance to be aware of the fact that, in the studied time period, international administrative law did not exist in legal doctrine.

2.2.Core elements of international administrative law

2.2.1. Solidarism: international administrative law for transboundary interests

Traditionally the nineteenth century was seen as dominated by the positivist school of thought. This traditional view has been questioned and refuted, most famously in Koskenniemi's seminal work *The gentle civilizer of nations*.[23] Koskenniemi showed that there were profound differences in the sociological or philosophical underpinnings of international legal doctrine in the 19th century and that there were, indeed, significant dissident currents in international legal doctrine. One of those currents, labelled 'solidarism' by Neff, was primarily championed by writers like von Mohl and Bluntschli.[24] The core of solidarism was interdependence.[25] In a rapidly changing world, countries were increasingly dependent on each other. The focus of positivism on state sovereignty was, according to solidarists, misguided: general welfare for all of humanity could only be achieved by acting for the good of the international community.[26] Their subjects would thrive only if the international community cooperated to the fullest extent possible.

Solidarism found its most extreme supporters in the French Saint-Simonians, a religious cult. The Saint-Simonian philosophy was theocratic, illiberal and deeply authoritarian[27], centred around the need of total organization of the state, society and the economy.[28] They were branded

[23] M. KOSKENNIEMI, *The gentle civilizer of nations: the rise and fall of international law (1870 – 1960)*, Cambridge University Press 2002, xiv + 569 p.
[24] J. VON BERNSTORFF, *The public international law theory of Hans Kelsen: believing in universal law*, Cambridge, CUP 2010, 137.
[25] S. NEFF, *Justice among nations: a history of international law*, Harvard University Press 2014, 285.
[26] Ibid.
[27] G. IGGERS, *The cult of authority. The political philosophy of the Saint-Simonians*, The Hague, Martinus Nijhoff 1970, 68 – 105.
[28] Id., 2.

socialists by their contemporaries, but they did not advocate radical egalitarianism: they considered inequality to be natural and resisted calls for equality of outcome, instead arguing that distribution of the means of production should be based on ability[29]: a technocratic hierarchy of the capable. Saint-Simonians had clear solidarist roots: they were one of the first groups of social reformers to emphasize transnational contacts.[30] They stressed the role of communication technologies such as the telegraph and railways, as they would bring countries together in an ever closer union.[31]

The Saint-Simonian utopia did not come into existence, but its philosophy managed to ingrain the solidarist agenda into the transport and communication sector. The emphasis on communication between nations meant that the Saint-Simonian faith had remarkable influence on key figures in railway development projects: France's railway boom during the Second Empire was distinctly Saint-Simonian, as many of its principal sponsors were Saint-Simonians.[32] This way, the solidarist line of reasoning seeped into the worldview of people in charge of international communication projects such as railways, telegraphs and the likes.

International administrative law found its roots in these international communication projects.[33] Consequently, solidarism found its way into international law. It was von Stein (a self-proclaimed Saint-Simonian) who first explicitly signalled this trend. He stated that in modern times individual states could no longer guarantee that their citizens and corporations flourished by acting individually within their own territory.[34] International administrative law, arising as

[29] Id., 151 – 152.
[30] P. PILBEAM, *Saint-Simonians in nineteenth century France. From free love to Algeria*, London, Palgrave Macmillan 2013, 82.
[31] S. NEFF, *Justice among nations: a history of international law*, Harvard University Press 2014, 288.
[32] P. PILBEAM, *Saint-Simonians in nineteenth century France. From free love to Algeria*, London, Palgrave Macmillan 2013, 77.
[33] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 2 – 3.
[34] L. VON STEIN, *Die Verwaltungslehre*. *Erster Teil : Das Bevölkerungswesen und sein Verwaltungsrecht*, Stuttgart, Cotta 1866, 95.

a reaction to this trend, had as its goal regulating and facilitating the social interests that transcended national boundaries. The new discipline was part of international law, in the sense that its rules were laid down in treaty law; its content, however, was distinctly administrative, according to von Stein.

This solidarist line of reasoning was mirrored by many authors. Kazansky argued that the domain of international administrative law was the regulation of '*des intérêts sociaux internationaux'*. Because these were transboundary interests, states had to work together to make them flourish.[35] Reinsch argued that interests that operated on a global scale could only be effectively regulated on a global scale.[36] Torres Campos argued that international administrative law was the result of not only transboundary material interests, but also of the fact that international services required international regulation.[37] Negulesco argued that states had engaged in a coordination of their administrative activities to protect the material interests of their citizens in light of the social and economic developments of the 19th century, thereby creating instances of international administration.[38] Dendias argued that, in its march towards progress, human society had evolved to transcend national boundaries.[39] Finally, Catellani considered the stellar rise of international administrative law proof that '*le sentiment de la solidarité*' had been the defining characteristic of the 19th century, and that it would continue playing an important role in the 20th century.[40]

[35] Id, (353) 357 – 358.
[36] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 2.
[37] J .GASCON Y MARIN, 'Les transformations du droit administratif international' *Recueil des Cours de l'Académie de Droit International de La Haye* 1930 , (5) 11.
[38] P. NEGULESCO, 'Principes du droit international administratif' *Recueil des Cours de l'Académie de Droit International de La Haye* 1935, (583) 588.
[39] M. DENDIAS, 'Les principaux services internationaux administratifs' *Recueil des Cours* 1938, (243) 247.
[40] E. CATELLANI, 'Le droit international au commencement du XXe siècle' *Revue Générale de Droit International Public* 1900, (385) 396.

There was a considerable amount of confusion, however, what 'social interests' actually were. Kazansky, for example, divided social interests in five categories: 1) communication (including telegraph, railway, maritime, etc); 2) religion, science and art; 3) international public health; 4) international commerce; and 5) international policing.[41] Reinsch saw communication, public health and international policing as examples; even international labour (more accurately, the supply of it) and agriculture were to be considered international social or economic interests.[42] Negulesco argued that international administrative law regulated the institutions that looked, among other things, after economic and literary interests.[43] Catellani simply stated that international administrative law defended certain individual liberties and protected certain social interests.[44]

The precise boundaries of the field might not have been very clear, the fundamental idea behind it was surprisingly simple. In the nineteenth century, the world had become so internationalized that states could no longer nurture vital interests of their citizens alone. National industries needed traffic infrastructure to enable a steady stream of import and export. Businessmen needed telegraphs to keep in touch with their foreign partners. French legal authors ground their teeth as Belgian publishers happily pirated their works in the aftermath of the Belgian Revolution.[45] Tycoons of industry watched with dismay how their industrial inventions were stolen, copied and smuggled out of the country to be used in (not so) faraway lands. States just could not sit idly by while their industries, corporations and citizens were not able to achieve

[41] P. KAZANSKY, 'Théorie de l'administration internationale' *Revue Générale de Droit International Public* 1902, 353 – 354.
[42] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 2 – 5.
[43] P. NEGULESCO, 'Principes du droit international administratif' *Recueil des Cours de l'Académie de Droit International de La Haye* 1935, (583) 597.
[44] E. CATELLANI, 'Le droit international au commencement du XXe siècle' *Revue Générale de Droit International Public* 1900, (385) 396.
[45] See, more generally, D. HEIRBAUT, 'The Belgian legal tradition: does it exist?' in M. KRUITHOF, W. DE BONDT (eds.) *Introduction to Belgian Law*, Alphen aan den Rijn, Kluwer Law International 2017, 1 – 24.

their full potential simply because their playing field was an international one. In the words of Martens:

'*Le développement progressif du droit administratif international est la conséquence du principe supérieure qui doit régir tout droit administratif : l'utilité pratique. Dans l'application, il doit correspondre aux besoins et aux aspirations des peuples et des individus ; car le but même de l'État est de les contenter'*.[46] (own emphasis)

2.2.2. Expertise and non-political interests

It is clear that, to help their citizens and industries thrive on the international plane, states would have to start cooperating. They did not, however, want to mortgage their core political interests (such as military affairs, but also extradition, tariff policy, etc.). So cooperation started in those areas where states considered cooperation could be fruitful without infringing on core political interests: highly technical and functional fields, such as international communication.[47] This is why authors were very keen to emphasize the non-political nature of the field. International administrative law dealt with social interests, not political ones, as Kazansky so eloquently stated.[48] Negulesco argued that international administrative law '*par* [son] *nature*, [n'a] *pas de caractère politique'*.[49] Catellani summed it up nicely: '[Le droit international administrative] *traite des droits individuels qui ne sont pas d'une nature privée et des droit ou intérêts qui n'ont point une caractère politique'*.[50] This way, a traditionally passive international law became increasingly active. In highly technical fields where states could cooperate while staying away

[46] F. MARTENS, *Traité de droit international*, Paris, Librairie Maresc Ainé 1886, 13.
[47] S. NEFF, *Justice among nations: a history of international law*, Harvard University Press 2014, 288.
[48] P. KAZANSKY, 'Théorie de l'administration internationale' *Revue Générale de Droit International Public* 1902, (353) 366.
[49] P. NEGULESCO, 'Principes du droit international administratif' *Recueil des Cours de l'Académie de Droit International de La Haye* 1935, (583) 597.
[50] E. CATELLANI, 'Le droit international au commencement du XXe siècle' *Revue Générale de Droit International Public* 1900, (385) 396.

from political sensitivities, international law became a vehicle for the furthering of so-called social interests.

This, of course, had an impact on the central actors in international administrative law. Diplomats trained in the ways of diplomacy and commerce did often not have the necessary knowledge to negotiate highly technical arrangements. This meant that technical experts were often called in to devise the substantive provisions of the arrangement. According to Reinsch (writing in the context of administrative unions) technical experts often hammered out the deal, while diplomats gave '*the prestige of* [their] *office*' to the negotiations and reviewed the undertaking in light of national diplomatic interests.[51] The 1865 Convention setting up the Telegraph Union, for example, was debated and decided upon solely by representatives of the telegraph authorities of each country. The plenipotentiaries of the states, mostly career diplomats, simply opened the conference and only reconvened to sign the text of the convention.[52] In subsequent sessions, many states decided to send only representatives from the telegraph authorities, a practice that became the norm by the end of the nineteenth century. The Belgian delegation to the conference setting up the Universal Postal Union consisted of representatives of the postal administration and the telegraph administration, along with a third member, most probably a diplomat.[53] Most treaties with administrative content imposed obligations directly on national administrations, making national administrations one of the principal actors in executing these provisions.[54] In these highly technical matters, the central

[51] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 21 – 22.
[52] S. FARI, *The formative years of the Telegraph Union*, Cambridge, Cambridge Scholars Publishing 2015, 50.
[53] The delegation consisted of three representatives. The first one was Vinchent, inspector-general at the department of Public Works; the second one was Fassiaux, director-general of the Belgian department for railways, post and telegraphs. X., *Annales des Travaux Publics de Belgique*, Brussels, Imprimerie Felix Callewaert 1873, pg. 529. The third delegate was someone called Gife. As we did not have access to the Almanach Royale de Belgique of 1874, we were unable to verify the identity of this delegate. It most probably was the Belgian ambassador in Switzerland, where the convention was signed.
[54] P. KAZANSKY, 'Théorie de l'administration internationale' *Revue Générale de Droit International Public* 1902, (353) 360.

actors were no longer the diplomats, but rather representatives of national administrations. Administrations sat down with one another and signed agreements, and the diplomats signed off on them.[55]

The rise of technical experts on the international plane was not an isolated evolution. All of this came in the middle of the 'administrative revolution' of the nineteenth century.[56] Engineers, chemists, doctors and statisticians: all had joined the ranks of the government as a response to increasing government intervention in society.[57] Through the rise of administration in government, experts penetrated the government apparatus and became increasingly commonplace in its ranks. The same can be seen on the international plane. By elevating the notion of administration (and the technical experts associated with it) to the international level, an increasing participation of technical experts in the fields of international relations and international law was promoted and achieved.[58]

The introduction of technical experts in international law did not always go very smoothly. Reinsch argued that, in setting up international administrative unions, diplomats sometimes proved to be a '*retarding influence*'.[59] They had different perspectives: while the technical experts wanted to come up with a workable solution, diplomats often had the '*complete diplomatic freedom*' of the country in mind.[60] This meant that diplomats sometimes slammed the brakes when they felt that the agreement infringed on this diplomatic freedom. It showed the tension that existed between the career diplomats and the administration experts.

