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or Permanent Insecurity?

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Introduction

‘we are less complacent than the Swiss, and would not take treaty violations so lightly.’

Baron de Vrière to Sylvain Van de Weyer, Brussels, 28 June 1859

Neutrality is one of the most controversial issues in public international law and international relations history. Its remoteness from the United Nations system of collective security has rendered its discussion less topical. The significance of contemporary self-proclaimed ‘permanent neutrality’ is limited. Recent scholarship has taken up the theme as a general narrative of nineteenth century international relations: between the Congress of Vienna and the Great War, neutrality was the rule, rather than the exception. In intellectual history, Belgium’s neutral status is seen as linked to the rise of the ‘Gentle Civilizer of Nations’ at the end of the nineteenth century. International lawyers’ and politicians’ activism brought three Noble Peace Prizes (August Beernaert, International Law Institute, Henri La Fontaine).

The present contribution focuses on the permanent or compulsory nature of Belgian neutrality in nineteenth century diplomacy, from the country’s inception (1830-1839) to the Franco-
Prussian War (1870). This subject has generally been left to political or diplomatic historians. This would suggest a lack of conceptual primary-source material. I argue, on the contrary, that political and diplomatic exchanges were steeped in international law-discourse. As the discursive arena of international politics, international law was impossible to evade. Hence, Belgian nineteenth century neutrality cannot be properly understood without having recourse to legal sources.

First, from the legal historian’s point of view, neutrality cannot be approached without a conceptual legal definition. This question might sound less convoluted than it turns out to be. ‘Permanent’ neutrality was an invention of the Congress of Vienna, in the specific status imposed on the Swiss Confederation, the City of Cracow and the territory of Moresnet. Previously, the law of nations only recognised voluntary (self-imposed, temporary) neutrality. This distinction is essential for our understanding of the ‘permanent’ neutrality imposed on Belgium by art. VII of the Treaty of London, signed at the Foreign Office. Scholars and diplomats alike understood that state practice would clarify the nature and extent of the country’s obligations under a radically novel legal status. If ‘neutrality’ was the standard of nineteenth century international politics, we should only understand this as voluntary neutrality: the freedom to abstain from a conflict between two other nations. The ‘hermaphrodite’ regime of permanent neutrality was an enigma.

Second, the issues of international recognition and the imposition of permanent neutrality were intimately linked. Did this imply that Belgium’s sovereignty was conditional to the observance of its obligations under the status of permanent neutrality? The eternal

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14 Treaty between Austria, France, Great Britain, Prussia and Russia, and Belgium, London, 19 April 1839, 88 CTS 421.
16 Words used by Charles de Brouckère (Henri’s brother, mayor of Brussels, 1848-1860) in the National Congress, the 1830-1831 constituent assembly. Emile Banning, Les origines & les phases de la neutralité belge, op. cit., p. 48.
controversy in international doctrine on the constitutive or declaratory effect of international recognition surfaced in practical politics. To whom did Belgium owe gratitude for the success of the 1830-1831 revolution? Were the young state’s hands tied? Would permanent neutrality mean ‘permanent intervention’?\(^{17}\) Belle Époque scholarship tended to discard the question entirely. The most elaborate treatise on Belgian neutralité, written by Edouard Descamps, professor of international law in Leuven, stated that from 9 July 1831 on, the date on which the constituent assembly consented to the proposed peace treaty of XVIII articles, ‘permanent neutrality became constitutional among us and contractual towards the London Conference, signing on behalf of Europe’.\(^{18}\) This conformed to the scepticism among revolutionaries concerning the law of nations in general, seen as a vector of conservative Great Power diplomacy: ‘Gentlemen, treaties are as neutrality: if they are not upheld, one is free to rescind them and start a war.’\(^{19}\) I will demonstrate in this contribution that this discourse overestimated the autonomy of Belgium, regarded by its guarantors as an object they had created, and underestimated the constraints of the laws of neutrality.

Finally, Belgium’s internal constitutional order pops up regularly in diplomatic quarrels. The 1831 constitution was seen as the most liberal in Europe.\(^{20}\) This generated British sympathy, but French condescendence at the same time. The priority given to free enterprise and a reduced role of the state could even count as an excuse to deflect diplomatic invectives.

\(\textit{A. Nineteenth-century neutrality in its own terms}\)

Three aspects impede an unprejudiced appreciation of the period treated here. First, the Great War has distorted our reading of the nineteenth century. The German invasion of Belgium in August 1914 amounted to a violation of the country’s status of permanent neutrality.\(^{21}\) The ensuing debate between German and Belgian (and allied) scholars has focused on this sole episode, leading to the end of permanent neutrality in the Treaty of Versailles and the famous art. 234 of the same treaty, blaming Germany as the sole responsible for the war. ‘Poor Little Belgium’ used the image of the ruthless Hun to gather food supplies and sympathy in Britain, which activated its obligation to intervene as a guarantor, and the United States. During the

\(^{17}\) Words used by Van Meenen in the National Congress. \textit{Ibid.}, p. 52.
\(^{19}\) Joseph Lebeau in the National Congress, quoted in \textit{Ibid.}, p. 195.
conflict, ‘Soldier-King’ Albert I (1875-1934) clung to neutrality as a tool of statecraft.\textsuperscript{22} Neutrality allowed keeping the Belgian armed forces out of senseless slaughter in large-scale attacks, and permitted bilateral negotiations with Germany.

Second, nationalist historiography has used neutrality as a sign of moral elevation above traditional monarchical or great-power politics. If Belgium escaped the Franco-Prussian confrontation of 1870,\textsuperscript{23} its neutrality status must have had the effect of a ‘\textit{miracle drug}’.\textsuperscript{24}

Finally, traditional law of nations theory had a greater impact than a \textit{prima facie} reading of sources would suggest. The terms of diplomatic reasoning are these of generic early nineteenth century law of nations doctrine. Vulgarised legal language on ‘constitution’, ‘sovereignty’, ‘public law of Europe’, abundantly present in parliamentary exchanges, diplomatic dispatches or private correspondence, refers to the common legal culture of the ‘diplomatic mind’.\textsuperscript{25} The works of Klüber or Martens lean heavily on eighteenth century authors as Vattel and Réal de Curban.\textsuperscript{26}

\textbf{B. ‘A right and a duty at the same time’}\textsuperscript{27}

The appropriate yardstick to determine the extent of obligations imposed by art. VII of the Treaty of London consists of a combination of the classical sources of international law. The 1839 Treaty was not elaborated in its wording, and stated nothing more than ‘Belgium will be an independent and perpetually neutral state. She will be obliged to observe this very neutrality towards all other states.’\textsuperscript{28} Neither were the Protocol of 20 December 1830, or the ensuing proposals of XVIII and XXIV articles of peace.\textsuperscript{29} However, we do dispose of the 1870 bilateral treaties whereby Britain affirmed its intention to act as guarantor, concluded

\begin{footnotesize}
\begin{enumerate}
\item John Russell in Van de Weyer to de Vrière, London, 24 June 1859 (copy), BMFA, IND, vol. 1A, s.f.
\item ‘\textit{La Belgique formera un Etat indépendant et perpétuellement neutre. Elle sera tenue d’observer cette même neutralité envers tous les autres Etats.}’
\item Emile Banning, \textit{Les origines & les phases de la neutralité belge}, op. cit., p. 39.
\end{enumerate}
\end{footnotesize}
with France and Prussia. As I will illustrate further on, these documents raise questions, and do not clarify the regime Belgium was supposed to be under. Doctrine, as always a supplementary source of the law of nations, mainly used as an argumentative treasure trove, left considerable leeway to states.

C. ‘Neutrality should enforce respect […] and is nothing without it’

Belgian diplomatic correspondence is kept by the Ministry for Foreign Affairs [Further: BMFA]. Aside from bilateral series, grouping the traditional material between Brussels and posts abroad, a thematic four volume-series ‘Indépendance, Neutralité, Défense Nationale’ [Furtner: IND] has been compiled in the so-called thematic ‘Classement B’. The 4 volume-file contains copies of pamphlets, memoranda and bilateral correspondence, featuring several crises originating from 1830 to the interbellum.

