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# The Birth of East-Belgian Identity and the Treaty of Versailles: A Critical Legal Analysis

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## Abstract

In the former districts of Eupen and Malmedy, present-day East-Belgians, in particular academic and socio-political elites, draw their collective identity, amongst others, from the historical injustices inflicted upon them ever since the adoption of the Treaty of Versailles. The transfer of sovereignty from Germany to Belgium was then the subject of a popular consultation organised by the transitional Belgian authorities in those territories. Favouring national over popular sovereignty, those authorities de facto undermined the freedom of choice and imposed their annexation to Belgium which the League of Nations, despite criticisms, consecutively endorsed. Much has been said about this *petite farce belge* yet not from a legal point of view. Thus, this article sheds a different light on the historical accounts of those events which are instrumentalised to construct the contemporary collective identity of the German-speaking Community of Belgium.

**Keywords:** annexation; Eupen-Malmedy; League of Nations; Ostbelgien; Treaty of Versailles

The German-speaking Community (DG) is a child of the Treaty of Versailles and the Belgian federal state model. Without the Treaty of Versailles, the German-speaking area would not belong to Belgium. The international legal belonging with the Belgian state and the inner logic of its institutional architecture define the framework within which the DG can assert itself.

Karl-Heinz Lambertz, former Minister-President of the German-speaking Community of Belgium (Lambertz 2005, 9)

## Introduction

The identity of the German-speaking Community of Belgium – the smallest language community living in the East of Belgium – has often been described as a so-called non-identity (Brüll 2009, 225). This non-identity has both an internal and external dimension. Internally, the autonomy of the German-speaking Community of Belgium has been largely decided by the political parties of the two other dominant language communities – the Flemish one and the French-speaking one (Wils 2005; Witte and Van Velthoven 2010; Faniel, Istasse, Lefebvre, and Sägerser 2021, 56). The latter two communities have been responsible for progressively transforming the unitary Belgian state into a federal one with 6 federated entities (Swenden and Jans 2006, 877–894; Dahmann 2007; Ponthus and Hass 2017).

Absent “a shared institutional history or preceding autonomy”, as Niessen points out, the German-speaking Community would, from the perspective of the ruling Belgian political elites,

be undeserving of a proper place within the federal state. Nonetheless, the continuous intra-party lobbying of regional political elites of the German-speaking Community – rather than large scale societal mobilization – demanding recognition of their unique historical and linguistic features within their own national political parties did, according to Niessen, contribute to the conferral of autonomy to this small language community counting less than 80000 members (Niessen 2021, 1028). Accordingly, competences have been distributed among the three language communities<sup>1</sup> and three regions.<sup>2</sup> Residual competences remain in the hands of the Belgian federal state.<sup>3</sup>

The identity of the German-speaking Community of Belgium is not only the product of the Belgian federal model, as its former Minister-President Lambertz stated. He continued that his Community is also “a child of the Treaty of Versailles” which was concluded at the end of the First World War. In this respect, without this treaty, the transfer of sovereignty from Germany to Belgium over the western territories of the former would not have been possible nor would it have given rise to the birth to the German-speaking Community in the first place (Lambertz 2005, 9). Externally, the fate of the inhabitants of the districts of Eupen and Malmédy was equally decided above their heads since the victorious powers of the First World War made the defeated German state accept the Treaty of Versailles.

Although the terms of the latter Treaty gave the inhabitants in those territories the opportunity to express their will to decide whether they wish to stay under German rule, their right of self-determination was undermined by the transitional Belgian authorities who were in charge of the execution of the popular consultation. Those authorities were accused of intimidating those inhabitants. The results of the consultation communicated to the League of Nations – in accordance with the provisions of the Treaty of Versailles – and endorsed by its Council rendered the transfer of sovereignty definitive (George 1927, 334; Grathwol 1975, 224). The resulting loss of those inhabitants’ *heimat* and belonging in the interwar period partially explained their search for security towards the German culture exemplified in the Nazi regime undermining Belgian unity at that time (van Werveke 1937, 7; Hoen 1953, 100). The renunciation of such German past after the Second World War accompanied with an excessive expression of national pathos embracing their belonging to Belgium (Cremer 2001a, 102-103) left, according to Fickers, deep scars in the collective memory of the German-speaking Community and shaped their present East-Belgian identity (Fickers 2001, 81).

In spite of this so-called non-identity of the German-speaking Community, a positive synthesis of its internal and external dimensions appears to be in the making (Brüll 2009, 225; Parlement der Deutschsprachigen Gemeinschaft Belgiens, 2015). One which, according to Beck and Penné, integrates the divisive past – within and across borders – to shape its “political and cultural identity” (Beck and Penné 2019, 73). Beck goes even further arguing that the Treaty of Versailles “is the foundation of the identity of the Eupen-Malmedians” (Beck 2017). This renewed interest in the Treaty of Versailles has been reflected in various initiatives. Academics – with(out) the financial and political support of the German-speaking Community of Belgium – have been documenting the history of East-Belgium in general<sup>4</sup> and the fraudulent conditions that gave rise to the contested annexation of the former districts of Eupen and Malmédy by Belgium in particular (Cremer 2001b, 20; O’Connell 2011, 162-187; O’Connell 2013, 10-46; O’Connell, 2018; Brüll 2018, 181-187; Beck and Penné 2019, 72-73; Venken 2020, 162-165; Brüll 2021, 99-109). Politicians too have been commemorating 100 years of Ostbelgien – East-Belgium – following the Treaty of Versailles which made the said transfer of sovereignty possible.<sup>5</sup>

This interest of East-Belgian academic and socio-political elites in the Treaty of Versailles and the popular consultation – commonly referred to as the *petite farce belge* given the fraudulent conditions under which the former took place – has repeatedly resurfaced. In the 1930s and 1960s, authors have questioned the limited degree of internal autonomy of the German-speaking citizens in East-Belgium in various fields, including education (Keufgens 1937, 57), compromising their right of self-determination as ensured under international law (Doepgen 1966, 21). It is argued that those references to a distant or far (inter)national past continue to be relevant to shape the identity

of the German-speaking Community – as explained by Beck and Panné – at moments when the internal dimension of the latter's identity cannot fully come to fruition within the Belgian unitary or federal model at a given moment in time. It demonstrates that the internal and external dimension are communicating vessels within the (non-)identity of the German-speaking Community of Belgium. Indeed, when demands for more internal autonomy have been satisfied, the external dimension of the identity shifts to the background. Conversely, it gains more prominence when internal aspirations for more autonomy within the Belgian federal model are halted.<sup>6</sup>

Furthermore, the external dimension and its reliance on the right of self-determination enshrined in the Treaty of Versailles can strengthen the aspiration of internal autonomy of the German-speaking Community. Caution, however, is warranted when integrating a past where such right was violated into the collective identity of East-Belgian citizens wishing to see their contemporary claims for self-determination to be fulfilled. While histories on self-determination in the past and the present cannot be easily divorced from the identity of the German-speaking Community, one should also carefully consider whether the allegations of the infringement of their right of self-determination after the First World War in fact violated international law at that given moment in time.

