

**Exploring Neutrality Through Belgium's Participation in the
Mexican Intervention in the 1860s**

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When the Belgian government sends legions to this side of the Atlantic to overthrow Republics, they necessarily submit themselves to the moral censure of all free states. Republics have equal rights and immunities with monarchies... American states have rights no less than those which they concede to European states.

William H. Seward, 1866

U.S. Secretary of State¹

With these words, William Seward offered one of the few diplomatic responses to Belgium's involvement in France's ill-fated Mexican intervention during which French troops forcibly removed Mexico's indigenous republican government in favour of an imperial monarchy headed by an Austrian prince. But in view of the Belgian legion in question amounting to less than two thousand troops, this lack of diplomatic reaction is hardly surprising.² Indeed, it would be absurd to attribute to Belgium a significant role in what was essentially a French concern. However, in Belgium it sparked a long stormy parliamentary debate that raised urgent questions about Belgium's duty to its permanently neutral status and its place in the world.³

Belgium's Neutrality and Its Discontents

¹ William H. Seward, U.S. Secretary of State, to Henry Shelton Sanford, Legation of the United States to Brussels, correspondence dated March 22, 1866, Papers relating to Foreign Affairs, accompanying the annual message of the President to the Second Debate of the Thirty-ninth Congress, at <https://history.state.gov/historicaldocuments/frus1866>.

² Laura O'Dogherty Madrazo, 'La Guardia de la Emperatriz Carlota,' *Estudios de historia moderna y contemporánea de México* 28 (2004): 31–76, p. 34.

³ Belgian Chamber of Representatives, September 2, 1864, and February 24, April 5 and May 30, 1865, *Moniteur Belge*, journal official, 1864, Vol. 9 (34) and 1865, Vols. 2, 4 and 5 (35). The full transcript of the Belgian Chamber of Representatives debates cited herein can be consulted online at www.dekamer.be (last accessed December 13th, 2024).

The intensity of that parliamentary debate and its wide-ranging focus is the subject of this paper. As a case study, it offers a microcosm of the Belgian political elite's efforts to interpret its neutral rights and obligations under international law at a time when international laws concerning the legality of intervention and recognition, and how they spoke to neutrality and the legal obligations of states, was in considerable flux. As such, the debate provides a valuable window into how a small country like Belgium was able to actively participate in the international system despite being compromised by its permanently neutral status.

The appeal of employing parliamentary debate to ask how political elites understood their obligations to neutrality under international law is hardly novel. During the nineteenth century a dramatic expansion of international law led to an increasing entanglement of law and international diplomacy. Yet there has been very little serious study of how, in practice, small states chose to respect or disregard international law in the 1860s. How they did so, and with what intentions they expanded or changed how international laws were interpreted during this period, was critical to the continuing legitimacy of those laws. This is particularly so with respect to the laws of neutrality. The fundamentals of neutrality developed with the aim of protecting trade during war time. But, for Belgium, neutrality was not a policy choice to be assumed at will; rather, it was a legal medium through which it was forced to act in the international sphere at all times. This paper uses the Belgian parliamentary debate over its role in the Mexican intervention and how it touched (or was perceived to touch) upon the integrity of Belgium's neutrality to understand how a permanently neutral country was still able to engage with the outside world.

Moreover, by moving beyond a focus on major power diplomacy to investigate how a small state like Belgium successfully interacted with the international system, I hope to add a

crucial element to our understanding of the not insignificant role that smaller states played in brokering how neutrality would henceforth be defined. The parliamentary debate over the Belgian legion's involvement in the Mexican intervention lends itself well to such a study because of the lack of international consensus with regard to the measures required to respect a neutral state's obligations of impartiality and abstention towards belligerents. This lack gave Belgium room to interpret neutrality in its own interests. As such, my investigation will also serve to illustrate how a small state was able to manipulate common understandings of international policy which, in turn, raises questions about the effect these interpretations had on the overall interpretation of international laws. Conversely, it also allows for the possibility of domestic politics controlling decisions in foreign policy. Thus, rather than simply focusing on how Belgium diplomacy reacted to outside pressures, this investigation considers the extent to which domestic pressures may have played an equal, if not more prominent, part in Belgium's place in the international space.

A Legal Status Under Pressure

Investigating how a small state like Belgium successfully interacted with the international system is in keeping with Seward's words with which this essay began. He spoke to a global understanding of the French intervention in Mexico which, until recently, was not shared by many scholars of the conflict. Instead they saw the intervention as an isolated incident, set apart from European diplomacy.⁴ Yet, from the instant French troops plunged into Mexico's interior in 1862 until their final retreat in 1867, the potential political and diplomatic ramifications of their

⁴ Nancy Nichols Barker, 'France, Austria, and the Mexican Venture, 1861-1864,' *French Historical Studies* 3.2, 1963, p. 224.

actions provoked a “firestorm” of debate across Europe and the Americas.⁵ For, while from the perspective of the United States government, the intervention was a clear case of France usurping power, the European governments’ recognition of a French-sponsored imperial regime in Mexico was more complicated. Indeed, Napoleon III’s forceful removal of an indigenous republican government and institution of an imperial monarchy came at an important global moment. Mexico had been in an almost chronic state of unrest since its liberation from Spain nearly half a century before.⁶ The United States was embroiled in civil war, and the European system was also experiencing distress shown by a growing shift away from the collective and collegiate diplomatic expectations that had characterized the Congress of Vienna since 1815.⁷ For example, Napoleon III’s Mexican ambitions were not only aided by the distraction afforded by the American Civil War (1861-1865) but also by the Polish insurrection (1863-1864), which served to morally weaken and further politically divide France, Britain and Austria; as well as Austrian and Prussian attempts to reform the Germanic Confederation that then culminated in the Austro-Prussian conquest of strategic provinces in Denmark (1864).⁸ As a consequence, understandings that had built up around international law, political ideology, belligerency and

⁵ James Sanders, *The Vanguard of the Atlantic World: Creating Modernity, Nation and Democracy in Nineteenth-Century Latin America*, Durham, North Carolina, 2014, p. 2, and more generally in Edward Shawcross, *France, Mexico and Informal Empire in Latin America, 1820-1867: Equilibrium in the New World*, Cham: Springer International Publishing, 2018 and Erika Pani, ‘Law, Allegiance, and Sovereignty in Civil War Mexico, 1857–1867,’ *The Journal of the Civil War era* 7.4 (2017): 570–596.

⁶ Alex Middleton, ‘British Liberalism and the French Invasion of Mexico,’ *Journal of British Studies*, 2023, 62(2), p. 365.

⁷ Paul W. Schroeder, ‘The Nineteenth-Century International System: Changes in the Structure,’ *World Politics* 39, 1986: 1-25.

⁸ For ‘an important global moment’ see Middleton, ‘British Liberalism,’ and Michael Palo, *Neutrality as a Policy Choice for Small/Weak Democracies: Learning from the Belgian Experience*, Leiden Boston: Brill, 2019, particularly pp. 23-4.

neutrality were increasingly under challenge.⁹ In its analysis, this paper will explore some of those challenges from the perspective of the Belgium state and its competing power factions as they sought to navigate the various diverse demands on Belgian security, diplomacy, and foreign interests within the limitations of Belgium's imposed permanent neutrality. In so doing, this paper aims to reach a better understanding of the politics (and practice) that contributed to the shaping of international law.

For Belgium's political leadership, the situation in Mexico was intensely personal;¹⁰ in early 1864, Maximilian von Hapsburg, the younger brother of Franz Joseph I of Austria, had assumed the Mexican throne with his wife, Charlotte of Saxe-Coburg and Gotha, daughter of Leopold I, the Belgian king, as his Empress.¹¹ Consequently, when Leopold I single-handedly declared the establishment of a Belgian legion of soldiers to protect Charlotte—and thus French and Belgian interests in Mexico—his actions immediately raised domestic questions about the extent of Belgium's involvement in the conflict and what it meant for Belgium generally since its permanently neutral status was integral to its continued existence.¹²

⁹ Arnold Blumberg, 'United States and the Role of Belgium in Mexico, 1863-1867,' *The Historian (Kingston)* 26.2, 1964, p. 206.

¹⁰ Egon Caesar Corti, *Maximilian and Charlotte of Mexico*, Hamden, Conn: Archon Books, 1968.

¹¹ Maximilian formally accepted the Mexican crown on April 10, 1864, at Miramar Castle, Trieste. Corti, *Maximilian and Charlotte*, pp. 353-55.

¹² Laura O'Dogherty Madrazo, 'La Guardia de la Emperatriz Carlota,' *Estudios de historia moderna y contemporánea de México* 28 (2004): 31-76, p. 34; Emile Banning, *Les origines & les phases de la neutralité belge*, Alfred de Ridder (ed.), University of Wisconsin – Madison, 1927, p. 147.



Maximilian, emperor of Mexico (1864–67). *Library of Congress, Washington, D.C.*

Belgium's permanent neutrality also played a central role in stabilizing European concerns and maintaining the international system.¹³ Following self-determination in 1831, Belgium had freely assumed its status of permanent neutrality in return for Britain, France, Austria and Prussia guaranteeing its sovereignty through a fear that any powerplay in such a geostrategic area might easily flare up into a European crisis.¹⁴ The result was a radically new legal status of contractual neutrality.¹⁵ Thus, it was paramount to Belgium's security that—as a nation—it was perceived by the world as adhering to its obligations under its new permanently

¹³ Maartje Abbenhuis, *An Age of Neutrals: Great Power Politics, 1815-1914*, Cambridge University Press, 2014, p. 12.

¹⁴ Stephen Neff, *The Rights and Duties of Neutrals*, New York: Juris, 2000, p. 101; William Lingelbach, 'Belgian Neutrality: Its Origin and Interpretation,' *The American Historical Review*, vol. 39, 1933, p. 48-72; and Paul W. Schroeder, *The Transformation of European Politics, 1763-1848*, Oxford, 1994.

¹⁵ Neff, *Rights and Duties*, p. 101; Article VII, Treaty of London (1839) between Austria, France, Britain, Prussia and Russia, and Belgium, signed April 19, 1839 in Clie Parry (ed) *The Consolidated Treaty Series*, Dobbs Ferry: Oceana 1969-1981, vol 88, p. 421.

neutral status. But the lack of clarity around these obligations meant that while neutrality necessarily informed Belgium's domestic and diplomatic policy, there remained considerable leeway for its interpretation and application.¹⁶ For example, while on the one hand it was clear that Belgium could not mobilize its armed forces in an aggressive way or declare war on another state, how the country might employ its military power in the pursuit of empire, or indeed in the protection of its interests in the non-European world, was far less obvious. Belgium's handling of the Mexico intervention also sat in a particularly contested period of neutrality politics.¹⁷ In light of these complexities, Belgium's political elite were constantly aware of the need to balance international expectations that Belgium would comply fully with its permanent neutral status with its populace's (and, thus, politicians') concerns for the future well-being of the nation and its commercial and economic interests.¹⁸

Nevertheless, the ambiguity that existed around the rules of neutrality enabled permanently neutral states like Belgium a certain amount of maneuverability in the international space, thereby facilitating a dynamic and active engagement in diplomacy. In focusing on how these ambiguities were employed by Belgium's political elite across a parliamentary debate, this paper hopes to complicate Frederik Dhondt's way of reading the agency attributed to permanently neutral states as something unduly constrictive and limiting.¹⁹ Furthermore, in

¹⁶ Fredrik Dhondt, 'Permanent Neutrality or Permanent Insecurity?', in Inge van Hulle, Randall Lesaffer, eds. *International Law in the Long Nineteenth Century (1776-1914): From the Public Law of Europe to Global International Law?*, Leiden Boston: Brill, 2019, pp. 159-185, particularly p. 163.

¹⁷ Elizabeth Chadwick, *Traditional Neutrality Revisited: Law, Theory, and Case Studies*, The Hague, Kluwer Law International, 2002.

¹⁸ Rik Coolsaet, *België en zijn buitenlandse politiek 1830-2000*, Leuven, Uitgeverij van Halewyck, 2001, pp. 27-47.

