Les toits de Paris[1]

Amour sacré de la patrie,
Rends-nous l'audace et la fierté;
A mon pays je dois la vie.
Il me devra sa liberté.

Paris, the city of light, is, in fact, a grey city. Since the days of Baron Haussmann, its roofs are covered in grey zinc creating the distinct looks of Parisian rooftops. Indeed, the mayor of the 9th arrondissement, Bürkli, advocates for inclusion of "*les savoir-faire du couvreur zingueur parisien*" (the craftsmanship of Parisian zinc roofers) in the UNESCO World Heritage List. A proposal, which sparked debate with Paris' mayor, Hidalgo.[2] – Not the first time that the zinc covering Parisian rooftops was at the centre of political controversy. Indeed, this spat between a conservative and a socialist party mayors pales in comparison to the original controversy, involving the greatest powers of Europe, while at times also reminiscent of the short stories by Giovannino Guareschi.

The Boundary Treaty concluded in Aachen on 26 June 1816 is historical. As is the concession that was granted by the prefect of Ourte on Frimaire 26, year XIV and homologated by an Imperial Decree of 24 March 1806. Historical are the judgements and court documents.

Fictional is the Investment Treaty signed at the Vienna Congress of 1813 (Vienna Investment Treaty or VIT) and the arbitration proceedings initiated under said Treaty.

Although the facts of the case and the proceedings take place in the 19th century, for the purposes of the Moot, participants will assume treaties, customary public international law and case law are those of the 21st century. In particular, participants in the Moot will assume that

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[1] This Case-Study would not be possible without Stefan Vogenauer and Laurent Pfister who helped piece together the documents from the archives that fell victims to the challenges of time: from fires to mould risks. This also a testimony to the hard work of Philip Dröge, who wrote down the fascinating story of Moresnet. All mistakes are my own.

[2] Launched in October 2014, the UNESCO World Heritage nomination project was originally focused on the "*toits de Paris*" (Roofs of Paris). Later, it was reformulated to the "*les savoir-faire du couvreur zingueur parisien*" as intangible cultural heritage. In June 2017, the Ministry of Culture of France recognized the know-how and registered it in the French inventory of the intangible cultural heritage (*l'inventaire du patrimoine culturel immatériel*). In October 2018, the Ministry approved the candidacy for the UNESCO List. However, at the 43rd session of the World Heritage Committee in July 2019, France chose to nominate French Austral Lands and Seas instead. *See* UNESCO, 8B. Nominations to the World Heritage List, WHC/19/43.COM/8B, 20 May 2019 (https://whc.unesco.org/archive/2019/whc19-43com-8B-en.pdf); Le Moniteur des Artisans, *Le couvreur-zingueur parisien en route vers l'Unesco*, 22 February 2019 (https://www.lemoniteur.fr/article/le-couvreur-zingueur-parisien-en-route-vers-l-unesco.2022890); Ministry of Culture of France, *Fiches de l'Inventaire national du PCI*, 27 April 2019 (http://www.culture.gouv.fr/Thematiques/Patrimoine-culturel-immateriel/L-inventaire-national/Inventaire-national/Fiches-de-l-Inventaire-national-du-PCI/Savoir-faire-de-l-artisanat-traditionnel).

the New York Convention entered into force on 12 March 1710. Belgium, the Netherlands, Prussia and France are contracting States. Neither the EU, nor any of its institutions, nor the Euro exist. For the purposes of the Moot, only the first of each the Hague Conventions of 1899 and 1907 exists.

Vieille Montagne S.A. ultimately survived the struggles concerning its Moresnet concession. One of its successors, Umicore, still exists today.

A Great Man's Bathtub

Calamine, or *cadmea* (*καδμία*), was used since antiquity to make brass. The ore was melted together with copper to produce a golden metal mentioned in Cicero's letters[3] and Pliny the Elder's *Naturalis Historia*[4]. Deposits of calamine in the vicinity of Aachen had been exploited at least since Roman times.[5]

However, it was not until 1803, that James Smithson discovered that calamine consists, in fact, of two minerals.[6] After his death, one of the two was named for Smithson, who, incidentally, also only in death came to the U.S.

Around the same time, Jean-Jacques Dony must have discovered a new method to create metallic zinc in a special oven (which he patented in 1810).[7] A method later known as *Belgian retort process* was used in the industry until 1950.[8] In 1809, Dony presented Napoleon with a heatable, mobile bathtub made of zinc, which allegedly accompanied Napoleon on his ill-fated Russian campaign and back.[9]

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[3] Referring to forgery, brass passing for gold. *See* The letters of Marcus Tullius Cicero to Titus Pomponius Atticus: in sixteen books, translated by William Heberden, London, 1825, p. 338 (https://archive.org/details/b24748742_0001/page/338); The Iliad of Homer, translated by Alexander Pope, London, 1806, p. 150 (https://archive.org/details/homeriliad00home/page/150).

[4] Pliny, Natural History with an English Translation, translated by Harris Rackham, Vol. IX, London, 1938, Book XXXIV, pp. 126 *et seq*. (https://archive.org/details/naturalhistory09plinuoft/page/126).

[5] Robert James Forbes, Metallurgy in Antiquity: A Notebook for Archaeologists and Technologists, Leiden: E.J. Brill, 1950, p. 283 (https://archive.org/details/R.J.Forbes1950MetallurgyInAntiquity/page/n289).

[6] The Smithsonian Institution, 1846-1896, The History of Its First Half Century, George Brown Goode (ed.), City of Washington: De Vinne Press, 1897, pp. 12–13 (https://archive.org/details/smithsoninstitut00smitrich/page/12).

[7] Biographical Dictionary of the History of Technology, Lance Day and Ian McNeil (eds.), Routledge, 2002, pp. 376-377 (hhttps://books.google.de/books?id=m8TsygLyfSMC&printsec=frontcover#v=onepage&q=dony%2C%20jean-jacques%20daniel&f=false).

[8] David van Reybrouck, Zink, Berlin: Suhrkamp Verlag, 2017, p. 17.

[9] *See* Céline Ruess and Anne Stelmes, *Vies de Zinc: portraits de travailleurs, images d'entreprise, Liège, Maison de la métallurgie et de l'industrie*, 2013, p. 14; Guy Depas, *La baignoire de Napoléon en vedette à Liège... Un zinc à la maison du métal*, 5 July 1997 (https://www.lesoir.be/art/la-baignoire-de-napoleon-en-vedette-a-liege-

Later, zinc from the Vieille Montagne smelters was used to protect Parisian houses from rain. When the great Baron Haussmann together with the financiers Émile and Isaac Pereire and Crédit Mobilier rebuilt Paris, the velvety grey material became part of the Parisian *vie en rose*.

The Concession

In 1805, Dony applied for a mining concession for the Vieille Montagne (or Altenberg).[10]

> (No. 648.) IMPERIAL DECREE on the concession of the calamine mines known as the Vieille-Montagne.
>
> At the Tuileries Palace, Ventôse 30, year XIII.
>
> NAPOLEON, EMPEROR OF THE FRENCH PEOPLE;
>
> Upon the report of the Minister of the Interior;
>
> Having regard to the report of Chief Engineer Lenoir,
>
> The advice of the Prefect of the Department of Ourte, dated Fructidor 14, year X, and that of the Mining Council;
>
> Having heard the *Conseil d'État* (Council of State),
>
> DECREES:
>
> ART. 1st The calamine mines known as the Vieille-Montagne will be conceded promptly.
>
> 2. The limits will be defined, 1.° to the east, by the communes of Billgen on the road from Liège to Aix-la-Chapelle and then, southward, by the ditch that marks the boundary of the department of Roer up till the forest road at a milestone marked with an eagle, then by the boundary ditch from Hauset to Hergenrath, the road across the Creek Rouge, the road from Hauset to Guelbruck, near the Kaiskerlstein mountains, the road called Bonsefeld, the road from Hauset to the mill of Eimalten across the Geul and down the road of Langeweck to a place called Strautz as well as the one to a place called Langue-Meuse, passing near a milestone marked Walhorn, further till the fountain of Ykerstradt, the chapel of Merols, the road from Rospotte to Kettnis;
>
> 2.° To the south, by the Hunstraet road, passing the Wems castle and the Kettnis church to the left, up till the road from Kettnis to Balen, followed to the south-west, across the Eupen road and continuing down the road to Balen, passing through the village along the lime kilns and along the trails of Dolhem up till the creek of that place, the road from the fountain to the Ruiff mill;
>
> 3.° To the west, by the road from Limburg to Mastreichte, crossing the Gremhaud woods, turning by the field of the colliery called Pincelle, and along the said road

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un-zinc-a-l_t-19970705-Z0DY2F.html); Blanca van Hasselt, *Moresnet – Opkomst en ondergang van een vergeten buurlandje* (The Rise and Fall of a Forgotten Neighbouring Country) Philip Dröge, I-News 119, December/January 2017/2018, p. 17 (http://iciea.jp/i-news/pdf/119/i-News119-17.pdf).

[10] Imperial Decree No. 648 on the concession of the calamine mines known as the Vieille-Montagne (*Décret impérial relatif à la Concession des mines de calamine dites de la Vieille-Montagne*), 21 March 1805 (https://gallica.bnf.fr/ark:/12148/bpt6k4453562.image.f35.langFR.vignettesnaviguer).

till the Bel-Œil barrier, then by the main road from Liège to Aix-la-Chapelle till the road by the creek leading to Mutzen, and said road;

4.° To the north, by the roads called Brandz and Bring-sur-Moresnet, crossing the Geule at Moresnet, and along the Buschlouser-sur-Billgen road up till the crossroads of Guemenich and Aix-la-Chapelle, then the road named Beisweig passing the Holsberg mountains to the right till the crossroads of Réformés and the main road from Liège to Aix-la-Chapelle, said road up till Billgen, the starting point.

3. The Minister of the Interior shall prepare the specifications of the concession, in which he shall outline the necessary engineering works to be made by the concessionaires and the other conditions of the concession.

4. The specifications will be published and posted in the department where the mine is located and in the neighboring departments, published in extracts in the *papiers publics* (public papers).

5. Two months later, the Prefect of Ourte will proceed, upon the offers he receives and, unless approved by his Majesty, on the report of the Minister of the Interior, to the procurement of the mines referred to above, also taking into consideration the price offered to the State as annual fee and warranties and liabilities which the bidders will offer.

6. All disputes that may arise over the execution of the concession and the terms of the specifications will be settled by the prefecture council, except for the recourse to the *Conseil d'État* (Council of State) in its regular form.

7. The Ministers of the Interior and Finance are responsible for the implementation of this decree.

Signed NAPOLEON.

By the Emperor:

The Secretary of State, signed Hugues B. Maret.

The concession was granted by the prefect of Ourte on Frimaire 26, year XIV and was homologated on 24 March 1806 by Imperial decree No. 1460.[11]

(No. 1460.) IMPERIAL DECREE on the procurement of the calamine mines known as the Vieille-Montagne (Outre), the procurement of which was made for fifty years to Mr. Dony for the payment of an annual fee of 40,500 Francs to the Treasury, etc. (Paris, 24 March [1806])

NAPOLEON, EMPEROR OF THE FRENCH PEOPLE & KING OF ITALY;

Upon the report of the Minister of the Interior;

[11] Imperial Decree No. 1460 on the concession of the calamine mines known as the Vieille-Montagne (*Décret impérial relatif à l'adjudication des mines de calamine dites de la Vieille-Montagne (Outre), dont l'adjudication a été faite pour cinquante années au Sr. Dony, à la charge de payer au trésor public une rétribution annuelle de 40,500 francs, etc.*), 24 March 1806 (https://fr.wikisource.org/wiki/Adjudication_de_la_mine_de_calamine_par_Napol%C3%A9on_%C3%A0_Jean_Jacques_Daniel_Dony; https://gallica.bnf.fr/ark:/12148/bpt6k445357f.image.f437.langFR.pagination).