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[55] This is, of course, somewhat simplified. Diplomats could still exert real and considerable influence over the course of international administrative law, as they were often appointed alongside technical experts to negotiate these agreements.
[56] See, for the United Kingdom, R. MACLEOD (ed.), *Government and expertise. Specialists, administrators and professionals, 1860 – 1919*, Cambridge, Cambridge University Press 1988.
[57] Id., 11.
[58] J.-S. FRITZ, 'Internationalism and the promise of science' in D. LONG, B. SCHMIDT (eds.), *Imperialism and internationalism in the discipline of international relations*, Albany, University of New York Press 2005, 151.
[59] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 22.
[60] Ibid.

2.2.3. A focus on international regulatory institutions

A significant amount of scholars situated international regulatory institutions at the heart of international administrative law. This is, for example, visible in Reinsch' definition of international administrative law: '*that body of laws and regulations created by the action of international conferences or commissions which regulates the relations and activities of national and international agencies with respect to those material and intellectual interests which have received an authoritative universal organization'* (own emphasis).[61] Authors such as Dendias[62], Delisle Burns[63] and Sayre[64] also tied international administrative law to international institutions. What were these international regulatory institutions? The most obvious examples are the so-called universal unions such as the Universal Postal Union. International commissions, both temporary and permanent,[65] were another example although literature tended to focus on the permanent ones. International bureaus were also considered part of international administration. In the Interbellum, the League of Nations became the go-to subject for international administrative lawyers.[66]

There certainly were authors that saw a role for national actors in international administrative law. Kunz, writing during the final months of World War II, argued that international administrative law was more than just the activities of international administrative agencies, pointing to treaties with administrative obligations that were carried out by domestic organs. [67] Kazansky even argued that international administrative law was for the most part in the hands of national actors: '*il faut le dire, c'est le plus souvent* […] *aux organes de l'administration*

[61] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 5.
[62] M. DENDIAS, 'Les principaux services internationaux administratifs' *Recueil des Cours* 1938, 243 – 366.
[63] C. DELISLE BURNS, 'International administration' *British Yearbook of International Law* 1926, 54 – 72.
[64] F. SAYRE, *Experiments in international administration*, New York/London, Harper and Brothers Publishers 1919, xi + 201 p.
[65] L. OPPENHEIM, *International law: a treatise*, New York/Bombay, Longman, Greens and Co. 1905, 492 – 493.
[66] For example : M. DENDIAS, 'Les principaux services internationaux administratifs' *Recueil des Cours* 1938, 321 – 355.
[67] J. KUNZ, 'Experience and techniques in international administration' *Iowa Law Review* 1945, 40.

étatiste que l'administration internationale se trouve confiée'.[68] Gascon Y Marin mused that '*n'étaient pas des organes nationaux ceux qui, avant 1919, se chargeaient de l'éxecution administrative de l'aspect international d'une service'*.[69] However, many of these authors failed to properly flesh out their views. Kunz, for example, after admitting that international administrative law was more than international administrative agencies alone, still somehow managed to write an entire article about these agencies alone. Many authors dedicated relatively little space to describing the role of national administration while writing entire chapters about the role of international administrative unions and the likes. This way, international regulatory institutions became the focal point of literature: international administrative law became almost synonymous with international regulatory institutions.[70]

2.2.4. Conclusion

We have seen three core elements of international administrative law. The first is solidarism. International administrative law was clearly based on solidarist undercurrents: authors frequently stressed the interdependence of countries instead of the notion of sovereignty. The second core element is technical, non-political objects and the introduction of technical experts in international law. International administrative law was considered one of the first 'positive' expressions of international law, where states used international law to actively cooperate. Cooperation could only succeed in those areas where political interests did not impede it: thus, international administrative law arose in very technical and functional fields of cooperation. This meant that technical experts of the national administrations were involved in both the negotiation and execution of the agreements. Lastly, doctrine on international administrative law was dominated by a focus on international regulatory institutions such as administrative

[68] P. KAZANSKY, 'Théorie de l'administration internationale' *Revue Générale de Droit International Public* 1902, (353) 360.
[69] J .GASCON Y MARIN, 'Les transformations du droit administratif international' *Recueil des Cours de l'Académie de Droit International de La Haye* 1930 , (5) 42.
[70] B. KINGSBURY, N. KRISCH, R. B. STEWART, 'The emergence of global administrative law' *Law and Contemporary Problems* 2005, (15) 19 – 20.

unions and international commissions: international administrative law outside these institutions was acknowledged by certain authors, but the focus remained on administrative unions and commissions.

3. All aboard! The Railway Revolution in Belgium

3.1. Antwerp and Liège paralysed: the Belgo-Dutch conflict

One of the catalysts of the Belgian railway project was the Belgian Revolution of 1830. Turmoil on the streets in Brussels at the end of August 1830 morphed into a full blown revolution against the Dutch king, Willem I.[71] Willem appealed to Prussia, Russia, Austria-Hungary and the United Kingdom to help him quash the Belgian rebellion in October 1830, but Great Power politics prevented him from regaining control. The Great Powers, along with the Netherlands and representatives of the Belgian provisional government, convened on the 4th of November 1830 to determine the fate of the breakaway state. The Conference (eventually) resulted in the Treaty of XXIV Articles, formalizing the separation of Belgium and the Netherlands. Although the Treaty was generally seen as favourable towards the Dutch, Willem refused to ratify it: it would take military intervention and a blockade of Dutch ports in 1833 by French and British forces to force the Dutch out of Antwerp.

Although the possibility of a military intervention was now unlikely, the situation remained precarious. The Francophile behaviour of Leopold and his government had angered the Great Powers, who feared French expansionism.[72] This left the Belgian government with precious little diplomatic credit. To make matters worse the revolution had halted much of the economic activity. The Dutch blockade of the Scheldt prevented trade between Antwerp and Prussia until late 1831. The port of Antwerp was the economic powerhouse of Belgium: without it, the Belgian economy was crippled. The (prolonged) bad diplomatic relations between Belgium and the Netherlands made it impossible to assess whether a connection between Antwerp and the Rhine was feasible or even possible.[73] Another problem was Liège's focus on export to the Netherlands and Germany: both were severely compromised by the Dutch economic blockade

[71] R. COOLSAET, *België en zijn buitenlands beleid*, Leuven, Uitgeverij van Haelewyck 2014, 21 – 22.
[72] Id, 51.
[73] B. VAN DER HERTEN, 'Nieuwe interpretaties over de besluitvorming rond de eerste spoorlijn in België, 1830 – 1834' *Revue belge de philologie et d'histoire* 1995, (379) 380.

of the inland waterways.[74] Economic *malaise* would play into Willem's arguments that the new country was failing and that it should be returned to its rightful owner. The Belgian government knew that economic revival would be essential if it wanted to retain its independence.

Railroads were seen as crucial in this regard.[75] The aim of constructing a Belgian railroad network was twofold[76]: it would facilitate national economic development and bolster Belgium's standing in the international community, showing the world (and Willem) that the young nation could very well hold its own. With regards to the first goal, it was clearly visible that the railway network was tailored to the needs of national industries. The first proposal for an international railroad or canal, submitted via petition to the Provisional Government of Belgium, was formulated by the *Comité d'Industrie et d'Agriculture* of Liège, a collective of industrialists and agriculture magnates.[77] Before voting the First Railway Act, minister of Public Works Rogier consulted all Belgian Chambers of Commerce and the city councils of all major Belgian cities to ask for comments on the plan engineers Simons and De Ridder had drafted.[78]

3.2.The international orientation of the Belgian railroad project

In 1831, engineers Pierre Simons and Gustave De Ridder were appointed to develop the railway network.[79] The process of this development has been discussed in great detail elsewhere and will not be discussed at length here.[80] Of interest to our research was the international

[74] Ibid.
[75] It must be noted that, in the months following the Belgian Revolution, the Belgian government had an alternative plan, namely the digging of a canal. This plan was abolished in July 1831 in favour of a railroad. B. VAN DER HERTEN, 'De pioniersjaren van de Belgische Spoorwegen' in B. VAN DER HERTEN, M. VAN HEERTEN and G. VERBEURGT (eds.) *Sporen in België. 175 jaar Belgische Spoorwegen. 75 jaar N.M.B.S..*, 51 – 52.
[76] G. DE BLOCK, 'Designing the Nation: the Belgian Railway Project, 1830 – 1837' *Technology and Culture* 2011, 703.
[77] B. VAN DER HERTEN, *De ontwikkeling van communicatie en transport in België tijdens de lange 19de eeuw*, doctoral thesis Katholieke Universiteit Leuven 200, 323.
[78] Id. 332 ff.
[79] G. DE BLOCK, 'Planning rural-urban landscapes: railways and countryside urbanisation in South-West Flanders, Belgium (1830 – 1930)' *Landscape Research* 2014, (542) 546.
[80] G. DE BLOCK, 'Designing the Nation: the Belgian Railway Project, 1830 – 1837' *Technology and Culture* 2011, 703 – 732.

orientation of the railroad network. A critical goal of the project was to connect the port of Antwerp to the Rhine through infrastructure that was built exclusively on Belgian territory. This would circumvent the Dutch blockade of inland waterways and would provide a reliable means of transport between Belgium and Prussia. This goal reflected in the initial bill proposed by the government, as the bill included only one transboundary railroad, namely from Verviers to Cologne. The *section centrale* of the Belgian Chamber of Representatives, however, had different plans. Different sections had proposed including a line to the French border, as to enable national industry to access the French market, and the *section centrale* amended the proposal to include it. The parliamentary proceedings eventually resulted in the law of 1st of May 1834 (hereinafter: the First Railway Act).[81]

Economic considerations were not the only reasons why the international connection was emphasized during the development of the initial Belgian railroad network. The role of king Leopold in the matter is well documented: he lobbied both at home and abroad to secure the international connection of the Belgian network.[82] Prussia wanted a direct connection to the Atlantic ocean without being dependent on the Dutch. It is no surprise, then, that Prussia was very enthusiastic about the railway between Antwerp and the Rhine. Great Power politics was never far away, too. In 1840, three years before the first train steamed from Verviers to the Prussian border, the French ambassador in Brussels complained to the French minister of Foreign Affairs about the fact that plans for the construction of the railway to the Prussian border made remarkable progress, while the plans for a railway to Paris seemed to have hit a roadblock. The ambassador revealed the 'true' advantage of a railway between Brussels and Paris:

[81] First Railway Act, *Bulletin Officiel* 1834, 263.
[82] J. STENGERS, 'Léopold Ier et le chemin de fer d'Anvers au Rhin' in X, *Mélanges offert à G. Jacquemyns*, Brussels, Université Libre de Bruxelles 1968, 573 – 599.

« […] *je dois comme ministre de France ici* [in Brussels], *désirer ardemment, dans l'intérêt de notre influence, que ce chemin soit voté et commencé le plutôt possible. Cette grande voie de communication et l'abaissement respectif des tarifs* […] *sont les plus sûrs moyens de resserrer les liens qui doivent unir la Belgique à la France.* » [83]

[83] AMFA, Archives d'État français, 16. Letter from the French ambassador in Brussels to the French MFA, nr. 2144, April 25th 1840.