Therefore, this article examines the international legal foundations of this earliest pivotal moment when Belgian sovereignty was contested to verify if those historical references to this particular common victimhood breached international law. Pursuant to the intertemporal law principle,<sup>7</sup> the hypothesis is that not all events leading up to the adoption of the Treaty of Versailles, the organisation of the popular consultation and the endorsement by the League of Nations of its results constitute violations of international law at that time. Thus, the intertemporality of norms could shed a different light on the historical accounts of the same events which are instrumentalised to construct the contemporary collective identity of the German-speaking Community of Belgium (von Arnould 2021).

This article, firstly, scrutinizes the terms and conclusion of the Treaty of Versailles of 1919 respectively in light of the law on the peoples' right of self-determination and the law of treaties. Secondly, it assesses the conformity of the organisation of the popular consultation of the will of the peoples of those territories by the transitional Belgian authorities with international human rights law. Thirdly, it evaluates the responsibility of the League of Nations under international law when endorsing the results of the consultation communicated by the Belgian authorities and which finalised the transfer of sovereignty from Germany to Belgium over the districts of Eupen and Malmedy.

### The Treaty of Versailles: The Erosion of the Right of Self-Determination?

The territorial arrangements pursued under the Treaty of Versailles concluded between the Allied and Associated Powers and Germany in 1919 were often the subject of a prior plebiscite organised under the auspices of the League of Nations. Accordingly, due to the pressures of the American and British delegation at the Paris Peace Conference, the Wilsonian imperative of self-determination transferred the final decision on the future destiny of peoples from the negotiating parties at diplomatic conferences into the hands of the peoples directly concerned. (Whelan 1994, 100-101). The wishes of the inhabitants of border regions in particular would have to be honoured in order to legitimize territorial rapprochement from one place to another. While self-determination was a tool for national unification processes, such as in Germany or Italy, within the post-conflict context, the choice for consulting the peoples' will in those border regions was not evident. Grievances amongst the mixed ethnic, religious and/or national communities could run deep and be aroused by extremist nationalist feelings pulling inhabitants into different territories rendering the outcome of a plebiscite inconclusive – not only for present but also for future generations (Visuvanathan 1989, 35). For those reasons, plebiscites have not been universally applied, such as in the case of the districts of Eupen and Malmedy.

In this regard, Article 34 of the Treaty of Versailles stipulated that Germany would renounce its sovereignty over the districts of Eupen and Malmedy.<sup>8</sup> The transfer of sovereignty would be final after the League of Nations endorsed the outcome of a popular consultation of its inhabitants as organised by the transitional Belgian authorities.<sup>9</sup> The latter consultation differs from a traditional plebiscite where voting is secret. In the present case, the transitional Belgian authorities in these districts had to open within a six month's period after the entry into force of the Treaty registers which openly recorded the express wish of those eligible inhabitants (A.R.H. 1921, 51). Furthermore, unlike a traditional plebiscite, no choice was offered regarding the question of the transfer of sovereignty. Only an expression of disapproval against the transfer of sovereignty from Germany to Belgium could be recorded: only the wishes of those who preferred to stay in whole or in part under German rule mattered; not the wish to voluntarily join Belgium.<sup>10</sup> As opposed to the other plebiscites which were normally organised by the League of Nations, it were the Belgian authorities that would do this in those districts and communicate the "results of this public expression of opinion" to the League of Nations who would take a final decision on the matter of the transfer of sovereignty.<sup>11</sup>

Historically too, the inhabitants of this particular border region never had the chance either to freely decide upon their national destiny. Following the Napoleonic wars, the Vienna Congress which redrew the map of Europe awarded these territories to the Prussian Empire as a compensation for the renunciation of its claims over Saxony – in its eastern neighbourhood (George 1927, 332). They were annexed by the Prussian Empire without consulting the peoples of its new western border region (Langohr 1920, 5). More than a century later, after the final transfer of sovereignty over those territories from Germany to Belgium, secret negotiations conducted by Belgium and Germany about the latter's offer to purchase these districts back were undermined by France who objected to any change to such territorial arrangement under the Treaty of Versailles (Grathwol 1975, 222). It was clear that, in 1815 as well as in 1919 and afterwards, territorial arrangements between sovereigns would prevail and sustain despite the emergence of the Wilsonian right of self-determination of peoples which sought to change such *Grosse Politik* (George 1927, 335; Wilson 1917).

Belgium was well aware about the risk of misappropriating the right of self-determination for aggressive purposes especially on behalf of Germany in the past, then and for the future. If irredentist peoples of German descent outside of Germany would contest their foreign rulers, Germany would have an excuse to come to their rescue. The reasons for the absence of a traditional plebiscite for the inhabitants of the districts of Eupen and Malmedy under the Treaty of Versailles, however, must also be seen in light of Belgium's own territorial ambitions and anxieties during and after the First World War (Palo 1980, 596). By 1916, for security reasons, Belgium wanted to expand its territories eastwards to the districts of Eupen and Malmedy. Indeed, in the district of Malmedy, a German military encampment was located in Elsenborn and a security buffer would have to be set up accordingly. Internally too, Belgium was fearful that self-determination at its borders and beyond would incite Flemish nationalists to claim separation from the unitary Belgian state (Palo 1980, 596). Such expansionist ambitions (Majerus 2008, 349-359) – not limited to the European context (Reeves 1909, 100) – would consolidate Belgium's territorial unity and tame nationalistic threats within.

Territorial concessions would be the right way for Belgium to frame its territorial ambitions rather than openly put them so on the bargaining table. In this regard, the martyr nation deserved to be compensated for the tremendous losses suffered during the war and be able to restore its broken nation after it (Brüll 2005, 25). As a victim of its neighbouring aggressor state, this would be the least thing that could be done.<sup>12</sup> Historical reunion of these territories with Belgium would also be restored because they were once separated since the Vienna Congress. One could presume that the peoples of those territories wanted to return to Belgium – especially the irredentist French-speaking minority in the communes of Malmedy and Waimès – unless, of course, they desired to stay under German rule.<sup>13</sup> Others contested these historical and cultural arguments for reunification. In this

respect, those territories could not have been separated from Belgium since it only existed since 1830. Historically, the different districts of the border region belonged to different political and religious entities. Furthermore, Prussian Walloons were culturally and linguistically different from the Belgian Walloons and had little in common (Dawson 1933, 329–330; Warny 2012, 10).