¹⁹ Frederik Dhondt, 'La Neutralité Permanente de la Belgique et l'Histoire du Droit International: Quelques Jalons pour la Recherche 1,' *C@hiers du CRHiDI. Histoire, Droit, Institutions, Société* (2018) at <https://popups.uliege.be/1370-2262/index.php?id=614>; Frederik Dhondt, 'Changing Interpretations of Belgium's

seeking to understand the complexity of the domestic obligations of neutrality which informed Belgium's international stance, this study is in keeping with a growing historiographical trend of looking beyond the nineteenth-century great powers to smaller states and their interaction with the wider community. This trend reflects an increased interest in a global study of history which has moved on from the presumption that only the great powers had the ability to shape international relations and the law. In the vein of Maartje Abbenhuis, who equates neutrality to a 'tool' of diplomacy used by all states, large and small, this paper suggests that small states like Belgium played an active diplomatic part in contributing to the international space and, thus, an understanding of international policy and laws in the 1860s.²⁰

The actual practice of neutrality during the 1860s has not attracted a wide scholarship, particularly with respect to permanent neutrality.²¹ The most comprehensive is Jan Lemnitzer's study of the Declaration of Paris (1856), which was negotiated and ratified by the European powers following the Crimean War (1853-1856) in a concerted effort to more formally regulate maritime neutrality in times of war. Lemnitzer's study extrapolates to the general practice of neutrality in the 1860s, but it does not specifically speak to permanent neutrality.²² Jan Anckaer's study of the Crimean War does speak specifically to Belgium's permanent neutrality, but his focus is diplomatic rather than political.²³ Detailed examinations of Belgium's neutrality have been completed by both Horst Lademacher and Daniel Thomas. These are comprehensive but

Permanent Neutrality in Three Legal Treatises,' *Tijdschrift voor rechtsgeschiedenis* 86.1-2 (2018): 188-214; and Dhondt, 'Permanent Neutrality,' pp. 159-185.

²⁰ Abbenhuis, *Age of Neutrals*, pp. 223, 229, and 237.

²¹ Jan Lemnitzer, *Power, Law and the End of Privateering*, London: Palgrave Macmillan U.K., 2014, p. 4; Inge Van Hulle, 'Britain's Recognition of the Spanish American Republics,' *Tijdschrift voor rechtsgeschiedenis* 82.3-4, 2014: 284-322, p. 287.

²² Lemnitzer, *Power*.

²³ Jan Anckaer, 'Dangerous Opportunities: Reassessing Belgian Neutrality during the Crimean War (1853- 1856),' *Journal of Belgian History* XLIV, 2014, 68-111.

their primary focus is on the great powers' guarantee and so they only touch on the extent of Belgium's agency.²⁴ Yet, in drawing attention to two instances in which Belgium's neutrality was tested, first in 1840 concerning Belgian military preparations and then again during the Crimean War, Thomas goes beyond Anckaer's analysis to show that while the Belgian government pursued a vigilantly defensive diplomacy, Leopold I's private diplomacy could have been more "enterprising."²⁵ Other scholars who have considered Belgium's status in relation to its interactions with other states tend to objectify Belgium as a buffer rather than looking specifically to its agency in the international arena.²⁶ There is not yet a concerted study of Belgian engagement with its agency in Mexico in the 1860s. This paper helps to fill that gap as well.

Using the government archives of Belgium, the United States, and Great Britain, this paper highlights how the Belgian political elite—including members of parliament—understood their obligations to neutrality under international law, and how they navigated and accommodated those obligations within the prevailing norms of the international community. Belgium's status and its position in Europe meant its political elite had a strong grasp of international policy and principles. Many were legally trained and, as a consequence, they regularly resorted to legal theory, like that of eighteenth century jurists Emmerich de Vattel and Sir William Scott, to support a range of diplomatic and political arguments.²⁷ This meant that

²⁴ Horst Lademacher, *Belgium Neutrality as a Problem of European Politics*; Daniel Thomas, *The Guarantee of Belgian Independence and Neutrality in European Diplomacy, 1830s-1930s*, Kingston, 1983.

²⁵ Thomas, *Guarantee*, pp. 75, 587, 632; Banning, *Les Origines*, p. 74.

²⁶ Neff, *Rights and Duties*; Chadwick, *Traditional Neutrality Revisited*; Dhondt, 'Permanent Neutrality'; and Coolsaet, *België*, pp. 27-47.

²⁷ 'I have a doctorate in laws like everyone else,' Charles Rogier, Minister for Foreign Affairs, Belgian Chamber of Representatives, November 21, 1861, *Moniteur Belge, Journal Officiel*, 1861, Vol. 11 (31) at www.dekamer.be; Neff, *Rights and Duties*, Chapter 5.

while the parliamentary debate was shaped by factors specific to it, it was also general enough in nature to speak directly to some of the complexities of being neutral in the 1860s. By contextualizing these parliamentary discussions within the prevailing treaty framework, this paper hopes to draw out attitudes that illustrate that Belgium, far from being restricted to a passive existence through its permanently neutral status, was able to use that status to proactively interact with the international community. This paper argues that Belgium was an actor on a large stage and that its neutrality did not restrict its field of action significantly. As such, this essay illustrates that the Mexico intervention threw up complex issues around international law, neutrality, and belligerency, which were shaped as much by smaller states and powers, like Belgium, as they were by the more powerful states, like France, Britain and the United States. The rest of this paper has been divided into five main sections. The first is a short general discussion of the international laws and norms of neutrality, which framed Belgium's status both diplomatically and politically. The second outlines the facts on which the debate about the Mexico intervention rested in the Belgian parliament. This is followed by sections three and four, in which the author analyzes the arguments employed during the debate and seek to connect them with broader patterns in international legal thought and political practice. By drawing out the arguments in this way, this paper hopes to show how they intersect with ideological imperatives such as the legitimacy of imperial invention and understandings of international law and neutral countries' obligations in the 1860s. This essay focuses particularly on two core ideas prevalent in these debates. The third section considers the question of whether France's intervention in Mexico could be classified as a "belligerency," which would imply that any support Belgium gave France might be in violation of its neutrality obligations. This issue

hung on questions of how to interpret the applications of existing international conventions and policy around the concepts of intervention, the recognition of non-European states as “states” in international law, and the wider implications of permanent neutrality. The fourth section considers the extent to which the Belgian government could restrict the application of international principles through a broad interpretation of its constitutional law. Since both parliamentary discussions were shaped by a very real fear that the United States had the ability to penalize Belgian commercial interests if it found Belgium in violation of international norms, my final section reflects on the balance between meeting political needs and a need to justify Belgium’s actions to the international community, particularly to powerful states like the United States. For, while the Belgian government’s methods might appear innovative in enabling independent action, their objective remained conservative: the preservation of the Belgian state and the continued advancement of Belgian industry.

I. Defining Neutrality in a Fragmented Legal Order

From a legal perspective, neutrality is a status, entailing rights and duties, depending on the existence of an international system.²⁸ International laws concerned with determining that status developed through state practice during wartime.²⁹ Therefore, in 1864, the very concept of neutrality implied an international conflict. Yet the formation of independent Belgium (1830-1839) was dependant on neutrality in perpetuity.³⁰ Perpetual neutrality as a consensus status in the interests of all was only viable in a particular international environment in which it

²⁸ Dhondt, ‘La Neutralité Permanente,’ pp. 2-3.

²⁹ Neff, *Rights and Duties*, pp. 68-9.

³⁰ *Ibid.*, p.101.

was understood that legal and political change was accommodated within a prevailing treaty framework designed to preserve a particular political order.³¹

Only the Treaty of London (1839), which linked recognition of Belgium's sovereignty and the great powers' guarantee to a strictly impartial attitude, was vague as to Belgium's obligations. It simply stated that Belgium was an independent and "perpetually neutral state" obliged to observe this neutrality towards "all other states."³² Nor did international authorities provide Belgium with greater clarity.³³ International policy had evolved around attitudes states could assume when confronted by war between their neighbors rather than the obligations of neutrals in perpetuity.³⁴ This evolution led to a normative understanding of neutrality based on customary practice molded over time through series of conflicts and compromises determined primarily by the relative power of the belligerents.³⁵ Accordingly, the making and enforcing of its application in the international space meant the rules were largely associated with answering specific questions. This specificity, together with a lack of consensus around customary practices, legal theory, and what authorities there were, added to the confusion.³⁶ By 1864, Belgium had created some precedent from its handling of early efforts by France and Prussia to manipulate its situation through customs unions as well as the management of Napoleon III's expansionist ambitions.³⁷ But since those spoke more to a French or Prussian desire not to

³¹ Lademacher, *Belgium Neutrality*; Paul W. Schroeder, 'Did the Vienna Settlement Rest on a Balance of Power?', *The American Historical Review* 97.3 (1992): 683–706.

³² Article VII, Treaty of London (1839) in Clie Parry, *Consolidated Treaty Series*, p. 421.

³³ Thomas, *Guarantee*, pp. 41-2.

³⁴ Neff, *Rights and Duties*, particularly Chapter 3.

³⁵ R. F. Roxburgh, 'Changes in the Conception of Neutrality,' *Journal of Comparative Legislation and International Law* 1.1, 1919, p. 20.

³⁶ R. F. Roxburgh, 'Changes in the Conception of Neutrality,' p. 21.

³⁷ Banning, *Les Origines*, pp. 131-145, particularly pp. 138-9.

provoke Britain than to a respect for Belgium's neutral status, they were not particularly helpful in establishing how Belgium was expected to behave within the international space.³⁸



The "Scrap of Paper." *Johnson, Riddle & Co. Ltd.*

Some clarity had come in the late 1850s with the movement towards commercial treaties between nations.³⁹ This movement resulted in a substantial reduction in bilateral tariffs between contracting parties—beginning with the Cobden-Chevalier Treaty (1860) between Britain and France—bringing political and economic interests together within a treaty network.⁴⁰ Instead of relying on organic growth of customary law, these treaties provided a network of agreed rules regarding acceptable state behavior in the international space. European powers' ratification of the Declaration of Paris (1856) following the Crimean War showed an even greater convergence in state practices on neutrality issues through a common desire to derestrict commercial activity in the international space.⁴¹ But since the agreed policies in the Declaration owed more to

³⁸ Thomas, *Guarantee*, pp. 575-6, 581-3.

³⁹ Neff, *Rights and Duties*, Chapter 6.

⁴⁰ Coolsaet, *België*, pp. 27-47.

⁴¹ Lemnitzer, *Power*, pp. 2-4, 179.

defining specific practices with regard to maritime rules during wartime rather than elucidating on the principles of impartiality and abstention generally, it provided only limited practical assistance towards clarifying Belgium's situation.⁴² However, while the Declaration did not speak explicitly to Belgium's status, it effectively reduced the classic law of nations doctrine, which forbade neutral states from aggravating the situation of a belligerent to a single standard by stating unequivocally that direct hostile actions by neutral states would not be "tolerated."⁴³ Consequently, the duties of neutrals became more burdensome and abstention was increasingly understood to require positive action by the neutral state to protect its neutral status, rather than inactivity.⁴⁴

II. Belgian Involvement in Mexico and the Politics of Dynasty

The facts on which the 1864 debate about Belgium's role in Mexico rested in the Belgian parliament concerned Napoleon III's intervention in Mexico. On June 3, 1861, President Juárez's newly formed republican government suspended payment of Mexico's foreign debts.⁴⁵ At the time, European commercial interests in Mexico were considerable, but a state which postponed payments to foreign creditors while regularly vacillating between anarchy and despotism—as Juárez's Mexico seemed to—was not conducive to economic stability and the exercise of free trade.⁴⁶ Taking advantage of the United States being momentarily disabled as the regional

⁴² Thomas, *Guarantee*, p. 42.

⁴³ Abbenhuis, *Age of Neutrals*, p. 87.

⁴⁴ Neff, *Rights and Duties*, p. 103.

