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‘Bringing the divided Powers of Europe nearer one another’ The Congress of Soissons, 1728-1730

Frederik Dhondt

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Direzione, Via Bosco degli Arvali 24, 00148 Roma
Contatti: direzione@nam-sigm.org ; virgilio.ilari@gmail.com

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Testiera (Shaffron) per cavallo, Brescia (?) 1560-70
Metropolitan Museum of Arts, New York. Public Domain

'Bringing the divided Powers of Europe nearer one another'[1]

The Congress of Soissons, 1728-1730

By Frederik Dhondt[2]

Abstract: this contribution reconstructs the Congress of Soissons (1728-1730), a consequence of the Parisian Preliminaries (31 May 1727), an agreement that prevented the eruption of a general war in Europe between the League of Hanover (France, Britain-Hanover, Dutch Republic) and the League of Vienna (Emperor, Spain, Brandenburg-Prussia). The 'sleeping' congress did not generate a final peace agreement. Soissons was a congress of peacekeeping (Burkhardt), and in part contributed to the European culture of peace engineering (Ghervas). Besides the central commercial claims that opposed the Maritime Powers to Spain, the delegations reflected on geopolitical questions from the East Indies to Scandinavia, the Baltic and the Mediterranean. They were solicited by multiple actors of the European Society of Princes (Bély), down to the level of private individuals, who hoped for diplomatic intercession. France's position as equidistant director of various bilateral and collective talks becomes clear through the itineraries of the delegates between Soissons, Fontainebleau, Compiègne and Versailles. The sociability of the congress is not purely curial or Parisian, but also includes life on the countryside. French archives highlight the material and logistical challenges of turning a regional hub as Soissons into an international one. The Hop Archives, which contain a synthesis of the daily reports of the Dutch delegation, and the British diplomatic archives (State Papers Foreign) are complemented by the press and the letters of George Lyttelton, who spent several months in Soissons on his *Grand Tour*. Not only this public circulation of news on the congress, but also the material culture of the print resources consulted by the diplomats allow to identify this eighteenth-century meeting place within the broader European republic of books, news and letters.

Keywords: peace, congress diplomacy, Fleury, Philip V of Spain, Emperor Charles VI, law of nations

1 Chauvelin, cited by Stephen Poyntz to the Duke of Newcastle, Paris, 14 January 1729, very private, NA, SP, 78, 190, f. 45r°.

2 Associate Professor and Director of the Research Group Contextual Research in Law (CORE), Faculty of Law and Criminology (VUB) - Voluntary Postdoctoral Collaborator at the Ghent Legal History Institute and the Gustave Rolin Jaequemyns Institute of International Law (UGent). My thanks go to Elisabetta Fiocchi Malaspina, Stefano Cattelan, Klaas Van Gelder, Hannah Ghulam Farag and Vincenzo De Meulenaere for their remarks and suggestions, as well as to Yves Deroubaix for careful proofreading. This paper was presented earlier at the 2015 World Conference for Eighteenth Century Studies in Rotterdam. I thank panellists Eric Schnakenbourg, Sylvain Lloret and Victor Simon.

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Introduction:
the legal-political conversation of diplomats as an alternative to the use of force

> '*Paix ! paix ! Braves Guerriers ! criez plus : aux Armes ! Car on court à Soissons pour finir vos allarmes, On va faire la Paix, qui commence à FLEURIr Il faut un tems calmé pour la faire meurir.*'
>
> *Der Merckwürdigsten Neuigkeiten von dem zu Soissons würcklich veranlaßten Friedens=Congress*, 17 July 1728[3]

The period following the Peace Treaties of Utrecht (1713),[4] Rastatt and Baden (1714) offers a remarkably less unstable image of European inter-polity relations, at least for Western Europe, where the Great Northern War (1700-1721) was not raging. The partition of the Spanish composite monarchy in 1713 installed a balance between the House of Bourbon and the House of Habsburg, brokered by Britain in 1711. It would be exaggerated to equal the whole reign of Louis XIV (1643-1715) with aggression and expansion. The Sun King strove to 'make the necessary conquests to push back and strengthen the boundaries of the Kingdom'.[5]

The War of the Spanish Succession[6] was fought to prevent Habsburg

3 *Merckwürdigsten Neuigkeiten von dem zu Soissons würdich veranlaßten allgemeinen Friedens=Congress. Aus glaubwürdigen Urkunden gezogen und mit nützlichen Anmerckungen aus der politischen Historie illustriert*, s.n., s.l., 1728, https://www.europeana.eu/nl/item/368/item_OK5CWQ3IMJJTFM67L36L4HVFQ6TVEZEN.

4 Lucien Bély, *Espions et ambassadeurs au temps de Louis XIV*, Fayard, Paris, 1990 ; Lucien Bély, Guillaume Hanotin & Géraud Poumarède (eds.), *La diplomatie-monde: autour de la paix d'Utrecht 1713*, Pedone, Paris, 2019 ; Heinz Duchhardt & Martin Espenhorst (ed.), *Utrecht – Rastatt – Baden 1712-1714. Ein europäisches Friedenswerk am Ende des Zeitalters Ludwigs XIV.*, Vandenhoeck & Ruprecht, Göttingen, 2013; Linda and Marsha Frey (eds.), *The treaties of the War of the Spanish Succession: an historical and critical dictionary*, Greenwood Press, Westport (Conn.), 1995; Frédéric Iéva (ed.), *I tratti di Utrecht: una pace di dimensione europea*, Viella, Torino, 2016; Alfred Soons (ed.), *The 1713 Peace of Utrecht and its Enduring Effects*, Martinus Nijhoff/Brill, Leiden/Boston, 2019, DOI 10.1163/9789004351578.

5 'Memoire particulier et secret pour servir d'instruction a M. Le Card[ina]l et aux s[ieu]rs M[arqu]is de Fenelon et C[om]te de Brancas Cereste allant au Congres de Soissons en qualité de Ministres Plenip[otentiai]res de sa Majesté aud[it] Congrès, Paris, 30 May 1728, AMAE, M&D, France, vol. 497, f. 106r°.

6 Joaquim Albareda i Salvadó, *La guerra de sucesión de España, 1700-1714*, Crítica, Barcelona, 2010; Clément Oury, *La guerre de succession d'Espagne: la fin tragique du*

encirclement of France. The partition of the Spanish monarchy had been envisaged in three treaties (1668, 1698, 1700) before the outbreak of the war.[7] Total victory for either the Bourbon or the Habsburg candidate had been impossible. During the Regency (1715-1723) and the ensuing ministry of the Duke of Bourbon (1723-1726), France carried through a peaceful policy, continued by Cardinal Fleury, Louis XV's former preceptor and principal minister.[8]

The extent to which Franco-British diplomatic cooperation was still decisive for the European security system is subject to debate, as rivalries were on the rise again from about 1727.[9] In any case, the often-cited 'Second Hundred Years War' between France and Britain from 1688 to 1815 does not match with the state of Franco-British relations from 1716 to 1727.[10] France and Britain intensely cooperated to pacify Europe, from the construction of the Quadruple Alliance (1717-1720) to the formation of an alliance against a potential Austro-Spanish Universal Monarchy (1725-1727). After having floated further apart, it is remarkable that Britain did not intervene in the War of the Polish Succession (1733-1735/1738),[11] and remained aloof from continental engagements until the War of the Austrian Succession (1740-1748).

Grand Siècle, Tallandier, Paris, 2020.

7 Auguste Mignet, *Négociations relatives à la Succession d'Espagne sous Louis XIV*, Imprimerie Royale, Paris, 1835-1842 ; Arsène Legrelle, *La Diplomatie française et la Succession d'Espagne: 1659-1725*, Pichon, Paris, 1888-1892; Luis Ribot García & José Manuel Iñurritegui Rodríguez (eds.), *Europa y los tratados de reparto de la monarquía de España, 1668-1700*, Marcial Pons, Madrid, 2016.

8 French secret instructions, *o.c.*, f. 106v°. See Peter R. Campbell, *Power and politics in Old Regime France, 1720-1745*, Routledge, London, 1996. Marc Fumaroli, *Dans ma bibliothèque. La guerre et la paix*, Les Belles Lettres/de Fallois, 2021, underlines Fleury's preference for Fénelon's *Télémaque* and suggests that Fleury had deliberately oriented Louis XV's education towards the virtues of a 'King of Peace'. Fleury's practical conduct, as shown in this paper, was considerably more complex.

9 Antoine Pecquet sr., 'Mémoire sur plusieurs articles qui paroissent tres importans, et dont on croyt que la négociation doit être soigneusement executée [sic]…', Paris, 28 May 1727, AMAE, M&D, France, vol. 497, ff. 2°-12r°. It should be noted that Antoine Pecquet sr. (1668-1728) had a particular dislike for Britain. See Jeremy Black, «Britain's Foreign Alliances in the Eighteenth Century», *Albion: A Quarterly Journal Concerned with British Studies* 20, 4 (1988), p. 574.

10 Hamish M. Scott, «The Second 'Hundred Years War', 1689-1815», *Historical Journal* 35, 2 (1992), pp. 443-469, DOI 10.1017/S0018246X00025887.

11 Jeremy Black, «Recovering Lost Years: British Foreign Policy After the War of the Polish Succession», *Diplomacy and Statecraft* 15, 3 (2004), pp. 465-487, DOI 10.1080/09592290490498848.

Researchers familiar with the extensive diplomatic correspondence and abundant published literature (newspapers, pamphlets, treaty collections) are aware of the painstaking nature of diplomatic negotiations of the various European courts. Yet, clear lines can be distinguished, such as this lucid statement in the secret instructions for the French plenipotentiaries Fleury, Fénelon[12] and Brancas-Cereste[13] for the Congress of Soissons:

> 'The unhappy experience which we had had during the last war [the War of the Spanish Succession], that France, when united to Spain, cannot find in this alliance everything necessary for its security, should be seen as an essential point. She should not be reduced to this status anymore.'[14]

Rather than the direction of this process (geared towards confrontation or reconfiguration of alliances, or as a more static game of perception and reaction), we should see the streams of correspondence in the 1720s and 1730s as a rich testimony of the constant efforts to coordinate various legal claims in the multi-layered and plural legal order of the Ancien Régime. The Congress of Soissons can rightly be counted among the 'peace keeping or peace ensuring' conferences,[15] which do not end a war or 'engineer' a new system.

However, these moments are crucial to understand the coexistence of a European 'culture of peace'[16], whereby the actors build on previous experiences to mitigate their continuous rivalry through a common set of 'notions and

12 Gabriel Jacques de Salignac Marquis de Fénelon (1688–1746), French ambassador in The Hague (1725–1728 and 1730–1743).

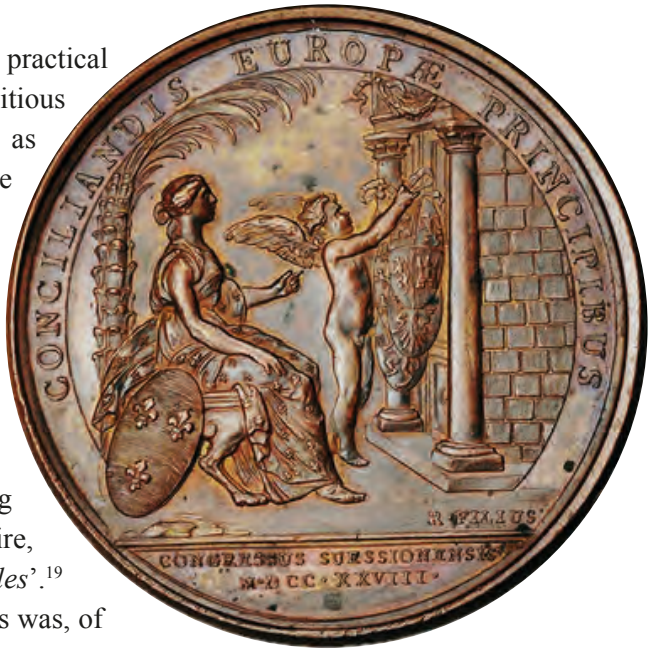
13 Basile-Hyacinthe-Toussaint de Brancas, count of Céreste (+ 1754), former envoy in Sweden (1725) ; see Louis Farges (ed.), *Recueil des instructions données aux ambassadeurs et ministres de France depuis les traités de Westphalie jusqu'à la Révolution Française. Pologne, T. 2*, Félix Alcan, Paris, 1888, p. 314. Fleury talked of Brancas as having 'but a weak head' (Poyntz to Newcastle, 27 February 1729, *o.c.*, s.f.).

14 French secret instructions, *o.c.*, ff. 106v°-107r°. Fleury benefited from the most kind address '*notre trés cher et bien amé Cousin*', whereas Fénelon and Brancas were mere '*amé et feal*' servants of the King (copy of the full powers, s.d., AMAE, M&D, France, vol. 498, f. 86v°. On the Regency, Alexandre Dupilet, *La Régence absolue: Philippe d'Orléans et la polysynodie*, Champ Vallon, Seyssel, 2011.

15 Johannes Burkhardt & Benjamin Durst, «Friedenskongresse», in Irene Dingel, Michael Rohrschneider, Inken Schmidt-Voges, Siegrid Westphal & Joachim Whaley (eds.), *Handbuch Frieden im Europa der frühen Neuzeit – Handbook of Peace in Early Modern Europe*, DeGruyter, Berlin, 2020, p. 450, DOI 10.1515/9783110591316-022.

16 Lucien Bély, «La diplomatie-monde. Autour de la Paix d'Utrecht (1713)» in Bély, Hanotin & Poumarède 2019, p. 11; Stella Ghervas, *Conquering peace: from the Enlightenment to the European Union*, Harvard University Press, Cambridge (MA), 2021 p. 8.

practices'.[17] The experience of practical foreign policy can generate ambitious philosophical treatises, such as Saint-Pierre's or Kant's.[18] Pierre Chaunu remarked that the level of losses in European conflicts between 1715 and 1790 was in radical decline compared to the bloody 'long' seventeenth century. He attributed this to the creation of a 'regulated space of violence', excluding Russia and the Ottoman Empire, with a true '*guerre en dentelles*'.[19] Yet, the best way to avoid losses was, of course, not to start a war.



Jean Duvivier (1687-1761), Charles Norbert Roëttiers (1720-1772), Medaille du Congrès de Soissons, Collection Musée du Louvre, Département des Objets d'Art du Moyen Age, de la Renaissance et des Temps Modernes, OAP 1902, © 2006 Musée du Louvre / Objets d'art du Moyen Age, de la Renaissance et des temps modernes

Congresses convened to solve specific pending issues between sovereigns are traditionally seen as failures when they did not produce a formal treaty. However, as I previously demonstrated for the Congress of Cambrai (1722-1725),[20] interest alone cannot explain sovereign conduct. Pointing to the failure of congress diplomacy in the 1720s, or to the abyss between legal doctrine and diplomatic practice, does

17 Lucien Bély, «De la société des princes à l'Union Européenne», in Lucien Bély (ed.), *La présence des Bourbons en Europe, XVIe-XXIe siècle*, PUF, Paris, 2003, p. 30

18 *Ibid*., pp. 29-80. See also Frederik Dhondt, « Renonciations et possession tranquille : l'abbé de Saint-Pierre, la paix d'Utrecht et la diplomatie de la Régence», *Clio@Thémis* 18 (2020), DOI 10.35562/cliothemis.316.

19 Pierre Chaunu, «Paix», in : Lucien Bély (ed.), *Dictionnaire de l'Ancien Régime*, PUF, Paris, 2000, p. 946.

20 Frederik Dhondt, «La culture juridique pratique au Congrès de Cambrai (1722-1725)», *Revue d'Histoire Diplomatique,* 127, 3 (2013), pp. 271-292. Id., *Balance of Power and Norm Hierarchy. Franco-British Diplomacy after the Peace of Utrecht*, Martinus Nijhoff/Brill, Leiden/Boston, 2015, pp. 253-400, DOI 10.1163/9789004293755.

not help to understand the culture of negotiation.[21]

When reading diplomatic correspondents with a jurist's eye, it immediately becomes clear that the shared legal culture of practical diplomatic experts is essential to capture the exchange of views.[22] For the following paper, I made use of British diplomatic correspondence, as kept in the National Archives (series State Papers Foreign, France), of the extensive six volumes of correspondence and papers kept in the series *Mémoires et Documents* of the French Diplomatic Archives (La Courneuve) and of the Hop archives in the *Nationaal Archief* (The Hague).[23] The Dutch Royal Library's powerful search engine Delpher, which contains various digitised 18th century newspapers, as well as the *Bayerische Staatsbibliothek*'s online collections, have been of great help.[24]

The Congress of Soissons was convened initially to settle the conflict between the allies of 'Vienna' (Spain and the Emperor), who had created an alliance that could destroy the balance of power in Europe,[25] on the one hand, and the allies

21 Karl-Heinz Lingens, «Kongresse im Spektrum des friedenswahrenden Instrumente des Völkerrechts – Cambrai und Soissons als Beispiele frühneuzeitlicher Praxis», in: Heinz Duchhardt (ed.), *Zwischenstaatliche Friedenswahrung in Mittelalter und Früher Neuzeit*, Böhlau, Köln, 1991, p. 224.