Having regard to the Decree of Ventôse 30, year XIII, Article 2 of which regulates the limits imposed on the concession of the calamine mines of the Vieille Montagne, Department of Ourte, and Articles 3, 4, 5 and 6 of which determine all the provisions relating to the procurement of these mines; the Deeds of the Prefecture of the Department of Ourte, dated Fructidor 24, year XIII, Vendémiaire 24, Vendémiaire 26 and Nivôse 6, year XIV. In execution of this Decree and of the provisions ordered by our Minister of the Interior, in particular the specifications of Messidor 22, year XIII;

The Opinion of the Mining Council, having heard our *Conseil d'État* (Council of State), we DECREED AND DECREE the following

ART. 1st The concession of the calamine mines of the Vieille Montagne, Department of Ourte, the procurement of which was made for fifty years to Mister Jean Jacques Daniel DONY, domiciled in *Liège*, is homologated.

2. As the price for the procurement of these mines, the concessionaire shall pay an annual fee of forty thousand five hundred Francs to the Treasury.

3. Furthermore, the following annual product fee is imposed on him: one twentieth of the value of the raw materials extracted and sold above twenty-eight meters deep, between sixty to fifty meters deep; and finally, the hundredth and below.

4. He is obligated to carry out the constructions and repairs identified in the specifications within the time limits expressed therein and all the conditions set out in said specifications which he has submitted himself to.

5. The mortgage of the value of eighty thousand Francs over the property [illegible] Contour de Mehan, basin and *chardenaux*, Department of Sambre and Meuse, with the declared size of six thousand three hundred and sixty four ares, seven hundred and fifty-three milli-ares is accepted, the Minister of the Treasury will take in this respect the necessary securities for the State.

6. The rights to this concession shall be exercised for the purposes of the execution of articles 2, 3, 4 and 5 of this Decree, and for the reasons provided by the mining legislation.

7. Our Ministers of the Interior and of the Treasury, each in his respect, are charged with the execution of this Decree.

Signed NAPOLEON.

By the Emperor:

The Secretary of State, signed HUGUES B. MARET (ampliation),

the Minister of the Interior, signed CHAMPAGNY.

By the new mining law of 21 April 1810, the duration of the ownership of the mine was extended indefinitely ("*perpétuelle*"):[12]

[12] Law of 21 April 1810 on mines, miners and quarries (*Loi du 21 avril 1810 concernant les mines, les minières et les carrières*) (http://www.annales.org/bicentenaire/documents/loi_1810_04_21.pdf). *See also* Lionel Latty, *La loi du 21 avril 1810 et le Conseil général des mines avant 1866. Les procès-verbaux des séances, Document pour l'histoire des techniques*, 2008, pp. 17-29, para 17 (https://journals.openedition.org/dht/803); *S.A.*

LAW of 21 April 1810 on mines, miners and quarries

[...]

TITLE II. On Ownership of Mines.

[ART.] 7. The perpetual ownership of the mine is granted, which is henceforth available and transmissible like any other property, and which can only be expropriated in the cases and in the forms prescribed for the other properties in accordance with the Napoleonic Code and the Code of Civil Procedure. However, a mine cannot be sold in lots or divided without a prior authorization from the Government given in the same form as a concession.

[...]

TITLE IV. On Concessions.

[...]

SECTION II. On the Obligations of the Owners of Mines.

22. Mining is not considered commerce and is not subject to *patentes* (licensing professional activity).

23. The owners of mines are required to pay the State a fixed fee and a fee proportionate to the mining production.

24. The fixed fee will be annual and measured by the extent of the production: it will be ten Francs per square kilometer.

The proportional fee will be an annual contribution to which the mines will be subjected by their production.

25. The proportional fee will be paid each year to the State budget, like other public contributions: however, it may never rise above five per cent of the net production. Instalments may be arranged for those owners of mines who request it.

26. In addition, a tenth of any Franc must be paid. The contributions will form a *fonds de non-valeur* (non-value fund) at the disposal of the Minister of the Interior, facilitating fee deductions for those owners of mines who will suffer losses or accidents.

27. The proportional fee will be imposed and treated as a land contribution.

The prefecture councils will decide claims for fee deduction and proportional equality. The fee deduction will apply when the licensee can establish that its fee exceeds five per cent of the net production of its operation.

28. The Government shall grant, as the case may be, for the operations which it deems appropriate, by an article of the deed of concession or by a special decree deliberated in the *Conseil d'Etat* (Council of State) for the mines already conceded, a discount for all or part of the payment of the proportional fee for the time that will be considered appropriate; and as encouragement, given the difficulty of the work; similar discount may also be granted as compensation in case of accident of *force majeure* that might occur during operation.

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des Mines et Fonderies de Zinc de la Vieille Montagne, Angleur (http://archiv.bgv-rheinberg.de/system/files/VielleMontagne.pdf).

29. The proceeds from the fixed and proportional fees shall form a special fund on a special account in the public treasury, which shall be used for the expenses of the Mining Administration, and for research, uncovering and putting in operation new mines or recovering old mines.

30. Old fees due to the State, either by virtue of laws, ordinances or regulations, or according to the conditions set forth in a deed of concession, or according to leases and contracts for management of the estate will cease to have effect from the day the new fees are established.

31. The revocation of old fees due in annuities, rights and benefits of any kind, for the transfer of funds or other similar grounds, without derogation, is not covered by the application of the laws which have abolished the feudal rights.

32. The right granted by Article 6 of this Law to the owners of the surface, will be regulated to a sum determined by a deed of concession.

33. The owners of mines are obliged to pay the compensation to the owner of the surface on whose land they will establish their works.

If the works undertaken by the operators or the owners of mines are only for a short term, and if the soil where they were undertaken can be cultivated as before after one year, the compensation will be twice of what the net production of damaged land would have been.

34. When the occupation of land for research or mining works deprives landowners of income beyond one year, or when after the works, the land is no longer fit for agriculture, the owners of the mines may be required to acquire land for mining. If the owner of the surface so requires, the parcels of land that are too damaged or degraded for too large of a part of their surface will have to be purchased in full by the owner of the mine.

The evaluation of the price will be made, as to the form, according to the rules established by the Law of 16 September 1807 on Desiccation of Marshes, Title XI, but the land to be acquired will always be appraised at twice the value it had before the operation of the mine.

35. If, because of the neighborhood or for any other cause, the mining works cause damage to the operation of another mine because of the large amount of water which enter the latter; if, on the other hand, the same works produce a contrary effect and drain all or part of the waters of another mine, there shall be compensation for one mine in favor of the other: regulated by the experts.

36. All questions of compensation to be paid by the owners of mines for research or works prior to the deed of concession will be decided in accordance with Article 4 of the Law of Pluviôse 28, year VIII.

[...]

TITLE VI. On Concessions or Enjoyment of Mines Prior to this Law.

SECTION I. Former Concessions in General.

51. The concessionaires prior to the this Law will become, from the day of its publication, absolute owners, without any formality of prior notice, field verifications or other preliminary requirements, with the only responsibility to execute, should they

exist, the agreements made with the owners of the surface, and without them being able to avail themselves of Articles 6 and 42 of this Law.

52. Therefore, former concessionaires will be subject to the payment of contributions, as stated in Section II of Title IV, Arts. 33 and 34, beginning in the year 1811.

[…]

Explanatory Report[13]

Speech delivered to the Legislative Body by the Count of Saint-Jean-d'Angely, 13 April 1810.

Motives for the Draft Mining Law.

[…]

Mining fees.

Mining, considered commerce until now, was subject to the law on *patentes* (professional activity).

No fees were due to the State under the law of 1791.

Only a few property rights were assigned to the registering authority in the united provinces, and even that authority has awarded mining rights by virtue of public procurement or discretionary conduct.

All of these fees, all of these determined prices will cease to be paid.

The mines will be subject to two fees, one fixed – of 10 Francs per square kilometer of the concession area; the other proportional – an annual fee, a fair tribute that the property owes to the State, but a tribute reduced to the lowest rate, since instead of being raised to one fifth, it cannot exceed one twentieth of the net proceeds; a tribute that will never be burdensome, since the Government may exempt from it when deems so appropriate, a tribute which can be paid in installments and which, like the other taxations, will have its reductions and allowances.

To this concession fee owed to the State will be added 1°. the remuneration to the owner of the very land which is being mined; 2°. the compensation to those from whom the property is taken in order to dig the wells, extract, deposit the materials.

The rules for these compensations are established in a way that satisfies the owners without encumbering the conditions of the operators.

These rules for the new concessions had originally appeared not to apply to the old concessions; the idea was to allow them to enjoy their rights for the duration fixed by their title and to postpone the application of the general rule to them upon their titles' expiry.

A more generous thought calls upon them to enjoy the benefit of the law without delay, even imposes upon them this pleasant obligation, and thus generalizes, to the

[13] Speech delivered to the Legislative Body by the Count of Saint-Jean-d'Angely, 13 April 1810, Reasons for the Draft Law on Mines (*Discours prononcé, au Corps législatif, par M. le Comte de Saint-Jean-d'Angely, le 13 avril 1810, Motifs du projet de loi sur les mines*), Journal des Mines, No. 160, April 1810, pp. 243 *et seq*. (http://www.annales.org/bicentenaire/documents/loi_1810_04_21.pdf).

great advantage of the persons concerned, the application of the law, which will thus confer more simplicity, ease and strength to the action of the administration.

The law goes further: it calls for the same privileges for those who have not yet complied with the law of 1791, who have nothing but operations and have no concessions, and need to put in line with the rules and obtain a regular title, which they lack, by a decree of His Majesty in his Council.

Both will pay to the State the new fees of which we have just spoken, thus becoming owners; but they will not pay any fees to the private owners of the land, because the right to use, without payment for this right, is established and it is not fair to give the law a retroactive effect.

Gentlemen, you see what an immense advantage the law, which we present to you, offers to the numerous operators of the mines spread throughout the Empire.

It is, I dare say, a generous gift made to them, and you can measure it by the general opinion which estimated that the annual product of the metal and coal mines of France at forty millions and that these mines could increase their capital to eight hundred millions afterwards.

These are properties of such value which are precariously held, temporarily possessed, and, as of today, have become heritage property protected by the common law of which the courts alone can pronounce the expropriation.

[…]

Report on the Draft Law on Mines made (to the Legislative Body) on behalf of the Commission of Internal Administration by Count STANISLAS DE GIRARDIN, President of this Commission.[14]

Meeting of 21 April 1810.

[…]

Capitalists alone can engage in risky operations and run the odds always inherent to the large corporations.

What is necessary is to raise capital for establishing regular and considerable works, what you need to spend before obtaining a product, is significant. [...]

Life-long concessions are not new; they exist in Hungary, Bohemia, Austria and even France.

If we consult the ordinances of the Kingdom, we shall see that the concessions are considered to be indefinite. The *patente* letters (licensing professional activity) of the Kings or the grants of the Grand Masters of the mines almost always concede the mines indefinitely. However, it is well known that the possession of the mine operators was rarely of long duration, and the Constituent Assembly itself, which had proclaimed so many times the sanctity of the engagements, thought it possible to restrict all the concessions to fifty years by the law of 1791.