The material link between ‘national defence’ and neutrality is tied to the credible nature of neutrality. External intervention by the guarantors was complementary to the duty of the Belgian state to defend itself. Hence the necessity for Belgian diplomacy to repeat the country’s ‘irrevocable resolution to defend […] our right and the treaties’, or the pledge of military assistance to France ‘if ever one would think of attacking her via our frontiers’. This translated into a new web of fortifications and fortress rings in the 1860s-1880s, even-handedly oriented against France (Namur, 1880s), Germany (Liège, 1880s) and the Netherlands (the national ‘redoubt’, Antwerp, 1860s).

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32 A transfer to the State Archives has been agreed on. Rik Coolsaet, Vincent Dujardin et Claude Roosens, Buitenlandse zaken in België. Een geschiedenis van de Belgische diplomatie van 1830 tot nu, Tielt, Lannoo, 2014.
33 Hence Austrian and Prussian suspicions during the 1840 crisis. Emile Banning, Les origines & les phases de la neutralité belge, op. cit., p. 73. See also John Russell’s incitement: ‘c’est là […] la véritable attitude que la Belgique […] doit prendre en présence de la politique de cette Puissance [France], et des dangers qu’elle fait naître partout ou son action se fait sentir.’
34 De Vrière to Van de Weyer, Brussels, 28 June 1859, o.c., s.f.
36 Paul Crokaert et Paul Hymans, Brialmont. Eloge & mémoires, Bruxelles, Lesigne, 1925. Edouard Eugène François Descamps, La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique : étude sur la Constitution des États pacifiques à titre permanent, op. cit., p. 419 – 426. Until World War I, the moral anti-militarist stance of the Catholic Party collided with the royal desire to erect fortresses and introduce general conscription. In Antwerp, protest against fortifications gave rise to the birth of the so-called Meeting-party, a local proxy of the Catholic party, insisting on linguistic issues.
Additionally, I explored the series *Belgique* in the *Correspondance Politique* [Further: CP] at the French *Archives Diplomatiques* (La Courneuve) [Further: AMAE] and the Foreign Office Papers and Treaties series at the *National Archives* (Kew) [Further: NA]. Finally, diplomatic documents are heavily reliant on the press and parliamentary opinions (if applicable). They can be complemented by an analysis of digitized newspapers and parliamentary proceedings. Conversely, public declarations in parliament or press were often contradicted by legitimate concerns expressed behind the veil of diplomatic secrecy.

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I. Origins and their Consequences

A. ‘A Government that owes everything to France and England’

If permanent neutrality is to be distinguished from voluntary neutrality, we should not take this conceptual distinction too literally to assess the prehistory of the neutrality status. At the Congress of Vienna, the United Kingdom of the Netherlands obtained international recognition. This new state had been a creation of British diplomacy. William VI of Orange (1772-1843) obtained compensation for the loss of his ancestral dominions in Germany, and for that of the Cape Colony. Acclaimed by the Dutch nation at the end of 1813, William ruled first as sovereign prince, obtained next an extension of his sovereignty in the former French departments of Belgium and, ultimately, could call himself King. William’s centralised rule was rejected by liberal bourgeois and the Catholic Church in the Belgian Revolution. The United Kingdom of the Netherlands failed to install a genuine national identity, as two centuries of religious, political and economic separation had driven North and South apart.

Yet, the international position of the United Kingdom was one of the more solid reasons for unification. The Netherlands counted as a buffer state against future French expansionism. William did not suffer the imposition of a mandatory neutrality status, but had to tolerate the construction and upkeep of the fortresses of the Wellington Barrier. Apart from this limitation, William could pursue a neutrality, not established by treaty, ‘but by policy’. ‘Permanent’ neutrality was devised at the London Conference (1830-1832) to prevent Belgium from becoming a cause of strife between the Great Powers. Yet, at the same time, the status fitted the maintenance of the Wellington Barrier, although cut in half, conformably

38 Barrot to Drouyn de Lhuys, Brussels, 10 April 1854, AMAE, CP, Belgique, 35, f. 216v°.
44 Ibid., p. xi.
to Talleyrand’s wishes.\footnote{Belgium was allowed to raze five fortresses (Menin, Ath, Mons, Philippeville, Mariembourg), but had to tolerate the fifteen others. Convention relative to the Belgian fortresses between Austria, Great Britain, Prussia, Russia and Belgium, London, 14 December 1831, 82 CTS 299. The Barrier was abandoned in 1847, to the profit of more elaborate fortifications around the main strategic points of Antwerp, Liège and Namur. Emile Banning, \textit{Les origines \& les phases de la neutralité belge}, op. cit., p. 63 ; Edouard Eugène François Descamps, \textit{La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique: étude sur la Constitution des Etats pacifiques à titre permanent}, op. cit., p. 262.} Analogies with the status of Switzerland in 1815 are inappropriate, as both the geographical and political context was fundamentally different.\footnote{André Holenstein, \textit{Mitten in Europa: Verflechtung und Abgrenzung in der Schweizer Geschichte}, Baden, hier \+ jetzt, 2014.}

The Belgian Provisional Government declared independence on 5 October 1830. This decision was far from decisive in establishing national sovereignty. Dutch troops had retreated at their own initiative, and did not suffer military defeat. Moreover, in August 1831, a Dutch invasion almost undid the new state altogether. French military intervention forced the retreat. The citadel of Antwerp was only liberated in December 1832, due to -again- French intervention.

In the ensuing succession of European crises, Belgium had to fear for its independence at several instances. In 1839, Marshal Soult, a former Napoleonic general, proposed a throttling customs union: the French Court of Cassation would claim competence over all matters belonging to export and import duties. French officials would take over operations at the border.\footnote{Max Suetens, \textit{Histoire de la politique commerciale de la Belgique depuis 1830 jusqu’à nos jours}, Bruxelles, Librairie encyclopédique, 1955 ; Helmut Sydow, \textit{Die Handelsbeziehungen zwischen Belgien und dem Zollverein 1830 - 1885}, Köln, Böhlaü, coll.« Dissertationen zur neueren Geschichte », vol. 2/, p. 53.}

The structural position of the country, caught between the Romanic and the Germanic worlds, caused uproar in 1840, when the President of the French Council of Ministers Adolphe Thiers (1797-1877) threatened to invade the Rhineland in reaction to Britain, Prussia, Russia and Austria’s exclusion of the July Monarchy in the Egyptian crisis. On 10 November 1840, Leopold I affirmed before both houses of Parliament that ‘neutralité […] inscribed in our public law […] is the true basis of our policy; its maintenance in a sincere, loyal and strong way should be our constant goal.’\footnote{Emile Banning, \textit{Les origines \& les phases de la neutralité belge}, op. cit., p. 69.} The sovereign commissioned Wilhelm Arendt’s \textit{Essai sur la neutralité de la Belgique}, to palliate the lack of a comprehensive international law treatise covering Belgium’s \textit{sui generis} legal position.\footnote{Horst Lademacher, \textit{Die belgische Neutralität als Problem der europäischen Politik 1830-1914}, op. cit., p. 122. Guillaume Arendt, \textit{Essai sur la neutralité de la Belgique}, Bruxelles/Leipzig, Muquardt, 1845. Wilhelm (Guillaume) Arendt was educated in lutheran theology in Berlin, but converted to Catholicism while teaching in Bonn. He lost this position due to his new confession, but was recruited by de Ram, first rector of the}
(1790-1865), it was essential that Belgium showed its hybrid national character, belonging to the German-speaking as well as to the French-speaking world. Giving in excessively to the latter would depict the country as a French protectorate.\(^{51}\)

Arendt’s treatise made a prudent synthesis of the available doctrine and law of nations precedents, to conclude that Belgium would need to invest in national defence, abstain from conflicts between third states, and conclude as many commercial conventions as possible, in order to draw sufficient profit from its geographical position at the heart of the continent.\(^{52}\) For Arendt, the centralised and representative internal constitutional order of Belgium could count as a guarantee that the country would defend its borders and abstain from bellicose behaviour.\(^{53}\) However, the restrictions imposed at the Treaty of London were real: \textit{volenti non fit iniuria}. If Belgium had accepted recognition by the Great Powers, it had to suffer the limitations stemming from the countervailing obligations as well.\(^{54}\)

The February Revolution in France (1848) was a challenge to Belgium’s first single party-liberal government under Frère-Orban (1812-1896) and Rogier (1800-1885).\(^{55}\) Belgium had to please the more conservative central powers and could thus not recognise the new French government in too precipitated a manner. The Revolutionary February government saw the issue of the Vienna Congress as a purely factual starting point in discussions, and not as a legally binding situation.\(^{56}\) Ledru-Rollin eagerly awaited a spontaneous merger, driven by Belgian public opinion.\(^{57}\) Frère and Rogier astutely managed the presumptions of the guarantors and recognised the second French Republic on 28 May 1848.\(^{58}\)


\(^{52}\)For a more elaborate analysis, I refer to my forthcoming article on Arendt, Nys and Descamps.