4. The first international railway lines in Belgium and their international regulatory framework

4.1. Construction

4.1.1. France

As mentioned, the building of the railroad from Mons to the French border was sanctioned by the law of 1834. A second railroad, between Ghent and Lille, got parliamentary approval with the law of 1837.[84] These were the two first railway lines constructed between Belgium and France: both were constructed more or less simultaneously and were finished in 1842.[85]

Taking the *Recueil* as principal point of departure, one could get the impression that the railroads to France appeared out of thin air: there are no mentions of construction treaties with France. This impression would be completely incorrect, however: international law was present front and center in the matter of construction. The first traces of international agreements with France regarding railways appear at the end of the 1830's. A report to the Chamber of Representatives of 1841 indicates that a provisional convention was signed in 1837 and that it was subsequently replaced in 1838.[86] Archival material, however, shows that more conventions were signed with regards to the junction of railway lines. For the railway between Mons and Valenciennes a convention was signed on the 5th of June 1840.[87] Its primary goal was to determine the precise direction and dimensions of the tracks to be constructed between station Blanc-Misseron (France) and Quiévrain (Belgium). The convention was surprisingly short and consisted of only five articles. The place where the railway would cross the border as well as the place of the *balises* were specified in article one and on a map annexed to the convention. The second article dealt with the position of the tracks with regards to the Aunelle river (which

[84] Second Railway Act, *Bulletin Officiel* 1837, 551.
[85] B. VAN DER HERTEN, *De ontwikkeling van communicatie en transport in België tijdens de lange 19de eeuw*, doctoral thesis Katholieke Universiteit Leuven 200, 343.
[86] X, *Chemin de Fer. Rapports aux chambres législatives*, Brussels, Imprimerie du Roi 1841, 11.
[87] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Convention signed between Belgium and France, nr. 9, June 5th 1840.

it crossed), the third article specified the dimensions of the tracks and the fourth article dealt with the costs and dimensions of the bridge to be built to cross the Aunelle. The fifth article subjected the convention to the approval of the governments. Correspondence between the Belgian ministers indicates that a second convention was signed laying down the details for the construction of the bridge[88], but the text of this convention could not be found in the archives. The correspondence also indicates that a convention was signed between the two countries with regards to the line between Ghent and Lille.[89] This convention was replaced by another convention on November 19th and was changed again on the 7th of January, this time supplemented by an appendix for the construction of a bridge[90]; all are missing from the archives.

A first remarkable thing is that all of these agreements were signed not by diplomats, but by engineers of the French and Belgian departments of Public Works.[91] For Belgium, the conventions were signed by engineer Noël[92] (later replaced by chief engineer Desart[93]) for the line Ghent – Lille and chief engineer Groetaers[94] for the line Mons – Valenciennes; all of them were engineers in service of Public Works. Instead of following the (time-consuming)

[88] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA. Nr. 40, September 7th 1841.
[89] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA. No number, June 3 1840.
[90] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA.Number 25, February 28th 1841.
[91] We will use 'department of Public Works' as a bucket term for the ministries competent for railway construction and exploitation in all countries. In some cases, railway construction and exploitation was part of the ministry of the Interior, as was the case in for example the Netherlands. In Belgium, the ministry in charge of railways was Public Works. The official name of the department in charge of construction and exploitation of railways (which was changed regularly) in 1840 was '*Ponts et chaussées – Chemins de fer – Canaux – Mines'.* We will use department of Public Works to avoid confusion, but the reader ought to remember that this department did more than only oversee construction and exploitation of railways, and that in some countries there was no separate department of Public Works.
[92] Noël was, in 1840, an inspector (second degree) of the General Service for the Belgian railway department. X, *Almanach Royale Belge*, Brussels, Librairie Polytechnique 1840, 456.
[93] Desart was the engineer in charge of the construction of the railway Ghent – Lille, more specifically the section between Tournai and Lille. See X, *Almanach Royale Belge*, Brussels, Librairie Polytechnique 1841, 499.
[94] Groetaers was the chief engineer in charge of the construction of the railway Mons – Valenciennes, more specifically from Tubise to the French border. See X, *Almanach Royale Belge*, Brussels, Librairie Polytechnique 1841, 499.

diplomatic channel, Belgian and French engineers signed these conventions and sent them to their respective ministers of Public Works for approval. The Belgian minister of Foreign Affairs only got a copy of the convention when the instruments of approval had to be exchanged between governments.

There can be little doubt about the question whether these conventions could be considered treaties under international law. The header of the convention signed on the 5th of June states '*Royaumes de France & de Belgique*', indicating that the agreement was, indeed, a treaty between the two countries. All the conventions were signed under the condition that governmental approval was needed before they could be executed. The report to parliament of 1842 stressed that French and Belgian engineers were authorized by their respective governments to come to an agreement on how to link the railways of both countries.[95] Finally, the Belgian government clearly considered them to be treaties, as is evidenced by the letter of the Belgian minister of Public Works Rogier of September 4th 1840. Addressing the question what form the convention signed on the 20th of May had to take, Rogier pragmatically argued the following:

> *"Je pense, monsieur le Ministre, que pour qu'elle n'ait pas a été soumise à la sanction des chambres, il* [ineligible] *de ne pas lui donner la forme diplomatique* […]"[96]

It seems like Rogier wanted to avoid that the convention signed between Belgian and French engineers would be qualified as a treaty in the sense of (then) article 68 of the Belgian Constitution, requiring that treaties that could potentially put a monetary burden on the state got the assent of both houses of parliament. Instead, he argued that the ministers of Public Works should simply exchange their instruments of approval and keep a copy of the convention

[95] X, *Chemin de Fer. Rapports présenté aux chambres législatives*, Brussels, Imprimerie du Roi 1842, XXXIV.
[96] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA. Nr. 13, September 4th 1840.

for their own records: this way, they could work around the obligation to get assent of both chambers before they could execute the provisions of the treaty. The legality of this practice is shaky at best[97], but the fact remains that this procedure was followed for all conventions signed between French and Belgian engineers.[98]

4.1.2. Prussia

The building of the railway to the Prussian border was sanctioned by the First Railway Act. Archival material suggests that, weeks before the final vote on the First Railway Act, there were no formal assurances that Prussia would actually allow the project on its territory. On the 24th of January 1834, the Belgian minister of Foreign Affairs *ad interim* relayed a question of the minister of Internal Affairs to the Belgian ambassador in Berlin.[99] The minister asked the ambassador to find out whether the Prussian cabinet had officially taken the decision to allow construction of the railway and, if yes, how it would be constructed (concession or state-owned). He pressed the ambassador to relay this info as soon as possible: '*il serait fâcheux que le Gouvernment fut pris au dépourvu le jour où la discussion sera ouverte devant la Chambre'.* The same sentiment played on the other side of the border: even after the First Railway Act was voted the Cologne committee[100] signaled that construction works would not be carried out before the Belgian government had given formal assurances, *'par un traité*[101] *ou par une*

[97] The convention signed on the 5th of June 1840, for example, stipulated that a bridge had to be built '*aux frais communs des deux royaumes'*. It is hard to argue that this provision would not burden the Belgian state. The same applies for the convention signed on the 7th of January, which had a similar provision. AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter of the MFA to the French ambassador in Belgium, nr. 26, March 1st 1841.

[98] See, for example: AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter of the French MPW to the Belgian ambassador in Paris, no number, July 15th 1840; AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter of the MFA to the MPW, nr. 16, November 22 1840.

[99] AMFA, Dossier B 2143, Chemin de Fer Rhénan, Letter of MFA to ambassador in Berlin, 24th January 1834.

[100] From the 1830's onwards, several cities established committees to solve the questions that surrounded the building of a railway in Prussia. The Cologne committee was one of them. Other cities included Düsseldorf and Aix-la-Chapelle.

[101] While in this letter *traité* can be correctly translated to 'treaty', this is not always the case. A *traité* was also an agreement between a private individual and the state or administration of a state (see X, *Dictionaire de la Langue Française,* Paris, Librairie Hachette et Co. 1874, 2305.). Specifically in the context of railway construction and exploitation (where governments often had shares in the constructing and exploiting companies) usage of this terminology can be very confusing. In this letter, it can correctly be translated as treaty, as the writer states that, in his opinion, '*le gouvernement puisse garantir à perpétuité, soit au gouvernement*

concession'.[102] In the following years, not one published treaty was signed between both governments on the subject of railways. What's even more remarkable is that, in the archives of Foreign Affairs, there is no correspondence on informal or unpublished conventions or agreements signed between Belgium and Prussia regarding railways. Correspondence focused on a range of things, going from information transfer[103] over a falling out between the city of Cologne and the constructing company about the exact location of one of the stations[104] to the bill introduced in the Second Chamber by the Dutch government to build a railway from Maestricht to Aix-la-Chapelle.[105] Not once is there a mention of a convention or agreement between governments about the construction of the railway line.

This can be explained by the circumstances of the case. Contrary to states like Hanover and Brunswick, Prussia did not rely on state owned railways but used a system of concessions, where private capital could own and exploit individual railways.[106] The building of the railway line on Prussian territory (from Aix-la-Chapelle to the Belgian border) was given in concession to the Rhenish Railway Company (*Rheinische Eisenbahn-Gesellschaft; Société rhénane des chemins de fer*) in 1837. The Prussian king and government seemed to actively avoid meddling in affairs regarding railways: the Belgian ambassador noted that the Crown was reluctant to

prusse, soit au Comité de Cologne, les avantages qui sont réclamés par ce Comité (…)'. Guarantee to the Prussian Government would then be through a treaty; to the Committee itself through a concession.

[102] AMFA, Dossier B 2143, Chemin de Fer Rhénan, letter of the Chamber of Commerce of Antwerp to MFA, no number, 14th of August 1834.

[103] On the 4th of January 1841, the director of the Rhenish railway administration asked the Belgian ambassador in Berlin to send him all published books and reports on the Belgian railways. What followed was an eye-watering amount of correspondence between the MFA, MPW and the legation sending and receiving books, reports, maps, tender specifications etc. on the subject of Belgian and Prussian/Hessian railways.

[104] AMFA, Dossier B 2143, Chemin de Fer Rhénan, letter of the minister of the Interior to MFA, no number, April 13th 1842.

[105] AMFA, Dossier B 2143, Chemin de Fer Rhénan, letter of the MFA to the minister of the Interior, no number, July 10th 1842.

[106] R. FREMDLING, 'Germany' in P. BRIEN, *Railways and the economic development of Western Europe, 1830 – 1914*, London, Palgrave Macmillan 1983, 122.

interfere in the company's affairs[107] and the Prussian government refused to provide companies government funds for the construction and exploitation of railways.[108]

This had practical implications for the construction of the railway to the Rhine region. It meant that Belgium's primary partner in the endeavour would be a company, not a state. All technical matters, such as where the tracks were to cross the border, what technical specifications were to be used etc. had to be agreed with the company, not the Prussian state. A report of 1841, compiled by the Belgian government to keep parliament up-to-date on the latest developments of railway construction and exploitation, states the following:

> *'D'autres conventions ont été conclues* […] *en 1838, entre les ingénieurs belges et les ingénieurs de la Société Rhénane* […] *pour déterminer les points de raccordement aux frontières*'.[109]

This shows that, indeed, agreements were signed between the department of Public Works and the Rhenish Railway Company. It is safe to assume that these agreements had largely the same scope as the Belgo-French arrangements, as they were mentioned in the same sentence in the report to parliament. There was one crucial difference, however. These were not treaties under international law; they were essentially contracts with a foreign company for the orderly progress of construction works.