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[14] Report made (to the Legislative Body) on behalf of the Commission of Internal Administration by Count STANISLAS DE GIRARDIN, President of this Commission, on the Draft Law on Mines, Meeting of 21 April 1810 (*Rapport fait (au Corps législatif), au nom de la Commission d'administration intérieure, par M. le Comte STANISLAS DE GIRARDIN, Président de cette Commission, sur le Projet de Loi relatif aux Mines, Séance du 21 avril 1810*), Journal des Mines, No. 160, April 1810, pp. 264 *et seq*. (http://www.annales.org/bicentenaire/documents/loi_1810_04_21.pdf).

You will, without doubt, appreciate, gentlemen, the difference which we have just established between an indefinite concession and the ownership of the mine. The concession is clearly nothing but an authorization, a lease, a privilege. It gives the right to apply the work, the capital, the industry to the operation of a mine the ownership over which resides in the hands of someone else.

Formerly, all the concessions were subject to more or less onerous conditions; they could be revoked in some cases.

Concessionaires were subject to a mode of operation determined by regulations and supervised by government agents.

Thus, the mines granted indefinitely were not true properties. Instead, once the proposed law is published, all the mines of the Empire that have operated legitimately in accordance with to the acquired rights, will become perpetual properties, protected and guaranteed by the Napoleonic Code, in the hands of those who operate them.

The mines conceded in the future will receive the same status through the deed of concession. Such nature of property will have the inestimable advantage of giving to the operators that spirit of foresight, preservation and improvement which seems to belong exclusively to the owner.

Once the law is published, the concessionaires become perpetual owners; their property is entirely distinct from the surface. Property distinct from the surface is a completely new concept, emanating from genius that strengthens and advances the destiny of the Empire every day.

It is for the very security of their owners, that the mines are immovable.

It is for their own benefit, that the shares are movable.

Article 514 of the Napoleonic Code applies to them as it does to any property.

They are transferable like other assets; they enable their owners to receive loans since they can be mortgaged.

Considerations of general welfare necessitated Article 8. The seizures apply to everything that is moveable. However, the sale of horses, tackle, machinery and utensils would suddenly freeze the operation and, on its own, cause irreparable losses.

The horses used not in the work inherent to the operation but in secondary services have been excepted from this arrangement and considered movable.

The sale of a mine, whether forced or voluntary, cannot be made in lots or separate parts, except under prior authorization of the Government. This is a consequence of the rationale behind designating the mine as property distinct from the surface property.

[…]

The Government, having reserved the right to concede mines exclusively under the second section of Title III, had to exercise full discretion to grant concessions to and avail itself of those who would make the most promising offers, *i.e.* to those who would raise a great deal of capital with a great deal of knowledge, and to whom past successes would give the utmost certainty of future success.

Even foreigners are invited to this competition – they will be allowed to enjoy new wealth and receive property if they offer assurance that they will utilize it.

You will no doubt have noticed, gentlemen, how liberal and political this provision is. It invites enlightened men to come and settle among us and offers them advantages that can motivate them to bring us their capital and their industry.

Anyone who has the necessary abilities can therefore obtain a concession, proving that he can provide a guarantee to pay any compensation due in the event of accidents caused by his operation either to houses or to other neighboring facilities.

[…]

Mining is not considered commerce and does not require a *patente* (licensing professional activity). This declaration was necessary to establish the jurisdiction of the ordinary courts and to relieve the companies established to operate the mines, from the scope of the *Code de Commerce* (Commercial Code), from the joint liability for the debts and from the *contrainte par corps* (coercive detention for payment default in commercial matters).

As we have already observed, the fixed fee will prevent the concession applications from pitching too high, and that alone is a great success; it will serve to set and maintain the boundaries of the mines. Your Commission considers, although this is not said in the Project, that when several concessions are granted under the same surface, the fixed fee will be re-distributed among all the concessionaires. This observation will undoubtedly be appreciated by the Government, and one may seek recourse to its justice.

The proportional fee is determined each year by the State budget.

The revenues from these two fees are not considered to be part of the State's finances; they are severed by Art. 39 which ascribes them a special purpose in assigning them exclusively to the expenses of the Mining Administration. This is a guarantee that must reassure the current operators and those who will engage in this industry in the future.

Allow us, gentlemen, to focus your attention on this important point for a while longer.

If it is fair that the owners of the mines pay – as owners – a fee, and it is necessary for the public welfare that it be extremely modest; for if it were considerable, it would soon paralyze or annihilate the existing operations and be an obstacle to the establishment of the new ones.

It is known that any tax on the industry is much more harmful than helpful.

The operator of a mine has no other property than the fruit of his labour. When the mine is abundant, it draws, it is fair to say, a profit that provides revenues on [the operator's] advances; but this profit is always out-balanced by the risks which are at least proportionate to the extent of the profits.

The operation of the mines must be encouraged, for their productions add incontestably more to the wealth of the nation than they cost, since it would be necessary to buy what is required to satisfy the needs of society and is manufactured abroad.

> We still depend on foreign countries for about a quarter of the iron consumed in France. However, the iron mines scattered almost over the entire land of the Empire are abundant and inexhaustible.
>
> It is necessary to direct the industry and the capital towards the production of iron and in order to achieve it, it is necessary to favour the mining of the coal from the earth. It is necessary to establish the internal workflow for saving timber and preserving it for the use of furnaces and forges.
>
> The law favours mining by guaranteeing that it will never be subject to ordinary fees, and that the taxes levied only to cover the expenses of the Administration will be so small that they will not deter anyone from continuing or undertaking the extraction of coal.
>
> […]

Vieille Montagne S.A.

While Dony was brilliant, or even a genius as an engineer, he was less successful as an entrepreneur. He invested around one millions francs in the factory and the necessary infrastructure.[15] However, despite the *de facto* monopoly over metallic zinc in Europe,[16] the situation was dismal. The political situation in Europe,[17] high prices for zinc and the fact that calamine was still used for making brass[18] did not make for a good business climate. At some point, because of the military conflict, 80% of production had to be warehoused.[19]

In June 1813, Dony entered into a 50:50 joint venture (Dony et Cie.) with the Parisian merchant Hector Chaulet. While Dony contributed the Vieille Montagne concession and the production site in Saint Léonard, Chaulet contributed 300 thousand francs.[20] However, this was not enough. On 25 August 1813, Dony transferred 75% of his rights to the concession and the plant to François-Dominique Mosselmann in exchange for 250 thousand francs.[21]

Although Mosselmann and Chaulet had given Dony five years to improve his financial situation, Dony ultimately went bankrupt in January 1819 and sold his interests in the joint

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15 Philip Dröge, *Niemands Land: Die unglaubliche Geschichte von Moresnet, einem Ort, den es eigentlich gar nicht geben durfte*, Piper, 2017, p. 17.

16 Dröge, p. 16.

17 Dröge, p. 18.

18 Susan Becker, *Multinationalität hat verschiedene Gesichter*, Franz Steiner Verlag, 2002, p. 50, ft. 99.

19 Dröge, p. 18.

20 Becker, p. 50.

21 Becker, p. 50, based on original documents. *See also* Thierry Claeys, *Mosselman, son réseau et la Vieille-Montagne* in *Morny et l'invention de Deauville*, Barjot, Anceau, Stoskopf (eds.), 2010, p. 185 (https://books.google.de/books?id=F3b56TelWvwC&printsec=frontcover&hl=de#v=onepage&q&f=false).

venture to Mosselmann on 17 September 1819.[22] Chaulet also sold his interest to Mosselmann and left the joint venture in September 1819.[23]

While Mosselmann was Belgian, he had made his fortune mainly in France, which he then transferred to Belgium when he created the company.[24] The Chaulet family was French.

After having overtaken the operation of the mine, Mosselmann added two production sites in France and a zinc smelter in Moresnet. He also entered into a five-year contract for the usage of a rolling mill in Dartfort. Another zinc smelter was in construction in Angleur near Liège, when Mosselmann and his children founded the Société Anonyme des Mines et Fonderies de la Vieille Montagne (Vieille Montagne S.A.) in Liège in 1837.[25] The share capital of Vieille Montagne S.A. was 5 million francs, with the Mosselmann family subscribing to 4.2 million and Banque de Belgique – to the remaining 800 thousand francs.[26]

Under its bylaws, Vieille Montagne S.A. reinvested 20% of its profits into a reserve account.[27] At the same time, Vieille Montagne S.A. had over the duration of its operation, a higher debt-to-equity ratio than other companies in the industry.[28] Vieille Montagne S.A. increased its debit financing through bonds.[29] Vieille Montagne S.A.'s financial dealings were considered careful and conservative, its shares yielded an average dividend of 24%.[30]

The first chairman of the company was Comte Le Hon, Mosselmann's son in law and newly-created Belgium's first ambassador in Paris. The other members of the administrative council (*conseil d'aministration*) were Alfred Mosselmann (Mosselmann's son), Charles Auguste de Morny (Napoleon's half-brother) and three directors of the Banque de Belgique (Charles De Brouckère, Comte Philippe Vilain XIIII and Gilles Davignon).[31]

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22 Becker, p. 50.

23 Decision of the *Cour de Liège,* 2e Ch., 6 March 1828; *Précis pour Messieurs les Commissaires des Mines de Leurs Majestés les Rois de Prusse et des Belges. contre les Représentans et Héritiers Chaulet*, p. 5.

24 Becker, p. 52.

25 Becker, p. 50.

26 Becker, p. 51.

27 Becker, p. 52.

28 Becker, p. 52. According to Becker, the Schlesag (*Schlesische Aktiengesellschaft für Bergbau und Zinkhüttenbetrieb*, founded in 1853) had twice the amount of equity of Vieille Montagne S.A., even though it only produced about a fifth of the raw zinc production of Vieille Montagne S.A.

29 Becker, p. 52.

30 Becker, p. 52, ft. 110 (24% between 1837 and 1910, with a historic low of 5% during the revolution year 1848 and over 50% in 1846 and 1899).

31 Becker, p. 53. *See also* René Brion, Jean-Louis Moreau, *De la Mine a Mars: La Genèse d'Umicore*, 2006, p. 22 (https://books.google.de/books?id=2RT1kRjHq6IC&printsec=frontcover&hl=de#v=onepage&q&f=false).

The Great Powers of Europe

While Dony was losing more and more influence over the enterprise he founded, the proud owner of his famous bathtub also suffered losses. In the latter's case, that included the loss of millions of lives.

Article 32 of the Treaty of Paris of 30 May 1814 (ratified on 31 May 1814) between the United Kingdom and France provided for a general congress: [32]

> XXXII. — All the powers engaged on either side in the present war shall, within the space of two months, send plenipotentiaries to Vienna, for the purpose of regulating, in general congress, the arrangements which are to complete the provisions of the present treaty.

Two months being a relative concept in diplomacy, the Congress of Vienna started in September 1814 and lasted until 9 June 1815. While, in total, more than 200 European polities participated, it was the Great Powers of Europe (the United Kingdom, the Austro-Hungarian Empire, France, Russia and Prussia) that were calling the shots.