22 Frederik Dhondt, «'Looking Beyond the Tip of the Iceberg', Diplomatic Praxis and Legal Culture in the History of Public International Law», *Rechtskultur – Zeitschrift für Europäische Rechtsgeschichte/European Journal of Legal History/Journal européen d'histoire du droit*, 2, 2013, pp. 31-42, DOI 10.17176/20210121-120051-0.

23 Dutch National Archives (*Nationaal Archief*), The Hague, Access Number 1.10.97, Inventory Number 71 (*Conceptverbaal 1728-1731, en stukken betreffende de missie van de gezanten en het afsluiten van de vredesonderhandelingen, 1731)* (further: Hop Archives, *o.c.*). Quotes in Dutch (just as those in French and Latin) will be italicised in this paper.

24 E.g. for the *Merckwürdigsten* 1728 and *Freymüthige* 1728.

25 Treaty of Peace between the Emperor and Spain, Vienna, 30 April 1725, 32 *CTS* 37; Alliance between the Emperor and Spain, Vienna, 30 April 1725, 32 *CTS* 99; Frederik Dhondt, «Law on the Diplomatic Stage: the 1725 Ripperda Treaty», in: Viktoria Draganova, Lea Heimbeck, Helmut Landerer, Stefan Kroll & Ulrike Meyer (eds.), *Inszenierung des Rechts – Law on Stage*, Martin Meidenbauer, München, 2011, pp. 303-324; Sytze Van der Veen, *Spaanse Groninger in Marokko: de levens van Johan Willem Ripperda (1682-1737)*, Bert Bakker, Amsterdam, 2007; Ana Mur Raurell, *Diplomacia secreta y paz: la correspondencia de los embajadores españoles en Viena, Juan Guillermo Ripperda y Luis Ripperda (1724-1727) = Geheimdiplomatie und Friede: die Korrespondenz der spanischen Botschafter in Wien Johan Willem Ripperda und Ludolf Ripperda (1724-1727)*, Madrid/Wien, Ministerio de Asuntos Exteriores y de Cooperación/Österreichisches Historisches Institut, 2011. On the reception of the commercial components of this treaty in the 'vibrant Spanish political' culture of the 1720s, see Edward Jones Corredera, *The*

of 'Hanover' (France, Britain, the Dutch Republic) on the other hand, who had coalesced to stop this.[26] This configuration of opposing blocks resulted from the 'most dangerous design that ever had been formed for subverting the Balance of Europe', in Fleury's words.[27] In April 1725, Philip V of Spain and Emperor Charles VI had concluded a bilateral treaty of peace and alliance, bypassing the Congress of Cambrai, which was meant to broker at a multilateral solution for pending dynastic problems. Philip V's son from his second marriage, don Carlos (the later King Charles VII of Naples and Charles III of Spain, 1716-1788), was promised the hand of 'an archduchess' of Austria. Needless to say, this 'fundamental and most dangerous point' would reunite the Empire of Charles V and, thus, 'would be most fatal to France'.[28]

Preliminaries of Peace concluded in Paris (31 May 1727)[29] and Vienna (13 June 1727)[30] - concluded thanks to the intervention of papal diplomacy- were followed by Spanish ratification in March 1728,[31] and cleared the way to a new collective gathering. The Congress of Soissons would have to come to a solution regarding the King of Spain's claims on behalf of the sons from his second marriage, who were promised the succession of the duchies of Parma and Piacenza, as well as that of the Grand Duchy of Tuscany. For the Allies of Hanover, trade with Spain was of the greatest importance. The Emperor had consented in the seven year-suspension of his East India Trading Company established in the Austrian Low Countries in 1722.[32] He attempted to obtain the international recognition of

Diplomatic Enlightenment. Spain, Europe, and the Age of Speculation, Leiden/Boston, Martinus Nijhoff/Brill, 2021, p. 84.

26 Frederik Dhondt, «The League of Hanover (3 September 1725): Safeguarding the European Balance», in: Randall Lesaffer (ed.), *Oxford Historical Treaties Online*, Oxford University Press, Oxford 2015, https://opil.ouplaw.com/page/433.

27 Stephen Poyntz to the Duke of Newcastle, 6 February 1729, NA, SP, 78, 190, f. 100r°.

28 Stephen Poyntz to the Duke of Newcastle, very private, Paris, 11 February 1729, NA, SP, 78, 190, f 150v°.

29 Preliminary Articles between the Emperor and France, Great Britain and the Netherlands, signed at Paris, 31 May 1727, 32 *CTS* 427.

30 Accession of Spain to the Preliminary Articles between the Emperor and France, Great Britain and the Netherlands, signed at Vienna, 13 June 1727, 32 *CTS* 443.

31 Declaration by the Emperor, France, Great Britain, the Netherlands and Spain, signed at the Pardo, 24 February (6 March) 1728, 33 *CTS* 89.

32 Frederik Dhondt, «Delenda est haec Carthago: The Ostend Company As A Problem Of European Great Power Politics (1722-1727)», *Revue Belge de Philologie et d'Histoire/ Belgisch Tijdschrift voor Filologie en Geschiedenis* XCIII (2015), 397-437, DOI 10.3406/

his internal succession order, allowing for his daughters to succeed him in the Habsburg hereditary lands.[33]

As customary, several other problems would pop up, whereby both domestic and imperial law, feudal law, general principles of Roman law and the law of nations would be invoked. The most prominent of these dossiers were those of Mecklenburg and East Frisia, two territories of the Empire, which normally ought to be considered as falling under imperial law. As with many potential causes of war in eighteenth-century Europe, diplomats could only hope they would not be 'pushed to Extremetys'[34] or cause an 'embrasement general'.[35]

After more than a year and a half of talks, in November 1729, Spain managed to attract France, Britain and the Dutch Republic, to conclude a separate treaty, thereby excluding the Imperial court.[36] However, less than a year and a half later, the court of Vienna managed to do the same with the Maritime Powers, which resulted in the Treaty of Vienna of March 1731.[37] Pending imperial issues (East Frisia, Bremen and Verden) were settled, and Charles VI obtained the recognition

rbph.2015.8840. On the Company in general the reference work remains Michel Huisman, *La Belgique commerciale sous l'empereur Charles VI: la Compagnie d'Ostende: étude historique de politique commerciale et coloniale*, Lamertin, Bruxelles, 1902. See also Norbert Laude, *La compagnie d'Ostende et son activite´ coloniale au Bengale (1725-1730)*, Bruxelles, Van Campenhout, 1944 ; Michael-W. Serruys, *Oostende en de Oostendse Compagnie. Het economisch effect van de koloniale zeehandel op een Zuid-Nederlandse havenstad tussen de Spaanse en de Oostenrijkse Successieoorlog (1713-1745),* Leuven, KU Leuven, 1999 (unpublished MA Thesis in History).

33 Johannes Kunisch, *Staatsverfassung und Mächtepolitik*, Duncker & Humblot, Berlin, 1979. The absence of a male heir was of course not a fatality, as rumours regularly resurfaced during the negotiation.

34 E.g. Stephen Poyntz to the Duke of Newcastle, Paris, 8 January 1729, NA, SP, 78, 190, f. 15v°.

35 'Memoire sur plusieurs articles qui paroissent tres importans, et dont on croyt que la négociation doit etre soigneusement executée, dans le Congrés general qu'il paroit qu'on assemblera pour regler les differens interests des Puissances de l'Europe, et raffermir la paix sur des fondemens aussy inébranlables, qu'il est permis a la prudence humaine de les Imaginer', January 1727, AMAE, M&D, France, vol. 497, f. 2r°.

36 Treaty between France, Britain and Spain, Seville, 9 November 1729, 33 *CTS* 253. See recently on Philip V's foreign policy : Joaquim Albareda i Salvadó & Núria Sallés Vilaseca (eds.), *La reconstrucción de la política internacional española El reinado de Felipe V*, Madrid, Casa de Velazquez, 2021 and Christopher Storrs, *The Spanish resurgence, 1713-1748*, Yale University Press, New Haven (Conn.), 2016.

37 Treaty between the Emperor, Britain and the Dutch Republic, Vienna, 16 March 1731, 33 *CTS* 313.

of his Pragmatic Sanction in exchange for the final suppression of the Ostend Company.[38] Spain and the Grand Duchy of Tuscany joined this alliance, as Charles VI bowed to Spanish demands in Italy (see further).[39] France's exclusion from this combination announced the conflict that would break out at the decease of King Augustus the Strong of Poland, Elector of Saxony, in 1733.[40] What other example of an 'Extremity', than the 'distant' interests of the chased King Stanislaus, who had lost his elective throne during the Great Northern War, and happened to be Louis XV's father-in-law since 1725 ?[41]

Within the scope of the present paper, it would be impossible to discuss all complex negotiations in extent. What follows serves to illustrate the complementary legal layer of all these debates. In a journal devoted to military history, the focus section on the law of war serves to illustrate the classical theoretical debates between scholars, or in public manifestos. However, the central normative problem of the law of nations as a law between sovereigns concerns the conditions under which it is seen as legitimate to use force. The use of force is at present outlawed under the UN Charter (art. 2 (4), with the exception of legitimate self-defence)[42]. By contrast, the *ultima ratio regum* (last resort of sovereign princes) of the eighteenth century was a means open to states wanting to pursue their claims by force.

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38 Charlotte Backerra, *Wien und London 1727-1735: Internationale Beziehungen im frühen 18. Jahrhundert*, Vandenhoeck & Ruprecht, Göttingen, 2018. Charlotte Backerra's book treats at length George II's Hanoverian interests and their weight in the British decision to conclude the 1731 Treaty of Vienna.

39 Convention between the Emperor, Britain, Spain and Tuscany, Vienna, 21 September 1731, 33 *CTS* 433. For this extremely complex question, see Matthias Schnettger, 'Das Alte Reich und Italien in der Frühen Neuzeit. Ein institutionsgeschichtlicher Überblick', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 79, (1999), pp. 344-420 and Marcello Verga, «Il ritorno dell'Impero in Italia tra XVII e XVIII secolo», in: Ieva 2016, pp. 139-156. On Charles VI as a ruler, see Leopold Auer, «Regierung und Persönlichkeit Karel VI. Umrisse einer Forschungsaufgabe», in: Stefan Seitschek & Sandra Hertel (eds.), *Herrschaft und Repräsentation in der Habsburgermonarchie (1700-1740). Die Kaiserliche Familie, die Habsburgischen Länder und das Reich*, DeGruyter, Berlin, 2020, pp. 39-56, DOI 10.1515/9783110670561-002, Backerra 2018, pp. 115-151 and Grete Mecenseffy, *Karl VI. spanische Bündnispolitik, 1725-1729. Ein Beitrag zur österreichischen Aussenpolitik des 18. Jahrhunderts.*, Universitäts-Verlag Wagner, Innsbruck, 1934.

40 Frederik Dhondt, «The Law of Nations and Declarations of War after the Peace of Utrecht», *History of European Ideas* 42, 2016, pp. 329-349, DOI 10.1080/01916599.2015.1118333.

41 Poyntz to Newcastle, 14 January 1729, *o.c.,* f. 40v°.

42 Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter. Evolutions in Customary Law and Practice*, Cambridge University Press, Cambridge,2011, DOI /10.1017/CBO9780511779527.

Recent scholarship has positioned the Peace of Utrecht at the cradle of an eighteenth-century culture of peace or as a turning point in the philosophical debate on the foundations of the law of nations.[43] Our current system of '*jus contra bellum*'[44] would have been the child of the negation, rather than of the operation of eighteenth-century diplomacy, where white male political actors would have been calculating in the build-up of alliances to the next inevitable confrontation. I argue in this paper that the complex European negotiations from 1728 to 1730 are an example of the embedding of the use of force in a set of both normative and strategic considerations. One sentence written by the British delegation in Paris on 1 June 1729 captures the whole continuum:

> 'If it had not been for [the loss of so many Millions to the Subjects of France by the entire confiscation of the effects of the Galleons], He would long since have proposed to bring Spain, by force of Arms, to Reason & Justice.'[45]

In the debate, to which we will return later in this paper, the British diplomats try to distillate a hierarchy of priorities from the manifold aspects alleged in a complex negotiation. It is also possible that Fleury skilfully manages his interlocutor, by emphasising trade, the aspect to which the British are the most sensitive. Yet, irrespective of the factual background, the wording matters.

The 'force of Arms' is clearly an alternative path to 'Reason and Justice' envisaged by those who manage foreign policy. Due to the complex and manifold links and relations of dependence between the actors, continued talks are privileged as the way to achieve the actors' objectives. These talks are dominated by a game of persuasion, whereby legal arguments provide legitimacy for arbitrary political decisions.[46] 'Lawyer-like wrangling',[47] as the British plenipotentiaries call the protracted negotiations, was a way to defer decisions, but also a process governed

43 Martti Koskenniemi, *To the uttermost parts of the earth: legal imagination and international power, 1300-1870*, Cambridge University Press, Cambridge, 2021.

44 Olivier Corten, *Le droit contre la guerre: l'interdiction du recours à la force en droit international contemporain*, Pedone, Paris, 2020.

45 William Stanhope, Horatio Walpole and Stephen Poyntz to the Duke of Newcastle, Paris, 1 June 1729, NA, SP, 78, 191 f. 173v°.

46 See Nicolas Drocourt & Eric Schnakenbourg (eds.), *Thémis en diplomatie : l'argument juridique dans les relations internationales de l'antiquité tardive à la fin du XVIIIe siècle*, Presses universitaires de Rennes, Rennes, 2016, DOI 10.4000/books.pur.47665

47 Stanhope, Walpole and Poyntz to Townshend, Paris, 6 June 1729, NA, SP, 78, 191, f. 247v°.

Painting by Augustin-Oudart Justinat (1663-1743), at the Palais Royal de Versailles, recently identified as depicting the Congress of Soissons (Roland Bossard, «Le premier Congrès Européen de la Paix, 1728-1731. Une séance du *Congrès* de Soissons par Augustin-Oudart Justinat», *Versalia. Revue de la Société des Amis de Versailles*, n°19, 2016. pp. 109-114, 2016, CC SA 4.0).

by attempts to tailor arguments to common standards.

The common treasure trove of European diplomats consisted of the plural legal order of the eighteenth century. It is striking to the modern reader's eye that doctrine is conspicuously absent from this exchange. Rarely is an author like Grotius invoked, and often not for 'the law of war and peace' as such (*jus ad bellum, jus in bello*), but more for the definition of sovereignty (in the case of Mecklenburg), or for the freedom of the seas (in the case of the Ostend Company). Explicitly contracted agreements between sovereigns (treaties), the in part feudal and in part constitutional law of the Holy Roman Empire (including the Peace of Westphalia and the Imperial Capitulations), general principles of private (Roman) law and incidentally references to custom, theology and canon law complete the picture.

The host and his guests: Fleury, 'arbitre du monde'?[48]

'*la France* […] *également souhaitée et recherchée par tous les Princes de l'Europe, peut faire pancher* [sic] *la balance du coté* [sic] *qu'elle croira devoir favoriser* […] *quoique alliée de l'angl*[eter]*re*, *et partie principalle* [sic] *contractante dans le T*[rai]*té d'hannover, n'a cependant pas d'interest* [sic] *personnel dans la pluspart* [sic] *des affaires*.'

Secret instructions for the Congress of Soissons, 30 May 1728[49]

'Mr. Walpole […] is obliged to keep strict guard over the cardinal, for fear the German ministers should take him from us: they pull and haul the poor old gentleman so many ways, that he does not know where to turn, or into whose arms to throw himself'

Poyntz to Newcastle, 1 February 1729[50]

'*Il semble qu'il vaut mieux ne rien dire que de dire imparfaitement*.'

Chauvelin[51]

From 1726 on, Cardinal André-Hercule de Fleury (1653-1742), preceptor of the young Louis XV (1710-1774) had been appointed as principal minister. He would occupy this position until his decease. The Cardinal exerted considerable influence on the King, who trusted his old master. We should note that Fleury's prudence also coincides with a period of uncertainty covering the duration of the congress: after his marriage to Marie Lecsczyńska in 1725, the King had not yet produced a male heir. Comparable to the Congress of Cambrai, where a temporary indisposition due to the young King's eating too much chocolate had caused a general panic, his suffering from smallpox in the Autumn of 1728 triggered a certain diplomatic alarm. Without a legitimate male heir, Philip V of Spain could try to invoke his claim on the throne as closest male relative.[52]

Fleury's prudence and moderation are generally opposed to the more aggressive views of Germain-Louis Chauvelin, *garde des sceaux* and secretary

48 Huisman 1902, p. 446.

49 French secret instructions, *o.c.*, ff. 104v° and 106r°.

50 Stephen Poyntz to the Duke of Newcastle, Paris, 1 February 1729, NA, SP, 78, 190, f. 94r°.

51 Chauvelin to the French plenipotentiaries, Fontainebleau, 24 August 1728, *o.c.*, f. 27v°.

52 Philip V had solemnly renounced his claim, as a mandatory precondition to concluding peace with Britain, in November 1712. He had been obliged to reaffirm his renunciation under the Treaty of London (1718). For an elaborate discussion of this: Alfred Baudrillart, «Examen des droits de Philippe V et de ses descendants au trône de France, en dehors des renonciations d'Utrecht», *Revue d'Histoire Diplomatique*, 3 (1889), pp. 161-191, 354-384.

of foreign affairs (1685-1762).[53] It is not surprising that for 'most secret' matters, as, for instance, revelations on Ripperda's confessions in London on the treaties of 1725, the third British plenipotentiary Stephen Poyntz[54] requested Fleury to 'promise secrecy towards the Garde des Sceaux'.[55] Johan Willem Ripperda, a Dutch adventurer who had become principal minister of Spain, had been the architect of the Alliance between Philip V and Charles VI. Arrested in Seville, in spite of his flight into the British embassy, he had managed to escape and was held for interrogation in Soho by the British during the congress.[56] Potential links between the Old Pretender and the court of Spain, as well as a potential Universal Monarchy of Spain and Austria together, justified British suspicions.