This did not mean that the Prussian government was completely uninvolved. When the Belgian government was forced to buy shares in the Rhenish Railway Company to prevent the company

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[107] '*S. M. le Roi de Prusse en témoignant le désir de voir terminer le différence par un arrangement à l'amiable, a fait comprendre, il me semble, qu'il Lui répugnait d'intervenir dans les débats d'une société à laquelle en sanctionnant ses statuts il avait octroyé le droit de se régir elle-même par une direction nommé à la majorité des voix des actionnaires. '* AMFA, Dossier B 2143, Chemin de Fer Rhénan, letter to the Belgian minister of the Interior, no number, May 4th 1842.

[108] K. KAMPMANN, *Die Entstehung der Rheinischen Eisenbah-Gesellschaft 1830 – 1844*, Essen-Ruhr, G. D. Baedeker Verlagshandlung 1910, 207.

[109] The report mentions the agreements signed between Belgian and French state engineers in the omitted parts of the quote, so it is safe to assume that these agreements had largely the same scope as the Belgo-French conventions. X, *Rapport présenté aux chambres législatives*, Brussels, Imprimerie du Roi 1841, 11.

from going under, it only did so after ensuring that the Prussian government would not be offended by the move.[110] These were political rather than legal overtures, however: there were no treaties or other documents between both governments that regulated the railway from Verviers to Aix-la-Chapelle.

4.1.3. The Netherlands

On the 18th of September 1850, the Belgian ambassador in the Hague sent Belgian minister of Foreign Affairs Hoffschmidt the message that William III, king of the Netherlands, had indicated that it would be in the best interest of both countries to connect Antwerp and Rotterdam through a railway line.[111] The Dutch ambassador in Belgium relayed the official request for the construction of a railway not too long after.[112] On March 8th 1851, the Dutch ambassador suggested that both countries should appoint experts as to discuss where the railway would be constructed, whether branch lines were necessary and all other questions relevant to the construction of the railway.[113] Both sides appointed functionaries of their respective departments of Public Works[114] and an engineer to be part of the joint commission.[115] The precise starting date of the sessions of the commission is unknown, but correspondence

[110] This can be seen in the bill the government introduced when buying the shares in the Rhenish Railway Company. Report of the *Section centrale* about the bill regarding the agreement to buy 4.000 shares in the Rhenish Railway Company, *Parliamentary Proceedings* 1839 – 1840, nr. 115.
[111] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Belgian legation in The Hague to the MFA, nr. 4, September 18th 1850.
[112] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Dutch ambassador in Brussels to the MFA, no number, no date.
[113] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Dutch ambassador in Brussels to the MFA, nr. 6, March 8th 1851.
[114] On the Dutch side, Public Works was a competence of the minister of the Interior. For the remainder of the text, we will refer to (the department of) Public Works for both the Belgian and Dutch side; the reader is advised that Public Works was not a separate ministry in the Netherlands.
[115] For the Netherlands: AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Dutch ambassador in Brussels to the MFA, no number, April 24th 1851; for Belgium: AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 14, May 6th 1851.

indicates that the commission worked from at least the beginning of October 1851[116] to January 1852.[117]

Up until that point, the negotiations between Belgium and the Netherlands were largely similar to those that had been conducted between Belgium and France a decade earlier: engineers of the railway departments[118] of their respective countries negotiating the direction of the railway, with that difference that there was a private company involved. How did the Belgo-Dutch agreement end up a full-fledged treaty, ratified by the heads of state and published in the *Moniteur*, while the French conventions were not? Perhaps both governments argued that, in light of the troubled past of both countries, the establishment of a railway line merited a somewhat more formal framework, symbolizing the intention of both parties to once and for all leave old conflicts in the past and to look ahead for a more peaceful, prosperous and friendly cooperation among both nations. Reading the parliamentary proceedings of the bill granting the government the right to concede the railway to industrialist and railway tycoon Louis Gihoul, one certainly gets this impression. With appropriate sense of drama, the *section centrale* stated the following:

> ' [..] *il* [the railway] *peut même être considéré comme dissipant les derniers nuages que les événements de 1830 avaient fait planer entre les deux nations. Aujourd'hui qu'elles mettent ensemble la main à un railway, symbole de paix et d'amitié dans les temps*

[116] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 24, October 6th 1851.
[117] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 26, February 1852.
[118] In Belgium, the ministry in charge of railways was Public Works. The official name of the department (which was changed regularly) in 1840 was '*Ponts et chaussées – Chemins de fer – Canaux – Mines'.* We will use 'railway department' to avoid confusion, but the reader ought to remember that this department did more than only oversee construction and exploitation of railways.

modernes, et qu'elles vont s'unir par des liens de fer, leur accord paraitra indissoluble.'[119]

Archival material, however, sketches a much more sobering view of the matter. Negotiations in the commission were difficult, as the delegations were unable to settle on the track the railway would follow.[120] Gihoul, supported by Belgium, had stated in no uncertain terms that he would not build the railroad if the Dutch delegation got its way.[121] Negotiations broke down as it was unclear whether the Dutch delegation would stick to its initial demand, despite several attempts by the Belgian ambassador in The Hague to find out more.[122] The Belgian ambassador soon found out why: the affaire seemed to have provoked a power struggle within the Dutch government, between the Dutch minister of the Interior and the minister of Foreign Affairs.[123] The minister of the Interior Johan Thorbecke, wanting to be in charge of the discussion, had sought to blindside the minister of Foreign Affairs Van Sonsbeeck by kickstarting negotiations with the same delegation as before, all functionaries of the Dutch department of Public Works. As a response, Van Sonsbeeck had argued that the negotiations should have a more formal character than they had had up until that point, under the guise that the negotiations should result in an international treaty. As a consequence, he had appointed the Dutch ambassador to Belgium as a co-negotiator; this way, the ministry of Foreign Affairs would not be out of the loop and could assert real influence over the course of the negotiations.

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[119] Report of the *Section Centrale* about the concession for a railway from Antwerp to the Dutch border, *Parliamentary Documents* 1852 – 1853, nr. 18.

[120] The Belgian delegation and Louis Gihoul wanted the fastest and shortest route, namely Antwerp – Roosendaal – Rotterdam. The Dutch delegation wanted Breda, instead of Roosendaal, to be connected to the network.

[121] The words used leave little to the imagination: '*Mais le sieur Gihoul, qui est notoirement le principal demandeur en concession, ayant été appelé dans le sein de la commission, a déclaré, de la manière la plus formelle, que ni lui, ni ses cointéressées se consentiraient à ce que le tracé fût modifié dans le sens indiqué par les commissaires néerlandais.'* AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 26, February 1852.

[122] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Belgian ambassador in The Hague to the MFA, nr. 28, April 9th 1852.

[123] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Belgian ambassador in The Hague to the MFA, nr. 29, April 13th 1852.

The internal dispute between Thorbecke and Van Sonsbeeck forced the treaty on a more formal path. A request to officially re-open negotiations reached the Belgian ministry of Foreign affairs on the 8th of April 1852.[124] Full powers were exchanged between both countries.[125] The Belgian delegation consisted of representatives from the railway department. The treaty was signed on the 9th of July 1852; annexed to it were the specific tender specifications for the concessions both countries would give to Gihoul. The treaty was ratified by both heads of state[126] and was inserted into the *Moniteur* the 4th of August 1852.[127]

The treaty contained provision regulating a variety of matters. In article 1, the countries committed themselves to champion the construction of the railway on their respective territories; they did not commit themselves to building it. This was, as the delegation reported back to the minister, a technique to avoid parliamentary approval being necessary.[128] Article 2 stated that another commission (hereinafter: the Article 2 Commission) was to be set up to determine the exact place the railway would cross the border; this commission would consist of commissioners appointed '*par les administrations des deux pays*'. Article 6 indicated that the exploitation regulations surrounding the railway would be decided in concert by both governments with the aim of achieving *'la plus grande conformité*'. Article 7 stated that customs formalities would be decided upon by both countries, and that customs regulations on these railways could not be more stringent than the ones Belgium and the Netherlands had

[124] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 32, April 16th 1852.
[125] A copy of the Dutch full powers has been preserved as an annex to a letter. AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Dutch ambassador in Brussels to the MFA, no number, May 13th 1852; the Belgian full powers: AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Draft of the full powers of the Belgian delegation, no number, no date.
[126] For Belgium: AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Draft of the ratification instrument to be signed by the King, nr. 45, no date.
[127] We have not been able to consult the *Moniteur* because of the COVID-19 measures. The publication date accompanied the text of the treaty in the *Recueil*, so we have relied on the latter's accuracy. D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 415 ff.
[128] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from Noël and Willmar to the MPW, nr. 58, July 9th 1852.

implemented on other railroads to neighboring countries. Article 8 dealt with the amount of daily convoys, article 9 concerned uniform fees for the usage of the railway and article 10 introduced an equal treatment obligation. Finally, article 11 imposed the obligation on both countries to facilitate and promote postal communications between both countries on the railway.

The Article 2 Commission, tasked with deciding where the railway line would cross the border, convened in June 1853.[129] The commissioners, again engineers in service of the departments of Public Works of their respective countries but this time without a diplomat from Foreign Affairs, signed a *procès-verbal* indicating that they had reached an agreement on the place of junction (as indicated on a map they annexed to it) and the dimensions of the track.[130] This *procès-verbal* was sent directly to the railway administrations of both countries, as prescribed by article 2 of the convention. Both governments, by way of decision of the ministers of Public Works, approved the plan and dimensions and gave Gihoul the go-ahead to start working on the construction of the railway.[131]

4.1.4. Conclusion

As we have seen, there was no uniform international regulatory framework or working method in the construction of the first international railway lines. With France, treaties were concluded, but they were never published or ratified by the heads of state. Instead, they were approved by the ministers of Public Works and a copy was kept in their own records. One could argue that the negotiations with the Netherlands would have had the same outcome, were it not for the dispute in the cabinet in The Hague. It seems like that dispute was the only trigger to turn to the

[129] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 69, July 6th 1853.
[130] AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. *Procès-verbal* as annexed to the letter of the MPW to the MFA, annex to nr. 69, June 27th 1853.
[131] For the Netherlands :AMFA, Dossier B 23 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Belgian legation in the Hague to the MFA, nr. 71, July 21st 1853; for Belgium: AMFA, Dossier B 2397 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the MPW to the MFA, nr. 73, August 6th 1853.

more ‘formal’ way of treatymaking through diplomats. Lastly, the line to Prussia seems to have escaped the sphere of international law entirely, because of the role of the Rhenish Railway Company and, more importantly, a generally disinterested Prussia.

There are two main takeaways from this. The first is that international law was definitely not absent in the construction of international railroads. The published treaty with the Netherlands, but also the sizeable amount of unpublished treaties signed with France shows this. International law was only absent in the case of Prussia, for reasons already explained above. Secondly, it is abundantly clear that the departments of Public Works took the lead in the projects. This may be unsurprising for the practical execution of the project (i.e. the building of the railroad), but it is quite remarkable that the engineers of the departments of Public Works also signed treaties with one another, without assistance and/or intervention from a diplomat. All treaties with France were signed by engineers only. Diplomats were only involved *pro forma*, when exchanging the instruments of approval. The Belgian delegation negotiating the treaty with the Netherlands consisted of representatives of the department of Public Works only: the Dutch ambassador was present only because of the internal dispute in the cabinet in The Hague. It is clear that, even in the process of negotiating treaties, the departments of Public Works played first fiddle while the departments of Foreign Affairs had a secondary role.