The Congress of Vienna is perhaps the best example that in multilateral negotiations, most of the progress is made not in the working groups and plenary sessions but in consultation breaks. The difference being certainly the quality of coffee and – of course – music. Or, in the famous words of Charles-Joseph de Ligne, "*Le congrès danse beaucoup, mais il ne marche pas*."[33]

In case of de Ligne, his dance ended on 13 December 1814. Or as he himself put it: "*Il manque encore une chose au Congrès: l'enterrement d'un feldmarschall, je vais m'en occuper.*"[34]

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[32] Definitive Treaty of Peace between his Britannic majesty and his most Christian majesty Louis XVIII (*Traité de paix, conclu à Paris le 30 mai 1814*), Paris, 30 May 1814, Art. XXXII. (https://archive.org/details/mapofeuropebytre01hertuoft/page/n45). Separate treaties were concluded on the same day between France and Austria, Portugal, Prussia, Russia and Sweden; and on the 20 July 1814, between France and Spain. The provisions of the treaties were identical, with Additional Articles contained in the treaties with Austria, Prussia and Russia relating specifically to each of those states.
The original French language version of the Treaty between France and Austria reads: "*Art. 32. Dans le délai de deux mois, toutes les Puissances qui ont été engagées de part et d'autre dans la présente guerre, enverront des Plénipotentiaires à Vienne, pour régler, dans un congrès général, les arrangements qui doivent compléter les dispositions du présent traité*." (https://archive.org/details/sc_0001065530_0000000121473 8/page/n39)

[33] Mark Jarrett, The Congress of Vienna and its Legacy: War and Great Power Diplomacy After Napoleon, Tauris, 2014, p. 113 (https://books.google.de/books?id=m-B7BAAAQBAJ&printsec=frontcover&hl=de#v=onepage&q&f=false).
In German, the quote is even more pointed: "*Der Kongress tanzt, aber er kommt nicht vorwärts*." See *Der Fürst von Ligne: Erinnerungen und Briefe*, translated by Victor Klarwill, Wien, 1920, p. 58. (https://archive.org/details/derfrstvonlign00lign/page/58).

[34] Charles-Joseph Prince De Ligne, *Les Trésors de l'Académie*: (https://tresorsdelacademie.be/fr/patrimoine-artistique/buste-de-charles-joseph-prince-de-ligne).

While the Congress was negotiating peace in Europe, the owner of the Dony bathtub got bored reforming the administration and exploring the iron mines of a beautiful island in the Mediterranean (or maybe, he just wanted his bathtub back).

On 1 March 1815, Napoleon landed in France.

It did have a beneficial effect on the Congress. Despite the pleasant surroundings, the possibility of a new war was a very real one. Tsar Alexander repeated to the British negotiator Castlereagh: "*I have three hundred thousand men in Poland; let them come and take it if they please*."[35] In no uncertain terms, Alexander threatened "*[M]y friend Frederick William will be King of Prussia and Saxony, as I myself Emperor of Russia and King of Poland*".[36] Allegedly, at some point, things got so heated that Tsar Alexander challenged Austria's Klemens von Metternich to a duel.[37]

Napoleon's landing quickly reunited the Congress. On 13 March 1815, the Great Powers of Europe and their allies declared that "*Napoleon Bonaparte has placed himself without the pale of civil and social relations; and that, as an enemy and disturber of the tranquillity of the world, he has rendered himself liable to public vengeance*."[38]

Treaties were signed "*separately by each of the four Powers with each of the three others, the engagement to preserve, against every attack, the order of things so happily established in Europe, and to determine upon the most effectual means of fulfilling that engagement, as well as of giving it all the extension which the present circumstances so imperiously call for*" on 25 March 1815.[39]

The result is known.

On 9 June 1815, the *Acte Final* of the Congress of Vienna was signed.

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35 Archibald Alison, Lives of Lord Castlereagh and Sir Charles Stewart the Second and Third Marquesses of Londonderry: With Annales Comtemporary Events in which They Bore a Part, Vol. II, Edinburgh and London, 1861, p. 538 (https://archive.org/details/liveslordcastle03alisgoog/page/n558).

36 Alison, p. 542.

37 Patrick O'Meara, The Russian Nobility in the Age of Alexander I, Bloomsbury, 2019, p. 143 (https://books.google.de/books?id=PgmUDwAAQBAJ&printsec=frontcover&hl=de#v=onepage&q&f=false). *See also* N.A. Troizskiy, Alexander I and Congress of Vienna (*Александр I и Венский Конгресс*), Izvestiia Saratovskogo Universiteta, V. 5, Issue 1/2, 2005, p. 8.

38 Declaration at the Congress of Vienna, 13 March 1815 in Edward Baines, History of the Wars of the French Revolution, from the Breaking Out of the War, in 1792, to the Restoration of a General Peace in 1815: Comprehending the Civil History of Great Britain and France, During that Period, Vol. 2, Longman, Hurst, Rees, Orme, and Brown, 1818, p. 433 (https://books.google.de/books?id=GMxLAAAAMAAJ&printsec=frontcover&hl=de#v=onepage&q&f=false).

39 Treaty Between His Britannic Majesty and His Majesty the Emperor of All the Russias, Vienna, 25 March 1815 in Journals of the House of Commons, Vol. 70, 1815, p. 628 (https://books.google.de/books?id=zh06AQAAMAAJ&printsec=frontcover&hl=de#v=onepage&q&f=false).

On 18 June 1815, the Duke of Wellington and Prince Blücher defeated Napoleon at Waterloo. Four days later, Napoleon abdicated.

A Small Village

Peace was restored. To preserve the delicate balance of powers, borders were drawn meticulously all over Europe. All over Europe? Well, there was a small village that nobody had had on their map. A village that fell between the gaps of the Netherlands, France and Prussia. A village with a zinc mine.

Mosselmann and Chaulet were following the negotiations of the Congress with fear and anticipation. Would Kelmis, and with it, the mine, become a part of the Netherlands or Prussia?[40] Because – unlike the Netherlands – Prussia had zinc mines near Katowice, concessionaries feared to be shut down if the territory went to Prussia.[41] Indeed, there had been threats that in case Prussia prevailed, it would attack the validity of the Vieille Montagne concession.[42]

The text of the Final Act being ambiguous, where did the mine belong?

The Final Act[43]

Prussian Possessions on the left bank of the Rhine.

ART. XXV. His Majesty the King of Prussia shall also possess in full property and sovereignty the countries on the left bank of the Rhine, included in the frontier hereinafter designated:

This frontier shall commence on the Rhine at Bingen; it shall thence ascend the course of the Nahe to the junction of this river with the Glan, and along the Glan to the village of Medart, below Lauterecken; the towns of Kreutznach and Meisenheim, with their territories, to belong entirely to Prussia; but Lauterecken and its territory to remain beyond the Prussian frontier. From the Glan the frontier shall pass by Medart, Merzweiler, Langweiler, Neider and Ober-Fechenbach, Ellenbach, Chreunchenborn, Answeiler, Cronweiler, Nieder-Brambach, Burbach, Boschweiler, Heubweiler, Hambach, and Rintzenberg, to the limits of the Canton of Hermeskeil;

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40 Dröge, p. 23.
41 Dröge, p. 23.
42 Dröge, p. 24.
43 The General Treaty of the Final Act of the Congress of Vienna (*Acte du Congres de Vienne du 9 Juin 1815*), 9 June 1815 in Edward Hertslet. The map of Europe by treaty; showing the various political and territorial changes which have taken place since the general peace of 1814, London, Butterworths, 1875, pp. 208 *et seq*. (https://archive.org/details/mapofeuropebytre01hertuoft/page/208).

the above places shall be included within the Prussian frontiers, and shall, together with their territories, belong to Prussia.

From Rintzenberg to the Sarre the line of demarcation shall follow the cantonal limits, so that the cantons of Hermeskiel and Conz (in which latter, however, are excepted the places on the left bank of the Sarre) shall remain wholly to Prussia, while the cantons of Wadern, Merzig, and Sarreburg are to be beyond the Prussian frontier.

From the point where the limit of the canton of Conz, below Gomlingen, traverses the Sarre, the line shall descend the Sarre till it falls into the Moselle; thence it shall re-ascend the Moselle to its junction with the Sarre, from the latter river to the mouth of the Our, and along the Our to the limits of the ancient Department of the Ourthe. The places traversed by these rivers shall not at all be divided, but shall belong, with their territories, to the Power in whose State the greater part of these places shall be situated; the Rivers themselves, in so far as they form the frontier, shall belong in common to the two Powers bordering on them.

In the old Department of the Ourthe, the five Cantons of Saint-Vith, Malmedy, Cronenburg, Schleiden, and Eupen, with the advanced point of the Canton of Aubel, to the south of Aix-la-Chapelle, shall belong to Prussia, and the frontier shall follow that of these cantons, so that a line, drawn from north to south, may cut the said point of the Canton of Aubel, and be prolonged as far as the point of contact of the three old departments of the Ourthe, the Lower Meuse, and the Roer; leaving that point, the frontier shall follow the line which separates these two last departments till it reaches the river Worm, which falls into the Roer, and shall go along this river to the point where it again touches the limits of these two departments; when it shall pursue that limit to the south of Hillensberg, shall ascend from thence towards the north, and leaving Hillensberg to Prussia, and cutting the Canton of Sittard in two parts, nearly equal, so that Sittard and Susteren remain on the left, shall reach the old Dutch territory; then following the old frontier of that territory, to the point where it touched the old Austrian Principality of Gueldres, on the side of Ruremonde, and directing itself towards the most eastern point of the Dutch territory, to the north of Swalmen, it shall continue to inclose this territory.

Then, setting out from the most eastern point, it joins that other part of the Dutch territory in which Venloo is situated, without including the latter town and its district: thence to the old Dutch frontier near Mook, situated below Genep, it shall follow the course of the Meuse, at such a distance from the right bank, as that all the places situated within a thousand Rhenish yards (*Rheinländische Ruthen*) of this bank, shall, with their territories, belong to the kingdom of the Netherlands; it being well understood, however, in regard to the reciprocity of this principle, that no point of the bank of the Meuse shall constitute a portion of the Prussian territory, unless such point approach to within 800 Rhenish yards of it.

From the point where the line just described joins the old Dutch frontier, as far as the Rhine, this frontier shall remain essentially as it was in 1795, between Cleves and the United Provinces. It shall be examined by the Commission which shall be appointed without delay by the two Governments to proceed to the exact determination of the limits, both of the Kingdom of the Netherlands, and the Grand Duchy of Luxemburg, designated in Articles LXVI and LXVII, and this Commission shall regulate, with the aid of experienced persons, whatever

concerns the hydrotechnical constructions, and other analogous points, in the most equitable manner, and conformably to the mutual interests of the Prussian States and of those of the Netherlands. This same disposition extends to the regulation of the limits in the Districts of Kyfwaerd, Lobith, and all the territory to Kekerdom.

The places (*enclaves*) named Huissen, Malburg, Lymers, with the town of Sevenaer, and the Lordship of Weel, shall form a part of the kingdom of the Netherlands, and His Prussian Majesty renounces them in perpetuity or himself, his heirs and successors.

His Majesty the King of Prussia, in uniting to his states the provinces and districts designated in the present Article, enters into all he rights and takes upon himself all the charges and engagements stipulated with, respect to the countries dismembered from France by the Treaty of Paris of the 30th May, 1814.

Grand Duchy of the Lower Rhine. Cologne.

The Prussian provinces upon the two banks of the Rhine, as far as above the town of Cologne, which shall also be comprised within this district, shall bear the name of Grand Duchy of the Lower Rhine, and His Majesty shall assume the title of it.

[…]

Boundaries of the Kingdom of the Netherlands.