⁴⁵ Howard Jones, *Blue and Gray Diplomacy: A History of Union and Confederate Foreign Relations*, Chapel Hill: University of North Carolina Press, 2010, pp. 76-80.

⁴⁶ John Gallagher and Ronald Robinson, 'The Imperialism of Free Trade,' *Economic History Review* 6, no. 1 (1953): 1-15.

hegemon by the American Civil War, Napoleon III seized upon President Juárez's refusal to honor European debts as an opportunity to reestablish French influence in the Americas.⁴⁷

By June 1863, French forces had successfully ousted Juárez's republican government from the Mexican capital, and by April 1864, Napoleon III had instituted an imperial monarchy in its place imposing the younger brother of Emperor Franz Josef I of Austria, Maximilian von Hapsburg, on its throne.⁴⁸ By the summer of 1864, Maximilian and his wife, Charlotte of Belgium, King Leopold I's daughter, had taken up residence at the palace in Mexico City.⁴⁹ Viewing the establishment of an imperial monarchy in Mexico as providing much-needed stability in the region, European states rushed to diplomatically recognize the new regime.⁵⁰ Europe's reaction provided Leopold I and the Belgian government a degree of latitude in giving some support to the French initiative.⁵¹ But for Belgium the position became all the more acute when, having achieved his objective, Napoleon pressured Maximilian to build up the imperial army using his father-in-law and brother's support to supplement Mexican troops so French forces may withdraw.⁵² But for Belgian politicians, and especially members of parliament, Leopold I's active support of France in Mexico raised a potentially divisive neutrality crisis, not least when the United States began to complain about the implied breach of Belgian neutrality.⁵³

⁴⁷ Erika Pani, 'Law, Allegiance, and Sovereignty in Civil War Mexico, 1857–1867,' *The Journal of the Civil War Era* 7.4, 2017, pp. 577-79; Neff, *Rights and Duties*, p. 103.

⁴⁸ Jones, *Blue and Gray*, pp. 308-312.

⁴⁹ Arnold Blumberg, *The Diplomacy of the Mexican Empire, 1863–1867*, Transactions of the American Philosophical Society, New Series, Volume 61, Part 8. Philadelphia: The Society. 1971, p. 64.

⁵⁰ Corti, *Maximilian and Charlotte*, pp. 388-89.

⁵¹ Banning, *Les Origines*, pp. 119, 125, and 131; Paul W. Schroeder, 'Historical Reality vs. Neo-Realist Theory,' *International Security*, 19, no. 2 (Summer 1994), pp. 144-45.

⁵² Dhondt, 'Permanent Neutrality,' pp. 166-7.

⁵³ Blumberg, *Diplomacy*, p. 61.

Hampered by the American Civil War, the United States government was unable to go on the diplomatic offensive against Belgium (or France). Instead, Washington adopted a foreign policy of “strict neutrality” in terms of the French action in Mexico, while reiterating Congress’s promise to defend the Americas from European colonization.⁵⁴ Above all, the United States government publicly aspired to protect the “free and independent condition” of the Americas which made the shift in power from President Juárez’s republican government to a French controlled imperial-monarchy particularly objectionable.⁵⁵ Consequently, Washington was highly alert to other states’ support of the French initiative, including the Belgians.⁵⁶ Thus, American efforts to control French and Belgian actions in Mexico offer an important backdrop to understanding the Belgian parliamentary debate regarding the establishment and deployment of a Belgian legion of soldiers to protect Charlotte—and thus French and Belgian interests—in Mexico.

The Belgian parliamentarians were also concerned about a potential backlash by other European states. Certainly, the European press and, thus, many European political elites were deeply interested in and concerned about the evolving situation in Mexico.⁵⁷ Unlike the Americans, however, no European government framed the Mexican intervention as a war involving identifiable “belligerents” within the meaning of the term under international law.⁵⁸

⁵⁴ Jay Sexton, *The Monroe Doctrine: Empire and Nation in Nineteenth-Century America*, New York: Hill and Wang, 2011, p. 151; Banning, *Les Origines*, cites joint resolution passed by U.S. Congress, April 4, 1864, condemning the replacement of a Republican government in Mexico with a monarchy, p. 148.

⁵⁵ William H. Seward, U.S. Secretary of State, to Henry Shelton Sanford, Legation of the United States to Brussels, correspondence dated October 4, 1864, reproduced in Francis Balace, *La Guerre de Secession et La Belgique: Documents d’Archives Americaines, 1861-1865*, Editions Nauwelaerts, Leuven-Louvain, Beatrice Nauwelaerts, Paris, 1969, p. 248.

⁵⁶ Sanders, *Vanguard of the Atlantic*, p. 2; Sexton, *Monroe Doctrine*, p. 4.

⁵⁷ Seward to Cassius Clay, American envoy to Russia, correspondence dated May 6, 1861, reproduced in William H. Seward and George E. Baker, *The Works of William H. Seward*, Boston: Houghton, Mifflin, 1884, vol 5, p. 251; J. W. Rooney Jr., *Belgium-American Diplomatic and Consular Relations 1830-1850, A Study in American Foreign Policy in mid-nineteenth century*, Publications Universitaires de Louvain, Louvain, 1969, pp. 2-5; and for a more general discussion see Glyndon Van Deusen, *William Henry Seward*, New York, 1967, p. 251.

⁵⁸ Middleton, ‘British Liberalism,’ pp. 362, 371-2.

This is particularly important because the legal obligations of neutrality only came into play in times of war. If the war in Mexico could be classified as an “intervention” or “diplomatic action,” as so many other interventions (including gunboat diplomacy) often were, Belgium’s neutrality was less threatened.⁵⁹

Whilst the part played by Belgium in Napoleon’s Mexico intervention was small, it was a telling one. By 1864, Belgium’s equilibrium function in Europe—which had prompted the great powers’ guarantee under the Treaty of London—was less straightforward.⁶⁰ The Second Italian War of Unification’s contempt for the integrity of small states in 1859 had left Belgium acutely conscious of having to remain vigilantly neutral so as not to provide a plausible excuse for another state to similarly annex it.⁶¹ Finding that degree of security and asserting independence while working within the international framework imposed by its neutral status was certainly not easy, and complicated even more by King Leopold I’s insistence that his sovereign independence was not affected by Belgium’s neutrality.⁶² Like many other monarchs of his day, Leopold I practiced private diplomacy through an extensive network of dynastic and political contacts.⁶³ In this he was much more enterprising than the Belgian government ministers who preferred to pursue a prudent path that looked largely to the commercial interests of their electorates and the formal status of their country in the international community.⁶⁴

⁵⁹ Elizabeth Chadwick, ‘Neutrality Revised?’ *Nottingham Law Journal* 22 (2013): 41-52; Randall Lesaffer, eds. *International Law in the Long Nineteenth Century*, Leiden Boston: Brill, 2019, p. 167.

⁶⁰ On diplomatic interventions generally, Jonathan Chappell, ‘The Limits of the Shanghai Bridgehead: Understanding British Intervention in the Taiping Rebellion 1860-62,’ *Journal of Imperial and Commonwealth History*, 44.4, 2016, pp. 543-4.

⁶¹ C. A. Tamse, ‘The Role of Small Countries in the International Politics of the 1860s,’ *Acta Neerlandica* 9, 1976, p. 166; Paul W. Schroeder, ‘Making a Necessity of Virtue,’ *Austrian History Yearbook*, 29.1, 1998, p.11.

⁶² Lademacher, *Belgium Neutrality*.

⁶³ Dhondt, ‘Permanent Neutrality,’ p. 172.

⁶⁴ Thomas, *Guarantee*, p. 81.

Indeed, as one of the most highly industrialized economies in Europe in the mid-nineteenth century, Belgium was greatly dependent on imports and exports, particularly given its limited home market and resources.⁶⁵ Consequently, its commercial policies were of paramount importance to its citizens, so to be perceived to be sympathetic to an enemy of one of the largest markets—the United States—went against Belgium’s most vital interests.⁶⁶ For example, during the Crimean War (1854 - 1856), the Belgian government interpreted its neutrality obligations of impartiality broadly to enable the Belgian arms industry to continue to export to all the belligerents equally. However, British and French protests that Belgian manufacturers were acting against the interests of the majority of their guarantors in continuing to supply Russia with armaments meant the Belgian government was forced to finely balance the interests of its people with international expectations of how Belgium should behave.⁶⁷ Leopold I was less circumspect in his behaviour. His propensity to give and collect political favors as a way of advancing his personal initiatives was often in violation of Belgium’s neutral status.⁶⁸ But because he was held in considerable esteem by the international community, so long as his actions reflected the aims of Belgium’s guarantors this was not an issue.⁶⁹ This was frequently the case because Leopold I’s initiatives were largely aimed towards preserving the overall balance of power in Europe.⁷⁰ The problem arose when Leopold I’s agenda moved beyond Europe to clash with Belgium’s neighbors in the imperial sphere.

⁶⁵ Anchaer, ‘Dangerous Opportunities,’ p. 73.

⁶⁶ Edwin Horlings and Jan-Pieter Smits, ‘A Comparison of the Pattern of Growth and Structural Change in the Netherlands and Belgium, 1800-1913,’ *Jahrbuch für Wirtschaftsgeschichte / Economic History Yearbook*, vol. 38, 1997, p. 87.

⁶⁷ Dhondt, ‘Permanent Neutrality,’ p 173.

⁶⁸ Tamse, ‘Role of Small Countries’; Corti, *Maximilian and Charlotte*, p. 60; and Balace, *La Guerre de Secession*, pp. 232-234

⁶⁹ Thomas, *Guarantee*, pp. 81, 162; Lademacher, *Belgium Neutrality*, p.165.

⁷⁰ Brison D. Gooch, *Belgium and the February Revolution*, Dordrecht: Springer Netherlands, 1963, pp. 20-23.

Leopold I's ability to work around Belgium's permanently neutral status raises complex questions about the extent to which states were able to rationalize international law to suit their purposes. He was aware of the difficulties around sending Belgian troops to serve in Mexico.⁷¹ After all, perpetual neutrality implied that Belgium could not use military power to support the war efforts of another state.⁷² Writing to his son-in-law, Emperor Maximilian, he conveyed the hope that "imperial allegiance" and the troops serving a monarch for her protection would offer sufficiently mitigating circumstances to provide an exception. He wrote that "...in order to carry through the business [of raising an armed force in Belgium to fight in Mexico] it will be necessary to recruit volunteers and have them fight under the imperial ensign."⁷³ Still, for the king of a neutral state to be seen to be connected to the raising of troops, even volunteers to form an honor guard for his daughter, was a delicate matter. This was made even more complex after the United States government's refusal to recognize Maximilian's imperial claims.⁷⁴ Leopold I sought advice on the issue from General Felix Chazal, Belgium's Minister of War. Anxious about an increasingly volatile Europe and the Belgian army's lack of experience, Chazal enthusiastically agreed to help raise a legion of Belgian recruits to fight in Mexico under the imperial ensign.⁷⁵ It was an opportunity to provide Belgian officers and soldiers with practical knowledge of war while also serving to raise the army's profile (and hopefully, funding), which

⁷¹ Corti, *Maximilian and Charlotte*, reproduction of correspondence between King Leopold I and Archduke Maximilian dated February 17, 1864, pp. 318-9.

⁷² Thomas, *Guarantee*, pp. 22, 29, 37 and 40.

⁷³ Blumberg, *Diplomacy*, p. 64.

⁷⁴ Seward to William L. Dayton, U.S. Ambassador to France, correspondence dated February 27, 1864, State Department Correspondence, National Archives, United States of America at <https://history.state.gov/historicaldocuments/frus1864p3/d59>.