4.2.Policing and customs

4.2.1. France

The first traces of an international agreement on the policing of the railway lines between Belgium and France appear mid-1841. Amidst the flurry of correspondence exchanging the instruments of approval between the ministers of Public Works for the construction treaties, the Belgian minister of Public Works, Léandre Desmaisières, signalled in July 1841 that the time had come to start thinking about how the exploitation of the line should be regulated, most

importantly customs rules and general administration.[132] The minister proposed convening a *commission mixte*, a mixed commission, consisting of French and Belgian representatives. The Belgian minister of Foreign Affairs, Camille de Briey, diligently relayed the proposal to the Belgian ambassador in Paris.[133]

The French government was, however, in no hurry to appoint its commissioners. In a sizeable amount of correspondence spanning just under a year, an increasingly blunt Desmaisières kept reminding his colleague at Foreign Affairs that he had not yet been informed of the identities of the French functionaries.[134] De Briey had diligently relayed the question to the Belgian ambassador in Paris, but French authorities would not give official confirmation of the delegation. The visibly frustrated minister of Public Works pressed de Briey time and time again to persuade the French government to formally appoint its commissioners. Archival material suggests that, at some point, Desmaisières had grown tired of French tardiness and had, unbeknownst to the Belgian minister of Foreign Affairs, contacted the French minister of Public Works directly.[135] The French minister of Foreign Affairs rebuked this action quickly and rather forcefully, but the tactic seemed to have worked: in the same letter, the French ambassador officially confirmed the identities of the French delegates.[136] De Briey later scolded

[132] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA, nr. 31, July 30th 1841.

[133] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MFA to the Belgian ambassador in Paris, nr. 32, August 3 1841.

[134] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 40, September 7th 1841; AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 42, October 4th 1841; AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 44, November 21st 1841; AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 46, December 27th 1841; AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 48, February 17th 1842.

[135] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 61, July 19th 1842.

[136] The letter of the French ambassador in Brussels leaves little to the imagination: after indicating that the Belgian minister of Public Works had done this, the ambassador stated that '*le gouvernement de Sa Majesté a pensé que c'était par erreur que cette communication avait été fait par Mr. Desmaisieres, et qu'elle devait avoir lieu par voie diplomatique. Mr. Guizot* [the French minister of Foreign Affairs] *aime à penser que Votre Excellence voudra bien réparer cette irrégularité'*. AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 61, July 19th 1842.

his colleague on Public Works for not following diplomatic protocol.[137] Desmaisières pushed back, claiming that he had tried to get answers through the regular channels long enough and that his letter was the only reason the French government had finally made the official appointments. Defiantly, he ended his letter with the following statement:

> '*Soyez persuadé, Monsieur le Ministre, que je serai toujours disposé à prendre la voie diplomatique dans les rapports de mon département avec les gouvernements étrangers, mais à la condition cependant qu'en me tenant strictement dans cette voie, je ne le trouve pas sans issue.*'[138]

The Belgian delegation consisted of four members: the governors of the provinces of Eastern Flanders and Hainaut; a chief engineer from the department of Public Works; and the inspector-general of the Finance department. The French delegates were the French prefect for the Northern region, the chief engineer in charge of the construction of the railways and the directors of the customs departments responsible for Dunkirk and Valenciennes.

The commission worked quickly and diligently to hammer out the agreement. It convened for the first time on the 24th of August 1842 and signed the final text the day after.[139] The text took the form of a resolution adopted by the commission. The resolution consisted of 55 articles dealing with a range of subject. It included, for example: customs rules (art. 1 – 23); provisions waiving general passport requirements for inhabitants of the border regions, introducing special passports for traveling on these railways (art. 25 – 31); introduction of *commissaires spéciaux* in all frontier stations, in charge of enforcing general policing rules (art. 32) etc. The resolution also indicated that the amount of convoys and their departure dates would be decided '*par des*

[137] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 62, July 25th 1842.
[138] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from MPW to the MFA, nr. 63, July 25th 1842.
[139] For the text of the convention, see D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 604 ff.

décisions spéciales concertées entre les deux administrations' (art. 39), but that the questions of tariffs remained firmly in the hands of the respective national authorities (art. 40). It also included more practical provisions, for example stipulating that machinists could resupply coal in all stations regardless of nationality (art. 45) and that broken down trains would be repaired by either country regardless of origin of the train; costs of coal and repairs would then be settled at the end of the trimester based on clear documentation of costs incurred by one of the governments (art. 47 – 48).

A surprising point of confusion (for contemporary readers; the actors involved payed no attention to it) in the diplomatic correspondence is the actual form of the text. The Belgian ministers of Public Works[140], Foreign Affairs[141] and Justice[142] seemed to consider the text a treaty. Ever the pragmatist, Desmaisières suggested that there was no point in ratifying the convention, as the execution of the provisions would probably lead to problems in practice.[143] His proposal was to simply execute the provisions of the convention without royal approbation of any kind, see where practical problems arose, and then reconvene the commission to finetune the convention. The French government shot down this proposal, as it would be incompatible with French railway legislation which required that rules regarding customs and general policing were laid down in a royal ordonnance.[144] This correspondence also showed that the French government had a fundamentally different view of the text approved by the commission. In its correspondence, it consistently regarded the text resolutions subject to what the French ambassador called '*homologation*' by king Louis-Philippe I. This *homologation* was done by

[140] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA, nr. 80, September 24th 1842.
[141] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MFA to the Belgian ambassador in France, nr. 81, September 29th 1842.
[142] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the minister of Justice to the MFA, nr. 95, December 7th 1842.
[143] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the MPW to the MFA, illegible number, September 24th 1842.
[144] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the French ambassador in Brussels to the MFA,, nr. 85, October 24th 1842.

the French royal ordonnance of 15 September 1842.[145] Article two of the ordonnance stated that the resolutions, as annexed to the ordonnance, were to be executed with some minor modifications. This was not a ratification. The ambassador sent an authentic version of the royal ordonnance signed by the king, but this cannot be considered a ratification, as the French government introduced modifications to the text of the resolutions in the ordonnance.[146]

So how were the resolutions (or the provisions of the convention) incorporated in national law? With regards to customs, Desmaisières seems to have walked back on his proposal to just apply the text of the convention without issuing a royal decree. The law of June 18th 1842 allowed the government to change the regulations surrounding import and transit through royal decree.[147] What followed was a flurry of royal decrees modifying the Belgian customs regulations. A first change had been made before the commission even convened, with the royal decree of August 20th 1842, which among other things exempted goods carried in or expedited through the two Belgo-French railways from customs inspection.[148] Mouscron and Courtrai were designated as customs checkpoints by the royal decree of October 8th 1842[149]; the same happened for Quiévrain with the royal decree of the third of April 1843.[150] The royal decree of the 29th of October incorporated the bulk of the customs rules, as agreed upon in the mixed commission, into national law for the railway line Ghent – Lille, with many provisions copied directly from

[145] C. M. GALISSET, *Corps du Droit Français*, Paris, Imprimerie et librairie générale de jurisprudence De Cosse et N. Delamotte 1845, 612.
[146] One cannot change the text of a convention and ratify it at the same time. For a parallel reasoning, see C. CALVO, *Dictionnaire manuel de diplomatie et de droit international et privé*, Berlin, Putkammer & Mühlbrecht 1885, 347.
[147] Law authorizing the government to modify import and transport of merchandise in transit, *Pasinomie belge* 1842, pg. 223 (nr. 400).
[148] Royal decree modifying the transit regime on railroads, *Pasinomie belge* 1842, 432 ff. (nr. 711).
[149] Royal decree instituting customs checkpoints in Mouscroun and Courtrai, *Pasinomie belge* 1842, 403 ff. (nr. 903).
[150] Royal decree instituting a customs checkpoint in Quiévrain, *Pasinomie belge* 1843, 148 ff. (nr. 168).

the convention/resolution.[151] This regime was later extended to the line Mons – Valenciennes with the royal decree of June 1st 1843.[152]

The policing provisions (e.g. the provisions introducing special passports) were not immediately introduced. Archival material shows why. At the end of 1842, the minister of Justice sent a letter to Desmaisières indicating his regret that he was not invited to take part in the mixed commission, even though policing measures were squarely within the competence of his department.[153] As a result, he continued, the convention contained several provisions that were difficult to square with Belgian law; some even violated the Constitution. He proposed convening another mixed commission to hammer out another agreement, consisting of the people who were entrusted with the execution of the convention: the administrator of the *Sûreté Publique*, the infamous predecessor of the Belgian State Security Services (*Staatsveiligheid/Sûreté de l'État*), the French Prefect of the North and a delegate from the Prussian government, accompanied by the secretary-generals of the Justice and Public Works departments. It is unclear whether the commission actually convened. A railway policing act was voted in 1843, but this act was very general in nature and cannot be considered the

[151] E.g. The right of customs officials to accompany convoys to the first station of the other country (art. 4 convention; art. 9 royal decree), the right of customs officials to order the train operator to stop the train in case of flagrant fraudulent activity (art. 5 – 6 convention; art. 41 – 42 royal decree), the prohibition on the use of hidden compartments in trains (art. 9 convention; article 46 royal decree), the special customs regime for the import/export of horses and cars (art. 18 convention; art. 22 royal decree), the rules surrounding the use of coal and costs incurred by repairs done (art. 45 convention; article 11 royal decree), the rule that customs official could cross the railway in execution of their duties (art. 7 convention; article 38 royal decree) and that they could freely enter stations and other buildings related to the railway (art. 8; article 39 royal decree), the obligation to use different compartments for goods and luggage of travellers (art. 9; article 2 royal decree), the introduction of the load sheets (art. 11 convention; art. 7 royal decree) and the presumption that merchandise and luggage in non-compliance with these loading sheets are irregular and can subsequently be seized by customs officials (art. 15 convention; art. 8 royal decree) etc. Royal decree determining the customs regime from Courtrai to Lille and from Courtrai to Tournai, *Pasinomie belge* 1842, 511 ff. (nr. 921).

[152] Royal decree extending the customs regime on the Belgo-French railroad to the Belgo-Prussian railroad, *Pasinomie belge* 1843, 305 (nr. 406).

[153] AMFA, Dossier B 2146, Chemins de Fer. Belgique – France. Letter from the minister of Justice to the MPW, no number, October 10th 1842.

implementation of the convention.[154] Thus, it seems that the policing provisions of the convention were not implemented in the Belgian legal order.

4.2.2. Prussia

Taking the *Recueil des Traités* as principal point of departure, one cannot help but notice something very odd. The first international treaty signed between both countries about customs on international railway lines appears in 1848, five years after the opening of the railway line between Verviers and Aix-la-Chapelle. The commercial and navigational treaty of 1844 between Belgium and the *Zollverein* contained provisions applicable to goods transported using the railway, but these were provisions on tariffs rather than provisions on the organisation of customs enforcement or general policing of the railway line. The treaty was not the result of the opening of the railway, but of the tariff war that had been raging between both countries in 1844.[155] Indeed, the parliamentary proceedings of the bill approving the treaty seem to suggest that the conditions regarding exploitation of the railway were not yet fully up to speed.[156]

Archival research shows that negotiations surrounding customs and general policing rules with the Prussian government started much like the ones with France. Two years after his letter stating that a mixed commission should be set up with France, Desmaisières voiced the same opinion about the connection between Belgian and Prussian railways.[157] Interestingly, the minister argued that, as the line was exploited by the Rhenish Railway Company, one of the directors should be part of the commission as to smoothen execution of the provisions decided upon by the commission on the line Verviers – Aix-la-Chapelle. Here, too, the wheels of diplomacy ground slowly: the Belgian ambassador attempted several times to convince the

[154] Law on the policing of railways, *Pasinomie belge* 1843, pg. 187 ff (nr. 198).
[155] R. COOLSAET, *België en zijn buitenlands beleid*, Leuven, Uitgeverij van Haelewyck 2014, 84.
[156] Report of the *Section Centrale* concerning the commercial and navigational treaty between Belgium and the *Zollverein*, *Parliamentary Documents* 1843 - 1844, nr. 72.
[157] AMFA, Dossier B 2143, Chemin de Fer Rhénan, Letter of the MPW to the MFA, nr. 1, September 2nd 1843.