Irrespective of the reasons and arguments for transferring sovereignty over these districts from Germany to Belgium, Article 34 of the Treaty of Versailles was crystal-clear about the conditionalities of such transfer: since Germany renounced “in favour of Belgium all rights and title over the territory comprising the whole of the Kreise of Eupen and of Malmedy”, Belgium had full sovereignty over these territories from the moment that the Treaty of Versailles entered into force, i.e. from 10 January 1920. The final transfer of sovereignty was subject to one condition, namely the endorsement of the results by the League of Nations following the popular consultation of its inhabitants as organised by the transitional Belgian authorities. Yet, this condition was restrictive in the sense that the exercise of sovereignty on behalf of Belgium over those territories from 10 January 1920 onwards until the decision of the League of Nations on 10 July 1920 could only be revoked if the outcome of the popular consultation would prove to voice a majority opinion to stay under German rule. In the present case, this condition was not fulfilled since only 271 votes against the transfer have been recorded (O’Connell 2011, 169). The decision of 10 July 1920 adopted by the Council of the League of Nations retroactively endorsed the final transfer of sovereignty over those territories.

The use of such resolutive condition to the transfer of sovereignty was quite unique and probably without any precedent under international law. A resolutive condition had its origins in domestic civil law where contracting parties could create legal obligations from the beginning, but which could be revoked or lead to their annulment when a particular event occurred as described in the contract. By analogy, such event could materialise in the context of treaty obligations. Indeed, under the doctrine of the sources of international law, general principles of law recognized within domestic jurisdictions can constitute an independent source of international law that can govern the relationship between states (Costelloe 2019, 177). To extend such resolutive condition to the relationship governing states and their own and other peoples was rather innovative. Yet, since it was included in a treaty, it became less relevant to consider this condition as a general principle of law.

As Germany fully renounced its rights and title over the said districts in favour of Belgium, a majority of its inhabitants calling for the return of sovereignty to Germany could alter this transfer and thus annul the transfer of sovereign rights of Belgium over those territories. Absent the realisation of this event, the resolutive condition under the Treaty of Versailles was not satisfied and, thus, could not alter the transfer which then became definitive when the Council of the League of Nations endorsed the results and communicated its decision to the parties concerned by this transfer (Jousten 2021, 168). In effect, such resolutive condition limited the right of self-determination of the inhabitants which was not the supreme law in governing the transfer of this particular territory under the Treaty of Versailles (Nisot 1921, 834).

Germany, on the other hand, had contested such reading of Article 34 of the Treaty of Versailles before and during the organisation of the popular consultation at the Peace Conference and to the Council of Ambassadors. It argued that Article 34 violated the principle of self-determination and that the popular consultation had to be organised by a disinterested party, such as the League of Nations itself. Though it assured that such revision would not undermine the principal clause of Article 34, i.e. the transfer of sovereignty, its execution, however, had to be carried out in light of the interest of the peoples of those territories concerned (van Werveke 1920, 242).<sup>14</sup> In other words, for Germany, the transfer of sovereignty was conditioned on the exercise of the right of self-determination of those inhabitants. As a result, the transfer of sovereignty could not have been the object of a negotiated territorial arrangement between two nations through a treaty but be suspended until the majority of the inhabitants made clear that they opposed Belgian rule. From the German perspective, a suspensive rather than a resolutive condition was the modality to execute the



Treaty of Versailles in light of the prevailing Wilsonian principles. According to Belgium, however, such an interpretation only raised further suspicion on the potential risk for future aggressionist policies on behalf of Germany to protect German irredentist people under foreign rule, in particular the German-speaking persons in the districts of Eupen and Malmedy.

Within the context of the conclusion of international treaties, the right of self-determination conditions the object and purpose of such treaties. In accordance with the law on treaties, a treaty cannot undermine the people's right of self-determination – a so-called peremptory or *jus cogens* norm.<sup>15</sup> Treaties that violate such a *jus cogens* norm would be null and void and not resort their legal consequences, including the transfer of sovereignty in accordance with such a resolutive condition. Conversely, a suspensory condition to such transfer of sovereignty would uphold the right of self-determination. It is questionable whether such rule on the law of treaties was a customary rule at the conclusion of the Treaty of Versailles. The Vienna Convention on the Law of Treaties adopted in 1969 itself did not elaborate on the examples of *jus cogens* norms that limit the freedom of negotiating parties to conclude a treaty. Nonetheless, according to Zemanek, territorial changes in the aftermath of the First World War showed proof that the object of international treaties would have to take into account the wishes of the inhabitants of the territories concerned. Their consent to the transfer of sovereignty over territory was already present in secret agreements concluded between allies of the US prior to the adoption of the Treaty of Versailles (Zemanek 2011, 381).

Yet, not all territorial changes under the Treaty of Versailles were conditioned on the organisation of plebiscite whereby the final transfer of sovereignty was decided by the affected populations (Mattern 1920). This questions the legal character of the right of self-determination as a *jus cogens* norm when the Treaty of Versailles was negotiated and concluded as opposed to when the Vienna Convention on the Law of Treaties was adopted (International Law Commission 1963, 199 and 2001, 85). Was the elucidation of the Wilsonian principle of self-determination a rule of customary international law at that time or merely an emerging norm? Its divergent application within the European context and in the colonial territories rather shows proof of the latter progressive development of international law.<sup>16</sup> In spite of the absence of a uniform practice at the global level, within the regional context of Europe, too, the modalities of all territorial changes would have to be conditioned on plebiscites if one were to acknowledge the existence of a customary right of self-determination at least of the peoples of Europe – which was probably not the case.

Furthermore, absent such uniform practice on the consent of the affected population to territorial changes governed under the Treaty of Versailles, this also challenges the existence of the rule rendering a treaty that violates the right of self-determination null and void. Although no uniform practice as such may be needed to establish the existence of such rule, within the same diplomatic context of the negotiation on the object of the Treaty of Versailles, such uniformity would be required if one considers the legal consequences of nullity and voidness which apply to the entire treaty (Schmalenbach 2018, 991). As a result, the invalidity of the Treaty of Versailles would be absolute. Pursuant to the principle of the integrity of a treaty to invalidate the latter,<sup>17</sup> none of the provisions of the Treaty of Versailles – even those which respect the right of self-determination (at least of European peoples if one assumes the regional customary nature of this right) – would not resort their legal effect; thus, opening Pandora's box where all territorial changes could be challenged even in those lands that have been the object of a plebiscite.

