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## **Legal arguments in the debate on recognition of Italian independence in Belgian parliament (November 1861)**

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‘J’ai fait aussi quelques études de droit comme tout le monde, je suis docteur en droit comme tout le monde, je veux dire que je suis un médiocre docteur en droit ; mais le droit des gens [...] que nous enseigne-t-il? [...] Nous prêtons, dit-on, la main à la violation des traités, mais combien de traités subsistent encore quant au fond dans les termes, où ils ont été conclus? N’allons pas plus loin que le traité de Vienne.’

Charles Rogier, 21 November 1861<sup>1</sup>

## Introduction

- 1 The intertwining histories of constitutional and international law are at the heart of this special issue of *Forum Historiae Iuris*, stemming from the conference *Entangled National and International Legal Orders in the Long 19<sup>th</sup> Century*. Italian unification stands out as a case of ‘patent disregard’ for the prevailing international law, or an episode wherein legal and political change had to be accommodated within the prevailing use of legal vocabulary to structure international order.<sup>2</sup> The legitimacy of Piemonte-Sardinia’s annexation of territory in Italy, often by force, and mainly with support from the French Second Empire, leaves traces into present-day Italian national conscience.<sup>3</sup> Proponents of Italian unification heralded ‘new legal standards’ for the time, namely the nationality principle and the principle of non-intervention, whereas their opponents defended the system of the Congress of Vienna, based on armed intervention against rebellion, legitimism and balance of power-politics.<sup>4</sup>
- 2 It is a commonplace to state that constitutional reform on the 19<sup>th</sup> century European continent was a consequence of the political ghosts awakened by the French revolution. Political liberalism desired individual rights and freedoms, coupled with accountability of the Executive Power, in the form of ministerial responsibility. Nationalism, on the other hand, drew the logical consequences of the principle of national sovereignty, proclaimed by the French *Assemblée Nationale Constituante*<sup>5</sup>. The Revolutionary regimes entrenched the idea that all (male) human beings possessed inalienable, fundamental political rights. However, this did not lead to the creation of a universal republic, as the resistance against the French in Germany, Tyrol or Spain demonstrated.

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1 Charles Rogier, Belgian Chamber of Representatives, 21 November 1861, pp. 27-28. The full transactions of the Belgian Chamber of Representatives can be consulted online: [www.dekamer.be](http://www.dekamer.be) (last accessed 24 June 2020).

2 MARCHISIO, SERGIO (2020) The Unification of Italy and International Law in BARTOLINI, GIULIO (ed), *A History of International Law in Italy* (Oxford, OUP 2020) 286.

3 Ibid.

4 Ibid 287.

5 Titre III, Art. 1: ‘La souveraineté est une, indivisible, inaliénable et imprescriptible. Elle appartient à la Nation; aucune section du peuple, ni aucun individu, ne peut s’en attribuer l’exercice.’ WILLOWEIT, DIETER & SEIF, ULRIKE (Hsrg) (2003), *Europäische Verfassungs-geschichte* (München, C.H. Beck) 299.

Furthermore, the borders drawn at the Congress of Vienna (1814-1815)<sup>6</sup> confirmed the partition of Germany and Italy in numerous sovereign entities. This ignored the German nationalist movement, born from the struggle against Napoleon, as well as the Italian experience of scale enlargement under that very same Napoleon.<sup>7</sup>

3 For the case of Belgium, it is very clear that the members of the Constituent Assembly (the National Congress, 10 November 1830-11 February 1831) blamed aristocratic diplomats for blocking their sincere desire to create a fully independent, sovereign nation. This anger had two causes. First, diplomacy was blamed for the creation of the United Kingdom of the Netherlands in 1814-1815. The monarchical or 'granted' constitutions accompanying the Congress decisions based on the legitimacy principle, were incompatible with parliamentary sovereignty.<sup>8</sup> Second, European cabinets had imposed the burden of permanent neutrality. The term 'Holy Alliance' (26 September 1815) of Czar Alexander I, Emperor Francis I and King Frederick William III was still used in the debates.<sup>9</sup> Diplomats were accused of 'diplomatising' revolts, bringing them to a halt, and starting scandalous negotiations, setting up traps, making betrayal their daily business, exercising illegitimate pressure, indulging in an insatiable greed for personal power.<sup>10</sup> This bad reputation of diplomats, who often constituted a link of continuity with the Old Regime<sup>11</sup>, still

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6 JARRETT, MARK (2013), *The Congress of Vienna and Its Legacy: War and Great Power Diplomacy after Napoleon* (London, IB Tauris).

7 'Les peuples auraient dû être appelés à décider du sort de l'Europe [...] Il va sans dire qu'il n'y fut point question de liberté. Le congrès n'eut à régler que la constitution territoriale de l'Europe.' LAURENT, FRANÇOIS (1869) *Études sur l'histoire de l'humanité – l'Empire* (Paris/Bruxelles/Leipzig/Livourne, Librairie internationale/Lacroix/Verbroeckhoven et Cie), 477 ; 'A partir de [1813] cette époque l'enthousiasme populaire et national atteint en Allemagne, en Italie et en Espagne des proportions inconnues [...] Ce changement trouve son explication [...] dans les promesses des souverains qui firent espérer à leurs peuples de meilleures institutions politiques, un gouvernement et des lois libérales' (MARTENS, FRIEDRICH FROMHOLD (1883), *Traité de droit international* (Paris, Maresq), I, 166).

8 MECCA, GIUSEPPE (2016), 'The Omnipotence of Parliament in the Legitimation Process of 'Representative Government' under the Albertine Statute (1848–1861)', in: MÜSSIG, ULRIKE (ed), *Reconsidering Constitutional Formation I National Sovereignty*, op. cit., 159 and 169. DOI 10.1007/978-3-319-42405-7\_3.

9 Treaty of the Holy Alliance between Russia, Austria and Prussia, Paris, 26 September 1815, 65 CTS 199; WITTE, ELS (2020), *Belgische Republikeinen. Radicalen tussen twee Revoluties (1830-1848)* (Antwerpen, Polis) 90.

10 Ibid 90, 388. Quotes from the meetings of the National Congress on 15 January 1831, 19 January 1831, 24 January 1831, 29 January 1831 and *L'Émancipation* (21 December 1830, 20 April 1831, 28 April 1831, 31 May 1831 and 30 June 1831). Belgian newspapers can be consulted on [www.belgicapress.be](http://www.belgicapress.be) (last accessed 24 June 2020).

11 MAYER, ARNO J (1981), *The Persistence of the Old Regime: Europe to the Great War* (London: Verso).

influences our present-day judgment of the treatises of authors as Georg Friedrich von Martens (1756-1821) or Johann Ludwig Klüber (1762-1837).<sup>12</sup>

- 4 The Belgian Constitution of February 1831<sup>13</sup> was inspired by the British conception of parliamentary sovereignty (1689), the French attempt at organising constitutional monarchy in 1791, the French granted constitution of 1814, and borrowed surprisingly many articles from its predecessor, the Constitution of the United Kingdom of the Netherlands (1815).<sup>14</sup> Article 25 (current article 33), expressing that ‘all powers are derived from the Nation’ was a core article. The moderate Catholic and Liberal revolutionaries aspired to a ‘republican monarchy’, as the July Revolution of 1830 had just installed in France.<sup>15</sup> Ministerial responsibility before the elected Chambers gave the nation a possibility to hold the Executive branch accountable. Judicial review of executive decisions by civil courts and tribunals guaranteed the supremacy of the Law. For foreign affairs, the monarch was compelled to obtain parliamentary consent for the ratification of treaties creating obligations for Belgian citizens and for treaties of commerce.<sup>16</sup> In practice, the country’s first monarch, Leopold I of Saxe-Coburg-Gotha (1790-1865), interpreted his competences broadly.<sup>17</sup> As a relative of Queen Victoria and many other European rulers, the ‘King of Europe’ dominated daily diplomatic exchanges, with a prudent conservatory attitude, aimed at preserving the overall balance in Europe.<sup>18</sup>

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12 KLÜBER, JOHANN LUDWIG (1819) *Droit des gens moderne de l'Europe* (Stuttgart, J.G. Cotta) ; MARTENS, GEORG FRIEDRICH VON (1821) *Précis du droit des gens modern de l'Europe fondé sur les traités et l'usage. Pour servir d'introduction à un cours politique et diplomatique* (Göttingen: Dieterich); KOSKENNIEMI, MARTTI (2008) ‘Into Positivism: Georg Friedrich Martens (1756-1821) and Modern International Law’ 15 *Constellations* 189; VEC, MILOŠ (2017) ‘Sources of International Law in the Nineteenth-Century European Tradition: The Myth of Positivism’ in BESSON, SAMANTHA and D’ASPREMONT, JEAN (eds), *The Oxford Handbook of the Sources of International Law* (Oxford, OUP) 19-36.

13 VELAERS, JAN (2019), *De Grondwet: Een Artikelsgewijze Commentaar* (Brugge, Die Keure).

14 WITTE, ELS (2014) *Het Verloren Koninkrijk: Het Harde Verzet van de Belgische Orangisten Tegen de Revolutie (1828-1850)* (Antwerpen, Bezige Bij); DHONDT, FREDERIK (2016), ‘Bij uitsluiting aan den soeverein, zonder eenige de minste ruggenspraak?’ *Soevereiniteit, grondwet en volkenrecht, van Verenigd Koninkrijk Der Nederlanden tot Koninkrijk België* in ALLEN, ANDRÉ, HERINGA, A.W., HEIRBAUT, D. en ROTTEVEEL-MANSVELD, C. (eds), *Tweehonderd jaar Grondwet 1815* (Brugge/Den Haag, Die Keure/Boom Juridische Uitgevers), 209-229.

15 DESEURE, BRECHT (2016), ‘National Sovereignty in the Belgian Constitution of 1831. On the Meaning(s) of Article 25’ in MÜSSIG, ULRIKE (ed), *Reconsidering Constitutional Formation I National Sovereignty: A Comparative Analysis of the Juridification by Constitution* (Heidelberg, Springer), 93-157. DOI: 10.1007/978-3-319-42405-7\_2.

16 Art. 68, Belgian Constitution of 1831 (current article 167 §2). VELAERS (2019), vol. III, 372-403.

17 STENGERS, JEAN (1984) ‘Léopold I<sup>er</sup> et la formation de la coutume constitutionnelle en Belgique’, in : X (ed.), *Liber Amicorum John Gilissen. Wetboek en Grondwet in historisch perspectief* (Antwerpen, Kluwer), 327-342.

18 DUMOULIN, MICHEL (1983), ‘La reconnaissance du Royaume de l’Italie par la Belgique en 1861’, *XCVII Revue d’Histoire Diplomatique* 147 ; DENECKERE, GITA (2011) *Leopold I. De eerste Koning van Europa* (Antwerpen, Bezige Bij). On the Vienna Congress’s concept of collective security: DE GRAAF, BEATRICE (2018) *Tegen de terreur: hoe Europa veilig werd, 1815-1820* (Amsterdam, Prometheus).

5 The attitude of international law<sup>19</sup> vis-à-vis internal turbulences is the subject of two classical themes of the law of nations: recognition<sup>20</sup> and intervention.<sup>21</sup> However, the rise of national sovereignty throughout the 19<sup>th</sup> century led to the affirmation that the nationality principle had become an international standard. International lawyers resorted to naturalist conceptions, or to Savigny's *Volksgeist* as applied to the international community, to explain this legal change.<sup>22</sup> In his elaborate analysis of Belgian permanent neutrality and the Berlin Conference (1885), Belgian scholar Ernest Nys (1850-1921) stated that this had become the rule, rather than the exception.<sup>23</sup> Nys attempted to maximally reduce the congenital restrictions imposed on Belgium by the Great Powers, stating that national sovereignty had become the rule, and all other externally contracted engagements mere exceptions, which -of course- ought to be interpreted narrowly.<sup>24</sup>

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19 The terms are used indiscriminately in this paper. 'International law' as term has been coined by Jeremy Bentham, and was used in English by Wheaton (1848), Wildman (1849-1850), Atkinson (1851) Phillimore (1854-1857), Travers Twiss (1856), Gardner (1860), Woolsey (1860) and Halleck (1861). In French, the term was used by Westlake (1859), Domin-Petrushevecz (1861) and in the French translation of Heffter's *Völkerrecht: Droit international public* in the 1857 translation by Jules Bergson. Most publications in French still used *Droit des gens* during the debate: Laurent (1850), Weiss (1856), Proudhon (1861), Ott's edition of Klüber (1861) and the 1858 edition of Martens. German authors used *Völkerrecht*, e.g. Bulmerincq (1858), Bluntschli (1866), von Kaltenborn (1847), Müller-Jochmus (1848), Oppenheim (1845).