Prussian government to designate its delegates, to no avail.[158] When the Prussian minister of Foreign Affairs finally answered, the answer was quite surprising.[159] The Prussian minister of Finance assured him that the provisional regulations put in place by the Prussian government were sufficient with regards to customs; if the Belgian government had any remarks or requests about the regulation, they could simply contact the Prussian government who would then change it. Remarkably, the Prussian minister of Foreign Affairs kindly requested that these requests should be sent directly to the head of the Prussian customs department instead of via diplomatic channels. For policing measures, however, a commission could be set up.

There are no indications that a policing commission was actually set up. With regards to the customs rules the Belgian government contacted the Prussian government several to request a change in the Prussian regulation.[160] This shows that the coordination of customs rules between Prussia and Belgium happened on what can be called a 'you ask, we provide' basis, largely outside of international law. Interestingly, the archives of Foreign Affairs also suggest that an agreement was signed between the Belgian railway department and the board of the Rhenish Railway Company with regards to '*les prix et les conditions de transport*'.[161] It regulated, among other things, the fees that would be levied for transport on the railroad. It is less clear, however, what was meant by '*les conditions des transport'*, as the text of the convention itself was not preserved. Perhaps certain administrative rules were enforced not through legislation, but through a private agreement with the exploiting company. Other conventions with the Rhenish Railway Company were more practical in nature, such as the one signed on the 6th of

[158] See, for example: AMFA, Dossier B 2143, Chemin de Fer Rhénan, Letter of the Belgian ambassador in Berlin to the MFA, no number, September 27th 1843.
[159] AMFA, Dossier B 2143, Chemin de Fer Rhénan. Letter from the Prussian MFA to the Belgian Ambassador in Berlin, nr. 145, October 5th 1843.
[160] See, for example, the report of the railway department to change certain provisions in the Prussian regulation: AMFA, Dossier B 2143, Chemin de Fer Rhénan. Letter from the Railway Department (exploitation branch) to the MPW, nr. 224, October 25th 1843.
[161] AMFA, Dossier B 2143, Chemin de Fer Rhénan. Ministerial decree approving the convention signed between the director of the Belgian Railway Department (exploitation branch) and the board of the Rhenish Railway Company.

March 1843[162], so it is unclear whether this was actually the case. In any case, the railway administration stressed that the Chambers of Commerce should be consulted on the text of the agreement before it was signed into effect.[163]

In the absence of a coordinating commission, the Belgian government issued its own regulations with regards to customs and policing on the railway to Aix-la-Chapelle. The royal decree of October 14th 1843 designated the customs checkpoints on the railway line.[164] The customs regime of the railway line Courtray – Lille was declared provisionally applicable on the same day through another royal decree.[165] This decree was, as already noted, an implementation of the Belgo-French customs convention/resolution.

4.2.3. The Netherlands (and France revisited)

Reading the *Recueil*, one immediately notices that there are no bilateral treaties between Belgium and the Netherlands to regulate customs and policing of the international railways. Instead, we see that a treaty was concluded between Belgium, the Netherlands and France with regards to customs on international railway lines on the 14th of December 1852.[166] Archival material shows that France took the initiative, eager to transport goods to and from the Netherlands once the railroad between Antwerp and Rotterdam was finished.[167] Before the commission convened, the Belgian Finance department argued that Prussia should be invited to take part in the proceedings[168], but the Belgian ambassador in Paris dismissed the idea: the

[162] The convention is published in X., *Report to the legislative chambers with regards to the Belgian railways*, Brussels, Devroye and Co. 1845, 102 - 109
[163] AMFA, Dossier B 2143, Chemin de Fer Rhénan. Letter from the railway administration (exploitation branch) to the MPW, no number, September 20th 1843.
[164] Royal decree designating the customs bureaus for the railway to the Prussian border, *Pasinomie belge* 1843, pg. 223 (nr. 729).
[165] Royal decree prescribing the customs formalities that have to be followed on the line the the Prussian border, *Pasinomie belge* 1843, pg. 498 (nr. 775).
[166] D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 447 ff.
[167] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in Paris to MFA, nr. 1, August 28th 1852.
[168] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Finance minister to the MFA, nr. 6, October 27th 1852.

French government considered inviting the Prussian government a waste of time.[169] Once again, the Antwerp Chamber of Commerce was asked for its opinion on the utility of a Belgo-French-Dutch arrangement, to which the Chamber responded with an endearing enthusiasm (while stressing the need for reciprocity).[170]

The commission convened for the first time on the 6th of December 1852. All delegations consisted of a diplomat and a representative from the Finance department; Belgium added a third representative, one delegated by the department of Public Works. The commission worked diligently and signed an agreement only 8 days after its initial session. This can be explained by the fact that the commission used the 1848 convention as a guiding document.[171] This convention had entered into force but was never duly executed by the participating states. The Belgian ambassador in Paris considered the representative of the Finance department of vital importance to the delegation, as he was the spiritual father of the 1848 convention.[172]

The regulation issued by the commission dealt with a variety of things. The first chapter of the convention (articles 1 – 9) introduced the rule that goods transported on the railway were exempt from customs checks if they complied with certain rules: containers had to be padlocked up to a standard agreed upon by all administrations involved and accompanied by a uniform shipping document, every convoy had to be under constant supervision of a customs agent of one of the countries, etc. The second chapter (articles 10 – 14) dealt with customs enforcement on passenger trains. The third chapter (articles 15 – 28) contained provisions regulating a

[169] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in France to the MFA, nr. 10, October 15th 1852.
[170] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Antwerp Chamber of Commerce to the governor of Antwerp, no number, December 9th 1852.
[171] The Belgian government delegated the same representatives for the commission of the 1852 convention as it did for the 1848 convention. This was a conscious decision by the government and shows that the 1852 convention is, in many ways, a revamped version of the 1848 convention. AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the MPW to the MFA, number unknown, date unknown; AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the MFA to the Belgian Ambassador in Paris, nr. 26, November 26th 1852.
[172] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in France to the MFA, nr. 10, October 15th 1852.

variety of things: it limited the amount of convoys would be allowed per day (art. 15), it regulated how goods brought in through international railways were to be stored and transferred (art. 17), it extended the scope of the scope of the regulation to convoys headed to and from Rotterdam and Amsterdam (art. 23) etc. The most remarkable provision of the chapter is article 27. The article allowed third countries (e.g. Prussia) to choose to apply the regulation in their dealings with the three contracting states. The commission anticipated that adjacent states would opt-in: '[…] *ils sont arrivés à signer un arrangement très important* […] *destiné à recevoir un développement européen, grâces à l'article 27*'.[173] The last chapter introduced provisional measures that would be applied until the railway between Antwerp and Hollandsch-Diep was finished (art. 29 – 30).

The regulation was approved by all governments in the weeks after the signing of the agreement.[174] On advice of the minister of Foreign Affairs[175], the regulation was published in the *Moniteur*.[176] This publication was deemed to be enough for implementation of the regulation: if problems arose after the publication, the ministers of Public Works and Finance would issue instructions to customs officials to solve them.[177] The text went into effect on the first of February 1853. Despite the high hopes of the commission, its entry into force was not followed by a '*développement européen*'. A disappointed Finance minister complained to his colleague on Foreign Affairs that Prussia had not adhered to the regulation and that the country

[173] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in France to the MFA, nr. 36, December 15th 1852.
[174] See, for example, for Belgium: AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in France to the MFA, nr. 45, December 31st 1852; for the Netherlands: AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Diplomatic note, nr. 48, January 21st 1853; for France: AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in France to th MFA, nr. 50, January 26th 1853.
[175] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the MFA to the MPW and the Finance minister, nr. 38, December 21st 1852.
[176] Once again, we have not been able to access the *Moniteur*. D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique,* Brussels, Imprimerie F. Parent 1854, 447 ff.
[177] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the MPW to the MFA, nr. 43, December 30th 1852.

was still carrying out customs checks on incoming Belgian trains in Aix-la-Chapelle, resulting in significant delays.[178] The Belgian ambassador in Berlin tried to get the Prussian government to adhere to the regulation, but it is unclear whether this attempt was successful.[179] Archival material stays silent on the matter and the *Recueil* suggests that Prussia did not join its three neighbours in the 1852 framework.

Archival material suggests that the 1852 regulation was complemented with additional rules for the railway between Antwerp and Hollandsch-diep. After reaching an agreement on the direction and the dimensions of the tracks, the Article 2 Commission convened again to decide on other matters such as customs enforcement. It was quickly decided to add delegates from the Treasury departments to the commission.[180] Unfortunately, it is unclear what happened next in the commission. Unlike the commission convened between Belgium, France and the Netherlands, the proceedings of the commission have not been preserved in the archives of Foreign Affairs.

4.2.4. Conclusion

Creating a mixed commission was clearly the favoured method to coordinate customs and policing rules. A mixed commission was used for both the railways with France and the Netherlands. In all commissions, representatives from the finance and customs departments hammered out the rules. Diplomats were uninvolved (Belgo-French arrangement) or took a back seat in the negotiation (Belgo-French-Dutch arrangement). Finally, the Prussian government refused to set up a commission to coordinate customs rules, instead asking the Belgian government to communicate any changes it deemed necessary in Prussian customs legislation directly to the Prussian customs department. The Belgian government did this

[178] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from a representative of the Finance ministry to the MFA, nr. 56, July 25th 1853.
[179] AMFA, Dossier B 2149. Chemins de fer. Conventions internationales. 1842 – 1856. Dossier nr. 2389. Letter from the Belgian ambassador in Berlin to the MFA, nr. 58, August 8th 1853.
[180] AMFA, Dossier B 2143 : Chemins de fer. Belgique – Pays Bas. 1850 – 1890. Convention de 1852. Letter from the Dutch legation in Brussels to the MFA, nr. 75, August 18th 1853.

multiple times, but took the royal decree of October 29th 1843 as the basis for its customs regime to the Prussian border, thereby indirectly transplanting the Belgo-French arrangement to the Belgo-Prussian railroad.

5. Analysis

Now we come to one of the crucial questions of this dissertation, whether the Belgian international regulatory practice with regards to its international railways can be considered a precursor of international administrative law. For this, we will discuss the three core elements we have distilled in light of the Belgian situation regarding international railways.

5.1. A solidarist base

It is clear that the construction and policing of the Belgian international railways had a solidarist base. As we have seen, the solidarist line of reasoning manifested itself most clearly in the field of international communication: because of states' interdependence, linking them to one another was of the utmost importance. The specific situation of the Belgian international railroads confirms this view. To give its national industry the oxygen it needed, Belgium would have to actively cooperate with foreign governments through international communication lines. It was willing to go to great lengths to enable its industry to prosper, as evidenced by the staggering amounts of money Belgium pumped into the railroad network. This was unsurprising: Belgium's survival in nineteenth century Europe depended on whether it could solve the problems posed by its industries' dependence on foreign markets.