⁷⁵ General Felix Chazal, Belgian Minister of War, to Charles Rogier, Prime Minister of Belgium, correspondence dated June 12, 1859 (416) AER Rogier Papers cited by Thomas, *Guarantee*, p.145 and Banning, *Les Origines* p.148.

had suffered from the Belgian public increasingly viewing the military as a drain on Belgian finances which might be better employed elsewhere.⁷⁶

Belgium's Prime Minister, Charles Rogier, was far less enthusiastic, however. In July 1864, he commissioned an investigation into the implications such recruitment had for Belgium's neutral status.⁷⁷ The Department of Justice advised against the government getting involved in the Legion, since the raising of troops on Belgian soil outside the Belgian army could be construed as a violent political insurrection, although it also noted that, because the enlistments were not in favour of a belligerent power, they did not appear contrary to Belgian laws or likely to compromise Belgian neutrality.⁷⁸ Rogier consulted with Chazal about pulling back but Chazal, at Leopold I's behest, had nominated the retired Lieutenant General Chapelie to organise the mission and Chapelie had thereafter been charged by Maximilian to organize a Belgian corps of around 2,000 volunteers to be entirely funded by the Mexican government.⁷⁹ Moreover, Chazal had already circulated an order to all Belgian generals obliging them to provide Chapelie with "every facility" for his "mission."⁸⁰ Nevertheless, while he remained enthusiastic, Chazal was also wary of getting the government directly involved. By an order circulated to all Belgian generals, he made it clear to any commanding officer promoting the Mexican mission that the

⁷⁶ Daniel Thomas, 'The Use of the Scheldt in British Plans for the Defence of Belgian Neutrality, 1831-1914,' *Revue Belge de Philologie et d'Histoire*, vol. 41 (1963); Palo, *Neutrality as a Policy Choice*, p. 17; and Banning, *Les Origines*, pp.148-150.

⁷⁷ Blumberg, *Diplomacy*, p. 61; Banning, *Les Origines*, pp. 149-150.

⁷⁸ Dispatch from the Belgian Minister of Justice, July 30, 1864, reproduced in Banning, *Les origines*, p.150 and cited in Dhondt, 'Permanent Neutrality,' pp. 159-185 and p. 167.

⁷⁹ Madrazo, 'La Guardia,' p. 34-39; correspondence, Sanford to William Seward, July 6, 1864, at <https://history.state.gov/historicaldocuments/frus1865p3>.

⁸⁰ Circular Order, Belgian War Ministry, July 25, 1864, reproduced in Banning, *Les Origines*, p.148, The initial order was circulated by the Belgian War Ministry on July 25, 1864 but after the first debate in the Belgian Chamber of Representatives on September 2, 1864 this was followed by a much stricter order dated September 3, 1864; both circulars are reproduced in Banning, *Les Origines*, pp.148-151.

responsibility for recruiting the Mexico-bound legion would lie solely with them.⁸¹ ⁸³ His caution did not carry over to the enlistment advertisements, however, which gave the general the impression that both Leopold I and the Belgian government supported the venture, though the government had carefully abstained from comment at this point. Furthermore, when it came to enlisting, each recruit signed a contract with the Mexican government (as opposed to the Belgian army).⁸² Despite the Belgian government's reticence in publicly addressing the issue, , including whether Belgium was breaching its neutrality conditions.⁸³ Over the summer, newspaper editorials considering whether the formation and deployment of a Belgian legion to Mexico amounted to a violation of Belgium's neutrality abounded. These spoke to the larger issue of the extent to which public opinion—particularly press opinion—shaped government policy and how the Belgian government was able to reconcile this with the need to maintain its strict neutrality in foreign affairs.⁸⁴ The issue was brought into sharp relief in May 1865 following the final resolution of the parliamentary debate in favor of the government, when the Netlieduitsclie League, a large Belgian commercial association based in Antwerp, wrote to the “Constitutional President of the Mexican Republic” to express their “regret” for both King Leopold I's conduct and that of the Belgian government who had “allowed” the raising of Belgian troops to serve a foreign imperial “rebel” government.⁸⁵

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⁸² Charles Rogier, Belgian Prime Minister to General Chazal, Belgian Minister of War, correspondence dated April 20, 1864 (A3690), reproduced in Blumberg, *Diplomacy*, p. 63.

⁸³ Sanford to Seward, September 7, 1864, (214) reproduced in Balace, *La Guerre de Secession*, pp. 241-2 and *Echo du Parlement (L')*, September 3, 1864, p.1, at KBR:belgicapress.be.

⁸⁴ For example, *Journal de Bruxelles (L')*, September 3, 1864, p.1; *Bien Public (L')*, April 7, 1865, p.2; *Courier de l'Escaut (L')*, June 4, 1865, p.1, and *Emancipation (L')*, June 5, 1865, ed.1, p.1, all at KBR:belgicapress.be.

⁸⁵ Correspondence dated May 26, 1865, Congressional Serial Set 39th Congress (1865-1867), Serial No. 1261 – House Executive Documents, Vol. 11, Pt. 1 House Executive Documents 73, H.Ex. Doc. 39-73 – Mexico, pp.683-686 at https://hdl.loc.gov/loc.law/l1serialsetpdf.01261_00_00.

But during the summer of 1864, embarrassed and fighting for re-election, Rogier's government sidestepped these public questions by stating that there was no law prohibiting Belgians from serving in Mexico provided they did not compromise Belgium or its neutrality.⁸⁶ Only when pressure was placed on the government by both Union and Confederate envoys in Brussels, who sought explanations from Rogier, was its hand forced.⁸⁷ Taking refuge behind protocol, Rogier responded that his government had no official information on the mission, since it was not organized under the aegis of the Belgian state.⁸⁸ But on receiving a direct request to waive duty on Mexican uniforms, Rogier could no longer hide.⁸⁹ He refused the request on the grounds such a favor would be "injurious to the Belgian textile industry," but it was enough for the conservative opposition to raise the first set of questions in parliament.⁹⁰

III. Belligerency and the Boundaries of Neutrality

In 1864, the liberal government was headed by Charles Rogier, who also assumed the role of Belgium's foreign minister.⁹¹ He, together with his finance minister, Walthere Frere-Orban, played an active role in responding to questions put to the floor of the Belgian Chamber of Representatives concerning the recruitment of Belgian army personnel (among others) to form a legion of volunteers in the service of the Emperor of Mexico. The questions

⁸⁶ Sanford to Seward, private correspondence dated July 7, 1864, reproduced in Balace, *La Guerre de Secession*, p. 226.

⁸⁷ Ambrose Dudley Mann, Confederate Commissioner to Europe, to J. P. Benjamin, Confederate Secretary of State, correspondence dated August 20, 1864, (103) and Sanford to Seward, September 7, 1864, (214), both reproduced in Balace, *La Guerre de Secession*, pp. 237-8, 241-2.

⁸⁸ Mann to Benjamin, correspondence dated July 7, 1864 (97) and Sanford to Seward, July 7, 1864 (200), reproduced in Balace, *La Guerre de Secession*, pp. 224-227.

⁸⁹ Banning, *Les Origines*, p. 150.

⁹⁰ Rogier to the Belgian Minister of Finance, correspondence dated July 27, 1864, reproduced in Banning, *Les Origines*, p. 148.

⁹¹ Dhondt, 'Permanent Neutrality,' pp. 165-6.

were posed by the conservative Catholic opposition, which was led in this matter by M.

Coomans, M. Gillery, and M. d'Hane Steenhuyse. Coomans opened the debate by suggesting that the establishment and deployment of a legion of Belgian volunteers to serve in Mexico was in violation of Belgium's permanent neutrality status.⁹² His assertion placed the government in the awkward position of having to rationalize an act that endorsed the replacement of a government "of the people" with an alien monarchy supported by a small conservative clerical elite.

Moreover, King Leopold I's concern for his daughter's safety had created a possible force of friction with a rising power that represented the largest market in the Americas, which could severely impact Belgium's economic interests, namely the United States. So, for the government to be seen to "tolerate" the deployment of a legion of Belgium volunteers to serve in Mexico was in direct contradiction to the commercial interests and individual freedoms that Rogier's liberal government professed to represent.

In each of the four parliamentary sessions that ensued—September 2, 1864, February 24, 1865, April 4, 1865 and May 30, 1885—Leopold I's continued promotion of a Mexican legion made up of Belgian volunteers, and France's intervention more widely, gave rise to vigorous discussion that employed sophisticated arguments drawing upon international law and the terms of the special and perpetual neutrality assumed by Belgium under the Treaty.⁹³ Rogier's liberal government combated the conservative opposition's allegations both ideologically— by asserting the conflict was simply two opposing political parties with Mexico's interests at heart—and by the practical use of political arguments drawn from a narrow reading of the

⁹² Banning, *Les Origines*, p.174.

⁹³ Belgian Chamber of Representatives, September 2, 1864, and February 24, April 5 and May 30, 1865, *Moniteur Belge, journal officiel*, 1864, Vol. 9 (34) and 1865, Vols. 2, 4 and 5 (35). The full transcript of the Belgian Chamber of Representatives debates cited herein can be consulted online at www.dekamer.be (last accessed December 13th, 2024).

Belgian constitution. The debate concluded with the Belgian Chamber of Representatives resolving that the government had not violated Belgian neutrality by tolerating the recruitment and training of Belgian citizens given there were not two belligerents in Mexico. Regret was also expressed for Belgium having provided support to a regime established through violence.

This section examines the terms of this debate, whereby the practical political use of arguments drawn from international law and theory were employed by the opposition for their evocative and ideological potential. The section that follows considers the government's successful counter argument which it grounded in constitutional law. It is a telling development that Belgium's neutrality was the primary platform around which the entire debate over the Mexican intervention was framed. M. Coomans, a Catholic M.P., initiated the debate on September 2, 1864 by interrupting the order of the day to censure the government for opening up Belgium to allegations that it had violated its neutral status by allowing a Belgian legion to serve in Mexico.

⁹⁴ He contended that the government should have shut down the recruitment and training of soldiers for the Mexico mission because, as a permanent neutral state, Belgium could not free itself from the external obligation of neutrality at will. Instead, the law required it to "appreciate" the scope and consequences of its acts, which extended to a requirement to "foresee" the obligations arising from those acts.⁹⁵ By granting soldiers leave to serve abroad, the government was guilty of associating Belgium so closely with one side as to make Belgium an actual part of the imperial regime's war effort.⁹⁶

⁹⁴ M. Coomans, First Debate, September 2, 1864, *Moniteur Belge*, Vol. 9 (34); Banning, *Les Origines* p. 154.

⁹⁵ Reference to William Arendt, a legal scholar at the University of Louvain, who was commissioned by King Leopold I in 1845 to explore Belgium's options under permanent neutrality. William Arendt, *Essai sur la neutralite de la Belgique*, Bruxelles, 1845, p. 87-9.

⁹⁶ Neff, *Rights and Duties*, p. 113.

Coomans' view tallied closely with well-publicized condemnations of Napoleon III's intervention in Mexico by liberal and American commentators, which had already formed the subject of many Belgian newspaper editorials.⁹⁷ The openness with which Napoleon III's move and Belgium's support of the king's daughter were publicly discussed speaks to a general understanding of the necessity to remain vigilant in maintaining Belgium's neutrality, so as not to provide a power like France or Prussia with sufficient excuse to invade Belgium itself.⁹⁸ However, the degree required to maintain an attitude of impartiality towards belligerents was disturbingly fluid. The Declaration of Paris (1856) offered little direction other than stating that direct hostile actions by neutral states would not be "tolerated."⁹⁹ Nevertheless, the duty of abstention was understood to require positive action on behalf of the neutral state.¹⁰⁰ Only how positive it needed to be remained unclear.

Coomans's prudence also speaks to the extent that international politics had become more complicated. By the mid-nineteenth century, international legal thought had shifted from the collective and colligate negotiations which characterized the Congress of Vienna (1814-1815) to an international system in which nation states competed for power.¹⁰¹ The result was a mounting tension between the great powers. The humiliation suffered by Britain in having rushed to aid the Poles and the Danes in 1863 and 1864 respectively, only to then abandon them in the face of Russian and Prussian resistance, caused it to retreat even further from continental matters.¹⁰²

⁹⁷ *Bien Public (Le)*, July 18, 1864, p.1; *Echo du Parlement (L')*, July 26, 1864, p.2; *Journal de Bruxelles (L')*, August 3, 1864, p.1; and *Journal de Bruxelles (L')*, August 3, 1864, p.1, all at KBR:belgicapress.be.