The British delegation saw Fleury as 'thoughtful and solicitous', but also as 'credulous, which his own honesty has often betrayed him into'.[57] He was even regarded as a target for 'intimidation' by Spanish or Imperial diplomats.[58] Making the Cardinal come out of his state of prudent indolence required the assistance of senior diplomats Horatio Walpole and William Stanhope, for whose presence Poyntz unambiguously called.[59] He feared that Fleury was too easy a prey for the

53 Lucien Bély, «Schoepflin et Chauvelin, l'historien et le ministre: étude comparative de deux visions des relations internationales», in : Bernard Vogler & Jürgen Voss (eds.), *Strasbourg, Schoepflin et l'Europe au XVIIIe siècle*, Bouvier, Bonn, 1996, pp. 225-242.

54 1685-1750, Whig politician and diplomat, educated at Eton and King's College (Cambridge), tutor of Charles Townshend's sons. Author of a staunchly Protestant and anti-French pamphlet on the Dutch Barrier in the Low Countries at the end of the War of the Spanish Succession. Private secretary to James Stanhope (who had been the architect of British foreign policy under George I). Envoy extraordinary in Sweden (1724-1730). See Philip Woodfine, «Poyntz, Stephen (*bap*. 1685-*d*. 1750)», *Oxford Dictionary of National Biography*, Oxford University Press, Oxford, 2004, DOI 10.1093/ref:odnb/22694.

55 Stephen Poyntz to the Duke of Newcastle, Paris, 22 February 1729, most secret, NA, SP, 78, 190, s.f.

56 George Lyttelton to Thomas Lyttelton, Soissons, 20 December 1728, in George Edward Ayscough (ed.), *The Works of George Lord Lyttelton; Formerly printed separately, and now first collected together*, G. Faulkner, Dublin, 1774, p. 679: 'when Spain would give up the English rebels, England would send back Ripperda.'

57 Stephen Poyntz to the Duke of Newcastle, Paris, 27 February 1729, most private, NA, SP, 78, 190, s.f.

58 Poyntz to the Duke of Newcastle, Paris, 6 May 1729, NA, SP, 78, 191, f. 1v°.

59 Poyntz to Newcastle, 27 February 1729, *o.c.*, s.f.

'flattering promises' of Bournonville (Spain),[60] Sinzendorf (Emperor)[61] and the Imperial resident in Paris Marcus Baron de Fonseca (who replaced Pentenriedter as Imperial plenipotentiary in late August 1728).[62] Philip Stanhope Earl of Chesterfield (1694-1773), ambassador extraordinary in The Hague, surmised that the Dutch had entered into the League of Hanover, precisely because they were convinced that Fleury would 'never act offensively', something which Britain counted on as *ultima ratio* to obtain satisfaction for its claims against Spain.[63]

On the British side, 'Britain's first Prime Minister' and First Lord of the Treasury Robert Walpole (1676-1745), in power since 1721, is famous for a likewise prudent foreign policy, avoiding military conflicts on the continent. However, due to the influence of the German-born King George II (1683-1760), who was equally Elector of Hanover, the rivalry with Brandenburg-Prussia in Northern Germany as well as the general position of the Electorate within the

60 Miguel José de Bournonville y Sainte-Aldegonde, Duc de Bournonville (1670–1752), fought as 'baron de Capres' during the War of the Spanish Succession in the army of the Bavarian Elector and governor-general Max II Emanuel. De Capres recaptured Ghent for Philip V in July 1708 and commanded the city until its surrender to Marlborough at the end of the campaign. He returned to Spain in 1710. Ambassador in Vienna, 1727-1728. See Frederik Dhondt, *Op zoek naar glorie in Vlaanderen. De Zonnekoning en de Spaanse Successie, 1707-1708*, UGA, Heule, 2011, p. 486; Etienne Rooms, *De organisatie van de troepen van de Spaans-Habsburgse monarchie in de Zuidelijke Nederlanden (1659-1700)*, Koninklijk Legermuseum, Brussel, 2003, p. 289; Didier and Denise Ozanam, *Les diplomates espagnols au XVIIIe siècle*, Casa de Velázquez/Maison des Pays Ibériques, 1998, p. 196.

61 Philipp Ludwig Graf von Sinzendorf, Burggraf zu Rheineck, minister plenipotentiary at the Congress of Utrecht and *Hofkanzler* (Imperial Aulic Chancellor) (1671-1742), *Freymüthige und unpartheyische Betrachtungen über den gegenwärtigen Friedens-Congress zu Soissons, und über dasjenige, was auf selbigem abgehandelt oder angebracht werden möchte*, s.n., Soissons, 1728, pp. 84-85. Whose 'dark and incoherent way of talking' was analysed by Fleury as 'trick and evasion' (Poyntz to Newcastle, 6 February 1729, *o.c.*, 110v°). Sinzendorf is associated with 'excessively long' letters, 'trifling and empty' (Stephen Poyntz to the Duke of Newcastle, Paris, 14 April 1729, NA, SP, 78, 190, f. 362r°). Leopold Viktorin Graf von Windischgrätz, who had acted as Imperial minister plenipotentiary at the Congress of Soissons (1722-1725) was originally designated as plenipotentiary. Yet, he returned to Vienna, as Charles VI appointed him in the *Geheime Konferenz* (Ibid., p. 85).

62 Stephen Poyntz to the Duke of Newcastle, Paris, 8 March 1729, NA, SP, 78, 190, f. 262r° and f. 264r°; Nicolas-Louis Le Dran, *Histoire du congrès tenu à Soissons pendant le cours de l'année 1728, entre les ministres plenipot^res des principales Puissances de l'Europe*, Versailles, 31 December 1736, AMAE, M&D, France, Soissons, vol. 496, f. 193v°.

63 Stephen Poyntz to the Duke of Newcastle, Paris, 29 March 1729, NA, SP, 78, 190, f. 313v°.

Empire could lead to complications.[64] On the Dutch side, pensionary Simon Slingelandt (1664-1736)'s prudent strategy has been the object of an elder but still excellent monograph, which goes into the details of Dutch foreign policy.[65]

Places of negotiation in the heart of Europe

> '*Une petite ville; mais charmante par sa situation* […] *sous un Climat doux et temperé* [sic]*, dans une vaste & reguliere Plaine consacrée à Cerès, & bornée par des Côteaux qui le sont à Bacchus. Sous cette douce & heureuse Constellation le Dieu & la Déesse dépositaires des Biens de la Terre, les font éclore & meurir abondamment*.'
>
> *Description galante de la ville de Soissons…*, 1729[66]

> 'This is one of the agreablest towns in France. The people are infinitely obliging to strangers. We are of all their parties, and perpetually share with them in their pleasures. I have learnt more French since I came here, than I should have picked up in a twelvemonth in Lorrain.'
>
> George Lyttelton, 20 November 1728[67]

> 'His good company […] has contributed more than anything else, to make the tediousness of this splendid banishment supportable to me, and to soften the impressions which the many perverse turns of the negotiations must have made on my mind.'
>
> Stephen Poyntz, 18 October 1729[68]

The congress convened at the Castle of Soissons, which was enlarged for the occasion.[69] The opening ceremony held on 14 June 1728 is described in detail

64 Ragnhild Hatton, *George I*, Yale University Press, New Haven (Conn.), 2001 [1978]; Andrew C. Thompson, *Britain, Hanover and the Protestant interest, 1688-1756*, Boydell Press, Woodbridge, 2006.

65 Adriaan Goslinga, *Slingelandt's efforts towards European peace, part I (1713-1739)*, Martinus Nijhoff, Den Haag, 1915.

66 *Description galante de la ville de Soissons avec un Recueil de pièces fugitives. Dédiée aux Dames*, Jaques vanden Kieboom, La Haye, 1729, pp. 1-2 https://www.europeana.eu/nl/item/368/item_WNJ4R5S2ZS755Z2M4YBOVSSYLREASEUD

67 George Lyttelton to Thomas Lyttelton, Soissons, 20 November 1728, published in Ayscough 1774, p. 674.

68 Stephen Poyntz to Thomas Lyttelton, Hautefontaine, 18 October 1729 in Ayscough 1774, p. 703.

69 Extrait de la dépense a faire au château de Soisson [sic] pour l'assemblée du Congrez le

in the Hop archives.[70] Sicco van Goslinga,[71] the sole of the Dutch Republic's three ministers plenipotentiary, was welcomed by Cardinal Fleury, whose arrival triggered canon shots and bell tolling. Goslinga was welcomed by François Richer d'Aube (1688-1752), *Intendant* of the generality of Soissons[72] when descending from his coach, and led to the main room of the castle, where a round table in the centre of the meeting room awaited the delegates. Delegates took a seat in the coincidental order of arrival, without any rank.[73] Fleury presided over the meeting, with the other French plenipotentiaries Fénelon and Brancas at his right and left side. They represented Louis XV, '*avec la même autorité que nous ferions et pourrions faire si nous y étions presents en personne*'.

Next to Fénelon (on the right), the Imperial ministers could be found, followed by those of Spain. Next to Brancas (on the left), the British and Dutch delegation were seated.[74] Five secretaries stood behind the ministers. Sinzendorf was the

vingt cinq mars mil sept cent vingt huit, s.l., s.d., AMAE, M&D, France, vol. 497, f. 18r° : 20 710lt of masonry, print, windows, carpentry… Plans of the castle dating from 1728 can be found on Gallica: https://gallica.bnf.fr/ark:/12148/btv1b53037739g.

70 Hop Archives, ff. 7r°-8r°.

71 Sicco van Goslinga (1664-1731) studied law in Franeker and Utrecht, curator of the university of Franeker in 1688, member for Frisia in the Estates-General for over forty years. Served five times as military deputy in Marlborough's army during the War of the Spanish Succession and was present at the battles of Ramillies (1706), Audenarde (1708) and Malplaquet (1709), minister plenipotentiary at the peace congress in Utrecht (1712-1713). See Hajo Brugmans, «Goslinga, Sicco van», in : Petrus Johannes Blok & Philip Christiaan Molhuysen (eds.), *Nieuw Nederlandsch biografisch woordenboek*, Sijthoff, Leiden, 1930, vol. 8, https://www.dbnl.org/tekst/molh003nieu08_01/molh003nieu08_01_1143.php

72 Richer d'Aube, who had been a councillor (judge) at the *Parlement* of Rouen, and a member of the Council of Commerce authored a legal treatise: *Essai sur les principes du droit et de la morale* (Paris : Bernard Brunet, 1743, translated into German, 1750). Gaspard Réal de Curban, *La Science du Gouvernement* (Paris : Les libraires associés, 1764), vol. VIII, 410-412 was rather critical of this work. See also Guy Thuillier, «Aux origines de l'ENA: le projet de noviciat administratif de Richer d'Aube», *Revue administrative,* 279,1994, pp. 243-249 ; Marie-France Renoux-Zagamé, «RICHER d'AUBE, François», in: Patrick Arabeyre, Jean-Louis Halpérin & Jacques Krynen (eds.), *Dictionnaire historique des juristes français XIIe-XXe siècle*, PUF, Paris, 2007, p. 875.

73 Art. II. Police Rules, Congress of Soissons, AMAE, M&D, France, vol. 497, f. 233r°. A painting kept at the Palace of Versailles has recently been identified as depicting the Congress of Soissons, see Roland Bossard, «Le premier Congrès européen de la Paix, 1728-1731. Une séance du congrès de Soissons par Augustin-Oudart Justinat», *Versalia. Revue de la Société des Amis de Versailles*, 19, 1, 2016, pp. 109-144, DOI 10.3406/versa.2016.961.

74 Hop Archives, f. 8r°.

3 François Lemoyne (1688-1737), *Louis XV donnant la paix à l'Europe - Louis XV offrant ses deux filles en témoignage de paix à l'Europe,* Palace of Versailles, Salon de la Paix. The young sovereign, aged nineteen, holds out an olive branch and receives his twin daughters, Louise-Elizabeth and Anne-Henriette, from the hands of Fertility and Piety. In the background, Discord tries in vain to reopen the doors of the Janus temple. Photo Coyau, CC BY-SA 3-0

first to speak (in French) and to communicate his master's sincere disposition and desire to prolong the state of tranquillity in Europe.

Fleury responded to Sinzendorf by calling for moderation in the respective delegations' wishes. The delegations opted to drop [otherwise no subject in the sentence] disputes on rank and ceremonial – as in Utrecht and Cambrai –,[75] and economising on the 'emulation of magnificence and squandering'. According to Dutch records, Fleury would have stated that this only led to 'ridiculous outward competition', but too often generated 'sad consequences'.[76] The congress's modesty would be a visible sign of its spirit of political moderation:

> 'for the present, the objective of the congress was not repealing the all too extensive pales of any power's territory, but just to quiet the disagreements, caused by suspicion and jealousy, which seemed to have touched all courts of Europe at almost the same moment […]. If everyone contributed to a spirit of equity, sincerity and justice, their resolution would become possible. No stubborn refusal to concede, no ill-placed *point d'honneur* or slight self-interest ought to prevail over common utility.'[77]

After the first gathering, all ministers and their secretaries were subsequently invited by Fleury to the bishop's palace for a 'wonderful feast'.[78] A year later, leaving France, George Lyttelton thought that the court was 'frugal', and the 'continued peace'… 'dull.'[79] The opening feast at Soissons seems to contrast with that image. The limited police regulations (XIV articles in total) were adopted

75 AMAE, M&D, France, vol. 497, f. 181r°.

76 '*Emulatie in der waarheid zeer belaggelijk voor 't uyterlyke, maar die echter niet naliet, dikwijls verdrietige gevolgen te hebben*'. Hop Archives, f. 11r°. Art. IV of the Police Regulations foresaw that coaches would observe no specific order but that of the specific arrivals on the day itself. Art. V created the obligation to give priority to the first arriving coach in narrow passages (to avoid incidents, e.g. for Utrecht: Lucien Bély 1990, pp. 413-414; more in general: Fanny Cosandey, *Le rang: préséances et hiérarchies dans la France d'Ancien Régime*, Paris, Gallimard, 2016, p. 367). Art. VII forbade pages, footmen and all '*gens de livrée*' to carry arms in town. Crimes committed by servants ought to be punished by the diplomats themselves, who could however opt to hand the suspected culprit over to local judges. See and Lucien Bély & Géraud Poumarède (eds.), *L'incident diplomatique: XVIe-XVIIIe siècle*, Pedone, Paris, 2010.

77 Hop Archives, f. 11v° : '*en dat men geen verkeerd point d'honneur* [in French in the original manuscript] *wilde maaken van niets te willen toegeven of dat men niet liever een gering eigen belang voor het gemeene nut wilde presenteren*.'.

78 '*een prachtig festijn*'. *Ibid*., f. 13r°.

79 George Lyttelton to Thomas Lyttelton, Lyon, 16 October 1729, published in Ayscough 1774, p. 706.

on 17 June.[80] The congress would meet twice a week, on Monday and Thursday. However, the political context determined whether any concrete progress was possible. If Monday or Thursday coincided with a religious feast, no activity took place.[81]

The practical and procedural role of the secretaries (standing in the back during the opening ceremony) was immediately rendered clear in the process of exchange of full powers. This point had generated a lot of debate at the Congress of Cambrai.[82] Copies of every delegation's full powers would be made for the others (i.e. four copies in total), signed and sealed by the plenipotentiaries themselves. The Hop Archives report that the full powers of the Imperial, British and Dutch delegations had been drawn up in Latin – a sign of this language's persistent attractivity for legal and diplomatic purposes. Spain and France had used the national language.

The French delegates objected that the Dutch full powers for the Parisian preliminaries and the Convention of the Pardo (March 1728, by which Philip V adhered to the preliminaries) had been in French ![83] The Imperial full powers had been drafted for a Congress at… Cambrai (!), and did not bear the correct dates.[84] In reaction to the French complaints, the Estates-General issued new instructions

80 AMAE, M&D, France, vol. 497, ff. 233r°. art. 1 stated that delegates would arrive with one secretary, two pages, four footmen, and, if desired '*deux valets à la mode Hongroise, appelés communement Heyduques*'. Their delegation had thus been pared to the bone, and could not contain more persons. The articles were equally published in the *Leydse courant*, 28 June 1728, https://resolver.kb.nl/resolve?urn=ddd:011013105 (last consulted 8 June 2021).