\(^{53}\)The country did not suffer the vicissitudes of federal states or loose confederations. Guillaume Arendt, \textit{Essai sur la neutralité de la Belgique}, op. cit., p. 75.

\(^{54}\)Ibid., p. 95.

\(^{55}\)Brison Dowling Gooch, \textit{Belgium and the February Revolution}, op. cit.

\(^{56}\)Ibid., p. 39.

\(^{57}\)Ibid., p. 80. See also 83, footnote 3: Ledru-Rollin was thought to have instigated the ‘Belgian Legion’s failed invasion of Belgium and the battle of Risquons-Tout. AMAE, CP, Belgique, 30.

\(^{58}\)Ibid., p. 100. Edouard Eugène François Descamps, \textit{La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique : étude sur la Constitution des Etats pacifiques à titre permanent}, op. cit., p. 470 ; Alphons Rivier, \textit{Principes du droit des gens}, Paris, Rousseau, 1896, p. I,59. In Rivier’s opinion, permanently neutral states had to await the approval of their guarantors before proceeding to the recognition of a new state. In view of the different political systems between the more authoritarian Northern courts in 1848 (among which Russia, with whom Belgium had no established diplomatic relations until 1852), this was hardly tenable for the French February and May-June regime changes.
The 1860s brought the American Civil war (1861-1865) and the Mexican Crisis (1862-1867), during which Frère-Orban hoped that Belgian neutrality could be seen as limited to the European continent, allowing Belgium to act more forcefully and trade in contraband outside of Europe. Belgium dismissed soldiers from the army with the permission to enlist as volunteers to defend the cause of Archduke Maximilian (1832-1867), who had wed Leopold I’s favourite daughter Charlotte. Enlisting for foreign service was only forbidden in cases of interstate conflicts, not for civil wars. This rather remarkable line of political argumentation was in overt contradiction with the Department of Justice’s advice, which stated that ‘Belgium would fall short of its duties by tolerating that help would be given on its territory to a belligerent, and, even more so, when a nation without political existence would be helped in its separatist insurrection against its mother state.’ Yet, in practice only France and Britain determined what was admissible or not with regards to the laws of neutrality, or not.

B. Gallus Amicus, Sed Non Vicinus? ‘Notre redoutable voisin’

Napoleon III’s arrival to power modified the political configuration dramatically. The ‘Emperor’ sought to annex Belgium to France, and repeatedly bullied the country into submission. Napoleon demanded and obtained the conclusion of a convention for the protection of intellectual property. This text brought down the profitable and active Belgian typographical industry, which plagiarised books published in France. Second, France dictated

59 Declaration regarding the Observance of Neutrality in the American Civil War, Brussels, 22 June 1861; Francis Deák, A Collection of neutrality laws, regulations and treaties of various countries: Edited and annotated by Francis Deák and Philip C. Jessup. Vol. 1. [-2.], Washington; (Concord, Carnegie endowment for international peace; N.H., the Rumford Press), 1939, p. 58, nr. 10a.

60 Edouard Eugène François Descamps, La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique: étude sur la Constitution des Etats pacifiques à titre permanent, op. cit., p. 489.


62 Emile Banning, Les origines & les phases de la neutralité belge, op. cit., p. 169. This has not withheld Britain from recruiting an ‘English legion’ in Belgium during the Crimean War. Department of Justice to Department of Foreign Affairs, Brussels, 27 July 1864, BMFA, IND, vol. 1A.

63 Department of Justice to Department of Foreign Affairs, Brussels, 27 July 1864, BMFA, IND, vol. 1A.

64 Horst Lademacher, Die belgische Neutralität als Problem der europäischen Politik 1830-1914, op. cit., p. 169.

65 ‘Keep the French as friend, but not as neighbour’ (maxim attributed to Johann De Witt, 17th Century pensionary of Holland). Expression used in the note ‘Délits de presse’ (BMFA, Délits de Presse, s.f.).

66 Henri de Brouckère to Leopold I, Brussels, 8 June 1853. BMFA, IND, vol 1A, s.f.

the introduction of a criminal offence of insults against a foreign head of state, in order to muzzle ‘the bad press’. 68

At the height of French pressure, Belgium lived under a ‘unionist’ cabinet since 31 October 1852. 69 Foreign Affairs minister Henri de Brouckère (1801-1891) was its de facto leader. 70 He preached a cautious policy of submissive deference towards France:

‘In our political acts, we should not show partiality to any Power; yet, in our intimate relations, in our most private acts, if I am allowed to used this language, we are free -I would even go further- it belongs to every Belgian stateman’s duties, to whos France our natural inclination for her, and the sympathy uniting us to our powerful neighbour.’ 71

Sympathy and officious pro-French preferences ought to convince Napoleon III that Belgium would not remain indifferent to his countless whims. 72 Counterbalancing France through a royal multilateral network across Europe failed. 73 Napoleon was highly sensitive to personal marks of honour, e.g. when he complained not to have been presented to the Duke of Brabant, as had been the case for ‘des puissances de moindre ordre’. 74 Belgian officials feared that, notwithstanding Leopold’s firm insistence on an even-handed approach, Belgium’s neutrality

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68 Barrot to Drouyn de Lhuys, Brussels, 16 March 1854, AMAE, CP, Belgique, 35, f. 138v°. Belgium’s popular juries had rejected the application of a 1816 law stemming from the United Kingdom of the Netherlands. The first measure of Minister of Justice Charles Faider in de Brouckère’s government was the introduction of a Belgian law to lift all ambiguity. See Law on the Punishment of Insults to Foreign Heads of State, 20 December 1852, Monteur Belge 21 December 1852; Bram Delbecke, De lange schaduw van de grondwetgever: perswetgeving en persmisdrijven in België (1831-1914), Gent, Academia press, 2012. Under Belgium’s first liberal government (1847-1852), French dissidents d’Haussonville and Thomas had been acquitted before the Court of Assises, just as the radical opposition newspapers Le Bulletin Français and La Nation. French pressure resulted in unrest with the voters and thus electoral losses for the liberal party (Theo Luykx, De Belgische kamerverkiezingen van 8 juni 1852: cijnskiezers onder Franse politieke druk, Leuven, Nauwelaerts, coll.« Standen en landen », 1966, p. 96): ‘votez pour les Clericaux, ou vos intérêts matériels seront sacrifiés, vous n’aurez plus de relations commerciales avec la France’. See also d’Anethan’s 1871 statement, according to which the Belgian press had a responsibility to abstain from reports angering a big power (Edouard Eugène François Descamps, La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique: étude sur la Constitution des Etats pacifiques à titre permanent, op. cit., p. 455.


70 The institution of prime minister was only introduced after World War I. Els Witte, Meynen, Alain et Luyten, Dirk, Politieke geschiedenis van Belgïe van 1830 tot heden, Antwerpen, Manteau/WPG, 2016, p. 182. De Brouckère, lawyer, magistrate and professor at the Université libre de Bruxelles, was a member of the House of Representatives until 1870, as well as governor of the provinces of Antwerp (1840-1844) and Liège (1844-1846).

71 Barrot to Drouyn de Lhuys, Brussels, 16 March 1854, o.c., f. 124v°.

72 E.g. ‘[le nom] de l’Empereur Napoléon retentit aujourd’hui dans le monde comme l’expression de toutes [v°] les idées de droit et de justice’ (de Brouckère in Barrot to Drouyn de Lhuys, Brussels, 19 March 1854, AMAE, CP, Belgique, 35, f. 129v°).


74 Reference
would become ‘coûteuse en cas de conflit entre la France et la Prusse’.\textsuperscript{75} If Napoleon III’s expansionism was to be feared, he could also be seen as a guarantor of internal stability after the revolution of 1848.\textsuperscript{76}

\textit{II. Belgium as an Object: the 1870 Treaties of London}

‘admitted in the big European family, she cannot escape the obligations resulting either explicitly or implicitly from the treaties that have recognised her. Independent, Belgium has rights to have respected; neutral, she has specific obligations to fulfill.’\textsuperscript{77}

International relations histories can draw an active or a passive image of a state in its interactions with others. Belgium’s role as a diplomatic hub at the heart of Europe should not be underestimated.\textsuperscript{78} Yet, foremost in the eyes of its guarantors, the country was an object first, and an actor only in second place. The confirmation of Belgian neutrality in 1870 was illustrative of this essential double dimension of diplomacy.