⁹⁸ Lademacher, *Belgium Neutrality*.

⁹⁹ Neff, *Rights and Duties*, p. 42.

¹⁰⁰ Neff, *Rights and Duties*, p. 103.

¹⁰¹ Schroeder, 'Nineteenth-Century International System,' pp. 23-25.

¹⁰² Thomas G. Otte, *The Foreign Office Mind: The Making of British Foreign Policy, 1865-1914*, Cambridge University Press, 2011, pp. 23-31.

Britain's retreat worried many Belgians because it was to Britain's guarantee that Belgium mainly looked in the event of an invasion.¹⁰³ This fear was exacerbated by the warm reception British parliament gave Sir Robert Peel's declaration opposing all treaties and guarantees that "render it necessary" for Britain to "interfere" with the affairs of others in June 1864.¹⁰⁴ Suddenly Belgium's status within Europe appeared all the more precarious.¹⁰⁵

The government's response to Coomans's contention rested on two points. First, the French intervention was a "moral" intervention, and as such, it did not constitute a belligerency within the meaning of that term under international law. Second, there was nothing in Belgium law to prevent the recruitment of Belgians for foreign service, provided it would not compromise Belgium or its neutrality. The debate across all four parliamentary sessions turned on these two points. This section deals with developments stemming from the first assertion made by Coomans – that the government should have shut down the recruitment of Belgian troops to serve in Mexico opened the discussion to whether a domestic armed conflict, such as the one in Mexico, could be identified as a state of belligerency by either the government against whom the rebels fought or by third states.¹⁰⁶ The response of the Belgian Minister of War, General Chazal, rested on legal theory expounded by the eighteenth-century jurist Emmerich de Vattel. Vattel contended that a neutral state could not do anything else but recognize the outcome of a struggle

¹⁰³ Lingelbach, 'Belgian Neutrality,' pp. 61-2.

¹⁰⁴ Sir Robert Peel, House of Commons, June 29, 1864, at [https://hansard.parliament.uk/Commons/1864-06-29/debates/f6d3235c-3e40-42d1-992f-575d9395c26b/Commons Chamber](https://hansard.parliament.uk/Commons/1864-06-29/debates/f6d3235c-3e40-42d1-992f-575d9395c26b/Commons%20Chamber).

¹⁰⁵ Banning, *Les Origines*, p. 69.

¹⁰⁶ Chadwick, *Traditional Neutrality Revisited*, p. 187.

between parties in another country.¹⁰⁷ Thus, since the official view of the imperial regime in Mexico was that the Republic had ceased to exist when President Juárez failed to meet international obligations and maintain domestic order,¹⁰⁸ the conflict was, mostly, an insurgency that fell outside the international law status of belligerency.¹⁰⁹

However, Chazal's reliance on Vattel's theory was complicated by two factors. Firstly, the lines of what was and what was not an insurgency had been blurred by Washington's insistence that the American Civil War was "at most an insurgency" despite the international community recognizing it as a belligerency.¹¹⁰ Britain had been quick to declare President Lincoln's blockade of the Southern ports in April 1861 to be an international act automatically triggering the law of neutrality for third-party states, although the practice of applying rules of neutrality during a civil war that involved a rebellious non-state belligerent was relatively new.¹¹¹ Washington responded by refusing to concede to the Confederate "rebels" the recognition that a belligerency status would provide them.¹¹² Instead, it asserted international laws had "no place in an internal conflict."¹¹³ Secondly, Washington's refusal to acknowledge any "monarchical" government in America, particularly one under the "auspices" of a European power, meant it viewed the French intervention in Mexico as a belligerency.¹¹⁴ The United States Secretary of State, William Seward, made this clear when he questioned Belgium's decision to recognize a

¹⁰⁷ Roxburgh, 'Changes in the Conception of Neutrality,' pp.18-20.

¹⁰⁸ Empress Eugenie of France to Empress Charlotte of Mexico, correspondence dated July 15, 1865, reproduced in Corti, *Maximilian and Charlotte*, pp. 112, 447.

¹⁰⁹ Chadwick, *Traditional Neutrality Revisited*, p. 188.

¹¹⁰ Jones, *Blue and Gray*, p. 11.

¹¹¹ Chadwick, *Traditional Neutrality Revisited*, p. 35; Neff, *Rights and Duties*, p. 109.

¹¹² Chadwick, *Traditional Neutrality Revisited*, p.36.

¹¹³ Jones, *Blue and Gray*.

¹¹⁴ Resolution of Congress, April 4, 1864, <https://www.Archives.gov/research/alic/periodicals/nara/citations/foreign-affairs.html>.

“foreign” imperial “revolutionary” government in Mexico while the United States remained in “treaty relations” with the “native” republican government “still existing” in Mexico.’¹¹⁵

Washington’s position illustrates how a lack of clarity around international law made any interpretation of its applicability to internal conflicts fundamentally political. Much of the parliamentary debate concerning the Mexican legion of Belgian recruits turned on this point.

The points raised by both the government and the conservative opposition in the debate that followed rested on an interpretation of international law that had arisen out of an escalation in civil conflict and trade treaties in the early nineteenth century. Such escalation had resulted in the great powers interpreting international law as enabling them to intervene in a third-party state’s affairs when “necessary” to reinforce and extend a particular set of principles of international order.¹¹⁶ This was so at Belgium’s inception (1830-1839) when the great powers intervened to guarantee Belgian independence in return for Belgium assuming a permanently neutral status.¹¹⁷ It was also the case for states whose politics could be represented as “dangerously disordered” in ways that affected European interests. Then, a “disinterested civilizing” foreign rule could be imposed upon them.¹¹⁸ It was on this understanding that Napoleon III justified his conversion of Mexico into an imperial monarchy.¹¹⁹ The United States government’s attitude reflected the liberal principle of non-intervention in “nations” that had reached a particular stage of political development.¹²⁰ On this point Britain’s response was

¹¹⁵ Seward to Sanford, October 4, 1864, <https://history.state.gov/historicaldocuments/frus1865p3>

¹¹⁶ Middleton, ‘British Liberalism,’ pp. 364-70.

¹¹⁷ Van Hulle, ‘Britain’s Recognition,’ p. 313.

¹¹⁸ David Armitage, *Civil Wars: A History in Ideas*, New York: Alfred A. Knopf, 2017, pp. 208-12.

¹¹⁹ Emperor Napoleon III of France to Lord Russell, British Foreign Secretary, correspondence dated October 17, 1861, in Daniel Dawson, *The Mexican Adventure*, Ayer Co., 1935, pp. 117-119.

¹²⁰ Middleton, ‘British Liberalism,’ p. 364.

equivocal. The British Foreign Secretary, Lord Russell, agreed that a “regeneration” of Mexico was desirable, but Napoleon III’s break with “policy” meant that Britain could have no active part in it.¹²¹ While Lord Palmerston, the British Prime Minister, approached the issue more pragmatically. France might not be as “disinterested” as they claimed, but he reasoned that it was in British interests for Mexico to have a stable government, and if Maximilian’s imperial regime worked to stop the United States from pushing further south, it was a thing “most desirable.”¹²²

The opposition challenged the Belgian government’s unquestioning acceptance of the great powers’ acquiescence of Napoleon III’s intervention as justified under international law since it was a “civilizing force” which had established a more stable government in Mexico. This acquiescence was amply illustrated through the rapidity with which the European powers recognized Maximilian’s imperial regime.¹²³ However, the parliamentary opposition charged the Belgian government with turning its back on its liberal ideology while dangerously ignoring the United States’s view that the intervention into Mexico was a “provocative” and violent “contravention” of the international order.¹²⁴ Washington’s refusal to recognize the imperial regime in Mexico kept open Juárez’s republican government’s credibility.¹²⁵ Furthermore, Washington’s proclamation of neutrality concerning the conflict meant the legion of Belgian recruits was taking part in a full-scale belligerency rather than a domestic insurgency.

¹²¹ Ibid., pp. 382-3.

¹²² On France’s ‘disinterest’ see Drouyn de Lhuys, French Foreign Minister, to Marquis de Montholon, French Ambassador to the United States, correspondence dated January 9, 1866, in Blumberg, *Diplomacy*, p. 206 and for Lord Palmerston’s statement to the House of Commons, July 29, 1864, https://api.parliament.uk/historichansard/commons/1864/jul/29/relations-with-mexico-papers-moved-for#column_202.

¹²³ Blumberg, *Diplomacy*.

¹²⁴ Middleton, ‘British Liberalism,’ p. 378.

¹²⁵ Sexton, *Monroe Doctrine*, pp. 157-158.

Moreover, Coomans's concern highlighted that even though the collapse of the United States into civil war had left it unable to enforce any version of its Monroe Doctrine, this did not mean it was disinterested.¹²⁶ President Lincoln had vowed publicly to bring soon "all its force to bear" on the newly established Mexican imperial regime, which many understood as meaning the Union army would not be disbanded at the end of the war but redeployed to uphold the republican government in Mexico.¹²⁷ Furthermore, the constant stream of appeals to the Monroe Doctrine in the United States media and by American politicians reiterated this belief.¹²⁸

In response, the Belgian Prime Minister, Charles Rogier, was quick to assert across all four parliamentary sessions, that it was unlikely that the presence of less than two thousand Belgians freely in Mexico wearing Mexican colors was of a nature to compromise the interests of Belgium, particularly as many more Belgians served the Union in the American Civil War.¹²⁹ But while Coomans's argument was overcome by the government's position, it serves to illuminate just how much the American Civil War complicated the conceptual and practical differences between the diplomatic recognition of a state, such as Europe's recognition of Maximilian's imperial regime, and an intervention in another state's affairs that amounted to a belligerency. Coomans's contention spoke to Belgium's very real concern for incurring the wrath of the United States as well as a need for Belgium to recognize Maximilian's imperial regime in a legal way that did not include Belgium becoming its ally.

¹²⁶ Coomans, First Debate, September 2, 1864, *Moniteur Belge*, Vol. 9 (34).

¹²⁷ Sanford to Seward, March 16, 1865, reproduced in Balace, *La Guerre de Secession*, p. 289; Steven McGregor, 'Seward's Corollary to the Monroe Doctrine, 1863-1866,' *International History Review* 43.5, 2021, p. 987.

¹²⁸ Seward to Cassius Clay, American envoy to Russia, May 6, 1861, reproduced in Van Deusen, *William Henry Seward*, p. 365.

¹²⁹ Rogier, September 2, 1864, and February 24, April 5 and May 30, 1865, *Moniteur Belge*, Vol. 9 (34) and Vols. 2, 4 & 5 (35).

Not exciting the wrath of the United States was particularly important for Rogier's liberal government, which had been elected based on its economic policy. As one of Europe's most highly industrialized economies, Belgium's continued prosperity depended on its access to foreign markets and resources, including the Americas.¹³⁰ Indeed, the American Civil War had presented an incredibly lucrative market for Belgian arms manufacturers, particularly in the city of Liege.¹³¹ Yet, a lack of clarity around rules of commercial conduct, coupled with an acceleration in globalization during the mid-nineteenth century, created a precarious and highly competitive international environment. Consequently, policy decisions had to finely balance Belgium's commercial interests with those of more powerful states.¹³² For example, the way the liberal government resisted French and British efforts to curtail the Belgian arms industry's ability to sell Belgian arms to Russia during the Crimean War is a case in point. Despite asserting it was unconstitutional for the Belgian government to seek to close private companies since it was contrary to the "freedom" of industry and commerce "enshrined" in the Belgian constitution, Belgium continued to trade with Russia.¹³³ Indeed, it is arguable that a significant reason for Leopold I's interest in the imperial enterprise in Mexico was not simply because it offered an appropriate solution to the uncomfortable situation his daughter and son-in-law had found themselves in following the Second Italian War of Independence (1859), although that would have played a part, but because it provided an opportunity to gain influence in a large American market. This was especially so because previous efforts by Belgium to expand into the Americas

¹³⁰ Horlings, 'A Comparison,' p. 87.