Although state parties of the Treaty of Versailles decided to govern all matters of territorial changes under the same Part III on Political Clauses for Europe, an exception to the integrity of this Part III could be invoked if provisions could have been regulated separately; meaning that not all provisions would have been null and void, yet only those which would conflict with a *jus cogens* norm.<sup>18</sup> In this regard, territorial changes that were effectuated by a plebiscite could survive the challenges of other treaty provisions conflicting with the right of self-determination. It would be unjust to the inhabitants of the territories where plebiscites were properly organised if the entire Treaty of Versailles would be invalidated.<sup>19</sup> Moreover, not all state parties to the Treaty of Versailles would want to challenge its validity entirely.<sup>20</sup> The separation of Article 34 of the Treaty of

Versailles under this reading may not prejudice the existence of the customary right of self-determination of European peoples as such nor question the existence of the rule and its modalities invalidating a treaty (provision) which violates such right of self-determination. It may, according to Oppenheim, simply point out that international law did not impose an obligation to condition every territorial change to a plebiscite (Lauterpacht 1955, 551-552).

### Fraudulent Popular Consultation: La Petit Farce Belge?

The divergent interpretations regarding the conditionality of the transfer of sovereignty from Germany to Belgium over the districts of Eupen and Malmedy attribute different purposes to the popular consultation of its inhabitants. On the one hand, a liberal reading of Article 34 of the Treaty of Versailles would condition the transfer of sovereignty to a suspensive condition that would take the form of a plebiscite – leaving the inhabitants the actual choice to stay with Germany or join Belgium. On the other hand, a conservative reading – also the one initially adopted by Germany since it accepted to renounce its sovereignty over the said territories from the beginning – conditions the transfer to a resolutive condition taking the form of a simple popular consultation. This only left inhabitants the option to protest against the transfer of sovereignty which has already been effective yet not definitive when the Treaty of Versailles entered into force.

The option chosen under the Treaty of Versailles did not include a plebiscite but a popular consultation excluding a choice for or against the transfer. The consultation through open registers was not secret nor carried out under the auspices of a third party such as the League of Nations (O'Connell 2018, 132). Strictly speaking, the absence of choice itself does not affect the satisfaction of a resolutive condition on the transfer of sovereignty. In accordance with the Treaty of Versailles, sovereignty over those territories was already exercised on behalf of Belgium. As a result, there would be only one choice left for the inhabitants faced with this *fait accompli*. That is to say, they could express their disapproval against the transfer rather than endorse the transfer that had already taken place in order to potentially reverse it. The popular consultation would record their opposition rather than their approval of the present transfer of sovereignty already fixed by the negotiating parties to the Treaty of Versailles. Surely, from the point of view of the right of self-determination this could potentially be contested. Yet, Germany protested on the modalities of this conditionality hoping that a plebiscite instead of popular consultation would be the right instrument to determine the final transfer of sovereignty.

In this regard, Germany, on several occasions – prior and after the entry into force of the Treaty of Versailles – questioned the impartiality of Belgium as an interested party to organise the popular consultation under its auspices. It wanted to revisit the role which Belgium had been assigned in accordance with Article 34 of the Treaty of Versailles. Therefore, the execution of this article on the matter of the organisation of the popular consultation should become the object of additional negotiations in order to give full effect to the interests of the inhabitants and their respective right of self-determination (van Werveke 1920, 241). Nonetheless, in accordance with the Treaty of Versailles, the Belgian authorities had already assumed full sovereignty over those territories prior to the start of the popular consultation due to start from the moment when the Treaty of Versailles had entered into force, i.e. on 10 January 1920.<sup>21</sup> On the basis of those sovereign rights, Belgium fixed the modalities of the popular consultation which was carried under its auspices rather than under those of a third – disinterested – party such as the League of Nations.<sup>22</sup> Belgian authorities were believed to be entitled and capable to independently open registers for the inhabitants to express their disapproval of the transfer of sovereignty (Poulain 1977, 394). They were also the only authorities who *de facto* exercised control over those territories where the popular consultation would take place. In this regard, since the adoption of the Belgian law of 15 September 1919, the transitional government was established in these annexed territories and would be in charge of the modalities and organisation of the popular consultation (O'Connell 2013, 26).

During and after the popular consultation, Germany voiced its concerns at the Peace Conference in Paris regarding the arbitrary way by which the registration of disapproval by the inhabitants of the districts of Eupen and Malmedy was carried out by the transitional Belgian authorities. It challenged the decree of 26 January 1920 adopted by the latter authorities – 3 days after the public registers were opened – on various counts.<sup>23</sup> Firstly, the decree did not specify the required identification documents in order to express one's disapproval. On the ground too, uncertainty worsened given the absence of clear or even presence of contradictory information causing confusion amongst the population and delays to register one's disapproval. Secondly, the eligibility criteria established by Article 1 of the decree were said to be arbitrary in terms of age (21 years) and the date of a registered domicile (1 August 1914, i.e. around the beginning of the First World War). For Germany, anyone aged 20 years at the moment when the Treaty of Versailles had entered into force or before the conclusion of the consultation should be eligible to register.<sup>24</sup> The required domicile should be fixed from 11 November 1918 onwards (Armistice Day) in order to allow residents to return after the war. Thirdly, according to Article 2 of the decree, registration was only made available in the two major cities of the districts, namely Eupen and Malmedy making it "technically impossible" to travel for hours to register. Therefore, Germany argued that registers should (have) be(en) opened in every townhall. Fourthly, since the disapproval of the transfer of sovereignty concerned the whole or parts of the territory, the eligible voters should have been able to register in both districts – thus, permitting several voting possibilities.

Upon the closure of the public registers on 23 July 1920, 271 protest votes out of 33726 eligible voters have been recorded. 202 of them were coming from former German officials of the districts. Only 62 persons registered in the greater district of Malmedy and 209 in the smaller one of Eupen (George 1927, 334). Such small outcome challenged the neutrality of the transitional Belgian authorities and the conditions under which such popular consultation could freely take place (Brüll 2022). International and national press reports as well as domestic protests of the local population and Belgian political representatives denounced the deceit by which such transfer of sovereignty has been effectuated, namely through intimidation and terrorism of the peoples of these annexed districts (Bartz 1928, 95).<sup>25</sup> Dissuasion to register one's disapproval was inherently present in the open registration process where one's name on the record eventually marked one's enmity vis-à-vis Belgium. Threats to lose one's job, food tickets, and import-export licences were commonly uttered by the transitional Belgian authorities which added up to the dissuasive effect of the popular consultation (Dawson 1933, 335-336). Intimidation on the spot of those who made it at the two registration offices were also reported (O'Connell 2013, 26). The public debate was equally stifled: public demonstrations against the voting conditions were prohibited with penalties of imprisonment and large fines as well as German newspapers were censored and repressed (Dawson 1933, 335-336).