20 CRAWFORD, JAMES (2006) *The Creation of States in International Law* (Oxford, OUP) 4-17. DOI 10.1093/acprof:oso/9780199228423.001.0001. See also TOURME-JOUANNET, EMMANUELLE (2013), 'The International Law of Recognition' XXIV *European Journal of International Law* 667. DOI 10.1093/ejil/cht021 on the law of recognition after 1945 as a 'new branch of law'. For its 19<sup>th</sup> application outside of Europe: CLARK, MARTIN (2017) 'A Conceptual History of Recognition in British International Legal Thought' LXXXVII *British Yearbook of International Law* 18. DOI 10.1093/bybil/bry003 ; VAN HULLE, INGE (2014) 'Britain's recognition of the Spanish American republics. The gap between theory and practice in international law (1810-1900)' LXXXII *Tijdschrift voor Rechtsgeschiedenis* 284. DOI 10.1163/15718190-08234p04.

21 BERNARD (1859) and recently ARMITAGE, DAVID (2017) *Civil War : A History in Ideas* (New Haven (Conn.)/London, Yale UP); CAHEN, RAPHAEL (2014) 'Frédéric Gentz (1764-1832): Pensée politique et droit d'intervention armée. Le Concert européen et la crise grecque' in KASPARIAN, BURT and BOUINEAU, JACQUES (ed), *Le droit international: aspects politiques* (Paris, l'Harmattan), 65-87.

22 BAKER RÖBEN, BETSY (2002) 'The Method Behind Bluntschli's 'Modern' International Law' IV *Journal of The History of International Law - Revue d'histoire du droit international* 249. DOI 10.1163/157180502401451123. Staunch criticism of the nationality principle as a legal principle can be found in articles by von Franz VON HOLTZENDORFF (2 *Revue de droit international et de législation comparée*, 100-102) and Guido PADELETTI (4 *Revue de droit international et de législation comparée* 464-495). The latter came to the conclusion that Mancini's theories were restricted to Italy, and were even a 'scientific lie'. Legal historian Luigi Nuzzo equally points to the inconsistencies between Mancini's political vision of the nationality principle as a legal scholar, on the one hand, and as Italian Foreign Minister, on the other hand. NUZZO, LUIGI (2011), 'Das Nationalitätsprinzip : der italienische Weg zum Völkerrecht', in : DAUCHY, SERGE and VEC, MILOS (ed), *Les conflits entre les peuples. De la résolution libre à la résolution imposée* (Baden-Baden, Nomos), 103-110.

23 NYS, ERNEST (1900) 'Notes sur la neutralité (premier article)' II (2e série) *Revue de droit international et de législation comparée* 460 ; ID. (1903), *L'état indépendant du Congo et le droit international* (Bruxelles, Hayez).

24 DHONDT, FREDERIK (2018) 'Neutralité permanente, interprétations mutantes: la neutralité belge à travers trois traités de juristes' (2018) LXXXVI *Tijdschrift voor Rechtsgeschiedenis/Revue d'Histoire du Droit/The Legal History Review* 188. DOI 10.1163/15718190-08612P00 ; DESCAMPS, EDOUARD (1902) *La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique : étude sur la Constitution des États pacifiques à titre permanent* (Bruxelles, Larcier).

6 A difference in internal constitutional arrangements is in principle a mere internal matter, but the gradual rise of national sovereignty created evident conflicts between international norms and decisions, on the one hand, and newly-created states, on the other hand. The consecutive wars between Piemonte-Sardinia and Austria (1848, 1859, 1866) were as many revisions by force of the Vienna Peace Treaties. In 1860, Terenzio Mamiani della Rovere (1799-1885) published an English translation of his Italian work *D'un nuovo diritto europeo* under the title *Rights of Nations, or the New Law of European States Applied to the Affairs of Italy*.<sup>25</sup> Translator Roger Acton dedicated this volume to Lord Russell (1792-1878), thanking him for his diplomatic dispatch of 16 August 1859, urging the courts of Paris and Vienna not to intervene to 'put down the will of the people in Central Italy.'<sup>26</sup> Acton cites a comment from the *Daily News* dated 10 January 1860, highlighting a similar criticism against diplomats and the classical so-called positivist school of international law:

7 *'Count Mamiani's book would render useful service to the progress of that sublime and beneficent department of study, which defines the obligations of political equity, beyond the conventional rules of civil institution. We mean that true and lofty science of Public Law, which is not restricted to the etiquette of ambassadors, or other such incidental arrangements of the state of peace or the state of war – but which aspires to render peace a perpetual blessing and war an antiquated horror, by appealing to the common experience and intelligence of mankind to bow before the supreme authority of Justice. Amongst the nations, indeed, dwelling side by side in legal equality as they do, there is no legislature and there are no tribunals. Their law [sic], apart from particular stipulations, consists but of a body of approved notions of the time, or derived from former times; a fluctuating mass of doctrines, precepts, and usages, which can never be determined by judicial interpretation, but which are broadly indicated by the general concurrence of opinion and example.'*<sup>27</sup>

8 The Italian *Risorgimento* found support with Belgian Liberals and was resisted and loathed by Belgian ultramontane Catholics. This is completely concurrent with the ideological underpinnings of the latter movement. Papal condemnation of '*liberates effrenatae*' with *Mirari Vos* in 1832 derived from the point of view that national constitutions could not trump the doctrine of the

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25 MAMIANI DELLA ROVERE, TERENCE (1860), *Rights of Nations, or, the New Law of European States Applied to the Affairs of Italy* (Roger Acton tr, Jeffs 1860). Translated by Roger Acton. RECH, WALTER (2020) 'International Law as a Political Language, 1600-1859' in BARTOLINI (2020), 91-95. DOI 10.1093/oso/9780198842934.003.0003.

26 MAMIANI DELLA ROVERE (1860) V.

27 *Ibid.* XV.

church.<sup>28</sup> Recognising the authority of the Pope above secular states (*ultra-montes*) went hand in hand with attempts to introduce a neo-corporatist political system, whereby the irrational and irresponsible individual right to choose one's representatives would be replaced by a harmonious cooperation between the fixed social forces in society. This ideological sympathy with the Pope and the very Catholic Austrian Emperor caused Belgian volunteers to enlist for the Zouaves.<sup>29</sup> Catholic investors deposited their funds with André Langrand-Dumonceau (1826-1900), a financial adventurer. His operations in exclusively Catholic recipient states would lead to a high-profile scandalous bankruptcy.<sup>30</sup> Conversely, Belgian arms were produced and sold to the other camp.<sup>31</sup> Furthermore, the transnational connections between the aspiring Italian and Belgian internal political struggles were evident.<sup>32</sup> Liberal politicians in Belgium fought for the same issues as their counterparts in Italy. This corresponds to numerous personal links between legal scholars, such as François Laurent (1810-1887) and Pasquale Stanislao Mancini (1817-1888) or Augusto Pierantoni (1840-1911).<sup>33</sup>

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28 LAMBERTS, EMIEL (1984) 'Het ultramontanisme in België 1830-1914' in : LAMBERTS, EMIEL (ed) (1984) *De Kruistocht tegen het Liberalisme. Facetten van het ultramontanisme in België in de 19e eeuw* (Leuven, Universitaire Pers/KADOC, 1984), 41, 58.

29 The Belgian prelate Xavier de Mérode (1820-1874) was in charge of a Franco-Belgian-Dutch battalion of volunteers and was appointed minister of War by Pope Pius IX. See DUMOULIN (1983) 148 ; LAMBERTS, EMIEL (2011) *Het gevecht met Leviathan. Een verhaal over de politieke ordening in Europa, 1815-1965* (Amsterdam, Bert Bakker) 167; GODDEERIS, JOHN (1978) *De Pauselijke Zouaven : met opgave van de vrijwilligers uit West-Vlaanderen (Handzame, Familia et Patria)* ; SARLIN, SIMON (2013) *Le légitimisme en armes : histoire d'une mobilisation contre l'unité italienne* (Rome, École française de Rome).

30 JACQUEMYNS, GUILLAUME (1960), *Langrand-Dumonceau, Promoteur d'une puissance financière catholique* (Bruxelles, Université libre de Bruxelles) ; LAMBERTS (2011) 178-185.

31 Official customs statistics were unreliable. Many Belgian arms were classified as 'French', 'British' or 'Dutch', due to the use of foreign intermediaries. However, since orders for French arms were insufficient to cover Cavour's needs, contracts between the Piedmontese government and arms manufacturers in Liège point to the existence of a far more extensive trade. 50 000 rifles were commanded with the Ets. Francotte in Liège, through the Italian consul in this city, historically notorious for its steel industry. Venetian banker Errera, consul-general in Brussels, commanded no less than 270 000 rifles in 1862, after Belgian recognition. DUMOULIN, MICHEL (1988) 'Armes Belges Pour l'Italie, 1860-1865' in LEFÈVRE, PATRICK and DEGRYSE, PIET (eds), *Mélanges offerts à Albert Duchesne, Jean Lorette et Jean-Léon Charles* (Bruxelles, Musée royal de l'armée), 43-52.

32 The recent doctoral dissertation of Elisabeth Bruyère (defended in Ghent in November 2019, under the supervision of Dirk Heirbaut) highlights the common theoretical underpinnings of their shared views on private international law. BRUYÈRE, ELISABETH (2019) 'Principes, esprit et controverses. L'Avant-Projet de Code Civil de François Laurent ou l'œuvre séditeuse d'un libre-penseur' (Dr Iur, UGent 2019) 263–281, 395–404.

33 FIOCCHI MALASPINA, ELISABETTA (2020) « Toil of the noble world » : Pasquale Stanislao Mancini, Augusto Pierantoni and the international legal discourse of 19th century Italy, *Clio@Thémis: Revue européenne électronique d'histoire du droit/European Electronic Journal in Legal History* 18; MURA, ELOISA (2020) 'The Construction of the International Law Discipline in Italy between the Mancinian and Positive Schools' in BARTOLINI (ed), *A History of International Law in Italy* (2020), 109-127. See also MURA, ELOISA (2017) *All'ombra di Mancini: la disciplina internazionalistica in Italia ai suoi albori* (Pisa, ETS); MANCINI, PASQUALE STANISLAO (2018), *Mancini in cattedra: le lezioni torinesi di diritto internazionale del 1850-51 e 1851-52* (ed. MURA, ELOISA) (Siena, ETS).

9 This long introduction sets the stage for a remarkably lively ('violent')<sup>34</sup> debate in the Belgian Chamber of Representatives. Insults and emotional tremolos were not unusual. Under the Belgian constitution, members of Parliament enjoyed a full civil and criminal immunity for words uttered in their meetings.<sup>35</sup> Yet, a reply by Charles Rogier to a question asked by a Catholic MP would eventually trigger a civil lawsuit against a newspaper, which Rogier's lawyers triumphantly won.<sup>36</sup> The liberal government was headed by Walthère Frère-Orban (a personal friend of Cavour)<sup>37</sup> and Charles Rogier. Both were in favour of recognising Victor Emmanuel II of Piemonte-Sardinia (1820-1878)'s assumed title of 'King of Italy.'<sup>38</sup> The consensus in international legal scholarship considers that the Kingdom of Piedmont-Sardinia and the Kingdom of Italy stand in a line of continuity, which is still unbroken up to the present day, irrespective of the fascist-totalitarian and republican transition.<sup>39</sup> The turn of the year 1861 is regularly taken as the starting point of official relations between Belgium and Italy. We will examine the terms of the debate, whereby the practical political use of arguments drawn from international law and constitutional history, for their 'evocative and ideological potential',<sup>40</sup> will demonstrate how the dissemination of the law of nations with individual members of Parliament made it a credible vector of legitimacy. First (A), the governmental position is briefly discussed, followed by that of the Catholic opposition (B). We will return to the significance of the debate for Belgian permanent neutrality in the conclusion of the present paper.

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34 DUMOULIN (1983) 164.

35 Artt. 44 and 45, Belgian Constitution of 1831 (current articles 58 and 89). VELAERS (2019), vol. II, 228-261.

36 We are currently preparing a contribution in Dutch on this matter. The Belgian Supreme Court (Court of Cassation) authoritatively stated on 24 January 1863 that reparation under tort law derived from natural law. Even if criminal laws limited freedom of speech, the arduous procedure of the popular jury could not be mandatory for obtaining redress. The printer of the Catholic conservative journal *Journal de Bruxelles* had been condemned by the Brussels Tribunal of First Instance on 15 February 1862 (confirmed by the Court of Appeal on 2 June 1862) to pay 10 000 Belgian Francs of compensations to the Minister of Foreign Affairs (by comparison: the daily wage of a labourer in the Ghent textile industry amounted to 1,5 Francs). The newspaper had suggested that Rogier descended from a hangman.