¹³¹ Stephen Wren, 'A Forgotten 'Merchant of Death, Auguste Schriever, the Dealmaker of Liege,' *Arms and Amour*, 20.1, 2023, p. 91.

¹³² Coolsaet, *België*, p. 31.

¹³³ Lademacher, *Belgium Neutrality*, p. 170; Dhondt, 'Permanent Neutrality,' pp. 175-177.

had met with failure. Plans for a Belgian economy in Texas had been dashed upon Texas joining the United States, while Belgian attempts to buy Cuba and invest in Guatemala had fallen through for want of capital.¹³⁴

It was not only the imperatives of trade, however, that the opposition looked to in their arguments. In a practical vein, M. d'Hane-Steenhuysen stated that the government's endorsement of the new imperial regime's conservative and clerical power base (which was at odds with the general population) went against Belgium's liberal principles.¹³⁵ Also, M. Guillery contended Belgium was participating in an "illegal" expedition since it was concerned with the "enslavement of an independent and free people."¹³⁶ Their arguments against the nature of French rule in Mexico echoed Coomans's concern that the government had turned its back on its liberal policies. Moreover, they underwrote a broader concern of Belgium's "civilizing" role in the wider world which pushed the parliamentary discussion into a larger debate about the meaning of recognition under international law.

In 1864, state recognition was a relatively new concept in international law and an essentially political one. Calls by the Confederacy during the American Civil War for international recognition had created ambiguity between the concepts of diplomatic recognition of third-party states and intervention in their affairs.¹³⁷ The distinction was crucial to Belgium, as a permanently neutral state could not be seen to be intervening in another state's affairs. Four decades earlier, when Britain had led the way in recognizing the then Republic of Mexico, it

¹³⁴ Pierre Henri Laurent, 'Belgium's Relations with Texas and the United States, 1839-1844,' *Southwestern Historical Quarterly* 68.2, 1964, pp. 220, 222-3, 235.

¹³⁵ M. d'Hane-Steenhuysen, First Debate, September 2, 1864, *Moniteur Belge*, Vol. 9 (34).

¹³⁶ M. Guillery, First Debate, September 2, 1864, *Moniteur Belge*; Banning, *Les Origines*, pp.157-9.

¹³⁷ Van Hulle, 'Britain's Recognition,' p. 302.

established the necessary factors for recognizing a state.¹³⁸ These amounted to the existence of a government acknowledged by the people over whom it was set, together with a “practical cessation of hostilities” with the old “state” so as to “afford” a “reasonable” security for the continuance of internal peace.¹³⁹ Expanding on Coomans’s concern that Belgium had become part of France’s war effort in Mexico, Guillery contended that since Maximilian’s government could not afford ‘reasonable’ security for the continuation of its internal peace, the United States—being an “interested party”—could intervene.¹⁴⁰ In this case, Belgium and France would be considered allies, and then either one of two things would happen: the United States would “consolidate” the monarchy, whereby Belgium would be “united” with the “enslavement” of Mexico and the loss of its independence, which was unthinkable for a nation like Belgium whose individual liberties were enshrined in its constitution.¹⁴¹ The alternative was that the United States would restore the republican regime, causing Belgium to become “compromised,” thus earning it the enmity of both the United States and the international community.¹⁴²

Guillery’s argument reflected the growing primacy given to nationality, which understood “civilized” states to lie beyond the proper bounds of domination, but more importantly, it spoke directly to Belgium’s desire to remain independent.¹⁴³ Fearful of Napoleon III’s expansionist ambitions, the Belgian government had spent the previous decade embarked on a policy of

¹³⁸ Van Hulle, ‘Britain’s Recognition,’ pp. 292-5.

¹³⁹ R. Phillimore, *Commentaries upon International Law*, III, London, 1855, pp. 17-19.

¹⁴⁰ Coomans, First and Second Debates, September 2, 1864, and February 24, 1865, *Moniteur Belge*, Vol. 9 (34) & Vol. 2 (35).

¹⁴¹ Art 7, Belgium Constitution (1831) at www.constituteproject.org/constitution/Belgium_1831.

¹⁴² Guillery, First and Second Debates, September 2, 1864, and February 24, 1865, *Moniteur Belge*.

¹⁴³ John Bew, ‘From an Umpire to a Competitor: Castlereagh, Canning and the Issue of International Intervention in the Wake of the Napoleonic Wars,’ *Humanitarian Intervention*, Cambridge University Press, 2011, pp. 121-3 and C. A. Bayly, *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons*, Malden, MA: Blackwell Publishing, 2004, p. 181.

“moral” and “civic regeneration” in an effort to strengthen national sentiment as a way of affirming the “authenticity” of the Belgian nation and thus, the legitimacy of their claim to independence.¹⁴⁴ This would have almost certainly colored Guillery’s view, especially in light of the well-publicized assertions of both Lord Russell and President Lincoln that Mexicans were the best judges of the form of government that suited them.¹⁴⁵ Guillery sympathized with these sentiments. He concluded that no matter how depraved the country’s political condition, since Mexico had stood as a self-governing republic for nearly half a century, the choice of its government should be left with its people.¹⁴⁶ Thus, Belgium’s intervention had denied the Mexican people their rights. For while the great powers recognized the Mexican imperial monarchy, it was not recognized by the “Mexican nation itself.” Under these conditions, Guillery asserted, Belgium was assisting France in taking sides in a struggle against the “people’s government,” which meant that neutrality would “no longer cover [Belgium’s] flag.”¹⁴⁷

Walthère Frère-Orban, the Belgian Minister of Finance, agreed with Guillery that governments needed to rest upon the will of their people. Still, that did not mean he agreed with Guillery’s assertion that Belgium was assisting France in taking sides against a “people’s government.”¹⁴⁸ Frère-Orban contended that, given Juárez’s government rested on faction and individual ambition, it had abandoned shared public conceptions of right and lost its popular mandate. This being the case, Juárez’s “government” represented a disgruntled political faction,

¹⁴⁴ Christophe Chevalier, ‘Les réactions en Belgique au traité de Turin de 1860. Enjeux sécuritaires et effervescence patriotique,’ *Relations Internationales*, 2016, vol. 2, no. 166, pp. 9-24.

¹⁴⁵ Dawson, *Mexican Adventure*, p. 19; Frederic Bancroft, ‘The French in Mexico and the Monroe Doctrine,’ *Political Science Quarterly*, 11.1 1896, p. 42.

¹⁴⁶ Guillery, First Debate, September 2, 1864, *Moniteur Belge*.

¹⁴⁷ Ibid., Guillery, and Banning, *Les Origines*, pp. 157-8.

¹⁴⁸ Walthère Frère-Orban, Belgian Minister of Finance, First and Second Debates, September 2, 1864, and February 24, 1865, *Moniteur Belge*.

so there was no question of a belligerency under international law. Furthermore, since the demarcation between revolt and full-scale war looked to the way the war was fought - in particular whether there was evidence of military “regulation” —the disordered nature of Juárez’s faction exempted it from being classed as belligerent.¹⁴⁹ Frère-Orban then reiterated that, as a neutral state, Belgium could do nothing except recognize the outcome of a struggle between factions in another country. Accordingly, Belgium was right to follow the great powers in recognizing Maximilian’s imperial regime.¹⁵⁰ It was right, he argued, because it was to the European powers that Belgium was contractually obligated under the Treaty of London (1839). Moreover, as the Treaty was an “essentially European convention” to which the United States was “completely foreign,” the United States could “no more avail itself of it” against Belgium than Belgium “could oppose it.”¹⁵¹ Frère-Orban’s carveout speaks to how the application of international law around recognition and intervention in the 1860s was far from consistent. Justifying his position, he stated that, since the great powers had created the Treaty of London for their benefit, Belgium’s neutral status was an institution of European public law. As such, it did not extend to relations with states outside Europe.¹⁵² Furthermore, there was a degree of latitude in how its provisions might be read, as shown by how great powers like France and Britain were not above bringing diplomatic pressure to bear on Belgium to join them against Russia in the Crimean War.¹⁵³ And when Belgium denied these requests because they were acts that fell outside its neutral status, Britain and France’s censure made it clear that they were

¹⁴⁹ Chadwick, *Traditional Neutrality Revisited*, p. 187.

¹⁵⁰ Blumberg, *Diplomacy*, p. 3; Dhondt, ‘Changing Interpretations.’

¹⁵¹ Frère-Orban, Belgian Minister of Finance, Second Debate, February 24, 1865, *Moniteur Belge*.

¹⁵² Treaty of London (1839), Clie Parry, *Consolidated Treaty Series*, p. 421.

¹⁵³ Lingelbach, ‘Belgian Neutrality,’ p. 64.

prepared to waive Belgium's neutral status when it suited them.¹⁵⁴ Consequently, Frère-Orban's reasoning is illustrative of how an element of pragmatism often colored state actions in the 1860s enabling a certain degree of adjustment of the law in order to apply old principles to new circumstances in many cases.¹⁵⁵

Thus, by Frère-Orban's reasoning, diplomatic recognition of a third-party state was more concerned with creating a legal way with which states could enter into treaties and commercial agreements with foreign parties than with a concern for whether a ruler had a legitimate right to rule.¹⁵⁶ In which case, since the Mexico intervention involved, directly or indirectly, two of Belgium's guarantors—France and Austria—as well as Leopold I's daughter, the legion of Belgian volunteers serving Maximilian was unlikely to be viewed as a violation of Belgium's Treaty obligations by the great powers, even more so since it was outside Europe and thus, beyond affecting the European equilibrium the Treaty had been designed to protect.¹⁵⁷

While Frère-Orban's argument was discussed across all four parliamentary sessions dealing with Belgium's role in the Mexican intervention, the Chamber failed to establish whether Belgium's neutrality could be so restricted to those actions which affected the interests of the great powers.¹⁵⁸ However, since most of the speakers who censured the conduct of the government did so on the grounds of a violation of neutrality, it is likely that they understood Belgium's neutrality to fit within the general and free principles of neutrality of international law rather than the more specific special and perpetual neutrality of the Treaty of 1839 as

¹⁵⁴ Palo, *Neutrality as a Policy Choice*, p. 23; Anckaer, 'Dangerous Opportunities,' p. 91.

¹⁵⁵ Neff, *Rights and Duties*, p. 51.

¹⁵⁶ Van Hulle, 'Britain's Recognition,' pp. 321-2.

¹⁵⁷ Palo, *Neutrality as a Policy Choice*, p. 24; Sanford to Seward, July 7, 1864, reproduced in Balace, *La Guerre de Secession*, pp. 226-7.

¹⁵⁸ Banning, *Les Origines*, p. 174.

differentiated by Frère-Orban. Certainly, the opposition's frequent references to the government's lack of moral integrity for having enabled the legion of Belgian volunteers' involvement in the French intervention in Mexico strongly suggest it was not prepared to limit Belgium's Treaty obligations to European interests.¹⁵⁹

In response to these parliamentary challenges, the government consistently defended its position by reflecting that the law of nations, which relied on concepts of morality, like what was "just" or "moral," had been superseded by an understanding of laws that rested on an international order that advanced commercial interests by preserving a certain stability.¹⁶⁰ The basis for the government's argument was an ability to differentiate between state acts and those of individuals. Rogier contended there was nothing in Belgium law preventing the enlistment of Belgians for foreign service except where it compromised Belgium or its neutrality, so the government could not be held responsible for what amounted to the expression of private liberty.

¹⁶¹ Moreover, he defended the right of every individual to serve abroad since international law only bound states.¹⁶² Rogier's argument spoke directly to the extent a neutral state was obliged to show abstention within the international system. However, it also relied on the lack of clarity around the level required of a neutral state to preserve an attitude of impartiality. The development—and eventual success—of this argument is discussed in detail in the next section where the government assumed a practical stance that leaned heavily on the fact that, in reality, the level of abstention practiced by a neutral state depended upon its ability to control its citizens

¹⁵⁹ M. Goblet, First, Second and Fourth Debates, September 2, 1864, and February 24 and May 30, 1865, *Moniteur Belge* Vols. 9 (34), 2 & 5 (35); Banning, *Les Origins*, pp. 156, 163 and 171.