81 E.g. the Saint-Jean (John the Baptist's Day), 24 June 1728. Hop Archives, f. 29r°. Fleury used the feast as a reason to withdraw to Compiègne with several delegates, to return only three days later. The Dutch delegates reported that they could start to worship in a separate chapel, that had been rendered suitable for Calvinist services, from the 28 June 1728 on (*ibid*. f. 31r°). Fleury, although in town, did not attend the session of Monday 28 June in person. On Wednesday, the Cardinal had to leave (the day before a new sessions ought to take place), since he had to return to Versailles with Louis XV. Consequently, the delegates advanced their originally foreseen conference.

82 DHONDT, *Balance of Power*, pp. 267-350.

83 Hop Archives, *o.c*. f. 18v°. This was corrected in July by the Dutch delegation: Hamel Bruynincx (long-term envoy extraordinary of the Dutch Republic in Vienna) and Willem Boreel (ambassador extraordinary in Paris) had received their full powers in Latin. Only Frans Van der Meer (long-term ambassador in Madrid) had received full powers in French (Hop Archives, f. 52r°). For the Convention of the Pardo, see 33 *CTS* 89.

84 *Ibid*., f. 18v°.

in French. Although the essential point of the Ostend Company had to be settled with the Emperor – who preferred the language of Cicero and Sallustius –, the other delegates were convinced to alter their Latin versions.[85]

On 6 September 1728, the Russian envoy Golovin, who had been present 'incognito', presented full powers… in Russian.[86] This was unacceptable to France, with reference to the congress of Nijmegen (1677-1679), where Danish ministers had been obliged to translate their full powers, '*ecrits* [sic] *dans la langue naturelle*'.[87] The Swedish delegation, by contrast, was admitted in November 1728 with full powers in Latin, and was not convinced to switched to French.[88] The Russian 'authentic translation', exchanged on 29 December 1728, was equally in Latin, and not in French.[89] The French delegation insisted on obtaining a translation which '*pour la France, devoit etre en françois*'.[90] The use of the title 'Imperial Majesty' by Peter II of Russia was subject to a typical verification quarrel. Brancas and Fénelon wrote to Chauvelin that they thought that tsarina Catherine I had 'merely' used the title 'majesty of all Russias', and used '*un Recüeil imprimé depuis peu en Hollande*' to back up their suspicion.[91] Chauvelin confirmed that the King of France had never recognised this title, from

85 *Ibid*., f. 52r°. The Bavarian minister Königfels, who arrived late in the Summer of 1728, carried Latin full powers (a copy of which can be found in AMAE, M&D, France, vol. 499, f. 129r). The French aversion towards Latin can be seen as an echo of Villars's distrust at the congress of Rastatt (Bély 1990, p. 455).

86 Hop Archives, f. 111r°. Golovin was told to provide a translation, pending which the exchange of full powers with him was suspended. The Dutch newspaper *Leydse courant* (30 June 1728) reported that Golovin had been confined in Westphalia by measles in his family, travelling with him (https://resolver.kb.nl/resolve?urn=ddd:011013106, last consulted 8 June 2021).

87 Brancas and Fénelon to Chauvelin, 7 September, cited in Le Dran, *Histoire du Congrès*, f. 210v°. Chauvelin clarified in his answer that it was not forbidden to accept full powers in a 'natural' language, as it had been customary to receive '*les lettres du Czar en moscovite*' (*Ibid*., f. 212r°), but that a translation was mandatory. On translation and language in early modern diplomacy: Guido Braun, «Verhandlungssprachen und Übersetzungen» in: Dingel et al 2020, pp. 491-509, DOI 10.1515/9783110591316-025.

88 Hop Archives, f. 139r°.

89 *Ibid*., f. 169r°. Le Dran, *Histoire du Congrès*, f. 293v°.

90 *Ibid*., f. 288v° (original underline). A first draft of Golovin's full powers was full of language errors. The French delegation only acquiesced in the exchange when it received a correct version. Golovin had offered to translate and certify the full powers himself (*ibid*., f. 202v°). This was clearly not as successful as the Russian minister had hoped for.

91 Brancas and Fénelon to Chauvelin, 7 September 1728, Le Dran, *Histoire du Congrès*, f. 210r°.

Peter the Great's reign on.[92]

The reference to the '*Recüeil*' printed in Holland by Brancas and Fénelon brings us to the question of information gathering. Besides the obvious postal networks, official diplomatic dispatches and rumours gathered from informants, the diplomats at the Congress also tried to get hold on both established works of reference and periodically appearing news.[93] Diplomats can be called the 'walking archives' of eighteenth-century Europe,[94] but they did have to fall back on print sources besides their own memory and papers. Adriaan Moetjens, publisher of the *Recueil des Traités* edited by Jacques Bernard and – most famously – the *Corps Universel Diplomatique du Droit des Gens*[95], announced in the Dutch newspaper *Leydse courant* of 30 June 1728 that he would be editing a new collection, entitled *Actes & Négociations du Congrès de Soissons, avec un Journal exact de tout ce qui se sera passé d'important dans cette Assemblée, depuis son Ouverture jusqu'à sa Conclusion*. The newspaper commented that Moetjens had acquired the exclusive right 'as first entrepreneur and possessor of the work', to print and sell it.[96]

On the consumer's side, the correspondence of the French plenipotentiaries contains a most precious report dated 'August 1728' on… book acquisitions for the congress! [97] The material culture of the book, both as a source of authority and reference, but also as an indispensable object of the diplomatic habitus, comes to the front in a first-hand statement. First on arriving at Soissons for the congress, the secretary of the French delegation (Jaunelle)[98] explained that he ordered

92 *Ibid*., f. 211v°.

93 See also Backerra 2018, pp. 249-255 on the contrast between the secrecy at Charles VI's court and the vivid debate in the British press.

94 Jones Corredera 2021 p. 44.

95 Benjamin Durst, *Archive des Völkerrechts: gedruckte Sammlungen europäischer Mächteverträge in der Frühen Neuzeit*, DeGruyter, Berlin, 2016; Marion Brétéché, *Les compagnons de Mercure: journalisme et politique dans l'Europe de Louis XIV*, Champ Vallon, Ceyzérieu, 2015.

96 *Leydse courant*, 30 June 1728, https://resolver.kb.nl/resolve?urn=ddd:011013106, last accessed 8 June 2021. This was repeated in the 2 July 1728 edition. See on the circulation of news on the congress: Heinz Duchhardt, «Der "Friedens-Courier von Soissons" – ein Beitrag zur Mediengeschichte des 18. Jahrhunderts» in: Heinz Duchhardt, *Friedens-Miniaturen : zur Kulturgeschichte und Ikonographie des Friedens in der Vormoderne*, Aschendorff Verlag, Münster, 2019, pp. 91-110.

97 AMAE, M&D, France, vol. 499, ff. 48r°-49v°.

98 Rousset 1731 p. 173.

the '*Recueil d'Actes d'Utreck*', with the one by Rousset, 'which is the logical sequel to the former'.[99] Yet, the bookseller did not have these volumes on shelf, and offered to order them. He was asked to add the 'translation of Grotius by Barbeyrac',[100] with the 'treatise of Pattyn on the Ostend Company'.[101]

Impatience grew, as neither the Soissons librarian nor his correspondent in Holland could offer a response for over a month. The French secretary was approached by his Dutch colleague, who – of course – had connections in Holland, 'the bookshop of the world'.[102] The Dutch delegation was so kind as to 'cede' the '*Recueil d'Utreck*', as well as one containing '*des actes posterieurs*' (ergo: Rousset's volume). For the other works, the Dutch secretary advised to write directly to Henri Scheurleer, bookseller in The Hague. Jaunelle explained to Chauvelin that:

> '*en fait de livres, on nest* [sic] *jamais content.*'[103]

Hence, he did not only order Grotius, but also the '*suite du Mercure Historique*'

99 *Actes, mémoires et autres pièces authentiques concernant la paix d'Utrecht. Depuis l'année 1706 jusqu'à présent*, Utrecht, G. Van de Water/J. Van Poolsum, 1713 ; Jean Rousset de Missy (ed.), *Recueil historique d'actes, negotiations, memoires, et traitez. Depuis la paix d'Utrecht jusqu'au second congrès de Cambray inclusivement*, Henri Scheurleer, La Haye, 1728. See also Rousset's later *Recueil historique d'actes, négociations, mémoires et traitez, depuis la Paix d'Utrecht jusqu'au Congrès de Soissons inclusivement¸* Scheurleer, The Hague, 1731 and Johann Jakob Schmauss (ed.), *Corpus Juris Gentium Academicum enthaltend die vornehmsten Grund=Gesetze, Friedens= und Commercien=Tractate, Bündnisse und andere Pacta der Königreiche, Republiquen und Staaten von Europa Welche seither zweyen Seculis biß auf den gegenwärtigen Congress zu Soissons errichtet worden*, Johan Friedrich Gleditsch, 1730 ; On Rousset de Missy, see Frederik Dhondt, «Jean Rousset de Missy et les Intérêts présens des puissances de l'Europe: territoires, souveraineté et argumentation juridique pratique» in: Pascal Hepner & Tanguy Le Mar'chadour (eds.), *Construction et déconstructions des territoires de l'Antiquité à nos jours. Actes des journées d'Arras de la société d'Histoire du droit et des institutions des pays flamands picards et wallons, 11 et 12 mai 2018*, Lille, CHJ-Editeur, forthcoming, DOI 10.17605/OSF.IO/ASZDM. On Schmauss : Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland. Erster Band: Reichspublizistik und Policeywissenschaft 1600-1800*, C.H. Beck, München, 1988, pp. 204-205.

100 Hugo Grotius, *Le droit de la guerre et de la paix* (transl. Jean Barbeyrac), P. de Coup Amsterdam, 1724. See recently: Randall Lesaffer & Janne Nijman (eds.), *The Cambridge Companion to Hugo Grotius*, Cambridge University Press, Cambridge, 2021.

101 Cf. infra.

102 Cf. Andrew Pettegree and Arthur der Weduwen, *The Bookshop of the World: Making and Trading Books in the Dutch Golden Age*, Yale University Press, New Haven (Conn.), 2020.

103 AMAE, M&D, France, vol. 499, f. 48r°-v°.

after 1720, the *Recherche des Motifs de la Conduite de la grande Bret*[a]*g*[n]*e*',[104] as well as the '*Etat*' of the same Kingdom. All of these books could be in 'one of the two packages' the existence of which Jaunelle had to bring to the foreign office's knowledge. The postmaster of Malines in the Austrian Low Countries had sent word that a package from 'Limiers' (Utrecht) had been delivered, which Jaunelle thought had been destined for the French delegation in Soissons.

When entering Fénelon's office, he had noticed a copy of the *Histoire des Traités depuis la Paix de Vervins* by French foreign office lawyer Jean-Yves de Saint-Prest (1640-1721), running to the Peace of Nijmegen, two volumes in-f°.[105] As the minister plenipotentiary seemed quite satisfied with that, Jaunelle ordered the *Recueil* of Lamberty from the same bookshop in The Hague.[106] The reason for ordering Lamberty was a positive appreciation by Brancas, Fénelon's colleague, who deplored only having acquired the first three, and thus subsequently requested the fourth and fifth volumes, as well as an own copy of the '*Recüeil depuis Vervins*', just as Fénelon's. Jaunelle further ordered the '*Etats*' of Sweden and Denmark, on top of the other books.[107]

As the book orders make clear, the postal system allowed to communicate with Paris,[108] but also – through the Austrian Low Countries – with the Dutch Republic and – through Lorraine – with Strasbourg and the Holy Roman Empire.[109] A detailed time schedule provided the following information, spanning

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104 *Recherche des Motifs sur lesquels est fondée la Conduite de la Grande-Bretagne rap rapport aux affaires et de l'état présent de l'Europe* (transl.), The Hague, Scheurleer, 1727.

105 *Histoire des Traités de Paix et autres Négotiations* [sic] *du dix-septième Siècle, depuis la paix de Vervins, Jusqu'à la Paix de Nimègue…*, J.F. Bernard/Vaillant et Prevost, Amsterdam/The Hague, 1725 ; DURST, *Archive,* 62. See also *Merckwürdigsten* 1728, pp. 10-16, containing a tentative (non-exhaustive) list of treaties since 1526.

106 AMAE, M&D, France, vol. 499, ff. 48v°-49r°. Guillaume DE LAMBERTY, *Mémoires pour servir à l'histoire du XVIIIe siècle… Tome Cinquième*, Scheurleer, The Hague, 1727.

107 The list seems compatible with Callières's and Torcy's requirements for the instruction of diplomats (BÉLY 1990, pp. 456-457), or those of La Sarraz in his 1731 treatise (*Le ministre public dans les Cours étrangères, ses fonctions, et ses prérogatives*, Aux dépens de la Compagnie, Amsterdam, 1731).

108 Etat present des Postes de la Route de Paris à Soissons, May 1728, AMAE, M&D, France, vol. 497, f. 72r°: Chauvelin is kindly asked to request the delegations not to overburden the 'Postes bien montées' between Soissons and Paris. If all mail went out on the same day, horses would not be able to get back on time to pick up mail. Consequently, the passport given to every delegation ought to spread them out.

109 Memorandum, s.l. 20 June 1728, AMAE, M&D, France, vol. 497, ff. 2r°-4v° with spe-

the continent[110]:

	Departing from Soissons	Arriving at Soissons
Amsterdam	Sunday – Monday	Tuesday – Saturday
Bruxelles	Every day	Every day
Basel	Sunday – Tuesday – Thursday	Tuesday – Friday – Sunday
Bern	Sunday – Tuesday – Thursday	Tuesday – Friday – Sunday
Brandenburg	Sunday – Monday – Thursday – Friday	Monday – Tuesday – Thursday – Saturday
Cadix	Monday	Sunday
Cologne	Every day	Every day
Denmark	Sunday – Monday – Thursday – Friday	Monday – Tuesday – Thursday – Saturday
Florence	Monday – Friday	Saturday
Genova	Monday – Friday	Saturday
Geneva	Saturday – Monday – Tuesday – Wednesday – Thursday	Monday – Wednesday – Saturday
Hanover	Sunday – Monday – Thursday – Friday	Monday – Tuesday – Thursday – Saturday
Hamburg	Sunday – Monday	Wednesday – Sunday
The Hague	Sunday – Thursday	Monday – Wednesday – Sunday
London	Tuesday – Friday	Thursday – Sunday, '*suivant les vents*'
Lisbon	Monday	Sunday
Liège	Every day	Every day
Madrid	Monday	Sunday
Modena	Monday – Friday	Saturday
Mainz	Sunday – Tuesday	Monday – Thursday – Sunday
Moscovia	Sunday – Monday – Thursday – Friday	Monday – Tuesday – Thursday – Saturday
Milan	Monday – Friday	Saturday
Naples	Monday – Friday	Saturday
Parma	Monday – Friday	Saturday

cial reference to the Paris-Soissons-Strasburg-Vienna connection, with a stop between Reims and Verdun. Detailed schemes show the intermediary stops to Calais (from whence messages can be transported overseas to England), Lille and Valenciennes (Austrian Low Countries), Sedan, Guise and Strasbourg (towards the Empire).

110 See also the table of distances contained in *Merkwürdigsten* 1728, p. 9.

Palatinate	Sunday – Monday	Wednesday – Sunday
Poland	Sunday – Monday – Thursday – Friday	Monday – Tuesday – Thursday – Saturday
Rome	Monday	Saturday
Soleure	Sunday – Tuesday – Thursday	Monday – Friday – Sunday
Saxony	Sunday – Monday – Thursday – Friday	Monday – Friday – Thursday – Saturday
Sweden	Sunday – Monday	Sunday – Wednesday
Turin	Monday – Friday	Wednesday – Saturday
Treves	Sunday – Tuesday	Wednesday – Sunday
Venice	Monday – Friday	Saturday
Vienna	Sunday – Tuesday	Wednesday - Sunday

Travel was quite smooth in the month of June 1728, as illustrated by Hop's trip. The Dutch minister had been ill and could not travel together with Goslinga. Once he got better, he was transported by yacht to Ghent from Rotterdam, to travel along by land post to Soissons, to arrive on 16 June at 7 PM, welcomed by '*l'honneur du canon*'[111] and church bells.[112] Just like his colleague, he was greeted by the local *Intendant*, the city's magistrates as well as the ecclesiastical and secular corporations of Soissons.

The continent-wide network of correspondence is baffling. Within France, horses departed for Paris, Calais, Lille, Versailles and Compiègne every day. Nancy (although in Lorraine, listed as one of the '*principales villes de France*', 250 kilometres away) was served three times a week, Strasbourg [otherwise no subject/verb in the sentence] and Lyon six days a week, Bayonne (818 kilometres from Soissons) only two days a week.