ART. LXVI. The line comprising the territories which compose the Kingdom of the Netherlands, is determined in the following manner:—

It leaves the sea, and extends along the frontiers of France on the side of the Netherlands, as rectified and fixed by Article III of the Treaty of Paris of the 30th May, 1814, to the Meuse; thence along the same frontiers to the old limits of the Duchy of Luxembourg. From this point it follows the direction of the limits between that Duchy and the ancient Bishopric of Liege, till it meets (to the south of Deiffelt) the western limits of that canton, and of that of Malmedy, to the point where the latter reaches the limits between the old Departments of the Ourthe and the Roer; it then follows these limits to where they touch those of the former French Canton of Eupen, in the Duchy of Limburg, and following the western limit of that canton, in a northerly direction, leaving to the right a small part of the former French Canton of Aubel, joins the point of contact of the three old Departments of the Ourthe, the Lower Meuse, and the Roer; parting again from this point, this line follows that which divides the two latter departments, until it reaches the Worm (a river falling into the Roer), and goes along this river to the point where it again reaches the limit of these two departments, pursues this limit to the south of Hillensberg, (the old Department of the Roer), from whence it reascends to the north, and leaving Hillensberg to the right and dividing the Canton of Sittard into two nearly equal parts, so that Sittard and Susteren remain on the left, it reaches the old Dutch territory, from whence, leaving this territory to the left, it goes on following its eastern frontier to the point where it touches the old Austrian Principality of Gueldres, on the south side of Ruremonde, and directing itself towards the most eastern point of the Dutch territory, to the north of Swalmen, continues to inclose this territory.

Lastly, setting out from the most eastern point it joins that part of the Dutch territory in which Venloo is situated; that town and its territory being included within it. From thence to the old Dutch frontier near Mook, situated above

Genep, the line follows the course of the Meuse, at such a distance from the right bank, that all the places within 1,000 Rhenish yards (*Rheinländische Ruthen*) from it shall belong, with their territories, to the Kingdom of the Netherlands; it being understood however, as to the reciprocity of this principle, that the Prussian territory shall not at any point touch the Meuse, or approach it within the distance of a 1,000 Rhenish yards.

Frontier between Cleves and United Provinces.

From the point where the line just described reaches the ancient Dutch frontier, as far as the Rhine, this frontier shall remain essentially the same as it was in 1795, between Cleves and the United Provinces.

Mixed Commission between Prussian and the Netherlands.

This line shall be examined by a Commission, which the Governments of Prussia and the Netherlands shall name without delay, for the purpose of proceeding to the exact determination of the limits, as well of the Kingdom of the Netherlands, as of the Grand Duchy of Luxembourg, specified in Article LXVIII; and this Commission, aided by professional persons, shall regulate everything concerning the hydrotecnnical constructions, and other similar points, in the most equitable manner, and the most conformable to the mutual interests of the Prussian States, and of those of the Netherlands. This same arrangement refers to the fixing of limits in the Districts of Kyfwaerd, Lobith, and in the whole territory as far as Kekerdom.

Prussian Renunciation of Huissen, Malburg, Lymers, Sevenaer, and Weel.

The *enclaves* of Huissen, Malburg, Lymers, with the town of Sevenaer and Lordship of Weel, shall form a part of the Kingdom of the Netherlands; and His Prussian Majesty renounces them in perpetuity, for himself, his heirs and successors.

Grand Duchy of Luxemburg. Sovereignty of the King of the Netherlands. Succession.

ART. LXVII. That part of the old Duchy of Luxemburg which is comprised in the limits specified in the following Article, is likewise ceded to the Sovereign Prince of the United Provinces, now King of the Netherlands, to be possessed in perpetuity by him and his successors, in full property and Sovereignty. The Sovereign of the Netherlands shall add to his titles that of Grand Duke of Luxemburg, His Majesty reserving to himself the privilege of making such family arrangement between the Princes his sons, relative to the succession to the Grand Duchy, as he shall think conformable to the interests of his monarchy, and to his paternal intentions.

Grand Duchy of Luxemburg a State of the Germanic Confederation.

The Grand Duchy of Luxemburg, serving as a compensation for the Principalities of Nassau-Dillenburg, Siegen, Hadamar and Dietz, shall form one of the States of the Germanic Confederation; and the Prince, King of the Netherlands, shall enter into the system of this Confederation as Grand Duke of Luxemburg, with all the prerogatives and privileges enjoyed by the other German Princes.

Luxemburg a Fortress of the Germanic Confederation. Right of King of the Netherlands to appoint Governor and Military Commandant.

The town of Luxemburg, in a military point of view, shall be considered as a Fortress of the Confederation; the Grand Duke shall, however, retain the right of appointing

the Governor and military Commandant of this Fortress, subject to the approbation of the executive power of the Confederation, and under such other conditions as it may be judged necessary to establish, in conformity with the future constitution of the said Confederation.

Boundaries of the Grand Duchy of Luxemburg.

ART. LXVIII. The Grand Duchy of Luxembourg shall consist of all the territory situated between the Kingdom, of the Netherlands, as it has been designated by Article LXVI, France, the Moselle, as far as the mouth of the Sure, the course of the Sure, as far as the junction of the Our, course of this last river, as far as the limits of the former French Canton of St. Vith, which shall not belong to the Grand Duchy of Luxemburg.

Luxemburg. Arrangements respecting the Duchy of Bouillon. Disputes to be settled by Arbitration.

ART. LXIX. His Majesty the King of the Netherlands, Grand Duke of Luxemburg, shall possess in perpetuity, for himself and his successors, the full and entire Sovereignty of that part of the Duchy of Bouillon, which is not ceded to France by the Treaty of Paris; and which, therefore, shall be united to the Grand Duchy of Luxemburg.

Disputes having arisen with respect to the said Duchy of Bouillon, the competitor who shall legally establish his right, in the manner hereafter specified, shall possess, in full property, the said part of the Duchy, as it was enjoyed by the last Duke, under the Sovereignty of His Majesty the King of the Netherlands, Grand Duke of Luxemburg.

This decision shall be made by Arbitration, and be without appeal. For this purpose there shall be appointed a certain number of arbitrators, one by each of the two competitors, and others, to the number of three, by the Courts of Austria, Prussia, and Sardinia. They shall assemble at Aix-la-Chapelle, as soon as the state of the war and other circumstances may admit of it, and their determination shall be made known within six months from their first meeting.

In the interim, His Majesty the King of the Netherlands, Grand Duke of Luxemburg, shall hold in trust the property of the said part of the Duchy of Bouillon, in order that he may restore it, together with the revenues of the provisional administration, to the competitor in whose favour the arbitrators shall decide; and His said Majesty shall indemnify him for the loss of the revenues arising from the rights of Sovereignty by means of some equitable arrangement. Should the restitution fall to Prince Charles of Rohan, this property, when in his possession, shall be regulated by the laws of the substitution which constitutes his title thereto.

Cession to Prussia of the German Possessions of the House of Nassau-Orange.

ART. LXX. His Majesty the King of the Netherlands renounces, in perpetuity for himself, his heirs and successors, in favour of His Majesty the King of Prussia, the sovereign possessions which the house of Nassau-Orange held in Germany, namely, the Principalities of Dillenburg, Dietz, Siegen, and Hadamar, with the Lordships of Beilstein, such as those possessions have been definitively arranged between the two branches of the house of Nassau by the Treaty concluded at the Hague on the 14th July 1814.

Principality of Fulda.

His Majesty also renounces the Principality of Fulda, and the other districts and territories which were secured to him by Article XII of the Principal Recès of the Extraordinary Deputation of the Empire of the 25th of February, 1803.

Family Pact of the Princes of Nassau. Succession.

ART. LXXI. The right and order of Succession, established between the two branches of the House of Nassau, by the Act of 1783, called *Nassauischer Erbverein*, is confirmed, and transferred from the four Principalities of Orange-Nassau, to the Grand Duchy of Luxemburg.

Charges and Engagements relating to the Provinces detached from France.

ART. LXXII. His Majesty the King of the Netherlands, in uniting under his Sovereignty the Countries designated in Articles LXVI and LXVIII, enters into all the rights, and takes upon himself all the charges and all the stipulated engagements, relative to the Provinces and Districts detached from France by the Treaty of Peace concluded at Paris the 30th May, 1814.

Basis of the Union of the Belgic Provinces.

ART. LXXIII. His Majesty the King of the Netherlands, having recognised and sanctioned, under date of the 21st July, 1814, as the Basis of the Union of the Belgic Provinces with the United Provinces, the 8 Articles contained in the document annexed to the present Treaty, the said Articles shall have the same force and validity as if they were inserted, word for word, in the present Instrument.

Defining Boundaries

As often in international affairs, negotiations started soon after they had concluded. In January 1816, Maximiliaan de Man for the Netherlands and Karl von Bernuth on behalf of Prussia set off to fix the final boundary between the two countries on the basis of the Final Act. However, they soon (according to Dröge, on or around 11 February 1816)[44] discovered that Articles 25 and 66 of the Final Act did not fit together. On 31 May 1816, after 60 meetings, de Man and von Bernuth finally gave up.[45] There was no either-or for Moresnet – and that was the provisional 'solution'.

The Boundary Treaty of 26 June 1816 signed in Aachen between Prussia and the Netherlands (*Traité de limites entre les Pays-Bas et la Prusse, et arrangement provisoire, conclu et signé à Aix-la-Chapelle, le 26 juin 1816*) provided:

ART. 17. – From the point of intersection mentioned in Article 15 to the contact point of the three Departments, the line of demarcation will remain undetermined, as the two Commissions have not been able to agree on the manner in which the small part of the Canton of Aubel, which, pursuant to the treaty of 31 May and other acts of the Congress of Vienna, is to belong to the Kingdom of Prussia, would be spearated. This difficulty

44 Dröge, pp. 38 *et seq*.
45 Dröge, p. 41.

> will be subject to the decision of the respective Governments, which will take such subsequent measures as they may deem appropriate in order to resolve it.
>
> Pending the decision, the provisional border will be formed by the commune of Moresnet, so that the part of this commune located to the left of a straight line drawn from the contact point of the three Cantons to the point of contact of three Departments will in all cases belong to the Kingdom of the Netherlands; that the part situated to the right of a line drawn from the limits of the canton of Eupen, directly from south to north, to the same point of contact of the three Departments, will also belong in all cases to the Kingdom of Prussia; and that, finally, the part of the same municipality situated between these two lines, being the only one which can reasonably be contested, will be submitted to a common administration and can not be occupied by the military of either of the two Powers; all without prejudice to what has been established above with respect to the part of Moresnet between the road and the town of Eupen, which under Article 14 above has already been assigned to the Kingdom of Prussia.

The agreement was for the two governments to find an agreement, pending which a provisional status quo was adopted. As it will be seen, no such agreement was ever found (despite a site visit on 4 May 1817).[46] Moresnet remained a conundrum wedged between Prussia, the Netherlands and, later, Belgium. Eventually, another big peace conference would decide the fate of Moresnet in 1919.

Legal 'System' of Moresnet

Kelmis, the 'capital' of the new territory is a divided city. Except that – unique for the 19th century – there is no visible boundary. The houses on the northern side of the main street are part of Neutral-Moresnet, the sidewalk and houses on the southern side are Prussian.[47]

In 1817, Prussia and the Netherlands asked the mayor of Prussian Moresnet to serve also as a mayor for Neutral-Moresnet and Kelmis.[48] Given that Arnold Timothée Albert François Joseph de Lasaulx had already been the mayor while the territory was French, this helped to keep the administrative chaos caused by the division somewhat limited.[49] Legally, it did not make things much easier: how would one determine nationality of a family whose ancestral home is part in Prussia and part in Neutral-Moresnet? In which army would a young man have to serve? To whom were taxes due? What about marriage licenses?[50]

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46 Dröge, pp. 43-44.
47 Dröge, p. 47.
48 Dröge, p. 48. The village Moresnet on the Dutch side of the border had its own mayor. *Id*.
49 Dröge, pp. 47-48.
50 Dröge, pp. 48 *et seq*.