Frightening the population in general and the eligible voters in particular into silence was characteristic of the *modus operandi* of the Royal High Commissioner of the transitional Belgian authorities, Lieutenant-General Herman Baltia, who "enjoyed the most potent form of autocratic power in Europe" (O'Connell 2011, 169) even at a time when democratic rights in Belgium were in their infancy. From 1919, universal suffrage only applied to male citizens over 21 years.<sup>26</sup> Despite those progressive reforms, national sovereignty was yet to be coupled with a representative regime (Maes, Deseure and Van Crombrugge 2020, 200).<sup>27</sup> According to Article 25 of the Belgian constitution at that moment "all the powers emanate from the nation" rather than its peoples. From such point of view, any form of voting – general elections, popular consultation, plebiscite or referendum alike – would not give the nation state its legitimacy to exercise its powers.

Unsurprisingly, the language in the decree of 26 January 1920 adopted by Baltia made the modalities of the popular vote superfluous to the transfer of sovereignty: "The Royal High Commissioner, Governor of the Territories *reunited* with Belgium decrees that..." As a result, the reunification of Belgium was, from the Belgian constitutional perspective, an undisputed fact.<sup>28</sup> The decree's retroactive application – from the moment of the entry into force of the Treaty of



Versailles on 20 January 1920 – further stressed the redundancy of the popular consultation in the districts. Moreover, the powers of Baltia within the new Belgian territories could be exercised if the Belgian Parliament fixed the new border between Belgium and Germany as defined in the Treaty of Versailles in the first place.<sup>29</sup> In accordance with the Belgian constitution,<sup>30</sup> any changes to the territory of Belgium – even through annexation – requires prior legislative action on behalf of the Parliament. Accordingly, on 15 September 1919, the Parliament adopted the law that approved the Treaty of Versailles. Once officially published in the *Moniteur Belge* on 17 October 1919, the law resorted its binding effect and Belgium's territory had expanded prior to the popular consultation and the decision of the Council of the League of Nations scheduled for the following year. The discussions on the ratification process of the Treaty of Versailles before the Parliament showed proof of hastiness as well as revisionist views of the members of Parliament when respectively welcoming their new citizens and the more favourable new border compared to the old one.<sup>31</sup>

The reunification of Belgium with the districts of Eupen and Malmedy, however, was a historical distortion since Belgium did not exist at the moment when these territories were awarded to the Prussian Empire following the Vienna Congress – 15 years before the creation of Belgium (Dawson 1933, 329-330). Although the peoples of those territories did not have a say either over the transfer of sovereignty in 1815, their right of self-determination from the Wilsonian point of view became undisputed when enshrined in Article 34 of the Treaty of Versailles – more than 100 years later. The exercise of such right of self-determination, however, was not specified in this Treaty. Contrary to the creation of referendum commissions that would carry out their mandate “in an unbiased manner” to ensure the freedom and secrecy of the vote as well as the fairness and neutrality of the process,<sup>32</sup> the Treaty of Versailles deliberately left the organisation and the execution of the popular consultation entirely into the hands of the transitional Belgian authorities. No additional rights or obligations could thus be derived from the Treaty of Versailles in order to give effect to the right of self-determination of the peoples of these territories and to hold the transitional Belgian authorities accountable accordingly.

In spite of this legal vacuum regarding the organisation of the popular consultation in the districts of Eupen and Malmedy under the Treaty of Versailles, the conditions of the freedom of vote remained a cause of official concern before and after its ratification. In his cover letter attached to the reply of the Allied and Associated Powers of 16 June 1919 to the German delegate's earlier reservations on the draft treaty text, French Prime Minister George Clemenceau reassured that the transfer of these territories from Germany to Belgium “will only take place as the result of a decision of the inhabitants themselves taken under conditions which will ensure complete freedom of vote” (Wambaugh 1933, 523). In respect of the final text, namely Article 34, Clemenceau contended that, despite the difference of popular consultation in other places such as Upper Silesia and Schleswig, the freedom of expression of the inhabitants of these districts was the real intention of the Allied and Associated Powers.<sup>33</sup>

During the ratification process of the Treaty of Versailles before the Belgian Parliament the Socialist Party urged on 8 August 1919 for ensuring those essential guarantees throughout the organisation of the popular consultation. Louis de Brouckère, chef de cabinet of the socialist Minister of Justice Emile Vandervelde, cast doubts about the political and technical possibilities to ensure the complete freedom to vote since inhabitants had to register their opposition under the very eyes of the transitional authorities which could become their definitive government (Le Peuple 1919). Conversely, towards the end of the popular consultation, the catholic Prime Minister Léon Delacroix, stressed before the Belgian Parliament that: “We in Belgium have given enough evidence of our commitment to freedom so that we are expected to respect the freedom of the peoples of Eupen and Malmédy. This freedom will not be an empty word, but a reality that all of us, without distinction of party, will recognize and will always be ready to uphold and defend.”<sup>34</sup> After the full annexation of these districts, however, Paul-Henri Spaak, the then adjunct chef de cabinet of the socialist Minister of Work Joseph Wauters, denounced it as a “vaste comédie” making a mockery of the right of self-determination (La Bataille Socialiste 1927).

Despite its absence of an explicit freedom of vote under the Treaty of Versailles as well as its actual disregard during this particular popular consultation, these very acknowledgments of the freedom of vote show proof that the application of this particular human right had its source within existing customary international law.<sup>35</sup> Other rights associated with this freedom are the freedom of expression and information<sup>36</sup> which had equally suffered under the auspices of the transitional Belgian authorities during the period of popular consultation as well as during the period leading up to it. Regarding this earlier period, not only international human rights law would be violated. Norms of international humanitarian law and the law of belligerent occupation in particular could equally have been breached. Belgium took over the occupation of respectively French troops in the district of Eupen from 29 May 1919 onwards and British troops in the district of Malmédy on 12 August 1919. The belligerent occupation lasted until the peace treaty – the Treaty of Versailles – entered into force on 10 January 1920. Propaganda attempts on behalf of the Belgian occupier in those districts (O’Connell 2018, 41) could constitute a violation of Article 45 of the Regulations Respecting the Laws and Customs of War on Land annexed to the 1907 Hague Conventions which both Belgium and Germany had signed and ratified, namely the prohibition to force inhabitants of occupied land to declare allegiance to the occupying power.