¹⁶⁰ Abbenhuis, *Age of Neutrals*, p. 41.

¹⁶¹ Sanford to Seward, September 7, 1864, reproduced in Balace, *La Guerre de Secession*, pp. 241-2.

¹⁶² Rogier, First Debate, May 30, 1865, *Moniteur Belge*.

and its sense of obligation.^{163, 164} Thus, by taking a practical approach that considered both the interests of its guarantors and utilized the ambiguities of international law, the Belgian government was able to circumvent the more ideological attitudes posed by the opposition in questioning whether France's intervention in Mexico could be classified as a "belligerency."

IV. Constitutional Constraints and the Politics of Non-Alignment

In assuming a practical stance on the interpretation of Belgium's obligations to its permanently neutral status, Rogier's government relied on its ability to restrict the application of international principles through a broad interpretation of constitutional law. This depended on being able to successfully legally distance the state from the acts of its citizens, which was made all the more imperative by the fact that underscoring much of the debate was a very real fear that the United States government had the ability to penalize Belgian commercial interests if it found Belgium in violation of international norms. The government's position was made more complicated by the United States and Britain having gone beyond the common understanding of what constituted a neutral's obligation under international law by introducing domestic legislation prohibiting foreign enlistment.¹⁶⁵

The Belgian government argued that, although the perception that their citizens were acting in an un-neutral way could endanger Belgium's neutrality, legislation specifically prohibiting foreign enlistment went beyond the common understanding of Belgium's obligations

¹⁶³ Chadwick, *Traditional Neutrality Revisited*, p. 37.

¹⁶⁴ Nir Arielli, Gabriela A Frei, and Inge Van Hulle, 'The Foreign Enlistment Act, International Law, and British Politics, 1819-2014,' *International History Review*, 38.4, 2016, p. 639.

¹⁶⁵ The U.S. Foreign Enlistment Act (1818) and the British Foreign Enlistment Act (1819) cited in Chadwick, *Traditional Neutrality Revisited*, pp. 70, 145.

as a neutral state.¹⁶⁶ Countering, M. Guillery, a conservative M.P. asserted that because the debate was specifically concerned with the United States' opinion, it was fair to ask whether the *perception* of a violation of neutrality amounted to an actual violation. Referencing the eighteenth century jurist Emmerich de Vattel's contention that neutral states must ensure they did not tolerate "free" gifts of troops to belligerents, Guillery contended that the question was whether the Belgian government was complicit in the military support provided to Maximilian's imperial regime.¹⁶⁷ If the Belgian government was complicit, there would be a clear perception that it had violated its neutrality obligation.

Guillery's contention was not without evidentiary support; complaints had been received from the Confederate envoy to Brussels concerning the Belgian government's permissive attitude towards the Union. Specifically, the Confederates contended that the Union's "deliberate" attempts to "procure troops" on Belgian territory placed Belgium in "violation" of international law regarding the conduct of neutral states.¹⁶⁸ Britain had also declared that Belgium's lax attitude to Union recruits boarding American ships at Antwerp was contrary to the "spirit" of Belgium's neutral status.¹⁶⁹ The Belgian Prime minister, Charles Rogier, responded to these complaints by pointing out that foreign enlistment acts were an ineffectual deterrent to preventing their citizens from fighting abroad.¹⁷⁰

As shown by this debate, however, where the foreign enlistment acts *were* effective was in their ability to stimulate significant discussion concerning neutrality, recognition, and

¹⁶⁶ Belgian Chamber of Representatives, Second Debate, February 24, 1865, *Moniteur Belge*.

¹⁶⁷ Chadwick, *Traditional Neutrality Revisited*, p. 145; M. Gillery, First and Second Debates, September 2, 1864, and February 24, 1865, *Moniteur Belge*.

¹⁶⁸ Mann to Rogier, July 4, 1864, reproduced in Balace, *La Guerre de Secession*, pp. 222-3.

¹⁶⁹ Sanford to Seward, July 7, 1864 (200) reproduced in Balace, *La Guerre de Secession*, pp. 226-7.

¹⁷⁰ Rogier, Second Debate, February 24, 1865, *Moniteur Belge*.

non-intervention.¹⁷¹ But the extent to which such enactments tied domestic policy to international law was uncertain. Clearly, there could be no obligation under international law that would require a state to act outside its legal capacity.¹⁷² This raised the question of how strictly neutrality should be observed and precisely what actions undertaken by a state's citizens represented unneutral behaviour on the part of the state. Belgium, like many other continental European states, balked at empowering the government to bar citizens from participating in foreign wars. Instead, it compromised by prohibiting the public from entering into actions which exposed the state to reprisals.¹⁷³ These prohibitions carried hefty penalties—penalties which governments tended to interpret narrowly because to do otherwise could result in a forfeiture of its neutral status.¹⁷⁴

Conscious of the need to close off any possibility of the government being accused of violating international law, the Minister of Justice asserted that the Belgian prohibition had not been designed to bar its citizens from participating in foreign wars unless it compromised Belgium's neutrality.¹⁷⁵ The opposition countered, arguing that Belgium would be “falling short of its duties” by “tolerating” help given on its territory to a belligerent, particularly one that the United States understood to be “lacking political existence” and in insurrection with the “true” government.¹⁷⁶ The minister responded by stressing the main objective of the prohibition was to serve as a domestic measure, not to satisfy foreign powers. It was only intended to apply to

¹⁷¹ Arielli, 'Foreign Enlistment Act.'

¹⁷² Abbenhuis, *Age of Neutrals*, p. 41.

¹⁷³ Alfred Rubin, 'The Concept of Neutrality in International Law,' *Denver Journal of International Law and Policy*, Vol 16: 2, 1988, p. 368.

¹⁷⁴ Neff, *Rights and Duties*, p. 106.

¹⁷⁵ Article 92, Belgium Penal Code (1831) reproduced in Banning, *Les Origines*, p. 161; Belgian Minister of Justice, Second Debate, February 24, 1865, *Moniteur Belge*.

¹⁷⁶ M. Thonissen, Second Debate, February 24, 1865, *Moniteur Belge* and *Journal de Bruxelles*, February 26, 1865, p.1, KBR:belgicapress.be.

enlistments directed against the Belgian state since a wider application would exceed the principle of neutrality by unduly overburdening the state.¹⁷⁷

The Minister of Justice's restrictive reading strongly suggests that the government had a very real concern of being held accountable for its citizens' actions under international law. As a permanently neutral state, such accountability would have left Belgium vulnerable to the actions of one of its citizens providing a pretext to overturn the Treaty of London (1839).¹⁷⁸ Nonetheless, the Declaration of Paris (1856), in tightening specific rules in the "problematic" areas of maritime warfare, demonstrated that states understood there was a need to address the extent to which a state was expected to "discover" acts "forbidden by its good faith" as a neutral.¹⁷⁹ This need became more acute during the American Civil War's challenge to British and French interpretations of neutrality, giving rise to a general attitude that neutrals should refrain from certain forms of "passive" aid and to see to it that their citizens "abstained" from the appearance of being "un-neutral."¹⁸⁰ However, in 1864 there was no consensus around the measure of care a government was required to take, leaving it largely up to each state to deduce what was "commensurate" with the "magnitude of the results of negligence."¹⁸¹

Thus, the parliamentary debate over the legion of Belgian volunteers serving in Mexico was a reflection of wider disputes around the obligations a neutral state was expected to (and could) place directly on its citizens.¹⁸² Many of the arguments used in the debate mirrored those used later by the British counsel in the arbitration of the Alabama case against the United States

¹⁷⁷ Minister of Justice, Second Debate, February 24, 1865, *Moniteur Belge*.

¹⁷⁸ Article VII, Treaty of London (1839), Clie Parry, *Consolidated Treaty Series*, p. 421.

¹⁷⁹ Neff, *Rights and Duties*, p. 98 and Chadwick, *Traditional Neutrality Revisited*, p. 29

¹⁸⁰ John Moore, 'The United States and International Arbitration,' *The Advocate of Peace*, 58.4, 1896, p. 91; Edwin Maxey, *International Law with Illustrative Cases*, Thomas Law Book Co., 1906, p. 536.

¹⁸¹ Roxburgh, 'Changes,' pp. 20-21.

¹⁸² Moore, 'United States and International Arbitration,' p. 92.

(1869). In arbitration, the parties ultimately accepted “due diligence” as a formal ground for neutral obligation, despite it not being articulated under international law at the time of the infringement (1864).¹⁸³ This finding is a reflection of how a duty of “due diligence,” while not formally accepted until 1870, did provide a useful point of reference for neutral obligations throughout the 1860s.¹⁸⁴

So, while attitudes were clearly shifting towards a more demanding interpretation of the fundamental neutral duties of abstention and impartiality at the time of the Belgian parliamentary debate, there was still uncertainty about how this affected international law. Since these issues were of prime importance to permanent neutral states like Belgium, they formed much of the discussion concerning the legion of Belgian volunteers in Mexico. If by simply “tolerating” its territory to be used as a “base of operations” by a belligerent was “un-neutral,” Belgium was in a very difficult position.¹⁸⁵ Determined to avoid this outcome, the Belgian government looked to the general principle of law. This stated that in the absence of a specific obligation, a neutral state was responsible only for the “organic” acts of its own government. Although, it could be held “indirectly accountable” for certain “definite” acts of violation committed by its citizens if these could “reasonably” be understood as having assumed a “public character.”¹⁸⁶ Consequently, the enlisting of troops would only assume a “public character” if they involved the cooperation of a large number of persons over whom the government may be presumed to have considerable control.¹⁸⁷ And since the organization of the Mexican mission lay

¹⁸³ Abbenhuis, *Age of Neutrals*, p. 118.

¹⁸⁴ Chadwick, *Traditional Neutrality Revisited*, pp. 21-2.

¹⁸⁵ Neff, *Rights and Duties*, pp. 103, 113.

¹⁸⁶ Amos, *Lectures on International Law. Delivered in the Middle Temple Hall to the Students of the Inns of Court*. Unspecified, 1874, pp. 79-83.

¹⁸⁷ *Ibid.*, p. 81; Roxburgh, ‘Changes,’ p. 18.

with the retired Lieutenant General Chapelie, who was “devoid of any official character,” the government argued that it was not directly implicated in the legion of Belgian volunteers serving in Mexico.¹⁸⁸

Dissatisfied with the government’s stance, M. Goblet, a conservative M.P, accused the Belgian Minister of War, General Chazal, of officially lending his support to the venture by ordering Belgian generals to provide Chapelie with “all” the facilities “necessary” to accomplish his mission.¹⁸⁹ Chazal agreed that, as an individual, he was sympathetic to the venture, but he refuted the allegation that he had acted in any official capacity to support it. He had simply limited himself to administrative matters.¹⁹⁰ This brought into contention whether the Belgian government’s administrative involvement in the recruitment of these volunteers amounted to militarily supporting Maximilian’s imperial regime. If it had, it would appear to be in violation of Belgium’s permanent neutrality.

The opposition argued that because Belgium’s Civil Code required Belgians to receive authorisation to serve in a foreign army—which had been duly granted by royal decree countersigned by a government minister—the government had indirectly agreed to militarily supporting Maximilian’s imperial regime.¹⁹¹ Charles Rogier, the Prime Minister, stressed that if the government intervened in the recruitment of Belgian volunteers to serve in the Mexican imperial army, it had not done so officially. Chazal had “simply undertaken” not to “create obstacles” for a private citizen to organize a Belgium corps to serve in Mexico. As a Belgian

¹⁸⁸ Chazal, Third Debate, April 5, 1865, *Moniteur Belge* Vol. 4 (35); Banning, *Les origines*, pp. 169-170.