The presence and depart of Sinzendorf, Charles VI's top diplomat, in November 1728, is a symbol of the quick demise of the Congress's initial stellar perspectives. Sinzendorf is depicted by various sources as volatile in his strategies, 'not always rolling on the same principles'.[113] The Hop Archives invoke his complaints to Fleury, after a month already, that 'he had reached such a high age, had had to suffer over two hundred miles of travelling, without the least hope of a good end

111 Le Dran, *Histoire du Congrès*, f. 284v°.

112 Hop Archives, f. 15r°.

113 *Ibid*., f. 27r°: '*dat de discoursen van den heere Gr van Sintzendorf niet altoos op deselve principes rouleerden*'.

of the Congress.'[114] Sinzendorf, complaining that no specific answers from the court of Seville allowed him to continue the process of negotiation, left on 29 November 1728. He kept his residence in Soissons, assuring that he was ready to return when necessary.[115] Horatio Walpole and William Stanhope went home for Christmas 1728.[116]

The British delegation stayed in Soissons,[117] and, from time to time in Hautefontaine, a village 22 kilometres from Soissons and about the same distance from the royal palace in Compiègne.[118] The place is described as Stephen Poyntz's 'country-seat', where the British diplomat enjoys 'the benefit of the air, and exercise of the country', restoring him 'almost to health'.[119] Poyntz would also have gotten acquainted with Fénelon, who invited him to a private estate near Paris.[120] Likewise, the Dutch delegates Steven Hurgronje (1682-1733) and Goslinga met with Cornelis Hop (1685-1762) in Nanteuil.[121] Other places of sociability than the palaces in Versailles, Compiègne and Fontainebleau, or than Paris, can thus clearly be identified. It is quite logical that bilateral meetings were held '*à la campagne*'.[122] The bucolic charm of the landscape surrounding Soissons appears in the descriptions of the city published during the congress.[123]

114 *Ibid*., f. 18r°.

115 Le Dran, *Histoire du Congrès*, f. 280r°.

116 Hop Archives, f. 159r°.

117 George Lyttelton to Thomas Lyttelton, Soissons, 20 December 1728, in Ayscough 1774, p. 679.

118 Google Maps estimate, 2 June 2021.

119 Stephen Poyntz to Thomas Lyttelton, Hautefontaine, 18 October 1729, *o.c*., p. 703.

120 September 1728, Hop Archives, f. 128r°.

121 Hop Archives, f. 101r°. Cornelis Hop (1685-1762), alderman of Amsterdam (1713), administrator of the Dutch West Indies Company (WIC, 1715), director of the '*Societeit van Suriname*', ambassador at the court of Louis XV from 1718 to 1725. His reception by Louis XV in July 1719 was the first time the Dutch Republic was treated on the same ceremonial footing as Venice (Carl Hendrik Theodor Bussemaker, «Hop, Cornelis», Petrus Johannes Blok & Philip Christiaan Molhuysen (eds.), *Nieuw Nederlandsch biografisch woordenboek*, Sijthoff, Leiden, 1912, vol. 2, https://www.dbnl.org/tekst/molh003nieu02_01/molh003nieu02_01_1168.php).

122 E.g. French plenipotentiaries to Chauvelin, Soissons, 26 August 1728, f. 41v°: no plenary meeting possible, since 'Poyntz and Goslinga are still out in the countryside'.

123 *Description galante* 1729; *Geographisch- und Historische Beschreibung der zu dem Friedens-Congreß erwehlten Schönen Haupt-Stadt Soissons : Mit Unterschiedlichen curieusen Anmerckungen*, s.n., Leipzig, 1728, https://www.europeana.eu/nl/item/09428/urn_nbn_de_gbv_3_1_129300.

Augustin-Oudart Justinat (1663-1743), Portrait of Louis XV of France, National Museum in Warsaw, Commons wikimedia

The British diplomats were accompanied by the young George first Baron Lyttelton (1709-1773)[124], whose correspondence with his father was partly published in Dublin in 1774.[125] Lyttelton had obtained his father's (and Robert Walpole's) permission to prepare his Italian Grand Tour during a stay with the British diplomats in Soissons and Paris. Acquaintance with the diplomats of various Italian sovereigns would be perfect to prepare his stay.[126] His testimony is precious regarding the atmosphere at the conference. On 28 October 1728, Lyttelton thanked his father for having obtained the permission to leave Lunéville, where he had had to stay in an exclusively English company, for Soissons, where 'my countrymen […] mix perpetually with the French, and converse for the most part in that language.' He described William Stanhope as being 'always' at the royal residence in Fontainebleau, whereas Poyntz took the young Lyttelton to Paris.[127]

The stubborn and skilled Imperial diplomat Pentenriedter[128] deceased after barely two congress talks, having repeatedly been seized by a 'pain in the chest and a kind of pleuritis'.[129] Penterriedter had indeed shown his ability as secretary to the Imperial ambassador in Paris (1714-1716), and as secretary to the Imperial delegation at the Congress of Baden (1714)[130]. He rose to the rank of ambassador to the court of the Regent and Louis XV and minister plenipotentiary at the Congress of Cambrai (1716-1725). The Dutch lauded his 'penetrating judgment, moderation and affable nature', and stated he was regretted by all in the diplomatic community.[131] In July 1729, the 'young and inexpercienced' Stephan Graf Kinsky

124 Christine Gerrard, «Lyttelton, George, first Baron Lyttelton», *Oxford Dictionary of National Biography*, DOI 10.1093/ref:odnb/17306.

125 Ayscough 1774.

126 George Lyttelton to Thomas Lyttelton, Soissons, 16 September 1728 in Ayscough 1774, p. 698.

127 George Lyttelton to Thomas Lyttelton, Soissons, 28 October 1728, *Ibid*. p 672.

128 'mainly baron Penterriedter remained unshakable' (Hop Archives, f. 53r°).

129 *Ibid*., f. 80r°.

130 Rolf Stücheli, *Der Friede von Baden (Schweiz) 1714: ein europäischer Diplomatenkongress und Friedensschluss des "Ancien Régime"*, Universitäts-Verlag, Freiburg, 1997, p. 26.

131 Hop Archives, f. 97r°. Condoleances were expressed by Dutch secretary Kerseboom, after receiving a visit from the Imperial delegation's secretary Ignaz von Wasner. As in the exchange of the full powers, the secretaries were clearly important actors of everyday interaction below ambassadorial level. On Wasner, see Charlotte Backerra, « […] The Emp.r's Envoy is as Good as Other Princes Amb.rs. Diplomates impériaux et britanniques auprès des cours de Londres et de Vienne au début du XVIIIe siècle», in: Indravati Félicité (ed.),

arrived as ambassador extraordinary and minister plenipotentiary.[132]

While negotiations were clearly carried out bilaterally elsewhere, the small community of diplomats lived on in Soissons, and kept on using the conference room in the castle. The setting of formal equality around the round conference table proved its utility on New Year 1729. The delegations 'avoided the speculation of rank, which would have been possible by exchanging New Year's wishes, if they would have been forced to pay each other alternating visits at their residences.'[133]

'This wretched state of uncertainty': Soissons at the diplomatic crossroads

> '*on ne s'engage jamais qu'aux traités connus*.'
>
> Chauvelin[134]

> '*il sera de la prudence de se menager d'autres alliances, qui puissent faire la balance dans les tems où le système general changeroit*.'
>
> Chauvelin[135]

> 'the ill treatment which Spain still continued to shew towards France, had opened the eyes of their Nation, and wrought a great change to our favour in their dispositions, which dispositions their Government, absolute as it was thought abroad, was obliged to have regard to, on account of the animositys contracted by our long Wars, and so hard to be rooted out, of which he imagined we had the like experience in England.'
>
> Chauvelin (cited by Poyntz)[136]

L'identité du diplomate (Moyen Âge-XIXe siècle). Métier ou noble loisir?, Classiques Garnier, Paris, 2020, pp. 308-308, DOI 10.15122/isbn.978-2-406-10466-7.

132 Quote: Goslinga 1915, p. 214. See Karl Adolf Constantin Höfler (ed.), *Der Congress von Soissons. Nach den Instructionen des Kaiserlichen Cabinetes und den Berichten des Kaiserlichen Botschafters Stefan Grafen Kinsky*, Kaiserlich-Könliglicher Hof- und Staatsdruckerei, Wien, 1871-1876, 2 vol.

133 Hop Archives, f. 170r°.

134 Annotation *in margine* to the Imperial plenipotentiaries' remarks on a French-proposed draft provisional treaty, Paris, 17 August 1728, AMAE, M&D, France, vol. 498, f. 241r°.

135 Chauvelin to the French plenipotentiaries, Fontainebleau, 24 August 1728, AMAE, M&D, France, vol. 499, f. 23r°.

136 Poyntz to Newcastle, 24 January 1729, *o.c.*, f. 41v°.

> 'If we had provoked her [Elisabeth Farnese] to a war, we must have spent millions to obtain by force what this treaty gives us upon a condition, which it is our interest to grant.'
>
> George Lyttelton[137]

Congresses such as Cambrai of Soissons isolated diplomats of the main protagonists at a reasonable but not impossible distance of a hundred kilometres from Paris, to which it was rather easy to return.[138] The continuous stream of information kept them up to date on news from Spain, Vienna, The Hague, Berlin, Hampton Court and Rome. Due to the still partly itinerant nature of the French court, Soissons was less than forty kilometres away from Compiègne. Logically, diplomats requested their home base that they would

> 'make [our] reverence to the King [of France], at the occasion, since he is nowadays so near Soissons.' [139]

This continuous *va-et-vient* between Soissons and wherever Fleury moved, gave rise to repetitive rumours on the end of the congress. In practice, the delegates moved to the court, where their own sovereign in some cases already had an envoy with at least the rank of ambassador.[140] Moreover, in August 1728, the stubborn Spanish delegation decided to remain in Paris and not return north.[141]

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137 George Lyttelton to Thomas Lyttelton, Paris, 13 August 1729, in Ayscough 1774, p. 692.

138 E.g. Brancas Céreste in December 1728, to 'find a remedy for the *fluxion* that had attacked him on the eyes' (Le Dran, *Histoire du congrès*, f. 283r°).

139 Hop Archives, *o.c.* f. 21r°. E.g. the day after the second general assembly of the delegations, Fleury already left for Compiègne, followed by Sinzendorf and Penterriedter (Emperor) as well as Bournonville (Spain), who announced to return within eight to ten days. Horatio Walpole left four days later for Compiègne. Fénelon and Brancas, the other French delegates, alternated between Soissons and Compiègne (*Ibid.*, f. 20r°). Likewise, early in July, Sinzendorf, Bourbonville and Horatio Walpole left Soissons for Versailles (*Ibid.*, f. 53r°). By the end of July, most delegates from the main allies had left to Versailles to carry on bilateral talks with Fleury and Chauvelin (*Ibid.*, f. 91r°).

140 E.g. for the Dutch: Abraham van Hoey, ambassador since 1727. Maintaining the residence at Soissons occasioned costs, e.g. approval by the Dutch Council of State of a pay raise for the Dutch reformed minister Roÿer and secretary (Hop Archives, f. 106r°). Roÿer asked for permission to leave in December 1728, as he had obtained a position in Leeuwarden (*Ibid.*, f. 155r°). As the congress seemed to drag on inactively, the Estates-General asked their ministers to start treating other cases as well, such as the fate of Protestants condemned to serve on French galleys (*Ibid.*, ff. 156r°, 180r°). Fleury answered in April 1729 that 'no persons were persecuted in France *solely* for religious motives, in so far as they *kept quiet*'. Those on the galleys had been condemned for organising forbidden gatherings, strictly punished by the laws of the land (*Ibid.*, f. 164r°).

141 E.g. late in July 1728, Hop Archives, f. 97r°.

At the return of Santa Cruz, the remaining ministers' gatherings twice a week were filled with 'civilities'.[142] Early in September, his colleague Bournonville, depicted as 'dominating the other Spanish plenipotentiaries as their master',[143] threatened to slam the door and leave for Seville.[144] It took him more than a month to withdraw to Spain for further consultation.

On his way home, Bournonville stopped in Fontainebleau, to find most plenipotentiaries of the Soissons Congress there. He presented a supplementary list of thirteen Spanish conditions to Fleury, which would make sure that the Congress would fail.[145] At the actual place of the congress, the remaining diplomats were busy 'with solely maintaining the exterior of the Congress'.[146] The advantage of plenary meetings and an environment solely dedicated to negotiations were lost, as the main protagonists found themselves dependent on the agenda of the French court, e.g. when it withdrew to Marly, Louis XIV's more intimate residence.[147] The typical elements of court hierarchy and ceremonial could be used to differentiate the treatment of delegations: access to Fleury (or Sinzendorf)[148] was limited, and the central chess piece on the board could turn the mind of one's previous interlocutor.[149]

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142 Hop Archives, f. 102r°.

143 Fleury to Chauvelin, Soissons, June 1728, AMAE, M&D, vol. 498, ff. 47v°-48r°.

144 Hop Archives, f. 125r°.

145 Bournonville, cited by Le Dran, *Histoire du Congrès*, ff. 239r°-241r°. Bournonville added all kind of supplementary bilateral disputes and unsettled issues, such as the Franco-Spanish border in San Domingo, '*selon* […] *au tems du Roy Cat^e^ Charles 2^d^*.', the granting of fishing rights in Newfoundland for inhabitants of Biscay and Guipuzcoa, or the abolition of the '*droit d'aubaine*' for Spaniards in France. Bournonville demanded the restitution of Providence Island by Britain. He furthermore suggested to cancel all British concessions obtained after the Hispano-Dutch treaty of Commerce signed in Utrecht in 1714. A particular sign of humour with regards to the Dutch arguments against the Ostend Company…

146 Hop Archives, f. 132r°.

147 *Ibid*., f. 160r°.

148 The Imperial delegation played a similar game to that of the French delegation: secretary Wasner was easily accessible, but he did not have a mandate to commit to concessions or alternative interpretations of what had been agreed earlier (Le Dran, *Histoire du Congrès*¸f. 197r°).

149 E.g. December 1728: Goslinga and Hop state that Fleury had had a chat with Stephen Poyntz, who would have altered the Cardinal's point of view, away from Dutch wishes. Chauvelin writes to the Dutch delegation that Fleury would not be able to see them the next day: he hoped to 'spare them the effort' of travelling to Versailles in the Winter (Hop Archives, f. 161r°).

It is not surprising that Sicco van Goslinga, one of the Dutch delegates, wrote to The Hague to explain that he only remained at Soissons,

> 'to please the Cardinal, who disliked seeing all ministers to abandon the congress, although the two remaining French delegates [Fénelon and Brancas] kept on abstaining themselves […] He intended to leave for Paris as well, since a sufficient answer had been reached on Ostfrisia.'[150]

The Franco-British couple, which acted as mediators at the Congress of Cambrai, evolves in a constant sphere of both mutual reinsurance and prudent distrust.[151] The dynastic links between Philip V and his nephew Louis XV had been confirmed in the Family Pact of 1721.[152] At the Congress of Cambrai, France and Britain had tried to further Philip V's interests. However, the experience of the War of the Spanish Succession, where France had lured Britain away from the Grand Alliance, had demonstrated that:

> 'the Union of France with the Maritime Powers is absolutely conformable to the most solid maxim of its government, since […] it seems unlikely that any Power would even dare to concoct a plan that France would have to fear.'[153]

French diplomats considered that they were in a comfortable position. Impartiality would allow for Britain and Spain to confide in Fleury.[154] Furthermore, France would not need to embark on a war if a rupture arrived, and Britain would need to convince her to remain neutral.[155] Louis XV would retain the right to 'engage himself only for the peace that he wants'.[156] A suggestion to

150 Goslinga to Fagel, early August 1728, abridged in Hop Archives, f. 99r°. Yet, shortly afterwards, the Dutch delegation split: one minister (Hurgronje) remained in Soissons, whereas the two others (Hop and Goslinga) would follow the French court to Fontainebleau. For the latter, permission from The Hague to rent 'houses over there' was necessary (*Ibid*., f. 101r°-v°). In May 1729, the Dutch delegation completely left Soissons for Compiègne, since the British, Spanish and Imperial delegation had all moved there (*Ibid*., f. 191r°).

151 E.g. Poyntz to Newcastle, Paris, 8 January 1729, *o.c*., f. 15r°: 'I much fear M. Chauvelin will be weakening or striking out some of them [passages] under pretence of their being particular to the case of England alone, and therefore more proper for Mr Keene's separate application [in Madrid]'.

152 Treaty of Defensive Alliance between France and Spain, Madrid, 27 March 1721, 31 *CTS* 287.

153 French secret instructions, *o.c*., f. 107v°.

154 E.g. at the start of the Congress, Fleury advised the Dutch delegates to wait with a memorandum enumerating demands against Spain. Hop Archives, *o.c*. f. 19r°.