37 TERLINDEN, CHARLES (1926), 'La Reconnaissance du Royaume d'Italie par la Belgique' in VANDER LINDEN, HERMAN and GANSHOF, FRANÇOIS LOUIS (eds), *Mélanges d'histoire offerts à Henri Pirenne par ses anciens élèves et ses amis à l'occasion de sa quarantième année d'enseignement à l'Université de Gand 1886-1926* (Gand, Vromant) 487 ; DUMOULIN (1983) 147.

38 This title was attributed to the King by the 'first Parliament of Italy' on 18 February 1861 (MÜSSIG (2016), 'Juridification by Constitution. National Sovereignty in Eighteenth and Nineteenth Century Europe', in: MÜSSIG (2016), 78. DOI 10.1007/978-3-319-42405-7\_1). X (1861) *Reconnaissance du Royaume d'Italie par la Belgique. Discussion de l'adresse à la Chambre des Représentants. Novembre 1861* (Bruxelles, De Labroue et Mertens); MARCHISIO, SERGIO (2020), 'The Unification of Italy and International Law' in BARTOLINI (2020) (ed), *A History of International Law in Italy*, op. cit.

39 MARCHISIO (2020) 287.

40 MECCA (2020) 163.

## A. The Belgian government's position

- 10 *'La neutralité, c'est la stipulation la plus garantissante de notre perpétuité. Les puissances ont stipulé dans leur intérêt ; mais c'est le plus grand service qu'elles aient pu nous rendre. Conservons donc avec soin ce bienfait ; n'en sortons à aucun prix ; aussi dois-je déclarer que je regrette et blâme l'acte de reconnaissance qui a été fait.'*

*Barthélémy de Theux, 23 November 1861<sup>41</sup>*

- 11 The legal framework of the debate is determined by the status of imposed permanent neutrality. The Belgian government was under permanent outside scrutiny by the Great Powers who had agreed to guarantee the country's independence and territorial integrity, on the countervailing condition that it would observe a strict neutrality against all other states. The recognition of a unified Italy under Victor Emmanuel II of Piemonte-Sardinia was evidently likely to frustrate Emperor Franz Joseph of Austria (1830-1916). In 1859, the latter had been compelled to give up Lombardy at the Treaty of Zurich.<sup>42</sup> In practice, France and Britain had granted support to the Italian movement of independence.<sup>43</sup> The conservative powers Prussia and Russia, the two other remaining guarantors, had kept aloof. In the case of Prussia, the weakening of Austria within the German Confederation was more important than the constitutional evolution of Italy.<sup>44</sup> For Russia, the defeat in the Crimean War (1853-1856) had discouraged further mingling in Western European affairs.<sup>45</sup> At the time of the debate, Victor Emmanuel II did not

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41 *Reconnaissance du Royaume d'Italie (1861), op. cit., 71.*

42 Treaty of Peace between Austria and France, Zurich, 10 November 1859; Treaty of Peace between Austria, France and Sardinia, Zurich, 10 November 1859; 121 CTS 145; Treaty between France and Sardinia for the Cession of Lombardy, Zurich, 10 November 1859, 121 CTS 171.

43 This does not mean both states' geopolitical interests were the same. E.g. Sylvain Van de Weyer (Belgian ambassador) to de Vrière, London, 18 May 1860 (copy) (Belgian Ministry of Foreign Affairs, Classement B, Indépendance, Neutralité, Défense Nationale, vol. 1, s.f.): *'La France fait répandre habilement partout le bruit que l'Angleterre dans son égoïsme industriel et mercantile, ne sacrifiera pour le maintien du droit public européen, ni un seul homme ni un seul shelling ; qu'elle a permis, sans protester, l'annexion de Nice & de la Savoie'*. Compare with 'No man can be so cold as not to have felt some little flush of hope and pleasure at witnessing the realization [sic] of those golden dreams of a free and united Italy [...]. For Europe at large the creation south of the Alps of a Power able to defy both France and Austria separately [...] seems to me very desirable' (BERNARD, MONTAGUE (1859) *On the Principle of Non Intervention: A Lecture Delivered in the Hall of All Souls' College* (Oxford, Parker) 31).

44 WAWRO, GEOFFREY (1997), *The Austro-Prussian War: Austria's War with Prussia and Italy in 1866* (Cambridge, CUP).

45 The necessity of internal recovery and prudent external restoration of relations was summarised as *'La Russie ne boude pas, elle se recueille'* (Constantin de Grunwald, cited by SCHIMMELPENNINCK VAN DER OYE, DAVID (2006) *Russian foreign policy, 1815-1917* in: LIEVEN, DOMINIC (ed) *The Cambridge History of Russia. II: Imperial Russia, 1689-1917* (Cambridge, CUP), 561).

46 Convention between Austria and France for the Cession of Venetia, Vienna, 24 August 1866, 133 CTS 89.

rule in Venice (which was only to be ceded at the end of the Austro-Prussian war of 1866)<sup>46</sup> nor in Rome (where the Pope still enjoyed a relation of protection with Napoleon III).<sup>47</sup>

12 The Catholic opposition published no less than 129 pages of parliamentary interventions, in order to bolster resistance against the policies pursued by the Liberals since 1857. From the start, the editors attack Rogier and Frère-Orban. Instead of clinging to the prudence inspired by Leopold I's intervention before both Houses of Parliament on 10 November 1840 (*neutralité sincère, loyale et forte*)<sup>48</sup>, the liberals had extorted an act from the King under pressure. This act was not only useless, but also harmful and eventually dreadful and disastrous to the country as a whole.<sup>49</sup> If even '*la plus vulgaire prudence*' had been followed, the ministry ought to have abstained from a recognition of the Kingdom of Italy. By doing so, the government had given a free hand to a system designed to 'leave the strong to oppress the weak, invoking a title that one can easily create when one is strong enough'. The extension of Sardinia-Piemonte all the way down south to the Kingdom of Naples was nothing more than a system of annexation.<sup>50</sup>

13 The justification provided by the government boiled down to two points, according to the Catholic opposition. First, a neutral state was 'condemned to recognise a *fait accompli*, or an '*acte de possession*',<sup>51</sup> of whatever nature it might be'. In a telegraphic dispatch to Carolus, Rogier

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47 BRULEY, YVES (2015) *La Diplomatie Du Sphinx* (Paris, CLD), 137-155 ; DUMOULIN, MICHEL (1981) 145-146. Dechamps, 28 November 1861. Reconnaissance du Royaume d'Italie... (1861) 121. Cavour publicly declared on 25 March 1861 that only French protection withheld Sardinia from annexating the Papal State. TERLINDEN (1926) 485-486. Rumours circulated according to which France would be ready to drop its support for the Pope in exchange for the cession of Sardinia. Ibid. 500. Russia argued that if Napoleon III could recognise a title with the exception of Rome, the Czar might as well recognise it with the exception of Naples. Ibid.

48 *L'Indépendance Belge*, 11 November 1840 ; Reconnaissance du Royaume d'Italie... (1861) 12 ; ARENDT, GUILLAUME (1845) *Essai sur la neutralité de la Belgique* (Bruxelles, Muquardt), 57-58; BANNING, EMILE (1927) (ed. DE RIDDER, ALFRED) *Les origines & les phases de la neutralité belge* (Bruxelles, Albert Dewit) ; DESCAMPS (1902) 584-591 ; LADEMACHER, HORST (1971) *Die Belgische Neutralität als problem der europäischen Politik 1830-1914* (Bonn, Röhrscheid), 97-116 ; MORAND, MARCEL (1894) *Les origines de la neutralité perpétuelle I* *Revue générale de droit international public* 522; NYS (1900) ; SCHOPFER, SIDNEY (1894) *Le principe juridique de la neutralité et son évolution dans l'histoire du droit de la guerre* (Lausanne, Corbaz), 229-237 ; THOMAS, DANIEL H. (1983) *The guarantee of Belgian independence and neutrality in European diplomacy : 1830s-1930s* (Kingston (R.I.), Thomas).

49 Reconnaissance du Royaume d'Italie... (1861) I.

50 Ibid. II.

51 Rogier, COR, 21 November 1861, p. 27. The same argument had been used by Britain, France, Sweden, the Netherlands and Portugal. DUMOULIN (1981) 146, 153. The Piemontese minister Ricasoli added in August 1861 that the success of an international loan had demonstrated that financial markets thought Italy was creditworthy. See note 125.

justified this using Vattel and Georg Friedrich von Martens.<sup>52</sup> A neutral state could not do anything else but recognise the outcome of a struggle between parties in another country. This is what Belgium had done for Spain and Portugal.<sup>53</sup> Of course, this reasoning was and is fallacious, the Catholics claimed. The contradiction between declaratory and constitutive approaches to recognition is unsolvable.<sup>54</sup> As Montague Bernard already highlighted in 1859, sovereignty is an internally absolute, but externally relational concept:

14 *‘The whole fabric of international law is built on two assumptions, or first principles – the assumption that States are severally sovereign or independent (the terms are here convertible) and the assumption that they are also members of a community united by a social tie [...] Destroy them and you destroy the system; impair them and you impair the system.’<sup>55</sup>*

15 Second, the imperatives of an advantageous commercial treaty made it necessary to first recognise the new situation.<sup>56</sup> Why would Belgium wait three more months or even three years, if not all Great Powers would presumably have recognised the Kingdom of Italy?<sup>57</sup> The opposition lost the ensuing vote, by 47 votes against 62.<sup>58</sup> The government’s doctrine of ‘effectiveness’ carried the day. Yet, at least twenty members of the Liberal group were said to have intimately condemned the path chosen by their leaders. The publication of Catholic interventions ought to prove that the government had been ‘morally beaten on this question’.<sup>59</sup>

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52 The Belgian historian Charles Terlinden (1878-1972) consulted the minute of the dispatch in the Belgian Foreign Archives (*Saint-Siège*, vol. XI, n° 72). TERLINDEN (1926) 502 note 3. It is not clear whether the spelling errors in the reference to G.F. Martens are those of Rogier, or Terlinden’s. Martens’s successful manual *Précis du droit des gens moderne de l’Europe* was published several times in (1789, 1801, 1821) and after his lifetime (1831, ed. Silvestre Pinheiro Ferreira), 1858 (ed. Silvestre Pinheiro Ferreira and Charles Vergé), 1864 (ed. Silvestre Pinheiro Ferreira and Charles Vergé). It did not contain a *supplément* in any of these editions, and the page in question does not refer to recognition in the 1821, 1831 or 1858 editions (which Rogier or his advisers could have consulted). « À côté de ce passage il est écrit sur la minute : ‘Ceci est du Vattel, paraît-il. C. R[ogier].’ Et sur la copie : ‘Voir p. 165 supplément de Maertens [sic], Précis des principes de droit public [sic]. » See also Orts, COR, 21 November 1861, p. 27 : ‘Sortie d’une affirmation énergique du dogme de la souveraineté populaire, la Belgique plus qu’aucun pays au monde doit respecter au-delà de ses frontières l’expression de la volonté nationale chaque fois qu’elle se manifeste’.

53 Rogier, COR, 21 November 1861, p. 29.

54 CRAWFORD (2006) 5: ‘The declaratory theorist’s equation of fact with law also obscures the possibility that the creation of States might be regulated by rules predicated on other fundamental principles’. Of course, the Catholic opposition aims at the existence of these rules, by appealing to neutrality and the general law of nations.

55 BERNARD (1859) 7.

56 Reconnaissance du Royaume d’Italie... (1861) II.

57 Charles Rogier, COR, 21 November 1861, 27.

58 COR, 29 November 1861, 105-106.

59 Reconnaissance du Royaume d’Italie... (1861) II.

16 Belgium was not confronted with its first debate on recognition since 1830. The French Revolution of 1848 had already created a delicate situation. It was well known that Lamartine, in charge of foreign affairs in the first revolutionary government, initially aimed to overturn the results of the Congress of Vienna. He considered the latter reactionary episode in the history of European peoples. The Belgian government at the time, directed by the same Rogier and Frère-Orban, prudently accepted the new regime in France, well aware that this move would not be supported by Austria, Prussia and Russia.<sup>60</sup> The medievalist Kervyn de Lettenhove<sup>61</sup> still had not digested the recognition of the '*dictature de 1848, celle de Ledru-Rollin et de Louis Blanc*'<sup>62</sup>, and feared that the ideas of Mazzini might replace those of Cavour, on which Rogier and Frère-Orban doubtlessly based their decision. Premature recognition of Italy, without waiting for the Pope to be found 'wandering and begging', would violate the obligations of permanent neutrality. Thibaut called Garibaldi '*un grand criminel*' and saw Mazzini as '*chef de la révolution sociale en Europe*'. Henri de Brouckère, who had been cabinet leader of a unionist government between 1855 and 1857, was presented as wiser than Rogier in his disapproval of the Liberals' position.<sup>63</sup>

17 The governmental position was defended using the commercial argument. On 3 November 1861, Charles Rogier wrote a letter to Carolus, envoy extraordinary and minister plenipotentiary for Leopold I at the Papal Court in Rome.<sup>64</sup> At the time when France was negotiating a commercial convention with the court of Turin, while it was clear that talks were going on with

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60 GOOCH, BRISON DOWLING (1963) *Belgium and the February Revolution* (Leiden, Nijhoff), 37-51; DE RIDDER, ALFRED (1928) *La crise de la neutralité belge de 1848. Le dossier diplomatique* (Bruxelles, Weissenbruch).