¹⁸⁹ M. Goblet, First Debate, September 2, 1864, *Moniteur Belge*; Banning, *Les Origines*, p. 156.

¹⁹⁰ Chazal, Third Debate, April 5, 1865, *Moniteur Belge*; Banning, *Les Origines*, p. 170.

¹⁹¹ Article 122, Belgian Constitution at https://www.constituteproject.org/constitution/Belgium_1831; Banning, *Les Origines*, pp. 149-150.

citizen, Chapelie was at liberty to act freely so long as his actions did not harm the state.¹⁹² And because Belgian citizens were free to enlist in foreign service provided that service did not compromise Belgium or its neutrality, a refusal to countersign the royal decree would have been an offense against the individual freedoms enshrined by the constitution.¹⁹³ Furthermore, Chazal had no power to prevent soldiers from leaving the army. They had done so freely. So, it was as private citizens they joined the legion serving in Mexico. Thus, they had not contravened military laws and regulations.¹⁹⁴ The opposition persevered.¹⁹⁵ The constitution made clear that no act of the king would have any effect without being countersigned by a government minister.¹⁹⁶ Thus, simply through the act of countersigning, Chazal had made himself (and thus the Belgian state) complicit. The issue was muddled even further by Chazal's response to the catastrophic Battle of Tacámbaro on April 11, 1865, which resulted in over three hundred Belgian casualties.¹⁹⁷ Chazal ordered army chaplains to conduct memorial services for the fallen Belgian soldiers and suspended army duties so military personnel could attend. Official invitations were also extended to all the major bodies of the state, the civic guard, and the wider public.¹⁹⁸ But more damaging still for the government's position, Chazal arranged for the names of the dead soldiers to be entered into the order books of their old regiments and read to the

¹⁹² Rogier, Second Debate, February 24, 1865, *Moniteur Belge*.

¹⁹³ Article 21(1) Civil Code (1831) and three royal decrees dated October 8 and November 9, 1864, and February 10, 1865, reproduced in Banning, *Les Origines*, pp. 149-150, 160, 170.

¹⁹⁴ Rogier, Second Debate, February 24, 1865, *Moniteur Belge*; M. Debaets, Second Debate, February 24, 1865, *Moniteur Belge*; Banning, *Les Origines*, p. 166

¹⁹⁵ This argument was conducted largely across the two final debates, April 5 and May 30, 1865, *Moniteur Belge*.

¹⁹⁶ Article 64, Belgian Constitution (1831) https://www.constituteproject.org/constitution/Belgium_1831.

¹⁹⁷ Blumberg, 'United States and the Role of Belgium in Mexico,' p. 217.

¹⁹⁸ Order of the Day, Ministry of War, May 28, 1865, *Moniteur Belge*; 'Campagne du Regiment Imperatrice – Charlotte dans la Michoacan – Combat de Tacámbaro' (extrait du *Journal de l'Armée Belge*), Bruxelles Imprimerie et lithographie de E. Guyot, Rue de Pacheco 12, 1865, p. 60.

assembled companies.¹⁹⁹ M. Coomans expressed “bitter regret” at having seen the government associate the Belgian armed forces “so intimately, so impolitically” with the Mexican legion after the government had assured parliament on numerous occasions that was “absolutely foreign” to the venture.²⁰⁰

The government excused Chazal’s actions on the grounds that he had been motivated by “pride” for the soldiers’ courage which he had wished to make known to their comrades-in-arms.

²⁰¹ The opposition contended that while sympathy for the soldiers’ plight was natural, the soldiers had served a foreign cause understood by the United States to be a violent contravention of the international order.²⁰² So, to publicly associate the Belgian army with the slain was contrary to Belgium’s commercial interests (and by implication, Belgium’s neutrality).²⁰³ Rogier reiterated that it was unlikely that the continued presence of less than a thousand Belgians in Mexico wearing Mexican colors compromised the interests of Belgium, particularly since many more Belgians served the Union during the American Civil War.²⁰⁴ M. d’Hane-Steenhuyse, a conservative M.P., sharply criticized Rogier’s reasoning on the grounds that Belgian citizens serving the Union differed from the legion of Belgian volunteers in Mexico as the latter were listed on the army’s official agenda as though there had been no break in their service, making them very much the government’s responsibility.²⁰⁵

¹⁹⁹ *Bien Public (L’)*, June 1, 1865, p. 2, at KBR:belgicapress.be.

²⁰⁰ *Courier de l’Escaut (L’)*, June 1, 1865, p.1, *Emancipation (L’)*, June 1, 1865, p.1, all at KBR:belgicapress.be.

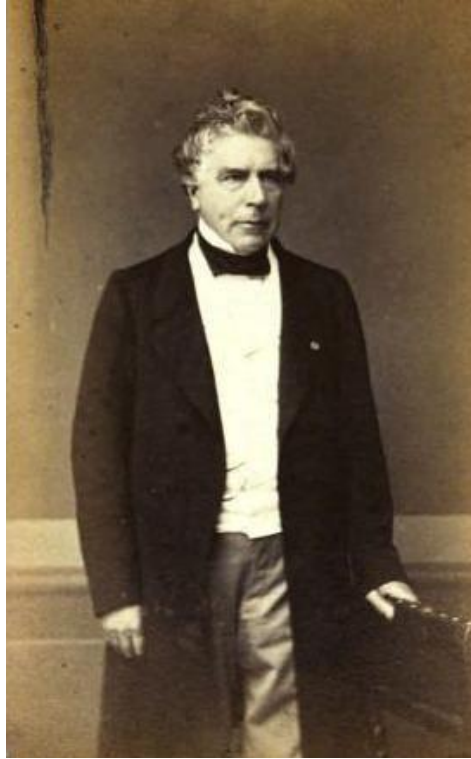
²⁰¹ Rogier, Final Debate, May 30, 1865, *Moniteur Belge*, Vol. 5 (35).

²⁰² Middleton, ‘British Liberalism,’ p. 378.

²⁰³ M. d’Hane-Steenhuyse, Final Debate, May 30, 1865, *Moniteur Belge*.

²⁰⁴ Rogier, Final Debate, May 30, 1865, *Moniteur Belge*; Banning, *Les Origines & les phases de la neutralité belge*, pp. 173-4.

²⁰⁵ M. d’Hane-Steenhuyse, Final Debate, May 30, 1865, *Moniteur Belge*.



Charles Rogier, Prime Minister of Belgium (1847–1852, 1857–1868). *Galerie de l'Association internationale pour le progrès des sciences sociales, Brussels.*

The debate concluded with the Belgian government conceding that in the unlikely event of the United States waging war on the Mexican Empire, all Belgian volunteers serving in the imperial army would be recalled so they could not compromise Belgium's neutral status.²⁰⁶

Rogier went on to express regret that Belgians had given their "support" to a political regime "established through violence," and to propose withdrawing diplomatic protection from Belgians who accepted civil or military functions abroad in the future. In this manner, the government retained its support of the personal liberties enshrined in the Belgian constitution while also putting the judiciary in a position to "repress" any future "illicit" levy of troops. Finally, the

²⁰⁶ Rogier, Final Debate, May 30, 1865, *Moniteur Belge*.

Chamber resolved that the government had not violated Belgium's permanent neutral status by tolerating the Mexican expedition, given there were not two belligerents in Mexico.²⁰⁷

V. Conclusion: Small State Neutrality Between Principle and Pragmatism

The furor that the Belgian legion serving in Mexico provoked in the Belgian parliament and Belgian press did not translate to an international incident.²⁰⁸ Indeed, the complete lack of a formal diplomatic reaction to Belgium's—albeit small—role in France's intervention in Mexico is arguably why Belgium's involvement in Napoleon III's scheme to forcibly remove Mexico's indigenous republican government and erect an imperial monarchy in its place rarely features in scholarly accounts. Yet, the reaction within Belgium—a state which was under permanent external scrutiny to ensure that it observed a strict neutrality against all other states at all times—is significant. For while the parliamentary debate may have ultimately been an exercise in party politics rather than a response to international censure, it assumed a wider relevance because of its far-ranging discussion of international laws around the legality of intervention and recognition and how these spoke to neutrality and Belgium's obligations. Conservatives and liberals alike summoned legal theory, precedent, and international policy alongside constitutional arguments to assert or temper the notion that Belgium had endangered its neutrality. Following their assertions and how they countered other's assertions provides an opportunity to enrich our understanding of the multivariate demands on Belgium's security, diplomacy, and foreign interests within the limitations of Belgium's imposed permanent neutrality in the 1860s.²⁰⁹

²⁰⁷ Rogier, Second Debate, February 24, 1865, *Moniteur Belge*.

²⁰⁸ Banning, *Les Origines*, p. 147.

²⁰⁹ “I have a doctorate in laws like everyone else,” Charles Rogier, Minister for Foreign Affairs, Belgian Chamber of Representatives, November 21, 1861, *Moniteur Belge*, Vol. 11 (31).

This is particularly important as the debates occurred when political, strategic, and commercial interests shaped the global norms on which international laws and policies were based. Since the great powers had such a prominent role in enforcing the rules in the international space, it was to their interests that the Belgian government looked to ensure its actions did not violate the guarantee of its independence and territorial integrity given by those powers pursuant to the terms of the Treaty of London (1839). So, in practice, the Belgian government's interpretation of its obligations was characterised by pragmatism and the making of strategic choices rather than a strict compliance with international law. It was this reasoning we see in Frère-Orban's contention that Belgium's neutral status did not extend to relations with states outside Europe.²¹⁰ And while this contention was left unresolved, it speaks to a recognition that Belgium was freer to act outside the European sphere. When considered in this light, Leopold I's promotion of a legion of Belgian soldiers to serve in Mexico appears less foolhardy and more strategic.

Still, the United States represented a greater unknown in this respect. William Seward's comments with which I began this essay indicate that the United States looked upon the Western Hemisphere as its sphere of influence in much the same way the great powers looked upon Europe as their own. Thus, it was in Belgian interests to respect this since Belgium's prosperity depended on its ability to reach markets freely and safely. In 1864, the United States represented one of the world's largest markets despite its embroilment in a civil war. This made it very much in Belgium's interest to avoid being excluded from American markets. Thus, it was here where Frère-Orban's argument failed for want of consideration of the influence wielded by another

²¹⁰ Frère-Orban, Second Debate, February 24, 1865, *Moniteur Belge*.

large market. It was on this point most of the parliamentary debate revolved, despite it being unlikely that the United States would have penalized Belgian commercial interests, particularly since it did not go after France in any binding way.²¹¹ Yet, the Belgian parliamentary opposition had a duty to bring it to the government's attention, especially as it was one of the prime concerns of their electorates.

Using this debate as a case study, one sees how, rather than being constrained by its neutrality, Belgium could maneuver both politically and diplomatically in its interests, albeit ever-mindful of how its acts impacted on those of the great powers who had agreed to guarantee its independence and territorial integrity. Employing arguments grounded in the constitution, the government effectively balanced its neutral obligations under international law with a desire to advance Belgium's interests in the international space. The fact that the debate concluded with the government suggesting changes to Belgium's legislation to prevent a future instance like the one it had just fought for is highly suggestive that it profoundly disliked being put in a position where Belgium's neutrality could be called into question. Since the amendments would place Belgium more in line with Britain's and the United States's understanding of a neutral's obligations around foreign enlistment, the government showed it had not let go of its prudent approach. For while the government's methods may have appeared innovative, their objective was still a conservative one — the preservation of the Belgium state and the continued advancement of Belgian industry.

This analysis has shown that in 1864, the circumstances in which states chose to respect international rules or disregard them, and the consequences of doing so, involved political and

²¹¹ Sexton, *Monroe Doctrine*.

diplomatic objectives rather than purely legal considerations. So, while examining the debate regarding the formation of a Belgian legion in the service of Mexico might get us no closer to clarifying international law, it does provide an example of how international law worked in practice and the arguments that could be made against such practice. In this way, the debate serves to highlight the many complexities surrounding neutrality and, accordingly, provides broader insight into how states operated in international space in the 1860s.

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