155 French secret instructions, *o.c*., f. 110v°.

156 *Ibid*., f. 110v°.

uncouple the mediating role following the structure of the Parisian preliminaries of 31 May 1727 had been rejected. This would have meant that France and the Emperor would have mediated between Spain and Britain, whereas Spain and France would have acted as mediators on the Ostend Company affair between the Dutch Republic and the Emperor.[157] Formally, the Congress of Soissons would operate without any kind of mediator.[158] France preferred a situation whereby it could be the sole *arbiter*, rather than the joint mediator with Britain.[159] The secret instructions of the French plenipotentiaries even stated that:

> 'if Britain could get rid of joining a congress whose assembly has become a public and solemn stipulation, it would be rather probable that they would just not do that.'[160]

On the ceremonial field, the court of Spain tried to stir up controversy by aggressively taking titles to territory Philip V did not control, such as that of 'King of the Two Sicilies'[161]. The Austrians had taken Naples in 1707 during the War of the Spanish Succession. The cession of Sicily to Victor Amadeus II of Savoy in 1713 was followed by a (forced) exchange between the Emperor and the Duke of Savoy in 1720.[162]

157 *Ibid*., f. 112r°.

158 Suggestions to confer the title to the Kings of Portugal, Poland or Sardinia had been rejected as well. *Ibid*., f. 112r°.

159 *Ibid*., f. 113r°. E.g. Fleury's invitation on 18 July to the Dutch plenipotentiaries to join him at court and discuss matters bilaterally (Hop Archives, f. 83r°). On the idea of being the 'arbiter' of the 'balance of power': Jones Corredera 2021, xiv.

160 French secret instructions, *o.c*., f. 113°.

161 Poyntz to Newcastle, Paris, 8 January 1729, *o.c*., f. 16r° Poyntz cites a letter by Viscount Bolingbroke as Secretary of State for the Southern Department in 1714 to Monteleón (Philip V's ambassador in London) and a continuous practice not to list this title when the King of Spain is mentioned. Ignacio de Barrenachea, Spanish plenipotentiary at the Congress of Soissons, opposed that 'titles were inalienable', and that Charles VI had consented to Philip V's carrying the title. Yet, as Poyntz remarked, this had been limited by the Emperor for the King of Spain's lifetime only, 'which proved the contrary of what he asserted'. Moreover, Fleury denied having ever used any other title with the French King's uncle than 'King of Spain' (Poyntz to Newcastle, 6 February 1729, *o.c*., f. 111v°). Yet, if this could soften the Spanish attitude in commercial affairs, concessions were possible (Poyntz to Newcastle, 22 February 1729, *o.c*., f. 180r°).

162 Núria Sallés Vilaseca, *Giulio Alberoni y la dirección de la política exterior española después de los tratados de Utrecht: 1715-1719*, Universitat Pompeu Fabra, Barcelona, 2016.

'Fixer la seureté des Etats destinez à l'Infant Don Carlos' : Parma, Piacenza and Tuscany[163]

'the King of Spain […] had been from the beginning of his reign continually in war'

Benjamin Keene, June 1729[164]

The Franco-British couple found itself in an ambiguous situation. The court of Spain tried to seduce them to defend the claims of Philip V and Queen Elisabeth Farnese's sons to Parma, Piacenza and Tuscany.[165] Stanhope, Walpole and Poyntz recognised that this would be conformable to the 'honour & justice and the faith of Treaties'.[166] However, the execution of this undeniable obligation was tied to Spanish leniency on commercial matters, which counted as '*Condition sine quâ non*'.[167]

To be more precise, the court of Seville[168] insisted on the introduction of Spanish garrisons in the main fortresses of these territories, rather than neutral Swiss ones, as the Treaty of the Quadruple Alliance had stipulated.[169] The Emperor could refuse this, by pointing to the latter.[170] Moreover, allowing Spanish garrisons in a fief of the Empire, which was the legal status of Parma, Piacenza and Tuscany since 1718, would have been seen as an insult to Charles VI as

163 Stanhope, Walpole and Poyntz to Newcastle, Hautefontaine, 7 May 1729, NA, SP, 78, 191, f. 21v°.

164 E.g. Benjamin Keene to Newcastle, Seville, 19 May 1727 (copy), NA, SP, 78, 191, f. 310v°.

165 The Spanish claim included the free port of Livorno and the port of Portoferraio on the Isle of Elba. In order to avoid overburdening of the text, these geopolitically and economically relevant hubs will not be mentioned further. On Elisabeth Farnese: María de los Ángeles Pérez Samper, *Isabel de Farnesio*, Barcelona, Plaza & Janés, 2003.

166 Stanhope, Walpole and Poyntz to Newcastle, Hautefontaine, 7 May 1729, *o.c.*, f. 10r°.

167 Original underline, *Ibid*. See also Bournonville (Spanish plenipotentiary, November 1728) cited in Le Dran, *Histoire du Congrès*, f. 232r° : '*jamais la Reine ne se départira de cette condition*.'

168 The Council of Castille would have complained to Philip V that his dereliction of Madrid had left his palace and tribunals in a greatly damaged state. Copy of a letter in Spanish, 21 April 1729, NA, SP, 78, 190, f. 73v°.

169 Treaty of the Quadruple Alliance between the Emperor, France and Britain, London, 2 August 1718, 30 *CTS* 415.

170 'Spain has no Right to insist upon any such demand, by virtue of any former Treaty or Convention'. Annex to the instructions of Stanhope, Walpole and Poyntz, *o.c.*, f. 341r°.

Anonymous sketch from c. 1724 showing the 35 pound, solid gold allegorical sculpture with, among other things, the historical lion of Ostend and the coat of arms of both the Ostend Company and Emperor Charles VI. Article 103 of the founding charter of the Ostend Company required that the owners of the newly-created trading company give such a sculpture to the Emperor as a gift to thank him for granting the charter. (J.N. Pasquini, *Histoire de la ville d'Ostende et du port*, Ostende, 1842, p. 225). Museum Plantin-Moretus, Antwerp, Belgium. Wikimedia commons.

overlord.[171] Nevertheless, in his more difficult moments, Philip V demanded that this debatable introduction of troops became the precondition for further talks.[172] In an attempt to soothe him and obtain at least Spanish compliance with their commercial demands, France and Britain proposed to pay for the levying of Swiss troops, and thus still remain within the framework of the Quadruple Alliance.[173] Another alternative was the 'adoption' of French or Spanish regiments by the Swiss cantons[174], or a 'conditional' oath of fidelity by the Swiss troops rented by a third power.[175]

A further problem concerned the collaboration of the reigning Grand Duke, Gian Gastone de'Medici, and his sister Anna Maria Luisa (1667-1743), widow of elector John William of the Palatinate-Neubourg (1658-1716). The Treaty of London stipulated that Philip V and Elisabeth Farnese's sons would be first in line to succeed the last Medici Grand Duke. However, domestic constitutional counterarguments could be opposed to that.[176] Hence the assurances made to Spain that French and British diplomats would insist in Florence that Gian Gastone would 'recognise, and publicly and authentically, declare' that Don Carlos would

171 Poyntz to Newcastle, 8 March 1729, f. 266r°. This status clearly submitted the rulers of these territories to the overlordship of the Emperor. Yet, on the other hand, the Holy See continued to dispute Imperial overlordship here. See *Protestatio Nomine Sedis Apostolicae & Sanctissimi D. D.* Innocentii *Papae XIII. Emissa in Conventu Cameracensi, adversus Tractatus initos aut ineundos super praetensa concessione eventualis Investiturae Ducatûs Parmae & Placentiae*, Cambrai, 14 March 1723, Rousset 1739, pp. 175-178 Dhondt, *Balance of Power*, 2015, pp. 337-347.

172 La Paz to Fleury, Isle of Leon, 29 March 1729, copy, NA, SP, 78, 190, f. 419v°.

173 Instructions for Benjamin Keene and the Marquis of Brancas, Compiègne, 8 May 1729, f. 25v°. George Lyttelton alleged a 'secret' and separate article in the Treaty of London, which would have foreseen that the Dutch share (which was never filled, since the Dutch Republic did not adhere to the treaty) could have been taken over by Spain. Hence, Spanish-paid troops would not have violated the spirit of the treaty. George Lyttelton to Thomas Lyttelton, Paris, 27 September 1729, in Ayscough 1774, p. 700. In general, the Dutch Republic had not guaranteed the solution for Parma, Piacenza and Tuscany at the Treaty of London, which caused Spain to insist on an inclusion of the garrison-question in an eventual treaty. Stanhope, Walpole and Poyntz to Newcastle, Hautefontaine, 7 May 1729, *o.c.*, f. 12r°.

174 'Translation of the paper given by the Spanish correspondent to M. Stanhope, 14 June 1729', NA, SP, 78, 191 f. 418r°.

175 Le Dran, *Histoire du Congrès*¸f. 239r°.

176 See Jean-Claude Waquet, *Le grand-duché de Toscane sous les derniers Médicis : essai sur le système des finances et la stabilité des institutions dans les anciens Etats italiens*, EFR/de Boccard, Rome/Paris, 1990.

'immediately' succeed on the Duke's decease.[177] Of course, a resurgence of the Renaissance republican spirit in Florence was also feared if foreign garrisons were to occupy fortresses before Gian Gastone's decease, '*sur tout ceux du Grand Duché soupirant apres leur ancienne Liberté*', who would have longed for '*cet Etat reprendre la forme de Republique*.'[178] The Emperor presented himself as the champion of Italy against 'foreign' Spanish rule, by keeping out Spanish garrisons.[179] This was quite remarkable, since the Duke of Parma and Piacenza's insistence on the necessity to balance the Emperor's power had been at the heart of the Treaty of London's compromise on his succession by Elisabeth Farnese and Philip V's son.[180]

Yet, in balancing commercial and dynastic issues, it could be argued that:

> 'it is the interest of all Europe, that the succession of those countries should be secured to Spain. The Emperor is too powerful already and may become master of the liberties of Italy, if he has not a neighbour in those states who will be strong enough to check him.'

177 Stanhope, Walpole and Poyntz to Newcastle, Hautefontaine, 7 May 1729, *o.c.*, f. 20v°

178 Idées de la Pacification par voye de Tréve, s.l., September 1728, AMAE, M&D, France, vol. 499, f. 160v°. See also *Freymüthige* 1728, p. 106: '*die Florentiner selbst, die sich biß anhero zu behaupten behmühet, daß Florenz schon seint den Zeiten Kayser Rudolphs des ersten* [1218-1291] *des ersten ein ganz freyer und independenter Staat gewesen, daß ihnen über ihre Freyheit fast von allen nachherigen Kaysern neue Bekäntnisse gegeben worden, daß Kayser Carl V. nicht als Ober-Herr, sondern als freywillig erwehlter Schieds-Richter den Streit zwischen den Mediceern und den Staat von Florenz entschieden, und darinnen Alexandrum Medices vor das Ober-Haupt der Magistraten erkläret, daß die Stadt diesen Alexander aus eigener Macht und Bewegniß zum Herzoge angenommen* […] *zum Beweiß ihrer absoluten Freyheit*.'

179 'Translation of the paper given by the Spanish correspondent to M. Stanhope', NA, SP, 78, 191, f.420v°. Early in July 1728, the Florentine resident in Paris, Giulio Franchini-Traviani, argued that his presence in Soissons was necessary to defend his master's interests. Hop Archives, f. 77r°. Cornelis Hop resented the installation of Spanish garrisons in Tuscany while Gian Gastone de'Medici was still alive, and compared it to 'the taking possession of Naboth's vineyard' (Hop to Slingelandt, Soissons, 4 June 1729, quoted in GOSLINGA 1915, p. 343). Yet, the Dutch pensionary Slingelandt thought this 'taking possession' during Gian Gastone's lifetime was necessary to extinguish the flame of war between Philip V and Charles VI. Hence, although the Dutch had not been a contracting party to the Quadruple Alliance, they ought to be prepared to guarantee the Spanish garrisons, for the common European good (*Ibid.*). See also SCHNETTGER 1999, pp. 414-415 on Imperial arguments before the Diet against the Treaty of Seville: the signatory powers (France, Spain, and the Maritime Powers) were accused of treating Imperial fiefs as '*ein Eigenthum*'.

180 See Emile BOURGEOIS, *La Diplomatie secrète au XVIIIe siècle, ses débuts. II. Le Secret des Farnèse, Philippe V et la politique d'Alberoni*, Armand Colin, Paris, 1909.

George Lyttelton's words quoted here are illustrative of the nature of balance-thinking during the Congress of Soissons. Whereas the Quadruple Alliance had been designed to 'prevent the mischiefs which might have ensued from the difference of the imperial court with that of Spain', the congress's mission was to 'prevent much greater ones that would arise from their too close union.' Lyttelton aptly summarised the stakes:

> 'we shall gain more by obliging Spain, and make the balance more even.'[181]

This is a clear echo of the repetitive assurances by British diplomats that France and Britain, as contracting parties to the Quadruple Alliance, were both guarantors of the agreement made, and mediators between Spain and the Emperor.[182] Installing don Carlos in Italy was in Spain's interest, but also in that of the Quadruple Alliance's mediators, who were set on 'securing the Balance of Power'.[183]

This situation strongly resembled that at the Congress of Cambrai. In 1721, France and Britain had promised Philip V the introduction of Spanish garrisons for the remainder of the reign of the Farnese and Medici princes. The main motive here was the restoration of trade, which had been interrupted from 1718 to 1720 because of the War of the Quadruple Alliance. At the congress, Charles VI's ministers plenipotentiary Windischgrätz and Pentendriedter had strongly defended the superior position accorded to the Emperor under imperial feudal law. In Cambrai, France and Britain had been acting impartially as mediators, but at the same time as guarantors of claims Philip V had had recognised both in 1718 and 1721, as well as contracting parties to the treaty of 1718. Conversely, Charles VI could try to distract George II and the Dutch Republic, by offering concessions on the Ostend Company, Mecklenburg or East Frisia.

181 George Lyttelton to Thomas Lyttelton, Paris 13 August 1729, in Ayscough 1774, pp. 690-691.

182 Stanhope, Walpole and Poyntz to Townshend, Paris, 15 June 1729, NA, SP, 78, 191 f. 333v°. See also Frederik Dhondt, «La consolidation juridique du système des traités d'Utrecht et de Rastatt par la diplomatie franco-anglaise (1713-1725)» in : Bély, Hanotin & Poumarède 2019, pp. 525-526.

183 Stanhope, Walpole and Poyntz to Townshend, Paris, 26 June 1729, NA, SP, 78, 191, f. 407r°.

The Duke of Bournonville,[184] Marquis Santa Cruz[185] and Barrenachea[186] composed the Spanish delegation. Sweden, invited by Britain and France,[187] was represented by its resident Niklas Baron Gedda and Gustaf baron Sparre,[188] the

184 'Whatever Reputation the D. of B. may have acquired as an able Minister […] he is a very good one for his own private advantage and honour' (Benjamin Keene to Stephen Poyntz and the Duke of Newcastle, Madrid, 11 February 1729, NA, SP, 78, 190, f. 256v°).

185 Àlvaro José de Navia Osorio y Vigil (1684-732), Third Marquess of Santa Cruz de Marcenado, Visconte del Puerto, field-marshal of Spain (who fought in Italy during the War of the Spanish Succession), ambassador extraordinary in Turin (1722-1727, see *Freymüthige* 1728, p. 86) 'he is one who cannot hold a secret long', Stephen Poyntz to Delafaye, 29 January 1729, NA, SP, 78, 190, f. 92r°. Santa Cruz was suspected of corresponding directly with the Queen, in order to advance his ambitions to 'accede to the ministry' of Spain. Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 179v°. Alongside Macanaz, he is cited to be in favour of the policy to recover the 'lost' Spanish provinces. See Alvaro José de Navia Osorio de Santa Cruz de Marcenado, *Reflexiones militares del Mariscal de Campo Don Alvaro Navia Ossorio, Vizconde de Puerto, ò Marques de Santa Cruz de Marzenado*, s.n., Torino, 1726.

186 Joaquin Ignacio Barrenachea y Erquiñigo (1681-1753). William Stanhope claimed to have bribed the secretary of this Spanish diplomat and stated he met with him regularly during the congress (William Stanhope and Horatio Walpole to the Duke of Newcastle, Fontainebleau, 28 October 1728, NA, SP, 78, 188, ff. 330r°-334v° (most secret) and 22 December 1728, *ibid.*, 416r°-417r°; see Dhondt, *Balance of Power,* 2015, p. 456 note 76).