61 1817-1891, Member of the Chamber of Representatives for Eeklo from 1861. Kervyn is well-known as a specialist of medieval history. He was elected to the Royal Academy in 1859. P. HENRARD, P. (1894) 'Notice sur Joseph-Bruno-Marie-Constantin Kervyn de Lettenhove', *Annuaire de l'Académie Royale de Belgique*, 248-300.

62 *Reconnaissance du Royaume d'Italie...* (1861) 79.

63 *Ibid.* 103. BANNING (1927) 117 found de Brouckère 'excessively scrupulous'. We should however approach Banning's analysis with caution, as his opinion on neutrality is contemporary with that of Nys and Descamps. This does not necessarily reflect the constraints of the 1850s and 1860s. On Henri de Brouckère's reaction to French and British pressure in the Crimean War, see DHONDT, FREDERIK 'Permanent Neutrality or Permanent Insecurity? Obligation and Self-Interest in the Defense of Belgian Neutrality' in VAN HULLE, INGE and LESAFFER, RANDALL (eds) (2019) *International Law in the Long 19th Century (1776-1914). From the Public Law of Europe to Global International Law?* (Leiden/Boston: Martinus Nijhoff/Brill), 159-185 DOI 10.1163/9789004412088\_009.

64 Henri Carolus (1811-1867) served in the Belgian army in the 1830s and was appointed as secretary of the Belgian legation in Berlin in 1840, with a personal royal mission. Carolus had to analyse the Prussian military. He also acted on behalf of the interests of the Société Cockerill, an important steel company in Wallonia. In 1846, Carolus was consul general in Hessen-Darmstadt, displaying a remarkable skill in combining military, political and commercial missions. He was dismissed from the army following the Law of 26 May 1848 (see part II) on incompatibilities, and remained in the diplomatic service. Missions in Paris (1848, advisor at the Belgian legation, from 1853 on resident minister, on royal proposal) and Lisbon (1856, envoy extraordinary and minister plenipotentiary, the highest rank in the diplomatic corps) brought him to the Holy See. Carolus is buried in the St Julian of the Belgians-Church in Rome. J.-R. LÉCONTE (1967), 'CAROLUS (Henri)', *Biographie Nationale VI* (suppl.), col. 160-163. This letter was directed at Carolus, since the Secretary of State, Cardinal Antonelli, had protested on 15 April 1861, asking not to recognise the title 'King of Italy', in view of the illegitimate annexations of Emilia Romagna, the Marche and Umbria. Terlinden (1926) note 1.

London and the Prussian *Zollverein*, Belgium could not allow itself to refrain from such talks as well. The 1860s witnessed a boom in trade conventions concluded by Belgium with other states, in the slipstream of the Cobden-Chevalier agreements. The thriving Belgian industry was constantly in need of new export markets, and pressured the government for recognition.<sup>65</sup> Furthermore, major infrastructure and public building works were announced in Italy. Belgian entrepreneurs could not be confronted with worse competitive conditions than their Dutch, French, British or Prussian counterparts!<sup>66</sup> In other words, the Belgian government argued a commercial treaty was necessary in order to create a level-playing field for Belgian companies vis-à-vis their foreign competitors. Finally, private international law required recognition of Italy by Belgium to ensure that legal acts drafted in either country would have effect in transnational transactions.<sup>67</sup>

18 In a second letter of the same date, directed at the Count of Montalto, Sardinian minister in Belgium,<sup>68</sup> Rogier announced that a new Belgian envoy extraordinary<sup>69</sup> would be sent to Victor Emmanuel II's court, with letters of credence conformably to the title used by the Sardinian Parliament in the Palazzo Carignano on 17 March 1861 at the proclamation of the Kingdom of Italy.<sup>70</sup> A third letter by Rogier was directed at Targioni, the King of Naples Francis II of Bourbons' agent in Brussels.<sup>71</sup> Rogier regretted that he was not able to officially notify his

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65 'Quand nous avons reconnu l'Italie, indépendamment des raisons politiques, nous avons mis en avant des motifs d'intérêt matériel [...] L'acte de reconnaissance n'a pas été, en un mot, une démonstration purement platonique de notre part.' (Rogier to Solvyns, minister in Turin, 5 July 1862, Belgian State Archives, Rogier Archives, cited by DUMOULIN (1982), 33). See also DUMOULIN (1983) 158; DESCAMPS (1902) 609.

66 Reconnaissance du Royaume d'Italie... (1861) 4; TERLINDEN (1926) 498. On the trade issue, see *ibid* 499; Michel DUMOULIN, *Les relations économiques italo-belges (1861-1914)* (Palais des Académies 1990); VOLKAERT, FLORENZ (2018) 'De Onderhandelingen over het Franco-Belgisch Verdrag van 1861 en de eerste onvoorwaardelijke Most-Favoured-Nation-Clausule in de Belgische handelspolitiek' *XX Pro Memorie. Bijdragen tot de rechtsgeschiedenis der Nederlanden* 234.

67 E.g. inquiries by the maritime authorities in Ostend, on whether they needed to block transactions with Italian subjects if their official documents contained a title not recognised by Belgium. The Ministry of Foreign Affairs decided in favour of the individuals and preferred to ignore the formal stumbling block. TERLINDEN (1926) 499.

68 *Ibid.* 490.

69 DUMOULIN (1983) 157; BANNING (1927) 108. Henri Solvyns (1817-1894) would later replace Lannoy, who died of stomach cancer. *Ibid.* 497. Lannoy had been received by Cavour on 4 April 1859, and received the latter's compliments on Belgium's 'scrupulous observance of the principle on which the basis of its public law rests' (Belgian Ministry of Foreign Affairs, Classement B, Indépendance, Neutralité, Défense Nationale, vol. 1, s.f.). Solvyns would play a major part in the diplomatic development of Leopold II's colonial project. See GENIN, VINCENT (2018) *Henri Solvyns (1817-1894). Diplomate belge*, in : *Nouvelle biographie nationale XIV* (Bruxelles, Académie Royale).

70 Reconnaissance du Royaume d'Italie... (1861) 6. The Parliament in Turin unanimously changed Victor Emmanuel II's title on 18 February 1861. TERLINDEN (1926) 483.

71 The same procedure had been followed by Lord Russell on 26 February 1831 with Fortunato, Francis II's chargé d'affaires in London. TERLINDEN (1926) 485 ; BANNING (1927) 110.

appointment as Minister of Foreign Affairs, since the decision had been taken to recognise Victor Emmanuel II as King of Italy (including Naples). Official relations were henceforth excluded.<sup>72</sup>

- 19 The whole issue had not been dealt with very smoothly. The Liberal government had been divided, mainly due to the obligations of the neutrality regime. Rogier had taken over the Ministry of Foreign Affairs after his predecessor, baron de Vrière, resigned out of protest against the impending recognition of Victor Emmanuel II's title.<sup>73</sup>

## B. Opposition arguments

### 1. 'Notre seule sauvegarde dans la famille des peuples!' : Belgian neutrality<sup>74</sup>

- 20 The opposition attacked Rogier. The first orator was Alphonse Nothomb, MP from the rural province of Luxemburg and former Minister of Justice.<sup>75</sup> Nothomb directed his criticism at the system of 'annexion' practiced in Italy. The 'rupture' with the Kingdom of Naples would equate a violation of the duties inherent to Belgian neutrality and the law of nations more generally. First, neutrality, as created by article VII of the Treaty of 19 April 1839, was for Nothomb a 'condition

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72 Reconnaissance du Royaume d'Italie... (1861) 6–7.

73 TERLINDEN (1926) 501 ; DUMOULIN (1983) 156-158.

74 Quote from NOTHOMB, Reconnaissance du Royaume d'Italie... (1861) 11.

75 Jean-Pierre-Dominique-Ambroise-Camille-Alphonse Nothomb (1817-1898), obtained the degree of doctor of Laws at Ghent University *magna cum laude* in 1836, and spent time at the University of Berlin as well. Nothomb abhorred life in Brussels, ('*c'est un dégoût, une nonchalance, une torpeur sans bornes, d'esprit et de corps*') and enrolled at the bar of Arlon in his native province. As Minister of Justice (30 March 1855-9 November 1857) Nothomb introduced the bill allowing for the extradition of conspirators against the life of a foreign sovereign, and also the infamous '*Loi des Couvents*', whereby religious congregations would receive legal personality. This caused a major political crisis in 1857, with widespread liberal street protest and, as a consequence, the fall of the last 'unionist' Cabinet (see GUIZOT, FRANÇOIS PIERRE GUILLAUME (1857), *La loi de charité en Belgique* (Bruxelles, Decq)). From this election until 1870, the Liberals of Rogier and Frère-Orban would reign alone. Nothomb favoured the extension of suffrage, hoping that this would allow the Catholic Church to transform her social power (the ultramontanist 'pays réel') into a parliamentary majority ('pays légal') and supported Leopold II's colonial ambitions. See HENDRICKX, JEAN-PIERRE (1971) 'NOTHOMB (Jean-Pierre-Dominique-Ambroise-Camille-Alphonse)', *Biographie Nationale XXXVII*, col. 609-618.

*d'existence européenne*'.<sup>76</sup> This alone should have sufficed for the Belgian government. In no way could the country choose to help a foreign state conducting a war.<sup>77</sup> Nothomb, a lawyer at the local bar in Arlon, appealed to the '*conscience de tous les hommes qui pratiquent les choses du droit*'. In other words, the conscience of ordinary law practitioners (traditionally well represented in Parliament) ought to be shocked by the Government's lack of prudence.<sup>78</sup>

21 Nothomb cited definitions of neutrality, ranging from 'staying in the same attitude' towards sovereigns in a state of war, to 'exact and perfect impartiality, demonstrated in fact by the neutral's attitude towards belligerents'. Rogier would have openly taken part for one side against the other. By granting assistance to one of the parties, the Liberals committed a '*violation manifeste*' of their neutral condition. Rogier presented Italian unification, as proclaimed by Parliament in Turin in March 1861, as a *fait accompli*. But, Nothomb opined, where was the peace treaty between the Holy See and Piemonte, or the Peace Treaty between Naples and Piemonte? Belgium gives '*gain de cause*' to Piemonte, whereas Garibaldi's men or Victor Emmanuel's troops had only occupied territory, and committed '*usurpations*' against other sovereigns.<sup>79</sup>

22 Resuscitating an 1840 quote by the liberal Founding Father Paul Devaux, Nothomb recalled that Belgian neutrality had to be a synonym for impartiality against the British, the French and the Germans alike. Why not add 'Piemontese' to the enumeration? Nothomb recalled that the liberal MP Auguste Orts<sup>80</sup> had taken this stance in Parliament, when he condemned Belgian volunteers for the Papal forces. Orts insisted they should lose their nationality, since:

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76 Treaty between Austria, France, Great Britain, Prussia and Russia, and Belgium, London, 19 April 1839, 88 CTS 421. GOBLET D'ALVIELLA, ALBERT (1863) *Des cinq grandes puissances de l'Europe dans leurs rapports politiques et militaires avec la Belgique* (Bruxelles/Leipzig, Lacroix, Verbroeckhoven & C°); DE LANNOY, FLEURY (1930) *Histoire diplomatique de l'indépendance belge* (Bruxelles, Dewit); DE RIDDER, ALFRED (1920) *Histoire diplomatique du traité de 1839 (19 avril 1839)* (Bruxelles/Paris, Vromant); DESCAMPS (1902), 135-300. For Metternich's restrictive reading of the concept of permanent neutrality (which he saw more as a collective protectorate by the great powers): DE RIDDER, ALFRED (1932) *La Belgique et le prince de Metternich. Instructions du Chancelier de l'Empire aux diplomates autrichiens accrédités à Bruxelles* (Bruxelles, Hayez); ŠEDIVÝ, MIROSLAV (2013) *Metternich, the Great Powers and the Eastern Question* (Pilsen: University of Western Bohemia), 47: 'The word 'guarantee' applied to independence [...] is essentially a misnomer because there is a contradiction between what the word implies and the independence to which one wants to apply it' (Metternich to Apponyi, Königswart, 1 September 1840, HHStA, StA, Frankreich, 319). FLASSAN, GAÉTAN RAXIS DE (1840) *Solution de la question d'Orient, et neutralité perpétuelle de l'Égypte* (Paris, Dentu & Ledoyen) 41 credited Austria's 'magnanimity' for avoiding a major European collision in 1830. Flassan stated he had been the intellectual father of Belgian permanent neutrality, as advisor to French Foreign Minister Sebastiani in 1831, *d'après un plan remis par nous* (Ibid., 17). My thanks to Raphaël Cahen for the reference.