In 1817, Prussia and the Netherlands appointed two commissioners, Wilhelm Hardt, a *Geheimer Bergrat* (a civil servant in the administration of mining), for Prussia and Werner Jacob, a lawyer and city counselor of Liège, for the Netherlands.[51] The former was replaced by Johann Martin Daniel Mayer in 1819.[52] Jacob served until 1823 and was succeeded by Joseph Brandès, a school inspector and city counselor of Liège.[53]

Small things (like building permits) can be dealt with by the mayor, anything more complex is referred to the two commissioners, in French – to the Dutch and in German – to the German commissioner. However, anything that could even remotely cause diplomatic shenanigans is referred to the two governments.[54]

Which leaves the not totally unimportant question of the applicable law. One proposed solution was to have two legal systems, depending on the nationality of the person.[55] While such systems have existed throughout history (and continue to exist today[56]), they bring with them an innate inequality for the people. Indeed, it was for that reason, that the Dutch minister Cornelis van Maanen opposed the idea.[57]

In 1821, Prussia proposed to 'freeze' the legal system as of the time of the French rule, *i.e.* to apply the *Code Napoléon* as of that time.[58] In early 1822, the Netherlands accepted the proposal. While the *Code Napoléon* was in some respects outdated (*e.g.* providing for corporal punishment), it was a seemingly 'neutral' solution and had the advantage of bringing with it a body of case law and legal scholarship.[59] Moreover, it meant that the young men of Neutral-Moresnet would be exempt from military service.[60]

The two States also agreed that the French franc would remain the currency of Neutral-Moresnet, but the inhabitants would be allowed to use Prussian, Dutch, French or even Austrian money for payments.[61]

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51 Dröge, p. 53.
52 Dröge, p. 262.
53 Dröge, p. 262.
54 Dröge, pp. 55-56.
55 Dröge, p. 57.
56 *See e.g.*, Article 8(2) of the International Labour Organization Convention 169 concerning Indigenous and Tribal People: "*These peoples [indigenous and tribal as defined in Article 1(1)] shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights*."
57 Dröge, p. 57.
58 Dröge, p. 58.
59 *See* Dröge, p. 58.
60 Dröge, p. 59.
61 Dröge, p. 60.

In terms of taxes, the two States limited taxation to real estate, staff, doors, windows and *patentes* (licensing professional activity).[62] No taxes on food, alcohol or raw materials would be due (a great relief for the poorer people).[63] *De facto*, Neutral-Moresnet became a tax paradise for the less affluent.[64] Indeed, poorer people from outside started buying their bread in Neutral-Moresnet because it was 25% cheaper than in their home villages.[65] Some bakers apparently even started a black market for bread, baking it in Neutral-Moresnet and selling it on country lanes outside the neutral area.[66]

An even more advanced trick to avoid salt tax used a stretch of two kilometres where the trade route between Aachen and Liège went over the Neutral-Moresnet territory.[67] Salt is delivered (from Spain or Portugal) to Antwerp, the importer pays the import duty and transports it towards Aachen – ostensibly – for export to Prussia. At the border with Neutral-Moresnet, the import tax is reimbursed.[68] However, instead of crossing Neutral-Moresnet into Prussia, the transport is diverted over the back roads through the forest back to the Netherlands. There, the 'laundered' salt is sold. There were just not enough customs officers to patrol the forest effectively. Indeed, the felling of trees that was initially intended to make it more difficult for the smugglers had the opposite effect.[69] Because the border was now clearly marked, the smugglers knew exactly where to run to in order to escape the jurisdiction of the customs officers. A similar trick worked for the Prussian smugglers. They would stop their salt transports on the neutral road, unload and hide the salt in the houses on the side of the road – which were already in Prussia.[70] After bread and salt, came butter, cheese, cattle and alcohol.[71]

This not-quite-legal free trade led to modest prosperity and more and more people migrating to Neutral-Moresnet. In the first ten years of neutrality, the number of inhabitants doubled.[72] Young men found the idea to move there shortly before their 21st birthday even more attractive – as a way to avoid military service.[73]

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62 Dröge, p. 60.
63 Dröge, p. 60.
64 Dröge, pp. 60-61.
65 Dröge, p. 61.
66 Dröge, p. 61.
67 Dröge, p. 62.
68 Dröge, p. 62.
69 Dröge, p. 63.
70 Dröge, pp. 63-64.
71 Dröge, p. 64.
72 Dröge, p. 65.
73 Dröge, p. 65.

While civil servants may have had an issue with this irregular place, it was a creation of their sovereigns, hence, way above their collective pay grades. Moreover, there was the issue of the zinc mine. While it existed, the two States were unlikely to agree on a solution.[74]

The Disputes

The zinc mine of the Vieille Montagne had been the subject of at least three legal disputes. Initially, Prussia attempted to invalidate the concession contract of 1806 between Dony and Napoléon.[75] Then, Prussia tried to refuse building permits for new smelters.[76] However, in each case, the concessionaries won in the courts.[77]

The third dispute concerned the concession payments. In 1823, just as Mosselmann received a gold medal for introducing a new branch of industry in France, Prussia and the Netherlands sued Moselmann and Dony's bankruptcy trustees for more than 200,000 francs. Chaulet was later joined to the proceedings for his share in the operation.

The root of the disputes went back to 1810.[78] In that year, France abolished concession payments and replaced it by a system of a "*redevance fixe*" and a "*redevance proportionelle*" (except that allegedly those *redevances* were never enforced).[79] As a consequence, Dony stopped the concession payments to the French State.[80] The Government took it to court in Liège.

Ultimately, the judgement of 22 October 1813 ordered Dony to make the concession payments on the ground that the old fees were only abolished when the new fees established by the law of 21 April 1810 had taken effect in 1811:[81]

> Whereas regarding the second question, it is common ground that the defendant through his agreements with the government undertook to pay an annual fee of 40,500 francs; the decree of 24 March 1806 sealed that contract; *the law of 21 April 1810 abolished the old fees only upon the establishment of the new ones*; these terms are clear and precise and refer only to the time when the new royalties will be established*; this is the time when the old ones must cease*.

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74 Dröge, p. 67 referring to a letter of 1826/1827 in the Dutch archives.
75 Dröge, p. 70.
76 Dröge, p. 70.
77 Dröge, p. 70.
78 Law of 21 April 1810 on mines, miners and quarries (*Loi du 21 avril 1810 concernant les mines, les minières et les carrières*).
79 Dröge, p. 78.
80 Dröge, p. 78.
81 Decision of the *Tribunal de première instance séant à Liège*, 22 October 1813.

> Considering that the government limits its request to what is due from 1 January 1810 to 1 January 1811, it is, therefore, founded in law;
>
> The court acknowledges the reservation made by the government on the question of ownership and, without regard to the application for stay or the objection to the lack of jurisdiction, orders that the request in question shall be carried out in accordance with its form and content, orders the defendant to pay the costs and disbursements.

Dony's appeal was quashed the following year.[82]

The dispute gained traction again after almost a decade, after Liège had changed into Dutch hands. In 1825, Prussia and the Netherlands argued that Article 41 of the law of 21 April 1810 still obliges the parties to pay the mining fees.

On 28 July 1826, the court of the first instance ordered Mosselmann and Chaulet to pay for their respective shares in the operation:

> [To the government], 1° the sum of 267,907 guilders 50 cents, amount, unless mistaken, of 14 years that expired on 31 December 1811, including 1824, for the principal rate of lease,
>
> 2° The sum of 15,011 guilders 64 cents for the same period, and except for a more fair valuation, for fixed and proportional fees established as of 1 January 1811 by Arts. 33, 34, 35 and 36 of the law of 21 April 1810, which have replaced the mining fees stipulated by the terms of the contract to the benefit of the State, except for the diminished fees charged to the [Mosselmann], which, as it justified, have been paid in reduction of the said sum; it is ordered to pay legitimate interest on the said two sums as from the date of the formal notice and to provide to the [to the government] a good and valid security in the amount of 37,800 guilders in real estate in accordance with Art. 24 of the technical specifications.[83]
>
> […] [R]egarding the guarantee claim raised by [Mosselmann] against [Chaulet], declares that the latter is prescribed half of the arrears of the said lease and fees due from 1 June 1813 to 1 June 1814. Consequently, orders [Chaulet] to guarantee [Mosselmann] the ruling against it above, but only half of it for the arrears accrued from 1 June 1814 to 17 September 1819, i.e. when it ceased the enjoyment of [Chaulet], etc.[84]

In 1827, the case is on appeal before the second chamber of the *Cour de Liège*.[85] According to the lawyers, the case could take a decade before all appeals are exhausted.[86] However, already on 6 March 1828, the appellate court rejected Mosselmann's and Chaulet's arguments regarding the application of Art. 40 of the law and *res judicata* exception.

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82 Decision of the *Cour supérieure de justice de Liège*, 8 December 1814.
83 Decision of the *Cour de Liège,* 28 July 1826.
84 Decision of the *Cour de Liège*, 2e Ch., 6 March 1828.
85 Dröge, p. 79.
86 Dröge, p. 79.

The appellate court stated that:

> Whereas things were in this state when the law of 1810 was adopted, which contains provisions applicable to all kinds of active mining operations;
>
> Whereas the conditions of the award made to Dony could not subsist unless they derogated from by the provisions of that law; as a result, Dony became the *propriétaire incommutable* (owner without the position to transfer the ownership) of the conceded mine under Art. 51, and the annual fee proportionate to the gross production of the operation and due to the State, set in the Art. 22 of the specifications, was abolished by Art. 40 of the law and replaced by the fee proportionate to the net proceeds established by Art. 35 of the same law;
>
> Whereas in respect of the fee of 19,136 guilders 25 cents, the law as a whole shows that the intention of the legislator was 1° to freely grant simple authorizations to operate the mines; 2° to favour them by imposing on the mine only a small tax intended to cover the expense of protective supervision and to give encouragement to this important branch of the industry; 3° to preserve for the past and secure for the future the rights of the inventors of the mine, and of those who bore the expenses and ran the risks of a first operation; the rights of the active operators, and even of those of the concessionaires who abandon the operation, by obligating the successors to reimburse the value of existing and useful work; 4° finally, Art. 41's literal purpose is to acknowledge 'the legal claims to fees' and any performances of the assignment of 'capital or other similar assets', a provision which necessarily includes the fee of 40,500 francs which is at issue here. Indeed it would never be applicable, if it were not applicable to a legal possession equivalent to a property right, including real estate or holdings of buildings resulting from the works of a first operation continued for an immemorial time in a large, always active operation until the concession of 24 March 1806, which brings back together all the advantages that the law wanted to preserve for everyone who, at the time of its publication, had legitimate rights to an active operation;
>
> Whereas, with regard to the order for arrears, before the writ of 31 December 1821, no legal proceedings were commenced for the payment of post-1810 payments, and a petition submitted in 1811 to the chief mining engineer and the head of government by the appellant could not interfere with the order under to the applicable laws;
>
> Whereas the titles of the concession do not determine the time of the expiry, and the inscription taken in the name of the State on the assets given in mortgage by Dony, fixed it on the 30th of December, and the State cannot come back on its own deed; thus the fee of 1821 had expired on the 31st of December, the day of the notice of the writ; therefore, it is included in the past five years, and, consequently, all arrears prior to 1817 are ordered.[87]

In light of the above, the court decided that:

> For these reasons and adopting those of the judges of the first instance with respect to the appellant's *res judicata* objection, without regard to the ill-founded *res judicata* exception of the appellants, rejects the appeal applications and everything subject to the appeal in that the judges of the first instance issued only the order regarding the arrears from 1813 to 1814; modifying in this regard, declares that the fees due from 1

[87] Decision of the *Cour de Liège*, 2e Ch., 6 March 1828.