The 1870 Franco-Prussian war was declared on 19 July 1870. Barely a week later, the so-called Benedetti-treaty appears in the \textit{Times} (25 July 1870). As is well known, Chancellor Bismarck leaked confidential proposals made by French ambassador de Benedetti to the British press.\textsuperscript{79} France would have offered to annex Belgium and Luxemburg\textsuperscript{80}, in return for the accession of the Southern German Confederation to Bismarck’s North German Confederation.\textsuperscript{81}

In view of the state of war between France and Prussia, Gladstone’s cabinet emphasised the need to safeguard the port of Antwerp and Belgium in general. On 4 August 1870, Gladstone addressed the House of Commons emphasising that the ‘public right in Europe’ would become extinct in case of violation of Belgium’s neutrality. This was in

\textsuperscript{75}De Brouckère in Barrot to Drouyn de Lhuys, Brussels, 6 April 1854, AMAE, CP, Belgique, 35, f. 202v°.
\textsuperscript{76}Yves Bruley, \textit{La diplomatie du sphinx}, CLD, 2015, p. 31 32.
\textsuperscript{77}‘Délits de presse’, BMFA, Délits de presse, s.f.
\textsuperscript{78}Rik Coolsaet, \textit{België en zijn buitenlandse politiek, 1830-2015}, op. cit.
\textsuperscript{79}Ibid., p. 132.
\textsuperscript{80}The Grand-Duchy of Luxemburg became independent pursuant to the dissolution of the German Confederation and Bismarck’s refusal to have this state enter the North German Confederation. In analogy with Belgium, Luxemburg became perpetually neutral. Jules Garsou, \textit{Le Grand-Duché de Luxembourg entre la Belgique, la France et la Prusse (1867-1871)}, Luxembourg, Editions des cahiers Luxembourgeois, coll.« Cahiers Luxembourgeois », 1936 ; M.R.D. Foot, « Great Britain and Luxemburg 1867 », \textit{English Historical Review}, LXVII, n° 52, 1952, p. 352 379.
\textsuperscript{81}The Prussian garrison in the fortification of Luxemburg was part of the German Confederation’s system of defence. Consequently, William I had continued to reign as a prince of the German Confederation, in a personal union with the Netherlands (Sebastiani to Talleyrand, Paris, 22 December 1830, AMAE, CP, Angleterre, 631bis, f. 158v°). The dissolution of the Confederation created an independent Luxemburg.
accordance with his Whig predecessor Palmerston’s intervention during the trouble days of 1848, and equally contradicted French affirmations according to which ‘experience and industrial egoism’ would force Britain to tolerate the annexation of Belgium and Luxemburg, as it had done in 1860 for Nice and Savoy. ‘La vieille Angleterre’ would intervene, as it had done in the days of Marlborough and Wellington.

The correspondence of French ambassador in London Charles de la Valette (1806-1881) reveals the composite mindset of Imperial diplomats. French arguments against the Hohenzollern claim on the throne of Spain were phrased as ‘nothing that would not be conformable to the best established precedents of European public law. Our principles are those that the Great Powers had made prevail in 1831 in Belgium against the Duke of Nemours as King of the Belgians’. France based its claims on ‘that great law of ponderation of forces between states, the basis of the European system’, or ‘the salutary rule of international modern jurisprudence forbidding any Great Power to move the balance of forces by looking for a foreign crown for one of its princes’.

Gladstone’s proposal to conclude a treaty of guarantee was seen with suspicion: ‘this [Belgian] territory will be inviolable as long as it will be the case for Prussia as well’… ‘The French government has always considered with defiance the compromising conventions offering her advantages that could not have been disposed of.’

According to Foreign Secretary Granville (1815-1891), the use of the reiteration of 1839 was that ‘both the Emperor [Napoleon III] and the King [Wilhelm I] subject their respective assurance to the condition that it is observed by the other, which seems to preclude an opinion on their part that the declaration is not complete’. Moreover, a British assurance ‘in a solemn Act, either Treaty of Protocol’ would serve to quell potential French unrest as well, and state that safeguarding Belgium’s neutrality was a ‘common determination.’

La Valette, in turn, questioned the utility of a reiteration: ‘why and to what point would it be convenient to sign a new protocol, to affirm the clauses of an international act of

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82 Emile Banning, Les origines & les phases de la neutralité belge, op. cit., p. 88. : the Great Powers do not have the right, but the obligation to intervene on Belgium’s behalf. We should however replace this affirmatio into its context: Palmerston meant an intervention against revolutionary France. Prussia -as defender of the legitimacy principle- eagerly supported this thesis, since this intervention would repress revolution. Brison Dowling Gooch, Belgium and the February Revolution, op. cit., p. 91.
84 Van de Weyer to de Vrière, London, 18 May 1860, o.c., s.f.
which all parties have solemnly acknowledged the value. Wouldn’t this second affirmation entail the inconveniency to believe that time can invalidate treaties, and that they lose their mandatory force as the date of signature becomes more remote?  

These fundamental objection haunted European diplomacy in the ensuing decades. Would every new casus belli between belligerents require the reiteration of their initial obligation to guarantee Belgian neutrality? Edouard Descamps tried to refute them in his landmark essay on Belgian neutrality: Britain had mediated as ‘neutral guarantor’ between two ‘belligerent guarantors’. However delicate and subtle this answer was, Belgium had been left out of this agreement. The confirmation of the 1839 Treaty was dependent on the political and arbitrary decision of France, Britain and Prussia. To equate this with the ‘forces of law and the eternal interests of the European equilibrium’, as formulated in the address by the Chamber to Leopold II, was most of all a demonstration of the indeterminacy and flexibility of balance-of-power-discourse. Foreign Affairs minister Jules d’Anethan (1803-1888) could rejoice at the upholding of neutrality, but the legal execution of the guarantee was questionable. Moreover, when Leopold II (1835-1909)- hoped to obtain a renewed British commitment to neutrality in 1887 against the background of Boulangerist agitation in the French Third Republic, the Catholic cabinet of Beernaert blocked his tentative.

Finally, Britain explicitly stipulated that its recognition would only concern Belgium’s continental borders as established in 1839. Potential acquisitions in other continents were left out of the guarantee. This argument was used later on, when Belgium annexed the Congo Free State in 1908. In 1870, this reinforced Frère-Orban’s view that permanent neutrality was

86 This affirmation is all the more relevant in light of Napoleon III’s exhortation to start a European congress in 1862-1863. According to the French Emperor, the treaties of 1815 had ‘ceased to exist’. Emile Banning, Les origines & les phases de la neutralité belge, op. cit., p. 134.
87 Edouard Eugène François Descamps, La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique : étude sur la Constitution des Etats pacifiques à titre permanent, op. cit., p. 327.
an institution of European public law, and did not concern relations with states outside the continent, let alone barbarous or savage political entities.92

III. ‘L’étrange doctrine de neutralité du gouvernement belge’: Belgium and the Arms Trade93

A. ‘Les Moyens Constitutionnels’

In theory, the Belgian constitution imposed parliamentary participation in the conclusion of treaties entailing obligations for its citizens or the country (art. 68).94 In practice, the monarchy monitored political activity.95 King Leopold was described by the French ambassador Adolphe Barrot (1801-1870) as ‘doing nothing but what he desires, and when he desires’. Leopold’s secretary Jules Van Praet,96 his officious Parisian envoy Firmin Rogier, the Prince of Chimay,97 or, later on, baron Lambermont (1819-1905)98, are examples of this para-governmental and extra-parliamentary activity: the King’s men of confidence were primary actors of foreign policy, without a formal mandate.99

The Belgian government actively used the liberal nature of its constitution to implore British sympathy, or to avoid regulating the arms trade. Sylvain Van de Weyer (1802-1874), long-standing Belgian ambassador in London, held warm pleadings contrasting authoritarian