77 *Reconnaissance du Royaume d'Italie...* (1861) 10.

78 Ibid. 11.

79 Ibid.

80 Auguste Orts (1814-1880) was a moderate Liberal lawyer and historian, who taught at the ULB. He was a staunch opponent of the 'mainmorte' of church property. See MESDACH DE TER KIELE (1901), 'ORTS (Auguste)', in: *Biographie Nationale XVI*, col. 334-342.

- 23 *'We ought to be more scrupulous than anybody else, since this is a condition of our independent existence in Europe [...]. We have to prove that we desire to remain neutral, since we want to remain independent [...] Besides the beautiful right we call independence, we ought to accept the countervailing obligations, namely the obligation not to do to others what one would like to avoid others to do in one's proper home.'*<sup>81</sup>
- 24 Of course, Nothomb defended the right of every individual to 'serve abroad', since 'treaties only bind states'. The liberal government tried to deprive men of their 'natural liberty', although neutrality was only a 'collective' concept, which could only apply to the State as a whole. Even more, Nothomb argued, Rogier was so hypocritical in his reasoning that he would allow the Belgian State what would be forbidden for the individual citizen: choosing sides for a belligerent in an international conflict not yet settled by a treaty.<sup>82</sup>
- 25 A major Catholic argument, recurring with several MPs, is that of the possible consequences of Rogier's letter. What if Belgium would argue that another state violated its duties as a neutral power, when this case would offer a precedent where it had committed such a violation itself?<sup>83</sup> How would Belgium react, if the Italian irredentist movement annexed Ticino, Venice, Dalmatia or even Corsica? What if Poland would rise and revolt against Russia? What if Ireland would proclaim some far relative of an '*ancienne race*' as its ruler? Why recognize a 'state of fact' in Italy, and not elsewhere? De Decker added that the massive investments required by the government to buttress the fortifications in Antwerp were a clear indication that the country was 'most threatened by annexation of all countries in Europe'.<sup>84</sup> Why spend 50 million to transform Antwerp into '*un Gibraltar*', or 15 million to buy Prussians canons?<sup>85</sup> Wasn't the government taking an enormous risk by encouraging Italian irredentism? What if the future annexation of Venice would arouse similar ideas in France? Pleas stating that 'Italy without Venice would be as

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81 *Reconnaissance du Royaume d'Italie... (1861)* 13.

82 *Ibid.* 14.

83 *Ibid.*

84 *Ibid.* 20. The fortification of Antwerp was part of Belgium's obligations as a 'credible' permanently neutral country, but was met with resistance by the Catholics and local proprietors, who created the 'Meeting Party', which would eventually become part of the Catholic Party. See BONIFACE, JOSEPH (1861) *La Belgique indépendante. III : la neutralité armée* (Bruxelles/Leipzig, Lacroix, Verbroeckhoven & Cie) 5 : '*armer la patrie, n'est-ce pas le seul moyen de la conserver indépendante et libre? Les pères de famille s'arment contre les voleurs, les nations libres s'arment contre les despotes. Est-il une question plus simple, plus élémentaire?*'; BRIALMONT, ALEXIS HENRI (1864) *La guerre du Schleswig envisagée au point de vue belge*. Anvers et la nouvelle artillerie par un officier d'Etat-Major (Paris, Tanera) ; ARENDT (1845) 80-83 ; LADEMACHER (1971) 161-162.

85 *Reconnaissance du Royaume d'Italie... (1861)* 61. Arguments put forward by Dumortier. See also DUMOULIN (1981) 147, who stated that 'recognising the legitimacy of Piemonte's policy of annexation would have equalled, for Belgium, a political suicide'.

France without Belgium' were already in print.<sup>86</sup> Louis Julliot (1795-1881), Catholic MP from Limburg (a province bordering the Netherlands) warned against the recognition of potential claims of the new King of 'Italy' on Venice and Rome. Didn't the European Great Powers link Belgium's recognition to its abandoning of the claim on Maastricht?<sup>87</sup>

26 Furthermore, why would Belgium recognise so quickly? Three out of five guarantors of Belgian independence (Russia, Prussia and Austria) had not yet reacted. De Decker argued that Belgium should orient its foreign policy on a similar footing as... Switzerland!<sup>88</sup> The former cabinet leader argued that the Swiss Confederation had only recognised Italy with reservations, but Rogier and Frère-Orban were able to contradict this quickly. Viscount Vilain XIII,<sup>89</sup> by contrast, claimed to have heard from Prussian and Russian voyagers that they did not suffer any inconveniences from their governments' wise decision to delay a full recognition. Rogier's argument of absolute necessity and urgency was thus a mere pretext.<sup>90</sup> Vilain XIII's words were not without weight. The viscount had personally represented Leopold I during the 1830s, and had had to negotiate with the various Italian courts to ensure Leopold I's recognition as King of Belgium. Furthermore, Vilain XIII thought any recognition of the 'Kingdom' of Italy was premature:

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86 Reconnaissance du Royaume d'Italie... (1861) 21. '*Le seul moyen de conjurer les maudits traités de 1815, c'est d'accorder à la France ses frontières naturelles. La violence, la conquête ne sont pas nécessaires. On a trouvé des procédés plus moraux et plus sûrs : la rectification des frontières ratifiée par le consentement populaire*' (*Le Siècle*, May 1860 quoted by HYMANS, PAUL (1905), *Frère-Orban* (Bruxelles, Lebègue), vol. II, 89-90).

87 Reconnaissance du Royaume d'Italie... (1861) 38. On Belgian claims on 'Dutch Limburg', see DE WAELE, MARIA (1989), *Naar een groter België! De Belgische territoriale eisen tijdens en na de Eerste Wereldoorlog. Een onderzoek naar de doeleinden, besluitvorming, de realisatiemiddelen en de propagandavorming van de buitenlandse politiek* (Dr Hist, UGent, 1989).

88 Reconnaissance du Royaume d'Italie... (1861) 26. On the contrary, de Vrière, Rogier's predecessor, assessed his nation's attitude differently: '*Les populations aussi bien que le Gouvernement prennent la neutralité très au sérieux. Nous avons, je l'avoue, moins de bonhomie que les Suisses et nous ne saurions prendre en si bonne part la violation des traités.*' (de Vrière to Sylvain Van de Weyer (ambassador in London), Brussels, 28 June 1859, Belgian Ministry of Foreign Affairs, Classement B, Indépendance, Neutralité, Défense Nationale, vol. 1, s.f. In reality, Rogier and Frère-Orban had been discussing the available options since April 1861. The decision had been delayed due to elections for the Chamber of Representatives, which had to be renewed by half, every two years. DUMOULIN (1983) 148-152; Art. 51 Constitution, THONISSEN, JEAN-JOSEPH (1844) *Constitution belge annotée* (Hasselt, Milis), 166-167.

89 Charles-Ghislain-Guillaume, vicomte Vilain XIII (1803-1878) had been Minister for Foreign Affairs under Pierre De Decker's unionist government (30 March 1855-9 November 1857). A member of the National Congress, Vilain XIII was elected MP for Saint-Nicolas in 1831, but quickly opted for a diplomatic career as envoy extraordinary and minister plenipotentiary in Rome with the Holy See. During this mission, he had to present letters of notification of Leopold I's accession to the Belgian throne, which made him the practical artisan of the recognition of Leopold I's title... by the various Italian courts. He met with rejection in Naples and Modena, was received only coolly in Turin and was in perpetual conflict with the Roman cardinalate. In 1839, Vilain XIII returned to Belgium for good. He was returned as an MP for Saint-Nicolas until 1848, and opted for his native Limburg from 1848 to 1878. After his tenure as Minister for Foreign Affairs, Leopold I appointed him Minister of State. See VAN KALKEN, FRANS (1936-1938), 'VILAIN XIII (Charles-Ghislain-Guillaume)', *Biographie Nationale XXVI*, col. 729-736.

90 Reconnaissance du Royaume d'Italie... (1861) 33.

- 27 *'non seulement parce qu'il n'est pas fait, mais parce qu'il est en train de se défaire, et j'espère qu'il ne se fera pas.'*
- 28 Vilain hoped that the House of Savoy would simply add the title of 'King of Italy' to a long list including 'King of Cyprus' and 'King of Jerusalem'.<sup>91</sup> If Victor Emmanuel II would keep the title of 'Duke of Savoy', while he had ceded the Duchy to France, the title 'King of Italy' might well enter into the same category, without any harm. Didn't the English royal family revindicate the Kingdom of France up to 1815, more than three centuries after the Hundred Years' War had ended?<sup>92</sup>
- 29 Why, finally, would Belgium help to eliminate small nationalities? The recognitions of independent Greece and Belgium respected the forms agreed at the Congress of Vienna. Belgium had to wait for more than a year after Leopold I's inauguration for all '*puissances secondaires*' in Europe to recognise his accession. On 23 November, Barthélémy Dumortier from Tournai,<sup>93</sup> amplified his colleagues' reasoning, by stating that Italian unification posed an existential threat to Belgium, because it consisted of
- 30 *'la négation de la base essentielle de notre existence politique [...] du respect dû aux petites nationalités.'*<sup>94</sup>
- 31 Dumortier portrayed the equal sovereignty of independent states as the essential contribution of international law to the world. Politics knows either force, or law. Since '*les petites nationalités*' are deprived of the former, they can only have a sole source of prestige or support: law. The creation of the Kingdom of Italy was nothing but the 'suppression' of the balance of power ('*équilibre européen*'), which was the best guarantee for Belgium's political existence. The formation of the Kingdom of Italy shows nothing but violations of the rights of small nationalities.<sup>95</sup> Moreover, France had previously announced that a recognition of the '*fait accompli*' would in

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91 A position shared by Dumortier, *Ibid.* 58. In this sense, the Dutch government had recognised Victor Emmanuel II's title in August, but with the precision that this did not entail an approbation of the facts. TERLINDEN (1926) 495.

92 *Reconnaissance du Royaume d'Italie...* (1861) 34.

93 '*le romantique*' Barthélémy Dumortier (1797-1878), '*une des vieilles glories de 1830*' (DUMOULIN (1983) 163) historian and Catholic member of the Chamber of Representatives from 1831 on, was elected a member of the Royal Academy in 1829. See CRÉPIN, FRANÇOIS (1879) 'Notice sur Barthélémy-Charles-Joseph Du Mortier, Membre de l'Académie', *Annuaire de l'Académie Royale de Belgique*, col. 302-345.

94 *Reconnaissance du Royaume d'Italie...* (1861) 50.

95 *Ibid.* 50–51. The issue was not unimportant to Belgian observers, e.g. ARENDT, LÉON (1867) *Les petits Etats dans la situation présente de l'Europe* (Bruxelles, Devaux) ; Compare with '*Toute nationalité absorbe les petits États, comme en Allemagne et en Italie, où chaque État, ne pouvant défendre son indépendance, était l'objet d'interventions réitérées.*' (CARNAZZA AMARI, GIUSEPPE (1873), 'Nouvel exposé du principe de non-intervention' V *Revue de droit international et de législation comparée* 600).

no way be guaranteed to Piemonte-Sardinia.<sup>96</sup> Why would Belgium then deviate from the principle of non-intervention?<sup>97</sup> For priest de Haerne, the Lombards, Venetians, Tuscans (Etrurians), Romans, Calabresi and Siculi were separate ‘*races*’, just as the ‘Belgian race’.<sup>98</sup>

32 Rogier’s decision to interrupt official relations with the Kingdom of the Two Sicilies was a mere ‘*patente frauduleuse*’ to cover the Liberal’s true merchandise. For Dumortier, the government’s declarations constituted an abuse of law (*‘en fraude de votre droit’*).<sup>99</sup> Barthélémy de Theux, former and future Catholic Cabinet Leader, argued that recognition was only possible, conformable to prescription in civil law, when a ‘*possession complète*’ of ‘more or less long duration’, was ‘*à peine contestable*’.<sup>100</sup> De Theux continued by pointing to the existing commercial treaty between Piemonte-Sardinia and Belgium.<sup>101</sup> This treaty contained a Most Favoured Nation-clause. If France concluded a new treaty with Piemonte-Sardinia, Belgium could unilaterally grant the same advantages to Piemonte-Sardinia as French subjects currently enjoyed in Piemonte-Sardinia. As a consequence, according to de Theux, Belgian merchants and industrialists would enjoy the same rights in Italy as their French competitors.<sup>102</sup>

## 2. ‘*Un regime imposé*’: the extension of Piemonte-Sardinia and popular sovereignty

33 *‘ah, si la révolution s’était faite à Naples par les Napolitains, si le peuple de Naples avait renversé le gouvernement de François II’*

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96 France had recalled its ambassador from Turin on 13 September 1860, out of protest against the encroachment on the Papal State’s territorial rights. MARCHISIO (2020) 295.