### The Responsibility of the League of Nations: *Ex Injuria Jus Non Oritur?*

Although the contestations regarding the impartiality of the transitional Belgian authorities and the freedom of vote of the inhabitants of the districts of Eupen and Malmédy were numerous, the League of Nations, in accordance with the Treaty of Versailles, was not entitled to intervene in the actual organisation of the popular consultation and could only take note of them. The examination of the conditions of the popular consultation could only take place after the communication of the results of the popular consultation by the transitional Belgian authorities.<sup>37</sup> In this regard, on 19 August 1920, the Belgian government transferred the two registers of Eupen and Malmédy (closed on 23 July 1920) to the League of Nations together with the report documenting the outcome of the popular consultation. The report also addressed the German charges seeking, from its point of view, to influence the public opinion within the districts of Eupen and Malmédy and beyond, to favour German sovereignty and to discredit Belgian’s sovereign title over the territories. It also called upon the Council of the League of Nations, pursuant to Article 34 para. 3 of the Treaty of Versailles, to endorse the definitive nature of the transfer of sovereignty from Germany to Belgium over those ceded districts of Eupen and Malmédy which was already effective when the Treaty of Versailles had entered into force (Wambaugh 1933, 532.).

According to the memorandum of Sir James Eric Drummond – Secretary-General of the League of Nations – to the Council, this *ex post facto* evaluation of the conditions of the popular consultation did not aim at reopening the interpretation of Article 34 para. 1 of the Treaty of Versailles, i.e. the economic, military and political reasons that justified the transfer of sovereignty in the minds of the negotiating parties of the Treaty of Versailles. Nonetheless, according to the Secretary-General, the mandate bestowed upon the League of Nations the obligation to consider the result of the popular consultation in light of those reasons drawing from all the evidence submitted and to decide if the cession of the districts of Eupen and Malmédy to Belgium could be overruled by its peoples. If necessary, it could decide that a Committee of Inquiry should be set up to ascertain if the charges against the Belgian government were founded or not.<sup>38</sup> After the examination of the report on the organisation of the popular consultation, its results and controversies,<sup>39</sup> the Council recognized the final transfer of sovereignty of Belgium over the former districts of Eupen and Malmédy. To that effect, the resolution of 20 September 1920 adopted by the Council of the League of Nations stipulated that the cession of the districts of Eupen and Malmédy remained “effective and valid” and that “no other decision can be taken unless it was demonstrated by definite and concordant proofs that the result of the public expression of opinion had been determined by

means of intimidation and pressure, by abuse of authority and threat of reprisals which had prevented the free expression of the will of the inhabitants”.<sup>40</sup>

The final report of Brazilian representative to the Council of the League of Nations, Gastao da Cunha, however, stirred controversy. The fact that he did not understand German – as spoken in those districts – and did not visit those districts after the popular consultation (Dawson 1933, 336) cast doubts about the evaluation of German accusations against the organisation of the popular consultation which were considered to be “vague and indeterminate” due to their anonymity; as opposed to the well-recorded accusations of the Belgian government on the German propaganda machine against the annexation.<sup>41</sup> Yet, the international and domestic condemnation during and after the popular consultation regarding the iron-fist rule by the Royal High-Commissioner, Lieutenant-General Baltia, cast additional doubts about the impartiality of the transitional authorities and the respect for the freedom of vote of the inhabitants of these districts. Conversely, the notable opposition of Germany before, during and after the popular consultation raised further concerns about its undue influence over these inhabitants who might have boycotted the popular consultation under its pressure. Despite those growing uncertainties about the right of self-determination of the inhabitants and its attributes to freely express their opinion on where their present loyalties lay, the Council of the League of Nations left this stone unturned and created definitive legal consequences out of facts which remained disputed when the resolution to that effect was adopted.

Therefore, the Council’s resolution of 20 September 1920, in accordance with the principle of *ex injuria jus non oritur*, could not create any permanent sovereign title for Belgium or Germany out of those disputed facts where the right of self-determination of the peoples of the districts of Eupen and Malmedy was violated. Given its customary nature at that time, a violation of the right of self-determination of the peoples of the districts of Eupen and Malmedy would prevent the acquisition of a permanent Belgian sovereign title over their territories. In this regard, the resolution of the Council of the League would be invalidated and no longer resort its legal consequences regarding the permanent acquisition of Belgian sovereignty over those territories (Lagerwall 2016, 37).<sup>42</sup> Such invalidation of the resolution sidesteps the legal uncertainty arising from the non-recognition of a permanent sovereign title derived from a violation of the right of self-determination. It appears that before the Second World War, the principle of *ex injuria jus non oritur* imposed a corollary obligation of non-recognition of acquisition of territory by a war of aggression;<sup>43</sup> yet, not in respect of another violation of international law, namely the right of self-determination of peoples which could trigger an obligation (*erga omnes*) not to recognize the acquired rights over such territory as being lawful (International Law Commission 2001, 115). Instead, the Council could have opted for taking other necessary measures such as the establishment of a Committee of Inquiry to investigate the disputed facts in the first place (Wambaugh 1933, 538).

## Conclusion

Like the other language communities in Belgium, the German-speaking Community has sought to distinguish itself on the basis of its distinctive linguistic, economic and political identities (Dewulf 2009, 65). Its collective identity has internally and externally been shaped respectively by domestic institutional reforms under the federal model and the Treaty of Versailles adopted after the First World War (Lambertz 2005, 9). To associate the birth of East-Belgium’s collective identity with the Treaty of Versailles may well be an intended effort of historians and politicians alike to construct the common unique identity of the German-speaking community – especially at times when the internal dimension of its identity has not been and/or could not be fully asserted. Yet, unlike the Flemish and French-speaking communities, the external dimension of its collective identity refers to historical injustices, namely those flowing from and following the Treaty of Versailles.

Regarding those historical injustices, it appears that the right of self-determination of the peoples of the former districts of Eupen and Malmedy has not been fully respected by the very terms of the Treaty of Versailles which already transferred sovereignty over their territories from Germany to Belgium on the basis of a resolutive condition. That condition involved the organisation of a popular consultation by the transitional Belgian authorities that would only register opposition to such transfer of sovereignty by those eligible inhabitants. Although not a formal plebiscite, the popular consultation, according to Germany and independent commentators as well as certain Belgian political representatives, did not respect existing human rights norms, including the freedom of vote and expression. Furthermore, the Council of the League of Nations concurred with results of the popular consultation communicated by the Belgian authorities after a summary evaluation of the allegations of the fraudulent consultation giving full effect to the definitive transfer of sovereignty from Germany to Belgium over the districts of Eupen and Malmedy in violation of the principle of *ex injuria jus non oritur*.