92 Edouard Eugène François Descamps, La neutralité de la Belgique au point de vue historique, diplomatique, juridique et politique : étude sur la Constitution des États pacifiques à titre permanent, op. cit., p. 488.
93 Expression drawn from Barrot to Drouyn de Lhuys, Brussels, 24 March 1854, AMAE, CP, Belgique, 35, f. 112v°.
94 See e.g. Catholic MP Charles Woeste refuting rumours of a secret Belgo-German Treaty of Alliance: without parliamentary participation, no international treaty can be binding on the Belgian nation. Charles Woeste, La neutralité belge. La Belgique et la France, Bruxelles/Paris, Société belge de librairie/Nouvelle librairie parisienne, 1891, p. 73.
96 Barrot to Drouyn de Lhuys, Brussels, 4 August 1853, AMAE, CP, Belgique, 34, f. 31r°.
97 Horst Lademacher, Die belgische Neutralität als Problem der europäischen Politik 1830-1914, op. cit., p. 165.
98 Lambermont obtained the diploma of candidate (Bachelor) in law. He was appointed as civil servant in the Department of Foreign Affairs in 1842, rising fast to head of unit (1848) and director at interim (1852). Lambermont played a key role in the acquittal of the Scheldt toll and the acquisition of Congo. He died at the eve of the festivities for the 75th anniversary of the country. For Lambermont’s personal involvement in negotiations with Napoleon III, see for instance Barrot to Drouyn de Lhuys, Brussels, 28 February 1854, AMAE, CP, Belgique, 35, f. 89v°.
or revolutionary France to steadfast and freedom-inspired Belgium. Yet, in practice, the implication of the national representation was thus rather restricted.

B. ‘A permanent breeding place of conspirators’

Napoleon III put pressure on Belgium, as well as on Switzerland, to expel political refugees and cease to be a hub of political trouble on the borders of the great powers. If any ‘enemy plots’ originated in Belgium, they had to be actively and proactively monitored by police and prosecuting authorities. Yet, alas, ‘the Belgian government is not an absolute one’! Individual liberties prevented repressive action against the press. The national representation acted as true legislator, and not as a mere ratification instance. However, as Henri de Brouckère’s words above suggest, ‘independently of the legal question, there is the question of courtesy’. In order to avoid an invasion, the Belgian government had already made parliament swallow restrictions on civil liberties. Napoleon III would have wished the Belgian authorities to prosecute his opponents motu proprio.

C. ‘A merchant’s calculation!’

France and Britain were particularly indignant at the Belgian attitude in the Crimean War (1854-1856). Since 23 October 1853, this conflict opposed Russia to the Ottoman Empire. France, Britain (31 March 1854), Austria (2 December 1854) and Piemonte-Sardinia (26 January 1855) chose to ‘protect Turkey by arms’ against a possible Russian preponderance in the East, in case Czar Nicolas I would have managed to absorb large parts of the Ottoman Empire.

The classical law of nations forbade neutral states to aggrieve the situation of a belligerent in particular. Pursuant to this logic, neutral states could not let contraband (goods

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103 This rendered the law on insults against a foreign head of state *de facto* inapplicable. Its article three foresaw in a written official complaint, and precluded spontaneous public prosecution. See ‘Réclamations adressées au Gouvernement belge par des Gouvernements étrangers en matière de presse, après la promulgation de la loi du 20 décembre 1852’, BMFA, ‘Délits de presse’, s.f.
104 Russia had aggressed the Ottoman navy at the battle of Sinopel, whereas multilateral negotiations were still going on. Saint-René Taillandier, « Frédéric-Guillaume IV et le baron de Bunsen - IV », *Revue des deux mondes*, XLIV/3, 1874, p. 143.
directly or indirectly useful for warfare) pass their borders.\textsuperscript{106} The Belgian government interpreted these provisions in a lax and broad sense. It followed Vattel’s opinion\textsuperscript{107}, according to which states with a historical arms industry had the faculty to export to all belligerents, if only they received an equal-handed treatment: ‘the duty imposed on Belgium as a neutral state, is that of complete impartiality, of an absolutely identical treatment of both belligerents [...] to furnish arms to both parties equally’\textsuperscript{108}. To be neutral does not mean complete abstention, but ‘equal friendship towards both parties, without favouring one or the other army.\textsuperscript{109} This of course completely disregarded the prolongation of hostilities caused by the arms trade.\textsuperscript{110}

The bloody conflict in Crimea would cost France 95,000 soldiers, and Britain 21,900. Full-scale battles and cholera devastated the guarantors’ armies.\textsuperscript{111} The Belgian attitude was vexing in view of the successive declarations of neutrality by the Netherlands, the Hanse, Hanover, the two Sicilies, Portugal, Spain and the United States, who adhered to a manifesto issued by Denmark and Sweden on 15 November 1853, listing the rights of neutral vessels during the conflict.\textsuperscript{112} The Northern courts would not sell any arms or munitions to the belligerents.\textsuperscript{113} Henri de Brouckère proclaimed before the Senate on 12 May 1854 that Belgium would loyally adhere to these principles, and recall them to its citizens. Even more, Belgium’s constant respect of the laws of neutrality resulted in the guarantee of national sovereignty, as all nations have but esteem, friendship and sympathy for her.\textsuperscript{114} Whereas all of Europe had been in turmoil in 1848, a ‘small people governed by wise norms, attached to its

\textsuperscript{106} Guillaume Arendt, *Essai sur la neutralité de la Belgique*, op. cit., p. 184; Eric Schnakenbourg, *Entre la guerre et la paix: neutralité et relations internationales, XVIIe-XVIIIe siècles*, op. cit., p. 31. Gentili explains the right of a belligerent to seize property as a conflict between the law of nations (allowing for trade between states) and the law of nature (preremptory, which grants every state the right to self-preservation).

\textsuperscript{107} ‘Si une nation commerce […] en munitions de guerre, je ne puis trouver mauvais qu’elle vende tout cela à mon ennemi, pourvu qu’elle ne refuse pas de m’en vendre aussi à un prix raisonnable. Elle exerce son trafic sans dessein de me nuire et en le continuant comme si je n’avais point de guerre, elle ne me donne aucun sujet de plainte.’ (‘De la neutralité maritime et commerciale de la Belgique’, Brussels, 1862, BMFA, IND, vol. 1A, s.f and *Le droit des gens*, Book III, Chapter VII, §110). In the same vein, Giovanni Maria Lampredi, *Du commerce des neutres en tems de guerre: Ouvrage élémentaire, destiné à fixer les principes des conventions maritimes et commerciales entre les nations*, traduit par PEUCHET, JACQUES, Paris, Chez H. Agasse, an x, 1802, p. 60.

\textsuperscript{108} De Brouckère to Barrot, Brussels, 18 March 1854, o.c., f. 147r°.


\textsuperscript{113} Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, AMAE, CP, Belgique, 35, f. 98r°-v°.

\textsuperscript{114} *L’Indépendance belge*, 13 May 1854.
institutions, devoted to royalty and with as much love as respect for its sovereign’ had been capable of stopping anarchy.115

In reality, the situation had been more complex. The commercial road to Russia ran either overseas, through Antwerp to Gdansk116 and Greece117, or by land, through the Prussian possessions by the Rhine.118 Russian agents bought up all military material they could get their hands on in Liège.119 Only when Prussia declared its neutrality in the conflict, were export possibilities truly limited.120 Pressure mounted on Frederick William IV (1795-1861).121 Prussian abstinence in the common fight against Russia was portrayed as immoral.122 Conversely, Frederick William IV is reported to have qualified the Franco-British relationship as ‘incestuous’.123 Bilateral Franco-British pressure was needed to cut off the land road to Russia.124

Russia established full diplomatic relations with Belgium as late as 1853. Barrot used this astutely to underline that Russia had only done this ‘at the very last moment, and only when it was in line with its current policy to make this sacrifice of governmental and dynastic antipathies’.125 Why would the Belgian government then take the risk to tolerate the fabrication and transit of arms to Russia, ‘meant to be used against our soldiers’?126 If all the major interests in Europe coalesced against the Russian boar, why would Belgium mobilise