187 French secret instructions, *o.c.*, f. 116v°.

188 Gustaf Baron Sparre (1688-1741) had been ambassador in London from 1719 on. He arrived early in July 1728, while Gedda had already been present before. Hop Archives, f. 55r°. Three weeks later, the Swedish ministers received their full powers. They justified their presence by the Swedish accession to the League of Hanover (*Ibid.*, f. 90r°; 14 March 1727, 32 *CTS* 385), which was accepted by the other parties. From late July 1728 on, the Swedish delegation attended the congress on the same footing as the initial five. From November 1728 on, both Swedish ministers had the rank of extraordinary ambassador (Le Dran, *Histoire du Congrès*, f. 278r°). One of the absolutely delicious pieces in the French diplomatic archives on the congress is the rent contract between Sparre and André de Gironde Count Buron, who rented out his castle of Escuiry, in present-day Rozières-sur-Crise, 7 kilometres from Soissons (including a *glacière* for cooling wine outside of the castle's park), 12 July 1728 (AMAE, M&D, France, vol. 498, ff. 80r°-81r°). A careful inventory was drafted previous to the signature. Sparre could not cut any wood for the duration of the congress and had to pay the gardener's salary, but was entitled to enjoy the right of hunting. The rent amounted to 6 000^{lt}, to be paid every three months. Thanks to the collection of letters in the *Merckwürdigsten* 1728, pp. 38-39, we can compare this to the other residences. Sinzendorf rented a house for 13 200 ^{lt}, Penterriedter for 11 390, Fleury lived for free in the episcopal palace, Fénelon rented a *logis* for 7 200, Brancas for 6 000, Jaunelle, the secretary of the French delegation for 1 000, Bournonville for 9 500, Santa Cruz for 6 000, Barrenachea for 8 000, Horatio Walpole for 8 000, William Stanhope for 22 300 (the most expensive residence), Poyntz for 11 000, Hop for 8 000, Goslinga for 7 900, Sparre for was listed for 7 560 (although this contract was thus less expensive), Ged-

Dutch Republic by Hop, Hurgronje and Goslinga.[189] The presence of Sweden and the Dutch Republic was due to their inclusion in the League of Hanover. French official instructions for the congress, drafted in May 1728, counted with possible participation from Holstein (devoted to the Court of Vienna and linked to Russia),[190] Frederick IV of Denmark (closely linked with Britain)[191] and Tsar Peter II ('suspect and with little good faith').[192] The treatment of the notoriously complex problem of Schleswig would not be beneficial to a speedy expedition of the talks.[193] In French secret instructions, the 'rights of the Duke of Holstein' were cited on the same level as the thorny issues of the Ostend Company and British commercial claims against Spain![194]

France can be said to have been 'equally wished for and courted' by 'all Princes of Europe', since it was capable to make 'the balance shift to either side

da for 7 500, Golovkin for 12 000, Königsfeld for 6 000, Bassewitz for 7 500, Francken for 6 000 and the 'commissioners for Ostend' for 2 400.

189 Note on the delegations, June 1728, Soissons, AMAE, M&D, France, vol. 497, f. 169r°. 'The Dutch Ministers [were] at variance among themselves, and all of them talkative' (Fleury, explaining why Hop had communicated a draft only to Pensionary Slingelandt and Greffier François Fagel, quoted in Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 177r°). Poyntz distrusted Hop, and insisted that Fleury should communicate all pieces to Goslinga, who would be more likely to actually pass them on to pensionary Slingelandt (Stephen Poyntz to Philip Stanhope Earl of Chesterfield, Paris, 1 April 1729, NA, SP, 78, 190, f. 354v°).

190 French instructions, 20 May 1728, Paris, AMAE, M&D, France, vol. 497, f. 105v°. Due to the position of Hanover in the Northern German theatre, the implication of the Emperor, Holstein (Russia) and Denmark at the congress could only complicate matters. Bassewitz, the resident for the Duke of Holstein-Gottorp, presented memoranda trying to influence the League of Hanover's delegates (Hop Archives, f. 55r°). The Russian diplomat Aleksandr Gravilovic Graf Golovkin arrived incognito in the vicinity of Soissons on 12 July 1728 (Hop Archives, ff. 78r°, 93r°). On the geopolitics of the North of Germany see Indravati Félicité, *Négocier pour exister: les villes et duchés du nord de l'Empire face à la France 1650-1730*, DeGruyter, Berlin, 2016 ; Eric Schnakenbourg, *La France, le Nord et l'Europe au début du XVIIIe siècle*, H. Champion, Paris, 2008.

191 Poyntz to Newcastle, 6 February 1729, *o.c.*, f. 112v°: Denmark invoked British and Dutch guarantees for the recovery of a debt against Spain. It had acceded to the League of Hanover on 16 April 1727 (32 *CTS* 397).

192 French instructions for the Congress of Soissons, *o.c..*, f. 133r°.

193 Reflexions sur les expediens qu'on pourroit peutêtre trouver pour l'afaire de Slesvic par le partage de ce Duché, AMAE, M&D, France, vol. 498, ff. 35r°-36v. For a succinct description : Schnakenbourg 2008, p. 28, note 6.

194 French secret instructions, *o.f.*, f. 116v°.

it wished to favour'.[195] The instructions for Fleury, Fénelon and Brancas clearly stated that France, 'although Britain's ally, and principal contracting party in the Treaty of Hanover', had 'no personal interest in most affairs.'[196] The instructions added that whereas France could aim for conquest and aggrandisement under Louis XIV, these times had now passed, as Louis wanted 'principally to avoid a war', convinced that 'the continuity of Peace is even necessary for the perfect restoration of his finances' or to 'elevate France from the state of languishment its trade is currently in'.[197] If matters at the congress ought to be settled 'according to justice', this could not lead to France alienating any of the powers whose alliance it wished to keep.[198] The 'last war' (the War of the Spanish Succession) had demonstrated that an alliance 'of France and Spain solely' was insufficient to provide France with the necessary security...[199]

By the start of 1729, the plenipotentiaries alternated between Soissons and Paris, where some of them, as the Spanish ministers Barrenachea and Santa Cruz, had 'taken a house.'[200] In view of the cardinal importance of both Spanish action on trade and the claims in Italy, rumours on court life reverberated across Europe. Poyntz reported regularly on information received from two Sicilian abbots in Paris.[201] Elisabeth Farnese, 'a woman who knew no law or justice'[202] was often portrayed as the female tyrant who pushed the Italian claims, whereas her husband's mental and physical health was frail throughout the year.[203] Rumours on Philip V's imminent abdication circulated throughout the congress.[204]

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195 French instructions for the Congress of Soissons, *o.c.*., f. 104v°.

196 *Ibid.*, f. 106r°.

197 *Ibid.*, *o.c.*, f. 106v° and 108r°.

198 *Ibid.*, *o.c.*, f. 106v°.

199 *Ibid.*

200 Poyntz to Delafaye, 29 January 1729, *o.c.*, f. 92r°.

201 Carraciolo and Platania, banned by Elisabeth Farnese. See Philip WOODFINE, *Britannia's glories : the Walpole ministry and the 1739 war with Spain*, Woodbridge, Royal Historical Society, 1998, p. 36.

202 Poyntz to Newcastle, 8 march 1729, *o.c.*, f. 261r°.

203 See the description of Philip V's attacks of bulimia, depression and euphoria, or of instances where 'the King believed that he was a frog' in Henry KAMEN, *Philip V of Spain: the King who Reigned Twice*, Yale University press, New Haven (Conn.), 2001, pp. 165-166.

204 E.g. Third plenary session: 'nothing to report', since the mutual communication of demands between the allies of Hanover and those of Vienna can only take place when both sides are ready. Rumours from Spain (the King would have abdicated for the second time,

Rumours of Philip's abdication contributed to the perception of instability.[205] Wasn't Philip V 'hardly in his senses', as Fleury interpreted?[206] Was Philip able 'to bear the least fatigue of business'? Could the King, 'grossly indolent and supine',[207] 'form an opinion or resolution of his own, and pursue it with steddiness for half an hour together?'[208] Wouldn't the *Grandes* at court be prepared to go to war to 'gather the Provinces dismembered from Spain' at the Peace of Utrecht?[209]

Statements by Ripperda, interrogated in London on the treaties of 1725, suggested that Charles VI and Philip V would have had a secret agreement to reconquer 'from France all its possessions in the Low Countrys and Franche Comté and Burgundy', were dismissed by Fleury as 'extravagant and chimerical'.[210] Ripperda's addition that 'reconquering what had formerly belonged to the House of Lorrain' was described as outright 'ignorant and absurd', since the Cardinal affirmed that Louis XV did not retain anything belonging 'at present […] to that House'.[211] The summum of Ripperda's absurdities, for Fleury, was the idea that Ferdinand, Prince of Asturias and later King Ferdinand VI (1713-1759), would accept his half-brother don Carlos as Holy Roman Emperor, and his youngest half-brother don Philip as King of France.

Spanish overblown projects of alliances, suggesting the League of Hanover to go to war against Charles VI and thus start the War of the Spanish Succession again, surfaced from time to time. This had also been the case during the first years of the French Regency (1715-1723). An example of this is a proposal attributed to Marquis La Paz, whereby Naples and Sicily as well as Milan ought

in favour of the Prince of Asturias, without the Queen's knowledge, with Elisabeth Farnese acting as regent while Philip would have withdrawn in San Ildefonso) are identified as the cause for this delay. Hop Archives, f. 25r°. Philip V had already abdicated once in 1724, during the Congress of Cambrai, to return at his son Luis I's decease. See Dhondt, *Balance of Power*, 2015, pp. 294-296, 358-361.

205 Poyntz to Keene, most private, Paris, 5 February 1729 (copy), NA, SP, 78, 190, f. 132v°.

206 Stephen Poyntz to the Duke of Newcastle, Paris, 22 February 1729, NA, SP, 78, 190, f. 173v°.

207 Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 174v°.

208 *Ibid*. f. 174r°.

209 Poyntz to Keene, most private, 5 February 1729, *o.c.*, f. 132v°.

210 Poyntz to Newcastle, 22 February 1729, most private, *o.c.*, s.f.

211 *Ibid*., Poyntz tried to argue that the three bishoprics acquired by France in 1559 at the Peace of Câteau-Cambrésis would have belonged to Lorraine, 'while it was a Kingdom', but Fleury refused to accept the argument.

Sicco van Goslinga (1664-1731), Fries politicus en Nederlands diplomaat. By Jacob Houbraken (1698–1780) Naar tekening van: Hendrik Pothoven (1725-1807). Rijksmuseum, Amsterdam.

to be transferred to don Carlos, 'without enfeoffment', ergo undoing the imperial legal order in Italy. Don Luis, born on 25 July 1727 (who would later become Archbishop of Toledo), was proposed as ruler in the '*Flandres Autrichiennes*'.[212]

Conversely, ascribing too much influence to the Queen, underestimating her husband's sole right to rule as King, could be seen as a mistake at the Spanish court.[213] Wouldn't Philip V have decided to treat all matters with his son, infant Ferdinand, the Prince of Asturias and hadn't the Queen lost favour?[214] Or, wouldn't Elisabeth Farnese have chosen to act more discreetly, to avoid her husband's abdication?[215] After all, hadn't this hot-headed woman been 'tricked' in the Ripperda treaties, worded as Bournonville explained to Fleury, to make sure the Emperor 'was under no positive engagement for the marriages'?[216] Equally, attempts of the Pretender's court to persuade pope Benedict XIII to prevent Philip V's abdication, were followed with curiosity.[217] What if the 'extraordinary backward and puerile'[218] Prince of Asturias fell ill, and Elisabeth's sons became the next in line for the throne ?[219]

Besides the strategic position of Spain, Elisabeth Farnese's Italian relative Antonio, Duke of Parma (1679-1731), reiterated demands formulated earlier in Cambrai.[220] The Treaty of the Quadruple Alliance had stated that Parma and Piacenza would become Imperial fiefs… *after* the extinction of the ruling house

212 Translation of the proposed draft of a 'public and final treaty' and of a 'another secret treaty', 'invented' by Marquess de la Paz, s.l., s.d., NA, SP, 78, 191, f. 412v°.

213 Poyntz to Newcastle, 6 February 1729, *o.c.*, f. 113r°.

214 Poyntz to Keene, most private, 5 February 1729, *o.c.*, f. 133r°. Other gossip consisted of correspondence between Macanaz and the Prince. Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 181r°.

215 *Ibid.*, f. 133r°.

216 Poyntz to Newcastle, 22 February 1729, most private, *o.c.*, s.f.

217 Poyntz to Keene, 22 February 1729, *o.c.*, f. 175v°. Poyntz mentioned Toby B[o]urk, a 'frequent visitor' of James III's court in Rome. Edward T. Corp, *The Stuarts in Italy, 1719-1766: a royal court in permanent exile*, Cambridge University Press, Cambridge, 2011, p. 245.

218 Benjamin Keene to Stephen Poyntz, Cadiz, 24 March 1729, 'all in cypher' (copy), NA, SP, 78, 190, s.f.

219 Keene to Poyntz and Newcastle, Madrid, 11 February 1729, reporting the Prince of Asturias having recovered from a cold.

220 See the Demands of Francesco Farnese, Duke of Parma (1678-1727) at the Congress of Cambrai, Rousset 1739, pp. 170-173 and Dhondt, *Balance of Power*, 2015, pp. 325-335.

of Farnese. Consequently, Antonio Farnese claimed to be a vassal of the Holy See. The Emperor's jurisdiction could thus not (yet) be invoked.[221] The Dukes of Parma derived from the Treaty of the Quadruple Alliance a claim to protection of their territory against various encroachments of the Imperial government in Milan and Mantua. Not only the Duke's 'jurisdiction' and sovereignty, but also private property would be under constant threat.[222] These claims stalled the general talks, as not all parties to the League of Hannover had been involved in the Quadruple Alliance, and, consequently, had not guaranteed the duke of Parma and Piacenza's possessions.[223]

The most ambitious and versatile Italian ruler, King Victor Amadeus II of Savoy-Sardinia, was not represented at the congress. In Versailles, it was thought that this prince -not a contracting party to either the Alliance of Hanover or Vienna- would only exploit the complex diplomatic playground to dominate the others.[224] However, in view of the permanent conversation between Versailles, Compiègne, Paris and Soissons, Sardinian diplomats still had numerous possibilities to enter into contact with all relevant protagonists.

Viewing these Italian claims, it is not surprising to find requests from local nobles, such as Giovanni Andrea Mariano Doria del Carretto, Duke of Tursi (1660-1742), who implored the congress to engineer a solution allowing for the restitution of his fiefs, confiscated following a decision of the Imperial Aulic Council almost twenty years earlier, during the War of the Spanish Succession. The Duke invoked the Treaties of Rastatt (art. 25, *in fine*) and Baden, whereby private persons who had been disadvantaged by judicial decisions taken during the war, could challenge the latter again.[225]

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221 Pointz arrêtez en faveur de M. le Duc de Parme dans le précis formé par les Médiateurs en explication du 5e article du Traité de Londres, s.l. (Paris ?), s.d., AMAE, M&D, France, vol. 500, f. 159r°-v°. SCHNETTGER 1999 p. 350 remarks that these Italian anti-Imperial claims aimed at the construction of a 'competing feudal order' against the Emperor, i.e. with the local Italian ruler as overlord.

222 Note on Parma, NA, SP, 78, 190, ff. 290v°-291r°.

223 Poyntz to Newcastle, 26 April 1729, *o.c.*, f. 417r°.

224 French secret instructions, *o.c.*, f. 114v°.

225 Mémoire de M. le Duc de Tursi pour leurs Excellences MM les Ambassadeurs Plenipotentiaires assemblées au Congrez de Soissons, 25 May 1728, AMAE, M&D, France, vol. 497, ff. 74r°-79v°. On the del Carretto family, see Viktoria HYDEN-HANDSCHO, « Dynastische Neuausrichtung des Hauses Arenberg nach Wien. Die Familie del Carretto », in: William D. GODSEY and Veronika HYDEN-HANDSCHO (eds.), *Das Haus Arenberg und die*

Tursi was far from the only 'non-state actor' insisting on redress of a perceived injustice. The French plenipotentiaries received a request from Charles de Malinez, Viscount of Zuytpeene, Colonel in the French cavalry. He had supported Philip of Anjou during the War of the Spanish Succession and insisted on getting back his official 'charge' as Grand Forestier of the Duchy of Brabant.[226] Malinez invoked the 'rights and laws of Brabant', which, in his interpretation at least, forbade the destitution of an office holder, once he had pledged an oath to the legitimate duke.[227]

'Manifest denial of justice?':

bilateral commercial quarrels with Spain

> 'those remedys […] might tend to inflame matters and to draw on an universal war, at the time when a Congress is sett on foot by Treaty for composing differences amicably'
>
> Chauvelin (cited by Poyntz)[228]

> 'as may with great civility give His Catholick Majesty to understand, there is a firmness and union among the Allys not any longer to be trifled with'
>
> Poyntz to Keene[229]

Habsburgermonarchie. Eine transterritoriale Adelsfamilie zwischen Fürstendienst und Eigenständigkeit (16.-20. Jahrhundert), Regensburg, Schnell & Steiner, 2019, pp. 83-144. As an example of further requests for intercession, we can cite the example of dowager princess Mary Louise of Hesse-Cassel (1688-1765), widow of John William Friso of Nassau (1687-1711), acting on behalf of her son William Charles Henry Friso (1711-1751). She insisted on the payment of a rent originating in a convention between William III of Orange and the Marquis of Gastañaga, governor-general of the Spanish Low Countries. Hop Archief, f. 69r°. For the details of the very complex inheritance of William III, see recently Marijke Bruggeman, *Nassau en de macht van Oranje. De strijd van de Friese Nassaus voor erkenning van hun rechten, 1702-1747*, Verloren, Hilversum, 2007. Furthermore, the Estates-General recommended their delegation to represent the interests of the Swiss Evangelical cantons as well (Hop Archives, *o.c.*., f. 106r°).