97 Reconnaissance du Royaume d’Italie... (1861) 57.

98 Ibid. 90. Mazzini saw no less than fifty nationalities in Europe, which ought to be reduced to ‘thirteen or fourteen of equal size’; FISCH, JÖRG (2015) *The Right of Self-Determination of Peoples. The Domestication of an Illusion* (Cambridge, CUP) 106. See further BANNING (1927) 118.

99 ‘Vous foulez aux pieds vos devoirs de neutralité, car la neutralité vous oblige à tenir à égale distance des deux parties belligérantes et ici vous donnez raison à l’une et tort à l’autre.’ Reconnaissance du Royaume d’Italie... (1861) 61.

100 BANNING (1927) 116. Barthélémy-Théodore de Theux comte de Meylandt (1794-1874), law graduate from the University of Liège, lawyer, member of the opposition movement against William I in 1829, member of the National Congress, Minister of Foreign Affairs during the final phase of the conclusion of the 1839 Treaty of London (13 December 1836-18 April 1840), which entrenched Belgium’s status as a permanently neutral country. TERLINDEN, CHARLES (1926-1929), ‘THEUX (Barthélémy-Théodore de)’ *Biographie Nationale XXIV*, col. 771-782. Reconnaissance du Royaume d’Italie... 66.

101 Treaty of Commerce and Navigation between Belgium and Piemonte-Sardinia, Brussels, 10 December 1857, 118 CTS 145, this was ardently desired by Cavour, to foster Piemonte’s economic development. DUMOULIN (1988) 27.

102 Reconnaissance du Royaume d’Italie... (1861) 70. Belgium and Italy signed a new commercial convention in 1863 (Treaty of Amity, Commerce and Navigation between Belgium and Italy, Turin, 9 April 1863, 127 CTS 371). See DUMOULIN (1990) 28. This convention harmonised the treaties Belgium had concluded with France in 1861 and Britain in 1862.

*Thibaut, 28 November 1861*<sup>103</sup>

- 34 De Decker argued as first speaker that the ‘right of peoples to command their destiny themselves’ was not being questioned by any Catholic orator. However, where was the Italian national will? Did the Belgian government contribute to freezing a situation that in essence, was merely temporary? The Italian unification was not ‘*réellement voulu[e]*’ by the population, and nothing but a ‘*régime momentané imposé par l’étranger, sous le coup de la terreur*’.<sup>104</sup>
- 35 De Decker borrowed from the French liberal thinker Benjamin Constant<sup>105</sup>. Only the most oppressive governments demand that their citizens fall over themselves to bring their ordained enthusiastic adherence. Abstention would bring the gravest dangers: ‘*tables de proscription*’ would list citizens destined for banishment or death.<sup>106</sup> Belgium ought to lead by example, demonstrating by the spontaneous happiness of its citizens that truly representative and constitutional institutions are to be preferred over civil war, martial law and shootings.<sup>107</sup> Dumortier added that no less than twenty-five thousand people were told to have been incarcerated by the Piemontese, without any judgment or hope of a fair trial. Why would the Liberals cry out at the violations of the Maronites’ rights by the Druses,<sup>108</sup> or those of the Polish by the Russians, and remain silent at the exactions committed by Pinelli?<sup>109</sup>
- 36 Again, following Dedecker, the Liberal government thought its recognition of Italy would encourage the rise of constitutional government, but it merely sanctioned revolts. It would have been better to respect ‘*les petites nationalités*’, the sole and true warranty for peace in Europe. De Decker concluded that even ‘great interests’ of political liberalism were alien to the Italian question, as he thought transpired from Guizot, Thiers, de Broglie, Lamartine and so many other French authors. In Belgium, only the Catholic party represented wise and prudent liberal political thought.<sup>110</sup>

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103 *Reconnaissance du Royaume d’Italie... (1861) 101.*

104 *Ibid.* 22.

105 DE HERT, PAUL, KINNEGING, ANDREAS ANTONIUS MARIA and MAARTEN COLETTE (2015) (eds.), Benjamin Constant. *Ontdekker van de Moderne Vrijheid* (Kapellen, Pelckmans).

106 *Reconnaissance du Royaume d’Italie... (1861) 23.*

107 *Ibid.* 24.

108 RODOGNO, DAVIDE (2012), *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914: The Emergence of a European Concept and International Practice* (Princeton, Princeton UP).

109 *Reconnaissance du Royaume d’Italie... (1861) 53.*

110 *Ibid.* 25–26.

- 37 Vilain XIII equally tried to undermine Piemonte-Sardinia's credibility. When count Walewski, Napoleon III's minister for foreign affairs, had insisted on measures against the freedom of the press in Belgium, almost all powers abstained (including the conservative courts), while Britain supported Belgium. Piemonte, by contrast, tried not to alienate France, on which it relied for the realisation of its designs for Lombardy.<sup>111</sup> Van Overloop remarked that Cavour went after journalists before criminal tribunals! This was, of course, impossible under the regime of the Belgian constitution of 1831, where the popular jury alone judged political and press crimes.<sup>112</sup>
- 38 The conservative Catholic MP and former lawyer for the Ministry of Foreign Affairs, Eugène Van Overloop<sup>113</sup>, likened Belgian patriotic feelings to the supposed loyalty of Italians to the Pope, against '*l'oppression étrangère*'.<sup>114</sup> During the debates, Charles Rogier explained Garibaldi's success in the Kingdom of the Two Sicilies as a reaction to the reactionary government in Naples, and reassured that (his own) prudent administration had saved Belgium from revolution in 1848.<sup>115</sup> Van Overloop replied that Rogier had omitted the 'preparation of Garibaldi's success by treason', and hoped rural revolts against him would jettison the Piemontese 'yoke'.<sup>116</sup> Dumortier added that recognising the title 'King of Italy' would inevitably encourage Italian irredentism, and

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111 Ibid. 36. See also TERLINDEN (1926) 488. This objection can also be found in a note by diplomat Jules Devaux (1828-1886), Leopold I's secretary, to Charles Rogier, dated 3 August 1861. Cavour's hostile attitude to Belgium (both in public and in private) and Charles Albert of Piemonte-Sardinia (1798-1849)'s delay in recognising Leopold as King of the Belgians were resented at court. Leopold reacted to Piemontese's ambassador's pressure by asking whether the same threats would apply to Prussia and Russia. DUMOULIN (1983) 154-155, who refers to the published letter in DISCAILLES, ERNEST (1895) Charles Rogier (1800-1885) d'après des documents inédits, vol. IV, 152-153. BANNING (1927) 107-108 mentioned the risk of a Prussian invasion, and stated that 'marshal von Moltke was preparing an invasion plan of Belgium analogous to the one executed by his nephew in 1914.' Prussia and France would have kept troops ready at the border (Aix-la-Chapelle for Prussia, Saint-Omer and Châlons-en-Champagne for France) in 1859, in the beginning of the armed conflict in Italy. In a letter to Minister de Vrière, diplomat Jean-Baptiste Nothomb, Belgian ambassador in Berlin, correctly evaluated that it would be 'harder than one can possibly think, to wage war in Italy and with Prussia at the same time', since Belgian and Swiss neutrality would only leave a corridor from Strasburg to Metz for the French and Prussian armies (Belgian Foreign Office Archives, Classement B, Indépendance, Neutralité, Défense Nationale, vol. 1, s.f.).

112 Reconnaissance du Royaume d'Italie... (1861) 46; DELBECKE, BRAM (2014), 'Modern Constitutionalism and Legal Transfer: The Political Offence in the French Charte Constitutionnelle (1830) and the Belgian Constitution (1831)' in DUVE, THOMAS (ed), Entanglements in Legal History: Conceptual Approaches (Frankfurt, MPI for European Legal History), 427-460.

113 Eugène-Jean-Isidore van Overloop (1814-1878), law graduate of the ULB (1837), lawyer at the Brussels Bar, and, from 1846 on, house lawyer of the Ministry of Foreign Affairs. Member of the Chamber of Representatives from 1852 to 1874 for Saint-Nicolas. Van Overloop was very active in confessional affairs. See BEECKMANS, EDOUARD (1901) 'OVERLOOP (Eugène-Jean-Isidore van)', Biographie Nationale, col. 416-420.

114 Reconnaissance du Royaume d'Italie... (1861) 41.

115 WITTE (2020) 296-306.

116 Reconnaissance du Royaume d'Italie... (1861) 42-43.

constituted an implicit encouragement to annex the Papal States.<sup>117</sup> Likewise, for de Theux, no title of ‘King of Italy’ could be recognised until ‘all Italians recognised it’, with Rome as capital and Venice as a security.<sup>118</sup> De Haerne feared that the Belgian government encouraged annexationism. He pleaded the case that 200 million Catholics all over the world had created a Catholic colony, and that a ‘*pacte social*’ underpinned the sovereignty of the Holy See.<sup>119</sup> De Haerne’s disquiet was a logical consequence of the *de facto* annexation of parts of the Papal State (Emilia Romagna, Marche, Umbria) by Victor Emmanuel II, based on an extensive interpretation of the Peace Treaties of Villafranca and Zurich.<sup>120</sup>

39 Dumortier told the tale of the Duchess of Parma, who accordingly had been on the run for her Parliament.<sup>121</sup> Yet, the population implored her to return, as the ‘idol of the Nation’, and brought her back in triumph in her capital. Only ‘*la corruption piémontaise*’ could push her out, and achieve the annexation of Parma to Piemonte.<sup>122</sup> Victor Emmanuel II had been so vicious as to make his ambassador, Buoncompagni, the chief of a conspiracy against the Grand Duke of Tuscany.<sup>123</sup> Dumortier said he agreed with Lord Strafford that the ruler should have hung the diplomatic agent in front of the Palazzo Pitti!<sup>124</sup>

### 3. ‘Une guerre sans déclaration, par avidité, sans motif valable’ : general law of nations

40 The opposition sought legitimacy for her political point of view in the ‘cold-headed quest’ (*froidement*) of the applicable principles of the law of nations (‘*droit des gens*’).<sup>125</sup> Thibaut mixed rhetorics and law, stating that since the principle of non-intervention was binding upon all

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117 Ibid. 57. This annexation would of course entail the introduction of secularising legislation regarding ecclesiastical property, the role of the Church in teaching and in censorship. These measures would be condemned in the Pius IX’s letter *Quanta Cura* and the *Syllabus Errorum* of 8 December 1864. LAMBERTS (2011) 160.

118 Ibid. 66.

119 Ibid. 88.

120 TERLINDEN (1926) 484, 489. Preliminary Treaty of Peace between Austria and France, Villafranca, 11 July 1859, 120 CTS 491; Treaties of Zurich (n 46).

121 Louise Marie Thérèse d’Artois (1819-1864), grand-daughter of the deposed French Bourbon King Charles X.

122 Reconnaissance du Royaume d’Italie... (1861) 51.

123 Buoncompagni installed a provisional government in 1859. Cavour’s successor as Prime Minister of Italy, Ricasoli, had been a member of this gremium. TERLINDEN (1926) 491.

124 Reconnaissance du Royaume d’Italie... (1861) 51.

125 Ibid. 97. Words by Xavier-Victor Thibaut (1817-1892), law graduate from the University of Leuven, lawyer at the Bar of Liège. Catholic MP for Dinant from 1848 to 1892, with an interruption between 1857 and 1859. In 1870, he would become president of the Chamber of Representatives.

126 Ibid. 98.

nations, *'tous les Etats sont neutres les uns à l'égard des autres'*.<sup>126</sup> Thibaut continued by putting forward a definition of voluntary neutrality:

41 *'un droit et un devoir: droit de refuser de prendre parti entre les nations, des peuples qui sont en état d'hostilité; devoir de s'abstenir de tout acte qui aurait le caractère de parti pris patent ou secret'*.