The Secretary-General of the League of Nations, however, did acknowledge that the Council of the League of Nations could have set up a Committee of Inquiry to investigate the disputed evidence brought forward by Belgian and German authorities and to familiarise itself with the situation on the ground – something which was ineffectively done by the Brazilian rapporteur to the Council. Yet, Sir Eric Drummond's final words and circular reasoning further added resonance to the undisputed nature of the terms of Treaty of Versailles which despite their violation of the right of self-determination of the peoples of the districts of Eupen and Malmedy left the transfer of sovereignty over their territories untouched – a matter which was already decided upon the conclusion of the treaty.<sup>44</sup> A popular consultation – even under the auspices of an independent party – would not alter those harsh political and legal realities – then and nowadays alike.<sup>45</sup>

It is not uncommon that historians have informed public policies within (inter)national contexts and thus have contributed to elaborating and/or consolidating collective identities (McCurley 1979; Green 2016). Conversely, politicians have relied on scholarship to advance their respective agendas (Neustadt and May 1986). Accordingly, the interaction between various scientific disciplines and the construction of collective – national – identities can underpin political claims for (inter)national recognition (Coppieters and Huyseune 2002, 15; Prott 2016; 142; Górný 2022, 98). Yet, within the Belgian institutional context, caution is warranted when historical injustices are instrumentalised to construct the collective identity of the German-speaking Community (Brüll 2005, 20; Wagener 2012, 75). In this regard, the portrayal of victimhood concerning the unfulfilled external right of self-determination after the adoption of the Treaty of Versailles may, following the principle of communicating vessels, shape the internal dimension of its collective identity – potentially taking up defensive proportions whereby it would close itself off from the other language communities.<sup>46</sup>

However, the critical legal analysis of the unfortunate events affecting the peoples of the districts of Eupen and Malmedy after the adoption of the Treaty of Versailles – carried out in this article – demonstrates that their right of self-determination may not have fully been compromised. Uncertainty persisted whether certain norms had in fact crystallised into binding international rules that would protect the interests and rights of peoples when the territories which they inhabited were transferred, in accordance with the Treaty of Versailles, from one sovereign state to another at that given moment in time. This observation not only exposes the fragile normative foundations that inform the collective identity of the German-speaking Community in its external dimension. This study also shows proof that the examination of historical facts instrumentalised in the construction of (imagined) collective identities (Anderson 1983) through various academic disciplines, including international law, sheds an entire different light on so-called historical injustices.<sup>47</sup> It builds the case for more interdisciplinary investigation into the identity (formation) of irrendenist peoples in Europe and beyond.

**Disclosure.** None.

## Notes

- 1 Belgian Constitution, article 2: the Flemish Community (Vlaamse Gemeenschap), the French Community (Communauté française) and the German-speaking Community (Deutschsprachigen Gemeinschaft).
- 2 Belgian Constitution, article 3: the Flemish Region (Vlaams Gewest), the Walloon Region (Région wallonne) and the Brussels Region (Région bruxelloise)
- 3 Belgian Constitution, article 35.
- 4 The members of the Centre for East-Belgian History have produced several volumes, such as: Lejeune and Brüll 2014. See also Zentrum für Ostbelgische Geschichte 2023. A virtual exhibition about the history of the Region of Eupen-Malmedy-Sankt Vith has been recently launched by this Centre and the German-speaking Community. See Deutschsprachigen Gemeinschaft, Zentrum für Ostbelgische Geschichte and the Luxembourg Centre for Contemporary and Digital History 2023.
- 5 This commemoration (Event series 100 years of East-Belgium) gave rise to controversy within the seat of the Parliament of the German-speaking Community of Belgium as one representative, Mr Franssen, questioned the absence of the local authorities from the majority French-speaking communes of Malmedy and Waimes which historically belonged to the former districts of Eupen and Malmedy. The Minister-President Paasch reassured that the preparation of this commemoration – in collaboration with academic historians – always envisaged the inclusion of those communes. He continued that terminology of “Ost-Belgien” (East-Belgium) within this particular context not only referred to the German-speaking Community alone. See Interpellation Nr. 7 of Franssen (CSP) about “100 Years East-Belgium Ceremony” of 9 January 9, 2020 in the Belgian Senate and Answer of Minister-President Paasch (Pro-DG) (February 3, 2020).
- 6 Evidently, the question on internal autonomy in Belgium is nuanced and focuses not only matters of identity but is also based on efficiency arguments. According to the empirical study of Reuchamps and others, most German-speaking persons who participated in their study on “citizen arguments towards (de)centralization in Belgium” were opposed to a full recentralization of powers back into the hands of the federal state. See Reuchamps, Boerjan, Niessen and Randour 2021, 235.
- 7 According to Judge Huber, this means that a “juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled”. See Permanent Court of Arbitration 1928, 845.
- 8 1919 Treaty of Versailles, article 34 para. 1.
- 9 According to the transitional Belgian authorities, 36916 inhabitants lived in the district of Malmedy whereas 27024 in the district of Eupen totalling 63940 inhabitants.
- 10 1919 Treaty of Versailles, article 34 para. 2.
- 11 *Ibid.*, article 34 para. 3.
- 12 Lord Asquith to the House of Commons, April 10, 1919, Archives Générales du Royaume (AGR), Jaspar Papers, 2472/199 [microfilm].
- 13 Paul Hymans to Lord Crowe, June 17, 1915, Archives Générales du Royaume (AGR), Jaspar Papers, T/031/02472/199. See also van Werveke 1920, 241.
- 14 Pierre van Werveke who was the secretary under the Baltia government stressed that the “Wilsonian principle of self-determination no longer belongs to the domain of ideals” and that it was “impossible to arbitrarily dispose over the rights of annexed population”. See van Werveke 1922, 10.
- 15 1969 Vienna Convention on the Law of Treaties, Article 53.
- 16 See the conditional right of self-determination of non-self-governing peoples under the Mandate System of the League of Nations. See 1919 Covenant of the League of Nations, article 22.
- 17 1969 Vienna Convention on the Law of Treaties, article 44, para. 2. See also Ciampi 2011, 376.