More specific indications of this solidarist base are visible in the fact that the interests of national industry were given considerable weight in the process of construction and policing of the international railways. Both primary and secondary sources show that the Chambers of Commerce were extensively consulted in construction and policing manners. Especially the Antwerp Chamber of Commerce was frequently asked to voice its opinion on railway matters. But perhaps the most tell-tale sign that the Belgian international railroad project had a solidarist base was that engineers Simons and De Ridder, the spiritual fathers of the Belgian railroad network, and Charles Rogier, the minister who oversaw the conception of the plan as minister of Internal Affairs (1832 – 1834) and a part of its execution as minister of Public Works (1840

– 1841) had clear Saint-Simonian influences. In a letter to French Saint-Simonian engineer and author Michel Chevalier, Rogier admitted that he had been inspired by Saint-Simonianism.[181] He had frequented Saint-Simonian conferences in Paris before the Belgian Revolution and read famous Saint-Simonian newspaper *Le Globe*.[182] The Saint-Simonian influence on Simon and De Ridders' work is crystal clear, with some passages in their 1839 work almost verbatim copied from French Saint-Simonian works.[183]

The line to Prussia is, of course, an exception to this. Interdependence was definitely a factor in the construction and policing of the international railroads: the railroad to Aix-la-Chapelle was the economic lifeline Antwerp needed to prosper and would give the *Zollverein* direct access to the Port of Antwerp. The fact remains, however, that international law was more or less absent in the project.

5.2.Non-political subjects and the rise of technical expertise

The Belgian situation also fits the element of a non-political subject and the rise of expertise. Again, the building of an international railroad was seen as one of the quintessential examples of the non-political subject of international administrative law. It was a highly technical and functional endeavour. The treaties regarding construction of the railroads with France and the Netherlands were drafted and signed by engineers of the departments of Public Works; the only reason a Dutch diplomat was present during the negotiation of the Belgo-Dutch treaty was the internal power struggle in the cabinet in The Hague. The technical experts clearly played first fiddle in construction matters.

The same can be said with regards to the policing and customs of these railways. All provisions were functional in nature and politically sensitive subject were often avoided: the explicit of

[181] G. DE BLOCK, 'Designing the Nation: the Belgian Railway Project, 1830 – 1837' *Technology and Culture* 2011, (703) 722.
[182] Id., footnote 70.
[183] Id., 722.

tariffs from the negotiations attests to this. The goal of the commissions was to ensure fast and orderly traffic on the railroads. Key political interests remained firmly in the hands of the cooperating states. It is also clear that national administrations called the shots in the commissions. The convention with France was negotiated by representatives of the administrations of Public Works and Finance departments; the joint convention with the Netherlands and France was also negotiated by representatives of these departments, this time accompanied by a diplomat. The representatives of these departments were clearly the heavyweights in this commission: evidence of this can be seen in the fact that the Belgian ambassador in France considered the representative from the Finance department the spiritual father of the 1848 convention, the predecessor of the 1852 convention.

The Belgian situation also shows some examples of the tensions Reinsch identified in his article between diplomats and the technical experts. The most obvious example was the French diplomatic rebuke when Desmaisières contacted the French minister of Public Works directly. The French and Belgian ministers of Foreign Affairs clearly were not happy with Desmaisières sidestepping their respective departments. It shows the frustration that lived on both sides of the aisle. The departments of Public Works on the one hand, who did not care for diplomatic pleasantries and were frustrated with the significant delays the diplomatic channels generated; and the departments of Foreign Affairs on the other, who saw other departments chip away at their core responsibilities. One must also acknowledge, however, that the Belgian department of Foreign Affairs seemed to be content with a somewhat 'passive' role. It was wholly absent in the process of negotiating the construction treaties and only intervened when the instruments of approval had to be exchanged. In matters of policing, it did not send a diplomat to the negotiations with France and took the back seat in the negotiation for the 1852 convention. Apart from the French incident with Desmaisières, there is nothing in the diplomatic correspondence that suggests that the department of Foreign Affairs was frustrated with the

primacy of the Public Works functionaries, or that this was an entirely new *modus operandi*. Looking at the Belgian postal conventions signed with neighbouring countries we see that, indeed, members of the postal administration had been signing treaties since the early years after the Belgian revolution.[184] This seems to be in line with the broader trend of postal conventions signed in the 19th century.

Again, the line to Prussia was the odd one out. Technical actors were, of course, present in the construction and policing of these railroads, but no technical experts were (directly) involved in devising its international regulation as international law was absent.

5.3.The central actors in international administration

The answer to the question whether the Belgian situation fits within the core element of international administrative law with regards to the element of the central actors is more ambiguous than the other elements. One must acknowledge that it is doubtful whether the authors writing about international administrative law would have considered the Belgian commissions good examples of international administrative law. Reinsch, for instance, would surely have rejected the idea, as there was no '*authoritative universal organisation*' yet.[185] But other authors would probably have had their doubts too. As mentioned before, literature tended to focus on large regional or universal international regulatory institutions such as the Universal Postal Union and the Danube River Commission. The mixed commissions tasked with the construction and customs measures bore more resemblance to the popular mixed diplomatic commissions of the nineteenth century.[186] They were a far cry from the large, permanent

[184] The first postal convention with France was signed in 1836; the Belgian delegation consisted of a representative of the Belgian post administration. See *Recueil des traités* volume 1, pg. 73 ff. The 1834 Postal Convention with the United Kingdom was signed by the Minister of Finance. On the British side, it was signed by the administrator of the British Postal Service. See *Recueil des traités* volume 1, pg. 69 ff. A provisional postal agreement was negotiated in 1839 between Belgium and the Netherlands by the Belgian director for postal services in Antwerp and the Dutch inspector-general of the postal administration.

[185] P. REINSCH, 'International administrative law and national sovereignty' *The American journal of International Law* 1909, (1) 5.

[186] L. BOISSON DE CHAZOURNES, D. CAMPANELLI, 'Mixed Commissions' *Max Planck Encyclopaedia of International Law* 2006.

institutions that became synonymous for international administrative law at the end of the nineteenth century.

If one keeps an open mind it is possible to see roots of international regulatory institutions in the Belgian *modus operandi*. Kazansky argued that international commissions were '*une organisation où sont représentés par des délégués ayant les mêmes droits tous les États signataires'* where each state had the opportunity to express its opinion on the matter at hand, and where resolutions issued by the commission were essentially treaties between the participating countries.[187] This description, while being general in nature, seems to fit the policing commissions. Kazansky's point of view also potentially (and retroactively) explains the discrepancies in the Belgian and French view on the regulation issued by the Belgo-French policing commission, with the French delegation considering it a resolution and the Belgian government considering it to be a treaty. More generally, the fact that these commissions were dominated by technical experts on the subject (engineers in the construction commissions; representatives from the finance departments in the case of customs) was also similar to the expert-based institutions of international administrative law. One must always keep in mind, however, that authors had a fundamentally different kind of institution in mind when writing about international regulatory institutions.

[187] P. KAZANSKY, 'Théorie de l'administration internationale' *Revue Générale de Droit International Public* 1902, (353) 359.

6. Conclusion

In this section, we will try to give a structured answer to our research questions. As we have two different research questions, we will answer them separately.

6.1. Research question 1

The construction of the first international railways was sanctioned by the First Railway Act of 1834. The original draft, submitted to the Chamber of Representatives by the Belgian government, only included a railroad to Prussia (Verviers – Aix-la-Chapelle), but the *section centrale* of the Chamber added a railroad to France as well (what would later become the line Mons – Valenciennes). A second railroad (Ghent – Lille) was added with the Second Railway Act of 1837. The first railroad to the Netherlands was sanctioned by a treaty signed in 1852 (Antwerp – Rotterdam).

There was no uniform working method for the construction of railroads. With France, unpublished treaties were signed between engineers of the railway departments. The process with the Netherlands followed largely the same course, but an internal dispute in the cabinet in The Hague forced the treaty down a more formal path. Finally, the construction of the railroad to Prussia seemed to have been completely untouched by international law, as the construction was carried out by a private company, the Rhenish Railway Company. Construction conventions were signed between Belgium and the company, but these cannot be considered instruments of international law.

Customs and policing rules were coordinated through the use of mixed commissions. The railways to France and to the Netherlands were governed by rules that were hammered out in mixed commissions. The proceedings of these mixed commissions were very much dominated by representatives of national administration: diplomats were not present (Belgo-French arrangement) or took the back seat in the negotiation (Belgo-French-Dutch arrangement). The arrangement was implemented through national legislation (Belgo-French arrangement) or was

published, making it directly applicable (Belgo-French-Dutch arrangement). Again, the railroad with Prussia was the odd one out: the Prussian government deemed setting up a commission unnecessary. Instead, it would apply the provisional regulation it had issued, and the Belgian government could request changes if it found this to be necessary. There might have been additional rules imposed via agreements with the Rhenish Railway Company, but this remains unclear.

6.2.Research question 2

Because international administrative law was a complex and very diverse field of law, we opted to distil core elements that enjoyed universal or near-universal acceptance from the literature. We have identified three core elements of international administrative law: a solidarist base, the role of technical experts in international administrative law and a focus on international regulatory institutions.

Can the international regulatory framework of the construction of the Belgian international railroads be considered an early example of international administrative law? For the railway line to Prussia, the answer is quite simple: it cannot be considered an early example of international administrative law, as international law was completely absent from the process. For France and the Netherlands, things are different. There clearly was a solidarist base for the projects: states worked together to construct an international railroad to support their national industries. It was not a matter of mere peaceful coexistence: to allow its industry to flourish, the Belgian government cooperated with foreign governments using international law to construct an international railway. Technical experts were also prominently present in the drafting and execution of the framework: both the railways to France and the railway to the Netherlands were sanctioned by treaties signed by engineers of the departments of Public Works. The third core element, a focus on international regulatory institutions, is less obvious. In the case of France, two engineers signing a treaty can hardly be called a regulatory

commission. The same reasoning applies for the railway to the Netherlands, with that difference that the Article 2 Commission seemed to have morphed into a customs commission later on. These commissions bore more resemblance to the popular mixed commission of the 19th century. The result is that the international regulation of the construction of the Belgian international railroads shows some similarities with international administrative law as defined in literature, but it certainly is not a perfect fit.

With regards to customs and policing, the conclusion is largely similar. Customs regulation on the railway to Prussia was only indirectly influence by international law through the royal decree of October 29th. With regards to France and the Netherlands, we can see a solidarist base for the regulations: the goal was speedy and orderly traffic along the international railroad to boost traffic, without infringing on key political interests such as tariffs. Again, technical experts from the state's administrations were the primary actors, this time the representatives from the finance and customs departments. With regards to the focus on international regulatory institutions, the question once again arises whether the customs and policing commissions would have been considered international regulatory institutions by most authors.

7. Bibliography

7.1. Archival resources

Archive of the Belgian ministry of Foreign Affairs)

B 2143 (Lignes Rhénanes 1834 – 1862).

B 2146 (Chemins de fer. Belgique – France. 1835 – 1865).

B 2149 (Chemins de fer. Belgique – divers pays. 1842 – 1865).

B 2397 (Chemins de fer. Belgique – Pays Bas. 1850 – 1890).

B 3507 (Chemins de fer. Pays Bas – Allemagne).

B Archives d'État français.

7.2.Primary legal sources

7.1.1. Treaties

Convention for the construction of the railway between Mons and Valenciennes of May 5th 1840, unpublished.

Convention of August 25th 1842 regulating questions of administration and customs as a result of the establishment of railroads between Belgium and France, D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 604 ff.

Convention of July 9th 1852 to facilitate the establishment of direct communication lines between Belgium and the Netherlands through railways, found in D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 447 ff.

Convention of December 14th 1852 regulating customs on international railway lines, D. DE GARCIA DE LA VEGA, *Recueil des Traités et Conventions concernant le royaume de Belgique*, Brussels, Imprimerie F. Parent 1854, 447 ff.

7.1.2. National legislation

Act of May 1st 1834 establishing a railroad network in Belgium, *Bulletin Officiel* 1834, 263 ff.

Act of May 26th 1837 establishing a railroad from Ghent to the French border, *Bulletin Officiel* 1837, 551 ff.