115 L’Indépendance belge, 13 May 1854.
116 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., 35, f. 103r°.
117 Barrot to Drouyn de Lhuys, Brussels, 14 March 1854, o.c., f. 115v°.
118 Barrot to Drouyn de Lhuys, Brussels, 14 March 1854, o.c., f. 112r°.
119 Barrot to Drouyn de Lhuys, Brussels, 14 March 1854, o.c., f. 115r°.
120 At least in theory. Westlake, quoting correspondence between Granville (Foreign Secretary) and Bernstorff (Prussian ambassador) regarding the Franco-Prussian war, reports numerous violations of Prussian exports restrictions and an almost continuous stream of land transports from Belgium to Russia. John Westlake, « Est-il désirable de prohiber l’exportation de la contrebande de guerre ? », Revue de droit international et de législation comparée, II, 1870, p. 617, 621. See also Jan Martin Lemnitzer, Power, law and the end of privateering, New York, Palgrave Macmillan, 2014, p. 30-33. Westlake further argues (633) that Britain would not have exerted pressure on Prussia to execute its internal regulations. The same cannot be said for Belgium, as Howard de Walden was on the same line as Barrot.
121 Saint-René Taillandier, « Frédéric-Guillaume IV et le baron de Bunsen - IV », op. cit., p. 137.
123 Saint-René Taillandier, « Frédéric-Guillaume IV et le baron de Bunsen - IV », op. cit., p. 146.
124 Barrot to Drouyn de Lhuys, Brussels, 14 March 1854, o.c., f. 117v°: ‘un acte peu amical’ […] ‘une violation presque aussi flagrante de la neutralité prussienne que si la Prusse ouvrait son territoire au passage de troupes ennemies’.
125 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., 35, f. 95r°.
126 Barrot to Drouyn de Lhuys, Brussels, 28 February 1854, AMAE, CP, Belgique, 35, f. 92r°.
all of its industrial resources to serve a malicious cause? Belgium’s neutrality should be ‘agreeable to a cause recognised by the whole of Europe as just’.  

The Belgian government replied that the all too well-known ‘revolutionary dispositions’ of the Province of Liège forbade any intervention in the arms export. Only God knew the consequences of a revolution against the King’s government in this turbulent province! Ruin and desolation would come to the whole region, drawing her living from this sole industry for centuries. Liège had even sold more arms to the Turks (in this case France and Britain’s ally) than to the Russians! The Russian chargé d’affaires in Brussels had even approved of Belgian sales to the Ottomans. Moreover, the constitution forbade intervention against ‘private arms factories’, ‘as independent from the Government as cloth or cigarette factories’, or banks. Of course, Liège held a royal cannon foundry, a weapons factory and a pyrotechnical establishment. If Barrot insisted on action against private enterprises, a legislative act would be necessary, implying a long-and public-discussion in both Chamber and Senate. Of course, the ‘laws of neutrality’ could be invoked against Belgium. Of course, these enterprises shouldn’t furnish weapons to belligerents… The government, entrusted with a mission to protect its industry, could not consent in committing an act of cruelty by issuing a decree that would close forever all iron casting plants, coal plants or workshops. Especially not with parliamentary elections coming up on 13 June 1854!

Barrot’s anger at Belgian official refuge behind ‘constitutional neutrality’ was expressed in harsh threats. Would de Brouckère have forgotten British arms deliveries, even before Belgium had been recognised officially by Whitehall, and while the United Kingdom of the Netherlands was William IV’s ally? How could ‘petty money concerns’ justify governmental inaction and thus keep in place an industry ‘wanting to draw profits from the adversities of war’? Why should Belgium be allowed to produce arms on a wholly

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127 Barrot to Drouyn de Lhuys, Brussels, 14 March 1854, o.c., f. 113v°.
128 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., f. 96r°.
129 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., f. 95v°;
Barrot to Drouyn de Lhuys, Brussels, 16 March 1854, o.c., f. 136v°.
130 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., f. 97v°.
131 See Horst Lademacher, Die belgische Neutralität als Problem der europäischen Politik 1830-1914, op. cit., p. 176. on de Brouckère’s refusal to intervene against Belgian banks giving loans to Russia.
132 Ibid., p. 173.
133 Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., f. 97r°.
disproportionate scale to its own needs? Cruisers would be sent out to Belgian ports, to stop vessels carrying arms and apply the normal rules of contraband.\footnote{Van de Weyer feared the British Cabinet was even more determinate to block the port of Ostend if necessary as a means of pressure. Horst Lademacher, \textit{Die belgische Neutralität als Problem der europäischen Politik 1830-1914}, \textit{op. cit.}, p. 172. Jan Martin Lemnitzer, \textit{Power, law and the end of privateering}, \textit{op. cit.}, p. 28.}

De Brouckère implicitly recycled Arendt’s arguments: ‘\textit{if neutrality imposed duties, it also has generated rights [...] why would we renounce these, if we stick to its obligations?}’\footnote{De Brouckère to Barrot, Brussels, 18 March 1854, \textit{o.c.}, f. 147v°: ‘\textit{pourquoi renoncerions-nous aux droits puisque nous observons les devoirs?}’; \textit{De Brouckère to Barrot, Brussels, 18 March 1854, \textit{o.c.}, f. 146v°. In August 1870, Granville (Foreign Secretary) developed a similar arguments to answer Prussian complaints on deliveries to the French. The inspection of all vessels would require setting up an expensive and complex customs system, of an inquisitorial nature, opening and examining every potentially suspect package. John Westlake, \textit{“Est-il désirable de prohiber l’exportation de la contrebande de guerre?”}, \textit{op. cit.}, p. 631. British public opinion would have been allergic to inquisitorial powers, more than any other nation in the world. Moreover, restricting exports would scare off states to stick to neutrality, and would encourage them to declare them for one of the belligerents. \textit{Ibid.}, p. 634.}}

How on earth could the Belgian government be understood to patrol the borders of Russia, to ensure an effective check on arms exports?\footnote{Joseph Lebeau to all Belgian legations abroad, Brussels, 4 August 1840, BMFA, IND, Vol. 1A, s.f.} This discourse was conformable to the line held by Foreign Minister Joseph Lebeau (1794-1865) in 1840, stating that ‘\textit{neutrality does not mean impotence}’.\footnote{Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, \textit{o.c.}, f. 99v°.} Yet, de Brouckère was caught in his own contradictions. Refuting Barrot’s example of Denmark and Sweden, the Foreign Affairs minister stated that the latter countries were voluntary neutral, and had settled their affairs ‘\textit{comme bon leur a semblé}’. Belgium, on the contrary, had neutrality imposed as an ‘\textit{existential condition}’. Consequently, limitations on arms and ammunition trade should not create the effect as to extinguish Belgian sovereignty.\footnote{Barrot to Drouyn de Lhuys, Brussels, 8 March 1854, \textit{o.c.}, f. 104v°; de Brouckère to Barrot, Brussels, 18 March 1854, AMAE, CP, Belgique, 35, f. 144v°: 5 000 rifles.}

De Brouckère returned Barrot’s example of British arms deliveries in 1831 to state that ‘\textit{no rule of international law}’ could oblige a state to close down its arms industry.\footnote{Barrot to Drouyn de Lhuys, Brussels, 8 March 1854, \textit{o.c.}, f. 105v°.} Belgium had behaved in an exemplary way when during the Carlists Revolt in Spain (1833-1839). At that time, all arms exports had been communicated to the Great Powers. Why would the Crimean War have been any different? If the Belgian government informed France and Britain on arms exports to Russia, they could be intercepted ‘very easily’.\footnote{Barrot to Drouyn de Lhuys, Brussels, 8 March 1854, \textit{o.c.}, f. 105v°.} Producers only needed to inform intermediaries of this risk, and the arms industry would be safeguarded. Adopting this procedure, Belgium would even go beyond the normal expectations of the
Great Powers, who did not bother to be informed of transactions with Italian, German and Hungarian agents in 1848!\textsuperscript{141}

This reasoning, according to Barrot, was ‘plus spécieux que fondé’\textsuperscript{142} If any link at all existed between the fundamental nature of Belgian perpetual neutrality and the interpretation of the country’s obligations, it should reside in respect for the ‘two powers that are your most sincere friends.’ If the liberal 1831 constitution could count as a valid excuse, de Brouckère defended himself against measures not demanded by France and Britain in the first place. Not the arms factories themselves, but the transport to Russia were problematic. Irrespective of the liberal and free-trade oriented constitution, the Belgian state could not close its eyes faced with its responsibility to oversee exports. Were exports not submitted to customs officers, per definition a state organ?\textsuperscript{143} Government alone could open or close this door.