- 18 1969 Vienna Convention on the Law of Treaties, article 44, para. 3.
- 19 *Ibid.*, article 44, para. 3 (c).
- 20 *Ibid.*, article 42. See also Gianelli 2011, 333.
- 21 The registers were only made public on 23 January 1920. From that date onwards, the six month's period for popular consultation started to count; thus, registers were closed on 23 July 1920. See van Werveke 1920, 251.
- 22 See also Report of the Belgian Government (represented by Prime Minister Delacroix on the popular consultation (August 17, 1920): "The special legal situation in which the territories of Eupen and Malmédy find themselves has had a consequence of particular importance with regard to the organization of popular consultation in the circles. 1§ I of art. 34 [of the Treaty of Versailles] having issued the principle of the immediate sovereignty of Belgium over these territories, the logical and necessary consequence was to entrust Belgium with the organization of the consultation. Any other method would have been, in fact, irreconcilable with the sovereign rights of Belgium."
- 23 Letter from the German Chargé d'Affaires in London on the subject of the Execution of Article 34 of the Treaty of Versailles (1 June 1920), League of Nations Official Journal (July-August 1920), 287-290.
- 24 This age requirement of 20 years had also been fixed by the Treaty of Versailles for the plebiscite organised in the Saar Basin. See 1919 Treaty of Versailles, Annex to Articles 45-50, Chapter III, point 34.
- 25 Bartz 1928, 95: "The organisation of the referendum was designed in such a way that it did not even meet the requirements of the Treaty of Versailles. The free expression of opinion of the population was prevented by means of pressure from the government."
- 26 Law of 9 May 1919. Yet, during the elections of November 1919, amongst the electorate of 2 millions eligible voters, also 12000 women could cast their vote. See Jacques 2013.
- 27 The founding father of the first Belgian Constitution, however, embraced the principle of popular sovereignty instead. See Maes and Deseure 2020, 504.
- 28 Paul Hymans to Lord Crowe, June 17, 1915, Archives Générales du Royaume (AGR), Jaspar Papers, T/031/02472/199.
- 29 1919 Treaty of Versailles, article 27(1).
- 30 See Belgian Constitution (February 7, 1831), Article 3 ("The boundaries of the State, of the provinces and of the communes can only be changed or rectified by law") and Article 68 ("No cession, no exchange, no addition of territory can take place except by law").
- 31 See Belgian Parliament, Projet de Loi approuvant le Traité de Paix avec l'Allemagne conclu à Versailles le 28 juin 1919, Message Nr. 283 (August 8, 1919): "The new border of our country, to which the Treaty gives Moresnet, Eupen and Malmédy, is, from the strategic point of view, slightly preferable to the old one. We greet these new compatriots with joy."
- 32 Unlike the detailed conditions for the plebiscite in the Saar Basis laid down in the Annex to the Treaty of Versailles, see 1919 Treaty of Versailles, Annex to Articles 45-50, Chapter III, point 34: "The other conditions, methods and the date of the voting shall be fixed by the Council of the League of Nations in such a way as to secure the freedom, secrecy and trustworthiness of the voting". See also Şen 2015, 220.
- 33 President Georges Clemenceau to the German Delegation at the Paris Peace Conference, AA, R76.417, Die Abstimmung in Eupen-Malmedy, L005696–L005697, 10 November 1919: "It is sufficient to read this article to realise clearly that it was not the intention of the allies and its associates to organise a plebiscite in Eupen and in Malmédy corresponding to those provided for in Upper Silesia and Schleswig, but that their intention was to permit the inhabitants of the districts in question, who might have the desire that their lands stay under German domination, to freely express their wish." Minke argued that the French delegation rather wished to cede those territories without consultation at all. See Minke 2010.
- 34 Annales parlementaires, Chambre des représentants, session of May 11, 1920, 1069.

- 35 Nowadays, Article 25 of the 1966 International Covenant on Civil and Political Rights also codifies this freedom.
- 36 Nowadays, Article 19 of the 1966 International Covenant on Civil and Political Rights also codifies these freedoms. See also Moeckli and Reimann 2022, 92-111.
- 37 Report of the Japanese Representative Mr M. K. Matsui presented at the fifth session of the League Council (15 May 1920), League of Nations Official Journal (May-June 1920), 119-120: "The League, therefore, will at that time be fully qualified to take cognisance of the conditions under which the plebiscite was held, and, consequently, to take any necessary measures." See also earlier confirmation of such reading by President Georges Clemenceau to the German Delegation at the Paris Peace Conference, AA, R76.417, Die Abstimmung in Eupen-Malmedy, L005696-L005697, 10 November 1919: "The last paragraph of Article 34 also imposes on Belgium an obligation to bring the result of the popular consultation to the attention of the League of Nations and to accept its decision. The League of Nations, under whose auspices the popular consultation will thus find itself taking place, as confirmed by the reply of June 16 (Part II Section I) will therefore be fully qualified to know the conditions under which the consultation will have taken place, on the basis of his decision; and to take the necessary measures accordingly."
- 38 Memorandum of the Secretary-General of the League of Nations on the Decision to Be Taken by the League of Nations under Article 34 of the Treaty of Peace of Versailles (Eupen and Malmedy) (16 July 1920), League of Nations Archives, Council Doc. 66 (11/6494/1).
- 39 Report of the Brazilian representative Gastao da Cunha, League of Nations Archives, Council Doc. 66 (11/6906/1).
- 40 League of Nations, Council Resolution (9<sup>th</sup> session of September 16-20 adopted on September 20, 1920), League of Nations Official Journal (October 1920), 408-409.
- 41 Report of the Brazilian representative Gastao da Cunha, League of Nations Archives, Council Doc. 66 (11/6906/1).
- 42 Lagerwall 2016, 37: "In international law, the prohibition of the threat and use of force as well as the right of peoples to self-determination have the corollary and legal consequence that any acquisition or occupation of territory made in violation of these principles is inadmissible."
- 43 The Assembly of the League of Nations recognized the existence of this principle following the annexation of Manchuria by Japan calling "upon the Members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris." See Resolution, Assembly of the League of Nations, *League of Nations Official Journal* (March 11, 1932), 383.
- 44 Memorandum of the Secretary-General of the League of Nations on the Decision to be Taken by the League of Nations under Article 34 of the Treaty of Peace of Versailles (Eupen and Malmedy) (July 16, 1920), League of Nations Archives, Council Doc. 66 (11/6494/1): "It is obvious that the appointment of such a committee would not involve any criticism of the procedure adopted by the Belgian Government. On the other hand, it would render the position of that Government towards the public opinion of the world, and also towards opinion in Germany and in the districts concerned, impregnable, if it could be ascertained by a committee of the League of Nations that the charges brought forward were unfounded, and did not, in any way, affect the general results of the public expression of opinion."
- 45 The adoption of the border treaty between Germany and Belgium in 1956 demonstrated that the return of sovereignty over certain parts of East-Belgium to Germany was once again decided above the heads of the inhabitants concerned. Unlike the Treaty of Versailles, no popular consultation or plebiscite took place. See 1956 Treaty between the Federal Republic of Germany and the Kingdom of Belgium concerning Rectification of the German-Belgian Boundary and Other Questions, Article 1(1)(a). See also Kleu 2007, 148-149.
- 46 Other authors had also warned about the risk of a defensive collective identity of the German-speaking Community when it retreats upon itself and closes itself off from the rest of the world and the federal model. See Stangherlin and Jacqmain 2005, 51.

- 47 Orford, however, cautions that the use of history in the interpretation of international law inherently involves a political perspective. Orford 2021, 286–287. Cremer would agree that “the reappraisal of [the regional history of the 20th century] is always a provocation because it demands personally courageous attempts at interpretation”. Cremer 2001b, 16.

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