42 As a secondary power, regardless of the status of imposed neutrality, Belgium does not have the right, in any case, to recognise a state before the great powers, *'les nations gardiennes et garantes du droit public européen'*, had done. Belgium's guarantors were entrusted with a specific mission to prevent 'usurpations and violent annexations on behalf of the revolutionary principle of unity of race, origin and language', and had to prevent 'any state from violating public law to the detriment of another state'.<sup>127</sup> Neutral states had the obligation to recognise any internal organisation of any state, and could not opt for either party when *'les gouvernements grandissent ou s'élèvent par usurpation ou conquête'*.<sup>128</sup>

43 Thibaut's insistence on a consensus between the Great Powers was of course illusory. Attempts by Austria to align Britain on its point of view had been in vain, since Russell publicly supported the right of populations to determine their own future.<sup>129</sup> For Thibaut, it was clear that a neutral state ought to tie its recognition to two preconditions. First, it has to wait for recognition by the Great Powers. Second, a reparation of violations of the general law of nations allegedly committed by Victor Emmanuel II is warranted.<sup>130</sup> This, Thibaut alleged, had been the line of Rogier's liberal predecessor, baron de Vrière.<sup>131</sup>

44 Nothomb argued violations of the law of nations had been so evident, that an exhaustive enumeration would not be required. Victor Emmanuel II had started a war without declaration,

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127 Ibid.

128 Ibid.

129 TERLINDEN (1926) 485.

130 Reconnaissance du Royaume d'Italie... (1861) 101.

131 Adolphe Pierre Aloïs de Vrière (1806-1885), career diplomat and minister for foreign affairs from 1857 to 1861. TERLINDEN (1926) 487. Baron de Vrière to de Lannoy, Brussels, 30 July 1861, cited by Terlinden, 487: *'La position faite à la Belgique par les traités qui ont consacré son indépendance et sa neutralité lui impose dans ces questions de cette nature une extrême réserve. Son rôle est de suivre et non de procéder les autres Etats et, sans subordonner formellement sa politique à celle d'aucune autre nation, d'avoir cependant, autant que possible, égard à l'attitude de la plupart des grandes Puissances.'* This was also the position of the Netherlands and Sweden. On 2 June 1861, Sweden acknowledged 'states with institutions similar to its own'. Ibid. 495. British pressure brought Portugal to recognise in July 1861. Ibid. 496. In September 1861, Brazilian recognition was announced by the Piedmontese authorities, heightening the pressure on Belgium. Ibid. 498. Rogier invoked these recognitions, by pointing to the example of the Swiss Confederation, a neutral state and Portugal, 'un pays essentiellement catholique'. Rogier, COR, 21 November 1861, p. 27.

had intervened in a civil war between the King of Naples and his subjects.<sup>132</sup> There was no just case for the war, since there was not a single grief between the King of Piedmont-Sardinia and the King of Naples. Only personal aggrandizement was the reason for the turmoil.<sup>133</sup> Dumortier accused Victor Emmanuel of invading Naples without any pretext, and of secretly sponsoring Garibaldi's fleet and army.<sup>134</sup> How could the King of Piemonte allow the revolutionary's ships in the ports of Tuscany, and publicly declare he had nothing to do with them? During the fight over Gaeta, treachery had allowed the Piemontese to incinerate the gunpowder storages of the King of the Two Sicilies. Gone were courage, virtue and law...<sup>135</sup>

45 Julliot, in addition, underlined that Piemonte-Sardinia created a unitary Italian state, whereas France had clearly expressed its desire of a federal Italy.<sup>136</sup> Couldn't this lead to a conflict with a humiliated France? Moreover, why wouldn't Emperor Napoleon III try to resuscitate the claims of his family to the throne of Naples? Priest de Haerne thought that France had recognised the Kingdom of Italy with an *'inadmissible'* motive. Napoleon III could exert blackmail on Italy, and threaten at any moment to withdraw his recognition. Recognition of a 'state of possession', as in Rogier's letter to Carolus, was *'imprudent'* in the priest's eye.<sup>137</sup> Thibaut added that a recognition of vicious possession could not lead to acquisitive prescription: *'est-ce que le temps justifie la spoliation'?*<sup>138</sup>

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132 In the same sense Thibaut: *Reconnaissance du Royaume d'Italie...* (1861) 99. BERNARD (1859) 28-29: 'We have seen a considerable kingdom, seven centuries old, a kingdom built by Norman enterprise on the ruins of Greek principalities, effaced from the map of Europe [...] without any declaration of war, without any pretence of a quarrel, without any interruption of amicable relations [...] We have seen the Kingdom of the Two Sicilies invaded and overrun by irregular expeditions fitted out in Piedmontese ports [...] this was no Neapolitan or Sicilian revolution, as that the Revolution of 1688 was an English one. There was no civil war [...] no *braves gens* fighting for their freedom. A true Southern race [sic], indolent though excitable [...] so far from having overthrown their own Government, have hardly contributed anything to its fall'.

133 *Reconnaissance du Royaume d'Italie...* (1861) 16.

134 *Ibid.* 52.

135 One could wonder if this would have effectively constituted a violation of the laws of war, since Grotius and Vattel accept the use of artifices if they bring the war to a speedier conclusion. *Ibid.*

136 *Ibid.* 38–39. Napoleon III's aims were incompatible with the aspirations of Giuseppe Mazzini, as he thought that Piemonte would render 'Italy the abject slave of Italian policy, dishonoured by her alliance with despotism; weak, corrupted, and disinherited of all moral mission, and bearing within her the germs of provincial autonomy and civil war.' MAZZINI, GIUSEPPE (1890) *Life and Writings* (London, Smith, Elder), I, 53, cited in CLOUGH, SHEPARD B. and SALADINO, SALVATORE (1968) *A History of Modern Italy* (New York/London, Columbia University Press) 127.

137 *Ibid.* 86–87. Priest Désiré-Pierre-Antoine de Haerne (1804-1890) was active in the insurrection against William I in 1829, and was elected in the National Congress as one of the twelve 'abbots'. He represented Roeselare until 1890, with a brief interruption in 1833 and 1834. See JANSSENS DE BISTHOVEN, BAUDOIN (1971) 'DE HAERNE (Désiré-Pierre-Antoine)', *Biographie Nationale de Belgique* XXXVI (suppl., t. IX), col. 395-403.

138 *Ibid.* 102. Similarly, Terlinden indicates rumours of a joint Austro-Spanish attempt to create a 'Catholic' alliance to intervene against Victor Emmanuel II, who had interpreted largely the treaties of Villafranca and Zürich. Terlinden (1926) 484.

46 Van Overloop sought analogies in the Old Regime foreign policy of France. Napoleon III would be best served with a balance between multiple Italian sovereigns, as created and repetitively amended after the Peace of Utrecht.<sup>139</sup> Moreover, according to Dumortier, Belgium's geostrategic interest would suffer from a strong Kingdom of Italy. What if France would decide to invade Belgium, and ask Italy to mobilise 300 000 men to prevent Austria or Prussia from conforming to their duty as guarantors of Belgian independence?<sup>140</sup> This argument did not fall into deaf ears at court, as Leopold I counted on the Central Powers to counterbalance a potential French desire of aggression.<sup>141</sup> A second geostrategic danger was that Piemonte would try to convince Napoleon III to intervene in Belgium, to divert his attention away from the Papal State.<sup>142</sup>

47 Kervyn de Lettenhove is the first orator to refer to international legal doctrine. He quoted Vattel on recognition, namely in the sense that:<sup>143</sup>

48 *‘Les nations étrangères, ne sont point obligées de déférer aux volontés du souverain qui prend un titre nouveau ou du peuple qui appelle son conducteur de tel nom qu’il lui plaît [...] Si ce titre est contre l’usage, s’il désigne des choses qui ne se trouvent pas dans celui qui l’affecte, les étrangers peuvent le lui refuser, sans qu’il ait raison de se plaindre.’*

49 For Kervyn, recognition was mainly an affair for the Great Powers alone, not for secondary powers such as Belgium. He considered the title ‘King of Italy’ as *‘une affaire de vanité’*<sup>144</sup>. Kervyn quoted Vattel again to argue that the unification of Italy could not have been complete without a peace treaty:

50 *‘La trêve ou la suspension d’armes ne termine point la guerre ; elle en suspend seulement les actes’*<sup>145</sup>

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139 Reconnaissance du Royaume d’Italie... (1861) 46 ; DHONDT, FREDERIK (2015) Balance of Power and Norm Hierarchy. Franco-British Diplomacy after the Peace of Utrecht (Leiden/Boston, Martinus Nijhoff/Brill). DOI 10.1163/9789004293755

140 Reconnaissance du Royaume d’Italie... (1861) 64.

141 TERLINDEN (1926) 488, 499.

142 Fears expressed by Sylvain Van de Weyer, Ibid. 488.

143 Book II, Chapter III, § 47. VATTEL, EMER DE (1758), Le droit des gens ou principes de la loi naturelle appliqués à la conduite & aux Affaires des Nations & des Souverains (Leide, Aux dépens de la Compagnie), vol. I, p. 124.

144 Reconnaissance du Royaume d’Italie... (1861), 75–76.

145 Book III, Chapter XVI, § 234. Vattel, Le droit des gens, op. cit., vol. II, 89.

51 Kervyn notably thought that the individual utterances of Sardinian MP Brofferio, who had asked why the Sardinian army would not just march on to Rome, constituted an indication that the Pope and Victor Emmanuel II were in a state of war.<sup>146</sup>

#### 4. National constitutional history

52 *‘Nous sommes pour 89, contre 93, nous sommes pour la révolution qui fonde et non pour celle qui détruit. Nous sommes pour celle des Washington, des Franklin, des Mounier, des Lafayette, des Barnave, nous ne sommes pas, nous ne pouvons pas être pour la révolution de M. Cavour et moins encore pour celle de M. Mazzini.’*

*Alphonse Nothomb, 28 November 1861<sup>147</sup>*

53 The second Catholic orator was Pierre De Decker, former cabinet leader between 1855 and 1857. De Decker’s government fell after Liberal protest against the creation of legal personality for religious charity foundations. In his speech, the parallels with Belgian constitutional history are an argument to highlight the perceived hypocrisy of the Liberal government. First, the constitutional system under Dutch period (1814-1830, against which the Belgian constitution was actually written), was likened to the *Statuto Albertino*<sup>148</sup>, in the sense that its extension to the rest of Italy was presented as an imposition of a preconceived text, just as the Dutch constitution of 1814 had contained the majority of the dispositions of the joint constitution of 1815.<sup>149</sup> Second, De Decker thought the South of Italy was being ‘exploited and sacrificed’ to the North, just as the Dutch ‘intolerant minority’ would have persecuted the Belgian Catholic religion, and William I had ‘ruined the national press.’<sup>150</sup>

54 Van Overloop recalled that the troops of Francis II of Bourbon were still holding on to the city of Gaeta, which was under siege by Piemonte. Would this mean that Francis II had ceased to reign

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146 Reconnaissance du Royaume d’Italie... (1861) 78.

147 *Ibid.* 116.

148 DAUM, WERNER (2012) ‘Die Königreiche Sardinien und beider Sizilien’ in DAUM, WERNER and others (eds), *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel*. Band 21815-1847 (Köln, Dietz), 352-394 ; MECCA (2016).

149 Reconnaissance du Royaume d’Italie... (1861) 19. The *Statuto* was indeed a granted constitution, not elaborated by a constituent assembly, as in Belgium. However, Cavour interpreted the constitution as to see the King bound by parliamentary consent in the exercise of his right to dismiss and appoint Cabinet. MECCA (2016) 164; SOFIA, FRANCESCA and CASALENA, MARIA PIA (2020), ‘Italien’, in: DAUM, WERNER and others (eds) (2020), *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert. Institutionen und Rechtspraxis im gesellschaftlichen Wandel*. Band 3: 1848-1870 (Köln: Dietz), 301-302.

150 *Ibid.* 20.

in Naples, or would it be more prudent to wait?<sup>151</sup> How would the Belgian government react, if Leopold I would be obliged to retreat to the citadel of Antwerp to fight of an attack, while the rest of the territory would be under armed occupation?<sup>152</sup> For Dumortier, it was clear that the Liberal government prepared itself to concentrate the whole governmental machinery in Antwerp, '*afin de pouvoir attendre les événements lorsque la Belgique aurait été envahie*'.<sup>153</sup>

55 The Piedmontese practice of plebiscites, reclaimed by Cavour to underline that Italian unification rested on popular legitimacy,<sup>154</sup> were likened by Van Overloop and Dumortier to French practice in 1792, 1793 and 1794.<sup>155</sup> Undercover agents stir up revolts in the name of liberty, gangs of criminals are dispatched under the pretext of overthrowing a tyrannical government, any kind of hostile press is suppressed. A unanimous vote in favour of annexation logically follows under threats with bayonets. Supporters of independence are treated as criminals and chased as wild beasts, to be shot by dozens. In sum, the end of the true Italian nationalities and installation of internal despotism are presented under the cover of liberty.<sup>156</sup> Cavour did nothing different from the French general Dumouriez, who pretended in 1792 to plant the 'tree of liberty'.<sup>157</sup> Adolphe Dechamps<sup>158</sup> stated that if one page of Belgian national history was conformable to what happened in Italy, it was the history of 1792, when general Dumouriez's bayonets forced Belgian citizens in mock elections to adhere to annexation, scrutinized by commissaries of the *Convention Nationale*, and not what had happened in 1830.<sup>159</sup> This criticism

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151 Alphonse Nothomb likened Francis II's position to that of the King of Spain Ferdinand VII in 1808, during the Spanish revolt against Napoleon. *ibid* 111. Alphonse Dechamps presented the example of William I of Prussia, who had notified his own accession to the throne to Victor Emmanuel II as King of Sardinia, and had invited the representative of Francis II of Naples.