On 20 March 1854, Barrot could report good news to Paris. De Brouckère had ordered the governor of Liège to advise manufacturers not to conclude any new deals but with the utmost prudence, and also used personal governmental links to the entrepreneurs to dissuade them.\textsuperscript{144} Deliveries from state workshops and factories would cease immediately.\textsuperscript{145} Embarking arms on vessels in Antwerp had been rendered almost impossible: they were sent back to Liège.\textsuperscript{146} Customs officers were told to share all necessary information with French and British consuls.\textsuperscript{147} Clandestine maritime transports would be intercepted by French and British cruisers at the start of the war (which effectively intervened on 31 March). To render victory complete, the Frederik William IV published a decree on 18 March, prohibiting land transport of arms in the most absolute manner, conformably to the general laws of neutrality.\textsuperscript{148}

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\footnote{De Brouckère to Barrot, Brussels, 18 March 1854, \textit{o.c.}, f. 144v°. This is supported in Montague Bernard’s analysis of the American Civil war, wherein he states that ‘it has not hitherto been judged reasonable or expedient that neutral Governments should be held bound to restrain their subjects from trafficking with belligerents in munitions of war […] The usage of nations leaves the belligerent free to take advantage of these enterprizes [sic] so far as they serve his turn, and to repress them as well as he can so far as they assist his enemy.’ Montague Bernard, \textit{A historical account of the neutrality of Great Britain during the American Civil war}, London, 1870, p. 391.}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, \textit{o.c.}, f. 99v°.}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, \textit{o.c.}, f. 100v°.}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 20 March 1854, AMAE, CP, Belgique, 35, f. 155v°-156r°.}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 22 March 1854, \textit{o.c.}, f. 161v°.}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 22 March 1854, \textit{o.c.}, f. 164r°. See also \textit{o.c.}, f. 185v°-186r° for a full list of weapons sent out from the port of Antwerp (New Orleans, Valparaiso, Bahia, Hamburg…).}
\footnote{Barrot to Drouyn de Lhuys, Brussels, 22 March 1854, \textit{o.c.}, f. 163r°. Barrot hoped the regulation would be eagerly copied by all Zollverein-member states. Yet, in August, news transpired that a considerable Belgian arms carriage had managed to reach Russia in spite of this measure. Barrot to Drouyn de Lhuys,}
\end{footnotes}
The *Moniteur Belge* of 25 April 1854 listed the measures of the Belgian government concerning corsairs and *lettres de marque*.\(^{149}\) Aligning itself on the line of conduct set out by the Northern courts was the wisest option, after thinly veiled threats by Barrot that Belgian vessels carrying enemy goods would be seized and confiscated if necessary.\(^{150}\) Similarly, Howard de Walden, British ambassador in Brussels, had demanded compulsory special licences for arms exports.\(^{151}\) Foreign Secretary Clarendon (1800-1870)\(^{152}\) entirely supported the French demand to end the furnishing of arms.\(^{153}\) Interestingly, and contrary to the next example discussed, Van de Weyer advised de Brouckère to cut off deliveries to Russia. For the Belgian ambassador in London, it was clear that Belgium should support the cause of France and Britain against the Czar, who could not sustain a lengthy conflict with the limited Russian arms industry alone.\(^{154}\) Van de Weyer’s correspondence shows a genuine worry: Clarendon’s answer to de Brouckère’s call to respect the ‘rights’ of neutrals who stuck to their

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\(^{151}\) Charles Ellis, 6th Baron Howard de Walden (1799-1868, undersecretary of State for Foreign Affairs, 1824-1828 and successively envoy extraordinary and plenipotentiary in Stockholm, Lisbon and Brussels). Barrot to Drouyn de Lhuys, Brussels, 7 March 1854, o.c., f. 101v°.


\(^{153}\) Barrot to Drouyn de Lhuys, Brussels, 8 March 1854, AMAE, CP, Belgique, 35, f. 104v°.

‘obligations’ was cynical and clear: ‘But if neutrality has its rights, self-preservation has its duties...’.

D. Latin-America: Another World, A Different Doctrine?

Ten years later, under the long ‘doctrinal’ liberal ministry Rogier/Frère-Orban (1857-1870), Belgium had managed to participate in the general upswing in international trade and the Franco-British commitment to free trade and the respect of neutral vessels. Its industry produced abundant quantities of goods, available at competitive prices. Unfortunately, the internal market was insufficient to satisfy this output. In 1860, L’Indépendance suggested to participate in British gunboat-diplomacy in China, as part of ‘l’Europe commerciale et civilisée’, in order to convince the Empire of the Middle to abandon its ‘politique stupide qui isole trois cent soixante millions d’hommes du reste de l’humanité’. In 1863, the Belgian government bought off the mandatory duties on the river Scheldt, definitively opening access to the port of Antwerp.

The Liège arms manufacturers participated again in a conflict, but this time situated on another continent. Between 1864 and 1870, Paraguay faced a coalition of Brazil, Argentina and Uruguay in a bitter and bloody conflict. On 13 April 1865, Nothomb, Belgian ambassador in Berlin alerted Charles Rogier, minister of Foreign Affairs. Fifteen thousand rifles were said to be waiting in Antwerp for their expedition to Brazil. Alfred de Graty, a Belgian-born adventurer acting as chargé d’affaires for Paraguay in Berlin, communicated

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155 Clarendon to Howard de Walden, NA, FO, 10/179. Ibid., p. 173.
156 Lemnitzer, Power, Law and the End of Privateering.
157 L’Indépendance, 2 January 1860.
158 The Treaty of London (1839) had revived the Dutch practice since the separation of the Netherlands in 1585 to impose duties on vessels descending the Scheldt estuary to Antwerp (L’Indépendance Belge, 22 April 1839). Although the Belgian state had taken up these payments itself from 1831 on, lifting this burden was seen as a sign of national regeneration. Rik Coolsaet, Belgïé en zijn buitenlandse politiek, 1830-2015, op. cit., p. 114 - 115. See Treaties of Commerce and Navigation, for the Regulations of Drawings of Water from the Meuse, and for the Extinction of the Schuldt Tolls between Belgium and the Netherlands, The Hague, 12 May 1863, 127 CTS 453; Convention between Belgium and the Netherlands for the Redemption of the Scheldt Pilotage Dues, The Hague, 29 September 1863, 128 CTS 209; Treaty between Austria, Belgium, Brazil, Chile, Denmark, France, Great Britain, the Hanse Towns, Italy, Oldenburg, Peru, Portugal, Prussia, Russia, Spain, Sweden-Norway and Turkey, Brussels, 15 July 1863; 128 CTS 95.
160 Nothomb to Rogier, Berlin, 13 April 1865, BMFA, IND, vol. 1A, s.f.
several letters from Liège. Moracs, a Brazilian captain presenting himself as delegate of the Brazilian Imperial Government, had met several arms manufacturers at the Hôtel de l’Europe. Brazil requested in total 10 000 infantry rifles with bayonets, 5 000 carbines and 5 000 muskets. The orders had been distributed among the factories of Malherbe, Lemille, Ancion, Mordan and Denster. All had to be finished within six to eight months, the arms leaving Liège as soon as possible, transported franco (at the Brazilian government’s expense) via Antwerp. Payments were to be made in London after delivery. According to de Graty, the big arms order was of public notoriety in Liège, including the customer’s identity. He asked the Belgian government to prevent the transport from leaving Antwerp, since there was no doubt as to the nature of the transaction or the identity of the parties.

Rogier’s answer to Nothomb was laconic and clear: ‘The Belgian government will observe the most complete impartiality by refusing neither of the two belligerents the faculty to order or buy arms in Belgium. No privilege or private facility will be granted to either party.’ De Graty, of course, insisted on the ‘principles of neutrality admitted by all Nations regarding the export and transport of war material to belligerents.’ Why would the Belgian government publicly proclaim its neutrality in the conflict between Brazil and Paraguay and discount the circumstances of the conflict, which rendered an even-handed approach of the belligerents impossible?

De Graty referred to the blockade at the confluence of the Paraguay and Panama rivers by a Brazilian squadron. This de facto deprived Paraguay of its access to maritime arms transports. Neutral third states had to abstain from trading with Paraguay, pursuant to the general characteristics of their status. France and Britain had already called an embargo on arms trade. If permanently neutral Belgium had to appreciate the Paraguayan case, it could not ignore the assessment of these powers! Moreover, if Belgium persisted in its attitude,
irrespective of the ‘lois prohibitives’ upheld by all Great Powers, the country would become the military and maritime arsenal of all belligerents. Belgian harbours would be the intermediaries for all clandestine trade of all neutral states!