> June 1811 up to and including 1816, are ordered; ruling on the merits, orders appellant Chaulet to pay half of the annual fee of 19,136 guilders 25 cents, for the years 1817 and 1818 including 7 September 1819, with legal interest since the formal notice; declares that there is no remedy against him on this account by Mosselman; terminates the court proceedings between them; orders the appellant Mosselman to pay the other half of those fees and those of the later years up to and including 30 December 1821, with the legal interest, in addition, the fees for the years 1822 and up to and including 30 December 1827, with the legal interest since the formal notice, to pay the same fees in the future, as long as he remains in possession of the operation, and to give good and sufficient security of 37,800 guilders in real estate, in accordance with Art. 24 of the tender specifications made to Dony; orders, etc.[88]

Here, the fates of ex-business partners diverged. Chaulet did not challenge this judgement and died soon thereafter. Mosselmann appeals the decision to the *Cour de cassation*.[89]

While the case is pending, Francoise-Zoé ('Fanny') Mosselmann (*née* Le Hon) complains to the Dutch Minister of the Interior about this 'Prussian provocation'.[90] (Indeed, according to the secret documents from the archives in Liège, the Netherlands never wanted to sue Vieille Montagne, they had only agreed to participate in the case to appease Prussia.)[91] The Mosselmann family is also convinced that – should they win this dispute – Prussia would come up with a new lawsuit in its endeavours to destroy Vieille Montagne and protect their own mines in Katowice.[92]

The Mosselmanns therefore are looking to divest the mine by selling it to the Dutch king Willem I.[93] The king has been vocal about the advantages of zinc as a material. The Dutch newspaper De Star reports in November 1823: "*As to the use of zinc for roofing, the King of the Netherlands has decreed that its use is to be preferred over all other metals for all public buildings, so that the new Opera in Brussels will be roofed with this metalloid*."[94] The negotiations between the Mosselmanns (by Fanny and her husband Charles Le Hon) and the Crown (through the foreign, interior and finance ministries) are conducted in utmost secrecy.[95] The experts in the ministries conduct a detailed valuation of the mine using scenario planning.[96]

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88 Decision of the *Cour de Liège*, 2e Ch., 6 March 1828.
89 *Précis pour Messieurs les Commissaires des Mines de Leurs Majestés les Rois de Prusse et des Belges. contre les Représentans et Héritiers Chaulet*, p. 6.
90 Dröge, p. 80.
91 Dröge, p. 82
92 Dröge, p. 80.
93 Dröge, p. 81.
94 Dröge, p. 81.
95 Dröge, pp. 82-83.
96 Dröge, p. 83.

On 27 June 1827, Fanny Mosselmann has a meeting with Johann Mayer, the Prussian commissioner for Neutral-Moresnet, to ask for stay of the court proceedings of six weeks.[97] She tells him that the Netherlands already accepted a stay.[98]

On 24 June 1829, the *Cour de Cassation* in Liège rejects Mosselmann's claim that there was a violation of Article 40 and misapplication of Article 41 of the law of 21 April 1813 and ultimately holds that

> Considering that it results from said deed of concession, from the clauses and stipulations which the procurement contains, as well as the respective qualities of the contracting parties; the obligation imposed on the plaintiff to pay annually an amount of 40,500 francs can only be considered as representing the price of the enjoyment granted to the successful bidder by the government in its capacity as owner of the operation known as la Vieille-Montagne; this fee thus stipulated is not of the same nature as those mentioned in Art. 40 above; consequently, it has not been abolished, but on the contrary, it has been maintained by the provision of Art. 41 *et seq*.; it follows that in this case, there has been no violation of Art. 40, or false application of Art. 41 of the law of 1810.
>
> On the cross-appeal: – Considering, as regards the question of ownership, that in principle, all authority and all effects of a judgment or a decision are contained in its operative part, and that reasoning can only be used to explain an obscure decision or to resolve doubt; that in this case, there is no doubt to be resolved, nor an obscure decision to be explained; it is therefore necessary to limit oneself only to the operative part of the judgment under appeal; that the operative part of this judgment contains no provision which would have transferred or awarded to the plaintiff the ownership of the operation of la Vieille-Montagne, or which would prove that the benefits of Art. 51 of the law of 21 April 1810 would have been applied to him; that thus this hypothetical ground of cassation is not admissible;
>
> For these reasons, reject, etc.[99]

These judicial decisions are enforced in Belgium through a settlement with the Mosselmanns, who are ready to sign the purchase agreement with the Dutch in summer 1830.[100]

The Valour and Culture of the Belgians

On 25 August 1830, during an opera performance in Brussels, a revolution starts with cries from the audience "*aux armes*". Soon, Loewen, Huy and Liège follow.[101]

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97 Dröge, p. 71.
98 Dröge, p. 71.
99 Decision of the *Cour de Liège, Ch. de Cass*., 24 June 1829.
100 *Précis pour Messieurs les Commissaires des Mines de Leurs Majestés les Rois de Prusse et des Belges. contre les Représentans et Héritiers Chaulet*, p. 6; Dröge, p. 85.
101 Dröge, p. 87.

On 4 October 1830, a provisional government declares the independence of the southern Netherlands.[102] A new State is born, Belgium.

On 3 November 1830, a National Congress is elected and on 7 February 1831, a constitution is adopted.[103]

On the international plane, the Great Powers of Europe (Great Britain, France, Russia, Prussia and Austria) held a congress on Belgium (the London Conference of 1830) and "ordered" an armistice on 4 November 1830.[104] Eventually, the five powers agreed not to intervene militarily to restore Willem I, but to accept the independent Kingdom of Belgium. On 20 January 1831, a protocol was signed that explained that Belgium would be formed from the southern provinces that were not part of the United Provinces of the Netherlands.[105]

The Powers finally settled on Leopold of Saxe-Coburg Saalfeld, the widower of the deceased Princess of Wales Charlotte.[106] Reluctantly, he accepted to become the king of Belgium on 21 July 1831.[107]

The Netherlands did not accept this imposition. Between 2 and 12 August 1831, they invaded Belgium but withdrew when French troops intervened.[108] The war ended in November 1832 when the French freed Antwerp, the last Dutch stronghold in Belgium.[109]

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102 Dröge, p. 87.

103 *See Grondwet van Belgien aengenomen door den Volksraed den 7 February 1831* (https://books.google.be/books?id=hcJbAAAAQAAJ&printsec=frontcover&hl=nl#v=onepage&q&f=false).

104 Protocol No. 1 of the Conference held at the Foreign Office of 4 November 1830 (*No. 1 Protocole de la Conférence tenue au Foreign Office, le 4 Novembre, 1830*) in Protocols of Conferences in London, Relative to the Affairs of Belgium, Vol. I, J. Harrison [Printers to the Foreign Office], 1832, p. 8. (https://books.google.de/books?id=4KhCAAAAIAAJ&pg=PA3&dq=London+Conference+armistice+on+4+November+1830+protocol&hl=de&sa=X&ved=0ahUKEwj-7OP4g87jAhVBDewKHUpZCC8Q6AEIKTAA#v=onepage&q=London%20Conference%20armistice%20on%204%20November%201830%20protocol&f=false).

105 Protocol No. 11 of the Conference held at the Foreign Office of 20 January 1831 (*No. 11 Protocole de la Conférence tenue au Foreign Office, le 20 Janvier, 1831*) in Protocols of Conferences in London, Relative to the Affairs of Belgium, Vol. I, J. Harrison [Printers to the Foreign Office], 1832, p. 39: "*Art. I. The borders of Holland encompass all the Territories, Areas, Cities and Places which belonged to the Republic of the United Provinces of the Netherlands, dating from 1790. II. Belgium will be formed on the remainder of the Territories that have been named The Kingdom of the Netherlands under the Treaties of 1815, except the Grand Duchy of Luxembourg, holding a different title by the Princes of the House of Nassau, which formed and continues to form a part of the German Confederation*." (https://books.google.de/books?id=4KhCAAAAIAAJ&pg=RA1-PA3&dq=London+Conference+30+January+1831+protocol&hl=de&sa=X&ved=0ahUKEwj38PjXhc7jAhXIsKQKHREsBL8Q6AEIKDAA#v=onepage&q=nord&f=false)

106 Henri Pirenne, *Histoire de Belgique*, Vol. VII: *De la Révolution de 1830 à la Guerre de 1914*, Brussels, 1932, p. 26. (https://archive.org/details/histoiredebelgiq07pireuoft/page/26).

107 Pirenne, p. 30.

108 Pirenne, pp. 32 *et seq*.

109 Pirenne, pp. 39-41.

However, it was not until 1839 that the Netherlands recognised Belgium in the Treaties of London of 19 April 1839.[110] Under the Treaties, Belgium would have a right of transit to the German Ruhr and would remain neutral.[111]

Meanwhile in France

Obtaining a judgment does not necessarily mean getting paid. Especially not, when the debtor has his or her assets outside the jurisdiction. As was in case with the heirs of Chaulet (Chaulet having passed away after 1828). Chaulet had left the operation of la Vieille-Montagne in September 1819, which meant that the Prussian and Belgian *Commissaires des Mines* had to turn to the family's assets in France.

Hence, in 1837, the governments of Belgium and Prussia turned to the local court – *Tribunal de la Seine* – to declare the judgements of the *Cour de Liége* of 28 July 1826, decision of the *Cour Superiéure* of 6 March 1828 and the decision of the *Cour de Cassation* of 24 June 1829 enforceable against Chaulet.

In its decision of 21 February 1840, the *Tribunal de la Seine* denied enforcement.[112]

The Prussian and Belgian *Commissaires des Mines* appealed this decision.[113]

The fate of the Prussian and Belgian appeal is unclear. The *délibérations du tribunal civil de la Seine* and *arrêts de la Cour d'appel de Paris* cannot be accessed due to the health risks (*risque fongique*) in the *Archives de Paris*. For the purposes of the Moot, the participants will assume that the appeal was rejected by the court of appeal.

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110 Treaty between Belgium and the Netherlands regarding the separation of their respective territories, signed in London on 19 April 1839 (*Traité entre la Belgique et la Hollande, relatif à la séparation de leurs territoires respectifs, signé à Londres, le 19 avril 1839*) (Annex to the Treaty of London signed on the 19 April 1839, between Great Britain, Austria, France, Prussia, and Russia, on the one part, and the Netherlands), Art. 1. (http://mjp.univ-perp.fr/constit/be1839.htm; ENG: https://archive.org/details/englandsguarante00sang/page/126)

111 Treaty between Belgium and the Netherlands regarding the separation of their respective territories, signed in London on 19 April 1839, Art. 7: "*Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and* ***perpetually neutral State****. It shall be bound to observe such neutrality towards all other States*" (emphasis added).
Article 11 provides for the right of free transit: "*The commercial communications through the town of Maestricht, and through Sittardt, shall remain entirely free, and shall not be impeded under any pretext whatsoever. The use of the roads which, passing through these towns lead to the frontiers of Germany, shall be subject only to the payment of moderate turnpike tolls, for the repair of the said roads, so that the transit commerce may not experience any obstacle thereby, and that by means of the tolls abovementioned these roads may be kept in good repair, and fit to afford facilities to that commerce*."

112 *Précis pour Messieurs les Commissaires des Mines de Leurs Majestés les Rois de Prusse et des Belges. contre les Représentans et Héritiers Chaulet*, pp. 5 *et seq*.

113 *Précis pour Messieurs les Commissaires des Mines de Leurs Majestés les Rois de Prusse et des Belges. contre les Représentans et Héritiers Chaulet*.

Privileged and Confidential[114]

Fanny Mosselmann's reputation is that of a woman of many talents: one lesser known being a keen interest in new developments in international law. When a young (and very charming) professor tells her about the Vienna Investment Treaty, she is intrigued and disappointed. Why did it only apply to foreigners?