Act of June 18th 1842 authorizing the government to modify the import and transport regime of merchandise in transit, *Pasinomie belge* 1842, pg. 223 (nr. 400).

Act of April 15th 1843 on the policing of railways, *Pasinomie belge* 1843, pg. 187 ff (nr. 198).

Royal decree of August 20th 1842 extending the customs regime on the Belgo-French railroad to the Belgo-Prussian railroad, *Pasinomie belge* 1843, 305 (nr. 406).

Royal decree of October 8th 1842 instituting customs checkpoints in Mouscroun and Courtrai, *Pasinomie belge* 1842, 403 ff. (nr. 903).

Royal decree of October 29th 1842 determining the customs regime from Courtrai to Lille and from Courtrai to Tournai, *Pasinomie belge* 1842, 511 ff. (nr. 921).

Royal decree of April third 1843 instituting a customs checkpoint in Quiévrain, *Pasinomie belge* 1843, 148 ff. (nr. 168).

Royal decree of June 1st 1843 extending the customs regime on the Belgo-French railroad to the Belgo-Prussian railroad, *Pasinomie belge* 1843, 305 (nr. 406).

Royal decree of October 14th 1843 designating the customs bureaus for the railway to the Prussian border, *Pasinomie belge* 1843, pg. 223 (nr. 729).

Royal decree of October 14th 1843 prescribing the customs formalities that have to be followed on the line the the Prussian border, *Pasinomie belge* 1843, pg. 498 (nr. 775).

7.3.Secondary sources

7.3.1. Books

BOONE, M., *Historici en hun métier*, Gent, Academia Press 2015, 377 p.

CALVO, C., *Dictionnaire manuel de diplomatie et de droit international et privé*, Berlin, Putkammer & Mühlbrecht 1885, 475 p..

COOLSAET, R., *België en zijn buitenlands beleid*, Leuven, Uitgeverij van Haelewyck 2014, 817 p.

DE LAVELEYE, A., *Histoire de vignt-cinq premières années des chemins de fer belges*, Imprimerie A. Decq 1862, 228 p.

FARI, S., *The formative years of the Telegraph Union*, Cambridge, Cambridge Scholars Publishing 2015, vii + 188 p.

FEDOZZI, P., *Il dirrito amministrativo internazionale nozioni sistematiche*, Perugia, Unione cooperativa tipografica 1901, 90 p.

HERSHEY, A. S., *The essentials of international public law*, New York, Macmillan 1921, 558 p.

HOBSBAWM, E., *The age of capital (1848 – 1875)*, London, Abacus 1995, 413 p.

IGGERS, G., *The cult of authority. The political philosophy of the Saint-Simonians*, The Hague, Martinus Nijhoff 1970, v + 214 p.

KAMPMANN, K., *Die Entstehung der Rheinischen Eisenbah-Gesellschaft 1830 – 1844*, Essen-Ruhr, G. D. Baedeker Verlagshandlung 1910, x + 510 p.

KOSKENNIEMI, M., *The gentle civilizer of nations: the rise and fall of international law (1870 – 1960)*, Cambridge University Press 2002, xiv + 569 p.

MACLEOD, R., (ed.), *Government and expertise. Specialists, administrators and professionals, 1860 – 1919*, Cambridge, Cambridge University Press 1988, xv + 359 p.

MARTENS, F., *Traité de droit international*, Paris, Librairie Maresc Ainé 1886, vii + 509 p.

MOYNIER, G., *Les bureaux internationaux des unions universelles*, Paris, Fischbacher 1892, 174 p.

NEFF, S., *War and the Law of Nations*, Cambridge, Cambridge University Press 2008, xii + 443.

NEFF, S., *Justice among nations: a history of international law*, Harvard University Press 2014, xii + 628 p.

OPPENHEIM, L., *International law: a treatise. Peace.*, New York/Bombay, Longman, Greens and Co. 1905, xxxvi + 610 p.

PILBEAM, P., *Saint-Simonians in nineteenth century France. From free love to Algeria*, London, Palgrave Macmillan 2013, x + 241 p.

REINSCH, P., *Public international unions, their work and organization; a study in international administrative law*, Boston, Ginn and Company 1911, viii + 189 p.

SAYRE, F., *Experiments in international administration*, New York/London, Harper and Brothers Publishers 1919, xi + 201 p.

SCHIVELBUSCH, W., *The railway journey: the industrialization of time and space in the nineteenth century*, Oakland, University of California Press 2014, xxvi + 206 p.

SIMONS, P., DE RIDDER, G., *Le chemin de fer belge*, Brussels, Imprimerie Lacrosse 1839, cxliv + 231 p.

STEARNS, P., *Globalization in World History*, London, Routledge, 2010, 176 p.

VAN DER HERTEN, B., *De ontwikkeling van communicatie en transport in België tijdens de lange 19de eeuw*, doctoral thesis Katholieke Universiteit Leuven 200, 597 p.

VEC, M., *Recht und Normierung in der Industriellen Revolution : Neue Strukturen der Normsetzung in Völkerrecht, staatlicher Gesetzgebung und gesellschaftlicher Selbstnormierung*, Frankfurt, Klostermann 2006, ix + 491 p.

VON BERNSTORFF, J., *The public international law theory of Hans Kelsen: believing in universal law*, Cambridge, CUP 2010, xiv + 328 p.

VON STEIN, L., *Die Verwaltungslehre. Erster Teil : Das Bevölkerungswesen und sein Verwaltungsrecht*, Stuttgart, Cotta 1866, xvi + 353 p.

WOLLMAR, C., *Blood, iron and gold. How the railways transformed the world*, London, Atlantic Books 2010, xxv + 373 p.

7.3.2. Chapters in collected works

BAKER, J., 'Reflections on 'doing' legal history' in A MUSSON, C. STEBBINGS (eds.), *Making legal history: approaches and methods*, Cambridge, Cambridge University Press 2012, 7 – 17.

FREMDLING, R., 'Germany' in P. BRIEN, *Railways and the economic development of Western Europe, 1830 – 1914*, London, Palgrave Macmillan 1983, 121 – 147.

FRITZ, J.-S., 'Internationalism and the promise of science' in LONG, D., SCHMIDT, B., (eds.), *Imperialism and internationalism in the discipline of international relations*, Albany, University of New York Press 2005, 222 p.

HEIRBAUT, D., 'A tale of two legal histories' in MICHALSEN, D., (ed.), *Reading past legal texts*, Oslo, Unipax 2006, 91 – 112.

HEIRBAUT, D., 'The Belgian legal tradition: does it exist?' in KRUITHOF, M., DE BONDT, W., (eds.) *Introduction to Belgian Law*, Alphen aan den Rijn, Kluwer Law International 2017, 1 – 24.

LAFFUT, M., 'Belgium' in P. O'BRIEN (ed.), *Railways and the economic development of Western Europe, 1830 – 1914*, London, Macmillan Press 1983, 203 – 226.

MALOU, J., *Étude sur les chemins de fer belges*, Brussels, A. Decq 1860, 34 p.

POINSARD, L., *Étude de droit international conventionnel*, Paris, Pichon 1894, xii + 596 p.

STENGERS, J., 'Léopold Ier et le chemin de fer d'Anvers au Rhin' in X, *Mélanges offert à G. Jacquemyns*, Brussels, Université Libre de Bruxelles 1968, 573 – 599.

TIRABASSI, K., 'Journeying into the archives: exploring the pragmatics of archival research' in RAMSEY, A., SHARER, W., E'PLATTENIER, B. en MASTRALENGO, S. (eds.), *Working in the archives. Practical research methods for rhetoric and composition*, Southern Illinois University Press 2010, 169 – 180.

VAN DER HERTEN, B., 'De pioniersjaren van de Belgische Spoorwegen' in VAN DER HERTEN, B., VAN HEERTEN, M., and VERBEURGT, G. (eds.) *Sporen in België. 175 jaar Belgische Spoorwegen. 75 jaar N.M.B.S.*, 49 – 63.

VEC, M., 'From the Congress of Vienna to the Paris Peace Treaties of 1919' in B. FASSBENDER, A. PETERS (eds.) *The Oxford Handbook of the History of International Law*, Oxford, Oxford University Press 2012, 654 – 677.

VON STEIN, L., 'Einige Bemerkungen über das internationale Verwaltungsrecht' *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich* 1882, 395 – 442.

7.3.3. Articles

ALBION, R., 'The communication revolution', *The American Historical Review* 1932, 13 – 25.

ANASTASIADOU, I., 'Networks of powers. Railway visions in inter-war Europe' *Journal of Transport History* 2007, 172 – 191.

CATELLANI, E., ‘Le droit international au commencement du XXe siècle’ *Revue Générale de Droit International Public* 1900, 385 – 413.

DE BLOCK, G., ‘Designing the Nation: the Belgian Railway Project, 1830 – 1837’ *Technology and Culture* 2011, 703 – 732.

DE BLOCK, G., ‘Planning rural-urban landscapes: railways and countryside urbanisation in South-West Flanders, Belgium (1830 – 1930)’ *Landscape Research* 2014, 542 – 565.

DELISLE BURNS, C., ‘International administration’ *British Yearbook of International Law* 1926, 54 – 72.

DENDIAS, M., ‘Les principaux services internationaux administratifs’ *Recueil des Cours* 1938, 243 – 365.

E’PLATTENIER, B., ‘An argument for archival research methods’ *College English* 2009, 67 – 79.

FREMDLING, R., ‘European railways 1825 – 2000, an overview’ *Research Memorandum Rijksuniversiteit Groningen* 2002, 1 – 18.

GASCON Y MARIN, J., ‘Les transformations du droit administratif international’ *Recueil des Cours de l’Académie de Droit International de La Haye* 1930 , 5 – 75.

HANDRLICA, J.,, ‘Revisiting international administrative law as a discipline’ *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 2018, 1237 – 1258.

HANDRLICA, J., ‘Two faces of “international administrative law”’ *Juridical Tribune* 2019, 363 – 376.

KAZANSKY, P., ‘Les premiers éléments de l’organisation universelle’ *Revue de Droit Internationale et de Droit Comparée* 1897, 238 – 247.

KAZANSKY, P., ‘Théorie de l’administration internationale’ *Revue Générale de Droit International Public* 1902, 353 – 367.

KINGSBURY, B., KRISCH, N., STEWART, R. B., ‘The emergence of global administrative law’ *Law and Contemporary Problems* 2005, 15 – 61.

KUNZ, J., ‘Experience and techniques in international administration’ *Iowa Law Review* 1945, 40 – 57.

NEGULESCO, P., ‘Principes du droit international administratif’ *Recueil des Cours de l’Académie de Droit International de La Haye* 1935, 583 – 689.

REINSCH, P., ‘International administrative law and national sovereignty’ *The American journal of International Law* 1909, 1 – 45.

SCHOT, J., BUITER, H., I. ANASTASIADOU, ‘The dynamics of transnational railway governance in the long nineteenth century’ *History and Technology* 2011, 265 – 289.

VAN DER HERTEN, B., ‘Nieuwe interpretaties over de besluitvorming rond de eerste spoorlijn in België, 1830 – 1834’ *Revue belge de philologie et d’histoire* 1995, 379 – 400.

7.3.4. Encyclopaedia contributions

KINGSBURY, B., DONALDSON, M., 'International administrative law' *Max Planck Encyclopaedia of International Law* 2011.

BOISSON DE CHAZOURNES, L., CAMPANELLI, D., 'Mixed Commissions' *Max Planck Encyclopaedia of International Law* 2006

7.3.5. Reports

X, *Chemin de Fer. Rapports présentés aux chambres législatives*, Brussels, Imprimerie du Roi 1841.

X, *Chemin de Fer. Rapports présentés aux chambres législatives*, Brussels, Imprimerie du Roi 1842.