If Belgium, a permanently neutral state, would tackle questions of international law by reasoning from the exceptions, and not from the general rules of prohibition, it would violate the very nature of its permanent neutrality. The latter had been conceived in 1830-1839 as a restriction, and not as a licence to sell anything to anybody! The laws of neutrality imposed themselves stricter than to any other neutral state, ‘since neutrality is a condition of Belgium’s political existence as an independent state.’\(^{166}\) A mere three days after de Graty’s admonition, the first cargo of arms was charged on the *Caesar* in Antwerp.\(^{167}\)

A month later, in June 1865, Sylvain Van de Weyer communicated sir John Russell’s scepticism on the Paraguayan point of view, disavowing de Graty’s arguments. Britain adhered to the same principles as its *protégé* Belgium. The elder statesman claimed to have been the first to come up with the idea of permanent neutrality, and was treated by Van de Weyer as an authority.\(^{168}\) Van de Weyer consulted with Layard, undersecretary of state.\(^{169}\) During the Crimean War, Britain itself had placed ‘considerable commands’ of carbines in Belgium, to pre-empt possible Russian claims on them.\(^{170}\) In any case, Belgium had no ‘paternal lessons’ to receive from the British! The Paraguayan reasoning would impose the death of the arms industry. Exactly what de Brouckère wanted to prevent in 1854! How could a decent arms industry exist under a prohibition to sell to any warrying state? Moreover, Brazilian harbours were not under blockade and could thus receive Belgian arms.\(^{171}\) Van De Weyer completely ignored de Graty’s argument of the blocus, and reproduced Vattel’s basic reasoning. Pereiro, the Paraguayan *chargé d’affaires* in London, had completely misinterpreted the question. Belgium applied the same principles as Britain did and did not in any case ‘officially encourage the sale of arms’\(^{172}\). Layard and Van de Weyer agreed that the Belgian government could only warn private entrepreneurs of the risks taken in such

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\(^{166}\) De Graty to Nothomb, Berlin, 15 May 1865, BMFA, IND, vol. IA, s.f.

\(^{167}\) Nothomb to Rogier, Berlin, 4 May 1865, BMFA, IND, vol. IA, s.f.


\(^{169}\) Austen Henry Layard (1817-1894), archaeologist (Iraq, Persia), trustee of the British Museum and undersecretary of state from 1861-1866, MP from 1852 to 1869, envoy extraordinary in Madrid (1869), ambassador in Constantinople (1877).


\(^{172}\) Van de Weyer to Rogier, London, 12 June 1865, BMFA, IND, vol. IA, s.f.
Finally, Lord Russell addressed a hand-written note to Pereiro to confirm that ‘the Belgian government may freely sell and export arms from Belgium, who is not called upon to provide against the accidental circumstances which render it more easy for one party than another to acquire such arms.’ Of course, this did not alter the French or Italian embargo.

Back in Berlin, de Graty tried to bring the affair to the public. Russel’s point of view had been very clear. There was no chance the five guarantors of Belgian independence and neutrality would take a common position against Rogier and Van de Weyer’s point of view. O’Sullivan de Grass, Belgian ambassador in Vienna, reported that Franz Joseph’s government supported the Belgian arms doctrine. De Graty had counted on them as inspectors of the law of nations, rather than as mere safeguards of geopolitical stability. The German press (Journal de l’Europe, Frankfurt) started attacking the selfish Belgian attitude, and suspected a community of interest with Britain in altering the balance of power in the Rio de la Plata region. However, the Belgian government was informed by the Brazilian diplomatic services of a dark cloud over de Graty’s arguments. It appeared from an intercepted letter from de Graty to president Francisco Solano Lopez of Paraguay (1827-1870), that the former had commanded rifles in Liège himself, at the workshop of Malherbe & Cie! De Graty had taken all measures to smuggle these arms out of Belgium, in case the government would decree a ban on arms exports.

**Conclusion**

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173 Van de Weyer to Rogier, London, 12 June 1865, BMFA, IND, vol. IA, s.f. See also congratulatory note transmitted on behalf of John Russell by Charles Ellis Howard de Walden, British ambassador, Brussels, 20 June 1865, BMFA, IND, vol. IA, s.f. This is not surprising, in view of Britain’s position as a main arms producer and seller, Steven C. Neff, *The rights and duties of neutrals. A general history*, op. cit., p. 106.


175 De Graty pretended to have had a conversation with Bismarck concerning the matter, as Prussia forbade arms exports to the region. De Graty to Nothomb, Berlin, 9 May 1865, BMFA, IND, vol. IA, s.f.


177 O’Sullivan de Grass to Rogier, Vienna, 28 October 1865, BMFA, IND, vol. IA, s.f. The Paraguayan chargé d’affaires had not been accredited to Vienna. Foreign Minister Count Alexander Mensdorff-Pouilly (1813-1871) informed the Prussian and Belgian ambassador directly of his support.

178 Rogier to Van de Weyer, Brussels, 28 June 1865, BMFA, IND, vol. IA, s.f.

179 Miguel Maria Lisboa to Charles Rogier, Rio de Janeiro, 19 June 1865, BMFA, IND, vol. IA, s.f. De Graty, a native Belgian, could easily move from Berlin to Belgium for the Summer.

180 Rogier to Van de Weyer, Brussels, 28 July 1865, BMFA, IND, vol. IA, s.f. (copy). This would not have been incompatible with Westlake’s opinion. According to the British lawyer, continuing an established arms trade during the conflict was not incompatible with neutrality. Only the start of a new trade relationship was. John Westlake, « Est-il désirable de prohiber l’exportation de la contrebande de guerre ? », *op. cit.* , p. 627.
By 1860, bold and proud Belgian patriotism could have formed a solid *de facto* obstacle to foreign annexation. Any foreign occupier would have found it difficult to obtain the adhesion of the Belgian population. Yet, the rhetorical intermingling of neutrality and sovereignty should not lead to a juridical assimilation of external and internal factors. The international context in which Belgian sovereignty originated, still, heavily influenced diplomatic debates and material power relations. The ambiguous guarantee given by France and Prussia in 1870 was essentially a result of British commitment to Belgian independence, but raised questions by its very existence.

If the country’s external conduct was subject to the traditional limits of neutrality, commercial opportunities might balance the damage incurred. Yet, French and British pressure during the Crimean War made clear that a blended prism of ‘legality, moral obligation and requests of European interest’ offered sufficient opportunities to stretch Belgium’s freedom of action according to circumstances. Lademacher argues that Henri de Brouckère was desperate to prevent a possible precedent that would ensure the ruin of the Belgian arms trade. Belgium furnished arms to its most important guarantors, and (officially, at least) cut off sales to Russia.

The Brazilian-Paraguayan conflict gave ample possibility to justify such a diplomatic course of action. As soon as France and Britain were not directly implied, the Belgian government could uphold its doctrine of even-handed arms trade with all belligerents. Even if this turned out to be practically impossible. In the contrary case, wherein the transport of arms to Russia would have been possible, but subject to Franco-British searches and seizures, Belgium was not officially asked to break its obligations as a neutral, but to render marks of sympathy to the states present at its cradle in 1830. Hence the tendency to narrowly interpret the status in case of extra-European conflicts, and to lift the obligations where possible, even if they were tied to a status congenital to the nation’s very existence.

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184 Ibid., p. 173.

185 Ibid., p. 175.

186 A similar argument is given by Bernstorff to defend Prussia’s attitude in 1854: the conflict in Crimea between Russia and the Ottoman Empire was too remote for Prussian interest to have been directly involved. If Britain wanted to discard criticism of its furnishing contraband (munitions) to France, this was inconsequent with respects to the pressure exerted on Frederick William IV in 1854 to forbid transport of contraband towards
guarantors could always decide to come back on their pledge towards the Belgian state. Paraguay held far less leverage.

From a more remote perspective, the Belgian government could hide behind the lack of codification of the laws of neutrality. There was no international consensus with regards to the internal measures necessary to respect the state’s obligation of impartiality and abstention towards belligerents. Consequently, adopting stringent export interdictions would have harmed Belgium’s position, since neutrality was a permanent and not a voluntary, temporary status. In the Paraguayan case, arm trade could continue, irrespective of the state of war between the belligerents. In the Crimean case, French and British pressure caused the government to give in. How firm was the doctrinal Anglo-American position that neutrals could carry contraband, just as belligerents could seize their vessels, ‘with equal legal rights’? The Belgian example suggests that politics, and not abstract principle, decided on a case per case basis.

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188 Steven C. Neff, The rights and duties of neutrals. A general history, op. cit., p. 92, 106.