The young professor, unwilling to be the source of her disappointment, explains that there are exceptions, in case of, say, investment structuring, internationalised contracts and that peculiar provision in Article 8(4) VIT.

Fanny has her agents find the heirs of Hector Chaulet.[115] She explains the situation.

The Arbitration

On behalf of his clients, Georges and Robert Chaulet as well as of Vieille Montagne S.A. as legal successor of Dony & Cie.,[116] Maître Jules Favre submits a Notice of Dispute to the Governments of Prussia, Belgium and the Netherlands.

When no result is reached in the consultations (other than an agreement regarding the formation of the tribunal and adoption of the UNCITRAL Rules on Transparency), Maître Favre submits a Notice of Arbitration under the PCA Arbitration Rules and Article 8(1) VIT stating that the Netherlands, Belgium and Prussia have breached their obligations under said Treaty. Claimants propose that the tribunal should consist of three arbitrators.

Respondents insist on separate proceedings or, at the very least, on the right for each State to appoint its own arbitrator.

When no agreement is reached, Maître Favre writes to Respondents that as a default, three arbitrators shall be appointed and appoints Mr. Johann Kaspar Bluntschli as arbitrator for Claimants.

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114 The facts relayed in the chapter "Privileged and Confidential" may not be relied upon by participants of the Moot acting for Respondents. Participants representing Claimants will use their professional discretion whether or not to rely on these facts.

115 The "heirs" are referred to in the decision of the *Tribunal de la Seine* of 21 February 1840 solely by category. For ease of reference, participants will refer to them as La Veuve Chaulet, Georges Chaulet and Robert Chaulet. Participants will assume that Georges and Robert Chaulet received each half of the inheritance after the "*execution de la succession*".

116 Participants of the Moot will assume that Dony & Cie. merged into the newly created S.A. when the S.A. was created. Participants of the Moot will assume further that as of the time of the transfer of Chaulet's interest to Mosselmann in 1819, Chaulet owned 50% of Dony & Cie.

When the Governments make no appointment within the time limit prescribed in Article 9(2) of the PCA Rules, Claimants ask the Secretary-General of the PCA to appoint for Respondents. The Secretary-General appoints Mr. Ignatuis de Kogala Iwanowski for the Respondents. It states that it deems it not necessary to revoke Claimants' joint appointment of Mr. Bluntschli.

The two co-arbitrators agree on Mr. Salmon P. Chase as President of the Tribunal. The President appoints John Rock as Tribunal's Secretary. When Iwanowski raises concerns over his ability to travel to Europe, Salmon replies that he would go forward despite obstacles and that courage breeds creativity.

The Governments choose to represent themselves in the arbitration. Each separately and individually objects to the jurisdiction of any arbitral tribunal and to the admissibility of any claims for the following reasons:

1. No territorial jurisdiction: There is no investment in either Belgium or the Netherlands or Prussia. The mine is in Moresnet which enjoys a special status.

2. Aachen Treaty is *lex specialis*: Having regard to the special status, Article 38 of the Aachen Boundary Treaty between the Netherlands and Prussia and Provisional Agreement concluded in Aachen on 28 June 1816 provides for a decision of the Commissioners on territorial disputes. Moreover, this Treaty provides for particular rights of Claimant under Article 31 of the Aachen Boundary Treaty. Hence, the Aachen Boundary Treaty is *lex specialis*.

3. No jurisdiction *ratione personae*/no victim: Hector Chaulet ceased to be an investor (if he ever was one!) in Dony & Cie. in 1819, well before the judgments of the Liège courts, *i.e*. the Measures in this case. Moreover, the Chaulets are not even victims of any Measure. The French courts stopped the enforcement of the Liège judgments and the Chaulets have no assets outside of France.[117]

4. No jurisdiction *ratione personae* with regard to of Vieille Montagne S.A. as legal successor of Dony & Cie.: Article 8(4) VIT requires control. First, a 50% ownership interest alone cannot establish control. Second, as of the time of the crystallization of the dispute, which can be at the earliest in 1826, Chaulet was no longer involved at all in the Dony & Cie. Indeed, he never was a shareholder in Vieille Montagne S.A.

5. Effect of Article 8(4) VIT: Claimants are claiming 100% of the alleged damage, i.e. also for the beneficial shares of Mr. Mosselmann in Vieille Montagne S.A. Even assuming that

[117] Participants of the Moot will assume that that is the case.

Vielle Montagne S.A. could be a claimant under Article 8(4) VIT and Article 1(2bis) of the PCA Rules, Article 8(4) VIT cannot have the effect of making a domestic company an investor and a holder of rights. It is a purely procedural provision. It is in the procedural part of the Treaty. The plain meaning of the words is clear. It says nowhere that the domestic company shall be included under the definition of investor (which would have been perfectly possible to do if the States had wanted it). Moreover, it would create a contradiction with the results if the same case was heard under the SCC Rules. Furthermore, the claims arising against Mosselmann's share of Dony & Cie./Vielle Montagne S.A. have already been enforced in Belgium. The French courts (in a violation of the rights of Belgium and Prussia) stopped enforcement against the Chaulets. Thus, actually 100% of any damages awarded would go to Vielle Montagne S.A., a Belgian company for an alleged Measure by Belgium/the Netherlands.

6. No joinder: The Tribunal should not undertake a joint arbitration against all three Respondents. Separate arbitrations against each Respondent are required as the Respondents' interests are not parallel and each Respondent has a right to appoint its own arbitrator. The conditions for a joinder are not present.

7. Re-composition of Tribunal: If the arbitration continues against all Respondents jointly, each Respondent must have the possibility to appoint a different arbitrator because each party has the fundamental right to appoint its own arbitrator. The PCA Rules indicate clearly that there can be tribunals with more than three arbitrators. Therefore, it is in the nature of things that seven can be appointed. To wit, even if three arbitrations were held in parallel before panels of three arbitrators each (and assuming that Claimants appoint jointly one arbitrator for all tree cases), and assuming further that the PCA appoints the same presiding arbitrator, there would be five arbitrators in the room. The arbitrators could then deliberate jointly.

8. No Case to Answer – Belgium/the Netherlands: Belgium cannot be liable because it has not come into existence until 1830/31. The Netherlands cannot be liable because the organ that has taken the alleged Measure ceased to be Dutch in 1830/31.

9. No Case to Answer – Prussia: Prussia cannot be liable because it has not participated in any alleged Measure and was only part of the common Administration. Particularly, the ILC Articles do not foresee that a State is liable for another State's conduct, namely that State's courts. Pursuing rights as a party in court proceedings in a foreign court does not make the other State's court's decision a measure of Prussia. Prussia acted as a normal litigant, as did the Claimants.

Claimant's Reply

1. Territorial jurisdiction: Moresnet is jointly held by Belgium/the Netherlands and Prussia. Thus, an investment in Moresnet must be protected by all of them jointly. This is a consequence of the special legal status. There are other cases of neutral territories, or in relation to territories changing hands, being occupied by other states. It would be contrary to international law to remove protection for the most vulnerable investors in territories with a doubtful status.

2. Aachen Treaty is not *lex specialis*: To refer Claimants to Article 38 of the Aachen Boundary Treaty concluded at Aachen on 28 June 1816 is ludicrous. It would be requesting the fox to guard the chickens. This is not what Article 38 had in mind. Neither had Article 31 in mind to deprive Claimant of any right. Moreover, the Vienna Investment Treaty is a separate treaty which may not be deprived of its application.

3. Jurisdiction *ratione personae*/victim: The concept of victim belongs to a different treaty. It has no application in an investment arbitration. The fact that the French courts stopped the enforcement of the Liège judgments does not deprive them of their force. The Chaulets are effectively barred from acquiring assets outside France for fear of execution, even if court judgments are not as enforceable internationally as arbitral awards.

4. Jurisdiction *ratione personae* with regard to of Vieille Montagne S.A. as legal successor of Dony & Cie.: A 50% share in Dony & Cie. is sufficient to establish control. Arbitral tribunals have assumed control in circumstances where the controlling foreign shareholder held much smaller shares. The roots of the dispute date back to 1813 and the dispute crystallized at the latest in 1816 with the inclusion of Article 31 in the Aachen Boundary Treaty. It would be contrary to the plain meaning and spirit of Vienna Investment Treaty to exclude claimants that ceased to be shareholders in the investment vehicle. This would only encourage states to expropriate the investment vehicle to defeat a claim. Vieille Montagne S.A. is the legal successor of Dony & Cie. Therefore, it is irrelevant if Hector Chaulet ever became a shareholder of the S.A.

5. Effect of Article 8(4) VIT: Claimants are claiming for 100% of the alleged damage of Dony & Cie., now Vieille Montagne S.A. Article 8(4) VIT states that

> An investor other than a physical person which has the nationality of a Contracting Party to the dispute on the date of the submission in writing referred to in paragraph (3) of this article and which, before a dispute between it and that Contracting Party arises, is controlled by investors of another Contracting Party, shall for the purposes of article 25(2)(b) of the I.C.S.I.D. Convention be treated as a 'national of another

> Contracting State' and for the purposes of article 1 (2bis) P.C.A. Rules be treated as a "party of another State".

It does not say that it does not extend to the substantial rights under the Aachen Boundary Treaty. Indeed, Respondent's interpretation of the provision would deprive it of all content. The High Contracting Parties to the Vienna Investment Treaty drafted it with great care. That there was a slight issue with regards to the boundaries of small portions of land, does not detract from that. Indeed, it would be *mala fide* if the States now invoked imprecise treaty drafting.

6. Joinder: The Tribunal should conduct a joint arbitration against all Respondents because the PCA Arbitration Rules provide for multi-party arbitration and Claimant invokes the same Measure against all Respondents.

7. Composition of Tribunal: There is no basis in the applicable law to have three party-appointed arbitrators for the Respondents. Particularly, Respondents have not alleged that their arbitrator lacks the necessary impartiality and independence. Hence, he cannot be unsuitable for representing the appointment of all Respondents. Moreover, Respondents have no basis to disagree on the arbitrator appointment since they are all liable for the same Measure. The procedure proposed by Respondents does not conform with the PCA Rules' method for the appointment of five-person tribunals either. Finally, if all three Respondents have the right to appoint one arbitrator each (*quod non*), Claimant must insist on its right to appoint three arbitrators on its own, *i.e.* a Tribunal consisting of seven arbitrators. This would be mandatory so as to re-establish the equality of the Parties' influence on the Tribunal's composition. However, the PCA Rules only foresee tribunal with a maximum number of five arbitrators. It was hard enough to find even three good arbitrators, it would be almost impossible to find seven! Parallel arbitrations and joint deliberations would be in absolute violation of any principles of fairness.

8. No Case to Answer – Belgium/the Netherlands: Belgium is liable because the organ, the Liège court that has taken the alleged Measure is now Belgian. The Netherlands are liable because the relevant organ was Dutch when it allegedly took the Measure. The two States cannot have it both ways so that no one is liable. Moreover, Belgium even continues to pursue the claims actively in the French courts.

9. No Case to Answer – Prussia: Prussia is liable because it participated in the creation of the common Administartion and, in addition, has acknowledged and adopted the conduct as its own under Article 11 ILC Articles. There is nothing in the ILC Articles that would suggest that

the fact that a State is a party before a foreign court alleviates it of its international responsibility. A State is bound by international law in all aspects of its dealings.

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In the week of 2 March [2020], the Tribunal commences the hearing on jurisdiction and admissibility.

The Tribunal further requests the Parties to reserve 7 March [2020] for an evidentiary hearing, should the need arise.