152 *Ibid.* 44.

153 *Ibid.* 61. This is indeed what the Belgian government would conceive and execute in 1914.

154 MÜSSIG (2016), 78.

155 *Reconnaissance du Royaume d'Italie...* (1861) 63. FISCH (2015), 108-109. Earlier, in May to June 1848, plebiscites had been held in Parma, Piacenza and Lombardy by Italian rebels. Their aim was to chase the Austrian occupants. Union with Piedmont was wished for by crushing numbers. Upon their return, the Austrians shelved the results. In 1860, Tuscany, Emilia, Naples, Sicily, the Marches and Umbria voted for accession, by large numbers. The same practice was upheld for the later annexation of Venice and Mantua (1865) and that of Rome (1870), as well as for the return of Nice and Savoy to France (April 1860). Italian irredentism, which would render the application of the nationality principle almost impossible (NUZZO (2011), 109), was of course incompatible with the cession of Nice, even with a referendum. Garibaldi, who was born in Nice, castigated Cavour's decision to cede his birthplace to France and lamented in the *Camera dei Deputati* to have been made 'a stranger in Italy'. CLOUGH and SALADINO (1968), 129.

156 *Reconnaissance du Royaume d'Italie...* (1861) 44-45.

157 *Ibid.*

158 1807-1875. See SIMON, A. (1965) 'DECHAMPS (Adolphe)', *Biographie Nationale XXXIII, Suppl. (V)*, col. 187-224. Catholic MP for Ath from 1834 to 1864, with a short break between 1857 and 1859, former Minister for Foreign Affairs from 30 July 1845 to 12 August 1847.

159 *Reconnaissance du Royaume d'Italie...* (1861) 123.

of the exceptionally high scores in favour of Victor Emmanuel II was shared by other outside observers, as well as by current historiography, which sees it as improbable that less than 1% of the votes cast would have been negative, especially in view of the uprisings in the South.<sup>160</sup> In the most recent overview of Italian international legal history, the plebiscites were called ‘simulacra of democracy’, manipulated by Piedmontese officers.<sup>161</sup>

56 Dumortier insisted that the Belgian Revolution of 1830 had taken place thanks to a ‘spontaneous popular movement,’ ‘*auquel l'étranger n'a eu aucune part*’.<sup>162</sup> The true revolutionaries in Italy, in his eyes, were those who fought against Piemonte, in the Abruzzi and Calabria. Without conscription and compulsory voting for Victor Emmanuel II, these regions had ‘true volunteers, as in Belgium in 1830’, armed with the spirit of the ‘righteous brigand, as we used to be in 1830’, treated as criminals by an oppressor.<sup>163</sup>

57 Priest de Haerne claimed authority as a member of the National Congress and ‘*patriote de 1830*’.<sup>164</sup> Any comparison between the Italian revolt and the noble Belgian Revolution was anathema. The 1815 Constitution had been imposed on the Belgian population, which had wisely tolerated the regime to avoid political instability. Yet, William I had ‘*déchiré la constitution*’ (tore the Constitution apart) by his message of 11 December 1829 to the Estates-General, the elected parliament of the United Kingdom of the Netherlands. The King curtailed freedom of expression, by prohibiting the use of the constitutional right to petition the monarch. He hereby violated the ‘tacit pact’ that allowed for the toleration and legitimation of the constitution. De Haerne began a slow demonstration, indicating he considered the Belgian Revolution had been more dignified and wise than the Italian Revolt. He lauded Charles Rogier’s intervention in 1830 to stop the pillaging of Dutch supporters’ belongings in Brussels. The Pope, de Haerne argued, had been much more moderate and tolerant. He had approved the Belgian constitutional order in 1847, and had publicly expressed his wish in 1848 for the creation of an Italian confederation and customs union.<sup>165</sup> Thibaut, finally, likened Victor Emmanuel II’s invasion of Naples with William I of Orange’s attack on Belgium in August 1831. Leopold I had accused the King of the Netherlands of

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160 FISCH (2015) 120.

161 MARCHISIO (2020) 286.

162 *Reconnaissance du Royaume d'Italie...* (1861) 47. Rogier replied that ‘la révolution belge aurait succombé, si elle n'avait pas été secourue par l'étranger.’ (Rogier, COR, 21 November 1861, p. 28). For the most recent historiographical synthesis on the question see WITTE, ELS (2006), *De constructie van België: 1828-1847* (Tielt, LannooCampus).

163 *Reconnaissance du Royaume d'Italie...* (1861) 60.

164 *Ibid.* 91.

165 *Reconnaissance du Royaume d'Italie...* (1861) 93. This idea had also been shared by Napoleon III and Francis Joseph I at the treaties of Zürich and Villafranca. LAMBERTS (2011) 82-83.

166 *Ibid.* 100.

attacking without prior declaration...<sup>166</sup> Francis II of Bourbon spoke *'le même langage que le roi Léopold'*.

58 The Catholic descriptions of a purely 'national' and noble Belgian revolution of 1830 were of course derided by the Liberal party. Joseph Lebeau (1794-1865), who had also been a member of the National Congress,<sup>167</sup> insisted on the vital French help in repelling the Dutch invasion of 1831, or in liberating the Citadel of Antwerp late in 1832. Furthermore, a joint Franco-British blockade of Dutch ports had helped to bring William I to acquiesce in the separation. Alphonse Nothomb tried to contradict this by hinting at a greater harmony, or at least a tacit agreement between the Great Powers in 1831. In 1859-1860, Napoleon III would have been a dissident in the concert of European Great Powers. In other words, Belgian independence would have been *'posé [...] conformément au droit public admis par l'Europe et de concert avec l'Europe entière'*.<sup>168</sup>

59 This story is not without relevance for Italy. Cavour desired recognition by Belgium, precisely because he saw Belgian independence as the first breach in the conservative state system created by the Congress of Vienna, thanks to French protection and British support.<sup>169</sup> He was even irritated at Belgian stalling manoeuvres in the Spring, for instance when minister of War Chazal enquired how the army of the 'King of Italy' was organised, whereas his government had not yet recognised this title at all.<sup>170</sup>

## Conclusion

60 The outcome of the parliamentary battle on Belgian recognition of 'Italian independence' has been elevated in the historiographical record to the status of 'decisive step' in the development of an independent national foreign policy.<sup>171</sup> The recognition of a *'fait accompli'* proceeded from economic pressure, even if the decision was presented as a logical consequence of European international law:

61 *'C'est une règle de droit public généralement admise, que, de la part d'une Puissance étrangère, reconnaître un autre gouvernement n'est que reconnaître un fait, savoir qu'il est généralement obéi, malgré la libre manifestation qu'un nombre plus ou moins considérable se soit permise une opinion contraire. Les Puissances étrangères suivent ici la possession [...] la ligne de conduite [...] nous a été tracée par un grand nombre de gouvernements. En reconnaissant le nouveau royaume d'Italie, nous*

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167 JUSTE, THÉODORE (1865) Joseph Lebeau d'après des documents inédits (Bruxelles, Muquardt).

168 Reconnaissance du Royaume d'Italie... (1861) 108.

169 TERLINDEN (1926) 486.

170 Ibid. 490.

171 TERLINDEN (1926) 519.

*reconnaissons à leur exemple un état de possessions sans nous constituer juges des événements qui l'ont établi, et nous gardons notre liberté d'appréciation vis-à-vis des éventualités qui pourraient modifier cet état de fait.*<sup>172</sup>

62 The quote above indicates that the Belgian government separated fact and morals, even if Piedmontese breaches of international law were not unlikely.<sup>173</sup> The governmental position clearly does not go as far as for Bluntschli in his *Moderne Völkerrecht*<sup>174</sup>, who subordinated public law to the 'life of the State'. Pre-existing international treaties could automatically become void.

63 Most importantly, the statement does not mention the previous unanimous recognition by the five guarantors. The Belgian government did not wait until the five guarantors of the country's independence had all pronounced themselves. The ensuing parliamentary debate has hitherto only been analysed by diplomat Emile Banning (1836-1898)'s posthumous memorandum on Belgian neutrality.<sup>175</sup> Banning stressed Frère-Orban's opinion that, if the treaties of 1839 had proclaimed Belgium's perpetual neutrality, they had, at the same time, insisted on its independence.<sup>176</sup> This would have ruled out a full dependence on the five guarantors. Frère-Orban pretended to be consolidating a practice of three decades, not contradicted by any other state in Europe.<sup>177</sup> Concluding his analysis of bilateral Belgian-Piedmontese correspondence, Michel Dumoulin pointed out, probably more correctly, that merely the fear of the guarantors had significantly decreased.<sup>178</sup>

64 If we analyse the terms and arguments invoked by the conservative opposition, the impregnation with the vocabulary and conceptual apparatus of the law of nations and constitutional doctrine is evident. Banning argued that the legal aspects of the question had been

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172 Rogier to Carolus, 3 November 1861 cited by BANNING (1927) 109-110.

173 BERNARD (1859), 29-30 : 'The only question is, whether the breach is morally excusable or no [sic]. There is a great difference between not breaking a law at all (as, in an excepted case, you do not) and breaking it excusably, which involves considerations of pure morality, and is matter of degree.'

174 'Die Autorität des geschichtlichen und formulirten Rechts verliert in dem Maße ihre Macht, in dem es offenbar wird, daß dasselbe das Leben des States gefährde statt demselben zu dienen und die Entwicklung des öffentlichen Rechts unmöglich macht, statt dieselbe zu reguliren.' BAKER RÖBEN (2002) 270.

175 BRIALMONT, HENRI ALEXIS (1900) 'Notes sur Émile Banning' *Annuaire de l'Académie Royale de Belgique*, 82-152 ; BANNING (1927) 111-118.

176 BANNING (1927), 115. Frère-Orban, COR, 29 November 1861, 100.

177 Ibid.: 'La Belgique a eu le droit de se prononcer à l'égard des gouvernements qui viennent à se constituer, et depuis trente années, c'est la première fois qu'une doctrine contraire est énoncée. Pendant trente années, la Belgique n'a cessé de pratiquer ainsi son indépendance, sans qu'aucune espèce de contestation se soit élevée en Europe au sujet de l'exercice de ce droit.'

178 DUMOULIN (1983) 163.

settled, since the Liberal government obtained a majority in the ensuing vote.<sup>179</sup> Even if the specific decision to recognise Victor Emmanuel II's title boiled down to a political appreciation, the whole debate was carried out in legal terms. General partisanship clearly transpires from the interventions by Catholic MP. Yet, well-informed lawyers as Van Overloop and Vilain XIII mobilised their expertise in the political debate. This is especially clear in Vilain XIII's and de Theux's intervention, where their practical experience as minister for foreign affairs is highlighted. By contrast, historian and botanic specialist Dumortier has difficulties in distinguishing morals and legal principles, as his confusion around the *ius in bello* illustrate.<sup>180</sup>

65 Dumortier's intervention and that of Kervyn de Lettenhove (who has difficulties in interpreting the *ius ad bellum*)<sup>181</sup> give the lower chamber of Parliament the aura of an academic aeropagus, where historical culture and erudition define the relevant borders of a debate. The use of law of nations doctrine is incidental, as Vattel is invoked by both sides, and an occasional reference to Suarez by priest De Haerne is not central to the construction of his anti-recognition argument.<sup>182</sup> The references to the 'decisive constitutional moments' of 1789, 1814-1815 and 1830 illustrate how the symbolic and self-defining power configurations and values associated with the past serve to define the legitimacy of the Liberal cabinet's foreign policy within the living Belgian constitutional system. The debate in the Fall of 1861 witnessed the interpretations of history and Belgium's international environment by the very actors who created the constitution. Thirty years later, their interpretations of the common past diverged as political partisanship had created competing narratives. The precarious nature of Belgium's security in the society of European states compelled every government to justify its conduct as cautious and prudent, safeguarding above all the country's sovereignty. Precisely this issue could not be confined to the domestic legal order alone.

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179 BANNING (1927) 116.

180 Reconnaissance du Royaume d'Italie... (1861) 52.

181 Ibid. 78.

182 Reconnaissance du Royaume d'Italie... (1861) 87.