226 On the office of '*Maître des Bois et Forêts'*, with its jurisdictional seat at the '*Broodhuys*', on of the major building on the Brussels Grand Place, see Goswin Arnold de Wynants, *Mémoires contenant des notions générales de tout ce qui concerne le Gouvernement des Païs-Bas*, Vienne, s.n., 1730 (copie) f. 383. Letter from Malinez to Louis XV, Soissons, July 1728, AMAE, M&D, France, vol. 498, ff. 52r°-54v°.

227 *Ibid.,* 53r°.

228 Poyntz to Newcastle, 24 January 1729, *o.c.*, f. 41r°.

229 Stephen Poyntz to Benjamin Keene, British minister plenipotentiary in Madrid, Paris, 5 February 1729 (copy), NA, SP, 78, 190, f. 116v°.

> 'It is the interest of the French court to be faithful to their engagements, though it may not entirely be the nation's […] but the mercantile interest has at no time been much considered by this court.'
>
> George Lyttelton[230]

> '*La Reine me fit l'honneur de me dire, qu'elle avoit furieusement disputé avec cet ambassadeur*'
>
> Brancas[231]

In a draft memorandum for the Hanover allies (France, Britain, Dutch Republic), the resumption of normal trade with Spain was justified on '*la foy des Traitez*', and the mutual guarantee that these would be executed.[232] This text was to be presented in Seville or Madrid by Brancas (who had left Soissons), Benjamin Keene (the British minister plenipotentiary at Philip V's court) and Van der Meer (Dutch ambassador).[233] 'Various excesses' committed under 'the most serene name' of Philip V, both in Spain and in the Indies called for redress. The damages and losses incurred by private persons ought to receive justice.[234] Spanish authorities had not only failed to provide satisfaction, but had not even bothered to answer complaints within the terms prescribed by commercial treaties.[235]

This was coupled with a general justification of trade, as 'the means to communicate the commodities and advantages from one nation to the other and to be mutually enriched'.[236] This vision did not seem to be derived from a grim zero-sum view of the balance of trade. Rather, the King of Spain ought to understand that the general interest of humanity was served by correct trading relations, even

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230 George Lyttelton to Thomas Lyttelton, Hautefontaine, 27 May 1729, in Ayscough 1774, p. 687.

231 Brancas to Chauvelin, 31 August 1728, cited by Le Dran, *Histoire du Congrès*, f. 217r°.

232 'Memoire à présenter à la Cour d'Espagne au nom des Puissances interessées [sic] dans le Commerce et Alliés par le Traité d'Hanovre', s.l., s.d. NA, SP, 78, 190, f. 17v°.

233 Hop Archives, f. 175r°.

234 'Mémoire à présenter à la Cour d'Espagne', *o.c.*, f. 18r°.

235 *Ibid.*, f. 20r°.

236 See on the theoretical framework of this '*doux commerce*': Antonella Alimento & Koen Stapelbroek, «Trade and Treaties: Balancing the Interstate System», in Antonella Alimento & Koen Stapelbroek (eds.), *The politics of commercial treaties in the eighteenth century: balance of power, balance of trade*, Palgrave, Basingstoke, 2017, p. 22; Eric Schnakenbourg, *Entre la guerre et la paix. Neutralité et relations internationales XVIIe-XVIIIe siècles*, Presses Universitaires de Rennes, Rennes, 2013, pp. 248-251 and recently John Shovlin, *Trading with the Enemy. Britain, France, and the 18th Century Quest for a Peaceful World Order*, New Haven (Conn.), Yale University Press, 2021.

more so since the individual morality of tradesmen who had 'invested their good and their industry' in trade, would have to appeal to the King as a human being

> 'too religious to suffer these private persons fall into total ruin, because they had placed their trust in the sacred force of treaties. His natural goodness is too considerable to refuse to indemnify them.'[237]

Philip was reminded that the exactions of his officers, 'increasing every day', were a violation of the Preliminaries of Paris and the Convention of the Pardo (by which Philip V adhered to the preliminaries). They brought 'insufferable losses' on businessmen, who had become 'totally disgusted from commerce'.[238] British ships had been seized by Spaniards on the high seas, far away from the 'ports and domains' controlled by Spain. Those entering Spanish-controlled ports to trade 'in a licit way, conformable to the treaties', had been confiscated with their carriage, against the permissions and terms conceded by treaty, which ought to be respected even in the case of an open war.[239] Philip was furthermore accused of having raised customs[240] above the level of Charles II's reign (1661-1700), and of imposing excessive '*indultos*' (royal taxes due to receive a permission for trade).[241] Philip's new company of Biscay[242], set up to 'disturb trade', authorised to

> 'have private judges order the confiscation of foreign nations' ships, under the specious pretext to prevent illicit trade, instead of the judges of Your Majesty himself'.[243]

This latter point would put an end to the competence of the conservatory judges who watched over the trade privileges of French, Dutch and British subjects.[244]

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237 'Mémoire à présenter à la Cour d'Espagne', *o.c.*, f. 18r°.

238 *Ibid.*, f. 18v°. Woodfine 1998, pp. 88-89 identified the whole period 1726-1731 as one of depredations, linked to the unwillingness of British merchants to respect the 'vigorous enforcement' of the Spanish trading monopoly, identifying the case of Story King, master of the Bristol galley the *Robert*, 'tortured for three days with thumbscrews, and lighted marches in his nails'. These 'older' cases were invoked later on by Horatio Walpole, in the run-up to the War of Jenkin's Ear (*Ibid.*, p. 95).

239 'Mémoire à présenter à la Cour d'Espagne', *o.c.*, f. 19r-v°.

240 E.g. import tax on goods brought in by the VOC. Poyntz to the Duke of Newcastle, Paris, 12 January 1729, f. 33v°.

241 'Mémoire à présenter à la Cour d'Espagne', *o.c.*, f. 19r°-v°. Baudrillart 1890, p. 383; Goslinga 1915, p. 141.

242 Poyntz to Newcastle, Paris, 12 January 1729, *o.c.*, f. 33v°. Hop Archives, f. 174. On this company, see Rousset 1731, V, pp. 239-246.

243 'Mémoire à présenter à la Cour d'Espagne', *o.c.*, f. 19v°.

244 Anonymous memorandum on trade, s.l., s.d., NA, SP, 78, 190, f. 54v°.

This ought to be contrasted with the Dutch ire at Philip V's decision in 1725 to extend the usual protection of these three nations to the subjects of Charles VI by an MFN-clause.[245]

Britain had obtained a privileged position above all other trading nations, notably by the exclusive right to sell enslaved Africans in Latin America, granted to the South Sea Company.[246] Conversely, Spain aimed at the reduction of British rights, and still claimed the restitution of Gibraltar. In 1721, George I had promised Philip V that he would return the 'Rock and fortress of Gibraltar,' but only '*du consentement de mon Parlement*.'[247] George II's diplomats considered his title on Gibraltar (cession by treaty) as 'right and just',[248] whereas Spanish diplomats still attempted to assimilate it with conquest and brute force.[249] Philip V had undertaken a siege in February 1727 (in reaction to the British blocking of the Silver Fleet), but had been obliged to suspend it at the conclusion of the preliminary articles of peace.[250] This text foresaw in its second article that the contracting parties guaranteed all 'Rights and Possessions, by virtue of the Treaty of Utrecht, Baden, and the Quadruple Alliance, and other Treatys and Conventions antecedent to the year 1725'.[251] This proved to be rather effective, as Fleury bluntly stated to Spanish plenipotentiary Bournonville that:

245 French secret instructions, *o.f.*, ff. 120v°-121r°. The establishment of the Imperial Trading Company at Trieste in 1719.

246 Treaty between Queen Anne and Philip V, Madrid, 26 March 1713, *CUD* VIII/1, nr. CXLIX, 330-337.

247 George I to Philip V, 12 June 1721 (copy), AMAE, CP, Angleterre (supplement), 7, f. 14r°; Dhondt, *Balance of Power* 2015, p. 238. The Imperial plenipotentiaries seemed to underestimate the likelihood of parliamentary consent for the restitution, e.g. Memorandum by the Imperial plenipotentiaries, Soissons, August 1728, AMAE, M&D, France, vol. 498, 146r°. On the question more generally: Martín Ortega Carcelén, «The Retrocession of Gibraltar: A New Reading of the Treaty of Utrecht», in: Trevor J. Dadson and John H. Elliott (eds.), *Britain, Spain and the Treaty of Utrecht 1713-2013*, MHRA-Maney, London, 2014, pp. 129-136.

248 Poyntz to Newcastle, 14 January 1729, *o.c.*, f. 47r°.

249 Pecquet sr., Mémoire sur plusieurs articles…, *o.c.*, s.f. : '*cette restitution doit se faire* […] *elle est selon touttes les loix de la justice* […] *l'Interest g*[é]*n*[éra]*l de l'Europe la demande* […] *vainement l'on se flatte d'une paix sûre et permanente, si elle ne s'execute pas*.'

250 Poyntz to Newcastle, 22 February 1729, most private, *o.c.*, s.f. In connection with this, Philip V had to return the *Prince Frederick*, a British ship seized in the Indies and estimated at four thousand piastres. Goslinga 1915, p. 163.

251 Annex to the instructions for Stanhope, Walpole and Poyntz, NA, SP, 78, 190, f. 335v°.

> '*l'Angleterre ne se laisserait pas déposséder sans guerre et la France ne veut pas faire la guerre pour ce motif.*'[252]

The draft hoped the 'religion of Your Majesty' had been 'surprised' by those who found their private interest in 'overburdening' the subjects of France, Britain and the Dutch Republic with taxes, encroaching on their privileges and property, alleging violations of the treaties without proof.[253] The joint interest of these three 'nations' was evident, due to the higher interest of trade.[254] 'A mutual guarantee of commerce established by treaties'[255] required a common demand that Philip V would stop hikes in customs compared to the state of Charles II's reign, to withdraw previous increases and to stop any 'visit and prise' of ships on the high seas for 'those not engaged in any trade forbidden in your possessions', and to proceed to a 'full restitution of ships and effects unjustly seized', as well as to restore trade. Finally, British, French and Dutch-held assets on the Silver Fleet ought to be returned to their owners.[256] This fleet had been stalled by the British navy in Portobello since the escalation of the situation between the Leagues of Hanover and Vienna.[257]

This important point was used as an argument by Poyntz to draw France into the negotiations, as he estimated that more than goods belonging to French merchants worth more than £ two million were aboard Spanish galleons from the West Indies.[258] The Silver Fleet, perceived by contemporaries as the essential extra influx of bullion in an otherwise locked zero-sum European economy, was

252 Bournonville to Spanish minister Marquis de La Paz, Soissons, 26 June 1728, cited in Baudrillart 1890, p. 431.

253 'Mémoire', *o.c.*, f. 20v°.

254 In December 1728, Chauvelin agreed that, since Spain was treating France 'no more better than the other Nations', trade ought complaints ought to be presented as a '*causam communem*' (Hop Archives, f. 157r°).

255 French instructions for the Congress of Soissons, *o.c.*, f. 126v°: 'Sa Majesté etant devenuë garante de tous les privileges de Commerce accordés aux anglois, il est aisé de sentir que non seulement elle ne pourroit travailler a les retrancher mais que mesme a la rigueur elle seroit obligée de concourir a leur maintien et a leur leur conservation.'

256 'Mémoire', *o.c.*, f. 21r°.

257 Goslinga 1915, p. 137.

258 Stephen Poyntz to the Duke of Newcastle, Paris, 5 March 1729, NA, SP, 78, 190, f. 252v°. See also 'Translation of the paper given by the Spanish correspondent to M. Stanhope', *o.c.*, f. 421r°: the ships are used as a '*gage*' (pledge) by the Spanish to force France and Britain to accept the garrisons in Italy.

Juan Guillermo baron de Ripperdä (1684-1737), Spanish Secretary of State (1725-26).
Hermannus Collenius De verhalen van Groningen, Groninger Boegbeeld 15, 1704

estimated by Chauvelin at 35 million piastres. A fourth was said to belong to Philip V, half to French merchants, and the remaining fourth to 'Spanish subjects and foreigners of different Nations'.[259] Poyntz hoped that Spanish taxes required for the royal *Indulto* would be so heavy, that they would make 'a war not at all unpopular' in France.[260]

However, from the onset of the negotiations, French diplomats distanced themselves from the British attempt to present their commercial claims as a common interest. Dissident advice within the *bureaux des affaires étrangères* even depicted the British privileged position in Spain's trade as an injustice which needed to be corrected.[261] British 'illicit commerce' was considered not to involve French merchants: Britain 'absorbed' a large part of the 'gold of the Mines' through its interloping.[262] Moreover, the extent of British 'possessions and trade' had already become 'too formidable', to allow the court of Saint James to 'abuse of the French alliance' to make the advantage even bigger.[263] Hence, it is hardly a surprise that Stephen Poyntz inserted an important caveat in the postscript of a letter to Benjamin Keene, George II's minister in Madrid:

> 'You will be watchfull that the French and Dutch Ministers dont [sic] take a handle from this joint application to introduce themselves hereafter into the direction and management of our particular complaints, though they are to support them.'[264]

In practice, French and British merchants would remain competitors. British trade was already perceived as 'too formidable', and the plenipotentiaries at the Congress were discouraged from enhancing it too much if France were to follow all British complaints against Spain.[265] Even more, Louis XV's interest demanded that 'the trade of Europe would be put in a juster balance'.[266] Chauvelin warned

259 Poyntz to Newcastle, 8 March 1729, *o.c.*, f. 265r°. A report from Cadiz indicated that about twenty-four million had safely arrived in Spain. Stephen Poyntz to the Duke of Newcastle, Paris, 16 March 1729, NA, SP, 78, 190, f. 294v°.

260 Poyntz to Chesterfield, 1 April 1729, *o.c.*, f. 355v°.

261 Anonymous memorandum (Pecquet ?), April 1728, AMAE, M&D, France, vol. 497, ff. 62r°-63r°.

262 French instructions for the Congress of Soissons, *o.c.*, f. 126r°.

263 *Ibid.*, f. 107v°.

264 Poyntz to Keene, 5 February 1729, *o.c.*, f. 117v°.

265 French secret instructions, ff. 107r°-v°.

266 '*le Commerce de l'Europe dans un plus juste équilibre*' (French secret instructions, *o.c.*, f.

against proposals laid down in British Parliament to prohibit imports of 'French Cambricks and Lawns'.[267] Although the Franco-British commercial treaty did not prohibit this, France would have to retaliate by restricting imports from Britain, due to the predictable 'animosity' of the merchant community. The use of diplomatic intercession on the count of alleged 'extraordinary acts of violence' committed on British ships, served to prevent individual cases from leading to an outright conflict.[268] Poyntz resented that Chauvelin did not proceed with his own promise to draft orders for:

> 'the Governours of Colonys &c for enjoyning a strict observance of Treatyes, and all the offices of humanity and friendship between the subjects of the two Crowns'[269]

Bilateral quarrels between merchants were sometimes addressed at the highest level when satisfaction in the matter was considered important enough, as a letter from Robert Walpole illustrates.[270] In one case addressed by Walpole, a French

107v°).

267 Stephen Poyntz to the Duke of Newcastle, 26 February 1729, NA, SP, 78, 190 f. 215v°. A 'cambric' is a kind of white linen, originally made at Cambrai.

268 Poyntz to Newcastle, 6 February 1729, *o.c.*, f. 112r°. Chauvelin, 'expressed the greatest abhorrence of this barbarity', and promised to treat the affair with all possible diligence. Conversely, a complaint by a French captain, after examination by 'a Sea Officer of my acquaintance', is dismissed by Poyntz as 'grossly exaggerated' (Stephen Poyntz to the Duke of Newcastle, Paris, 19 February 1729, NA, SP, 78, f. 171v°). Yet, the report of the French captain having rendered public, it was said to have 'inflamed this Nation against us to the utmost degree', requiring a corresponding 'clear and distinct justification of the proceedings of our officers' (*Ibid.*). Poyntz reported that the French captain in question would have lost at least his commission for striking a British vessel, and probably 'his life', if a court martial case had not been interrupted by a private letter from Fleury, insisting to 'stop their Proceeding, that the affair might not be […] engagée before an answer could be returned from England.' (original underline) (*Ibid.*, f. 172r°). Vice versa, an incident with a French merchant at Plymouth had made Fleury 'inconsolable', to which Poyntz requested justification of British officers' conduct (Poyntz to Newcastle, 26 February 1729, *o.c.*, f. 151r°). In March, Poyntz was contacted by Maurepas, secretary of state for the Navy: British complaints regarding a vessel based in Brest did not allow to identify either the ship or the owner (Poyntz to Newcastle, 16 March 1729, *o.c.*, f. 296v°). E.g. my analysis of the French complaints of British depredations during the War of the Quadruple Alliance: Frederik Dhondt, «"Arrestez et pillez contre toute sorte de droit": Trade and the War of the Quadruple Alliance (1718-1720)», *Legatio: the Journal for Renaissance and Early Modern Diplomatic Studies* 1 (2017), pp. 98-130, DOI 10.12775/LEGATIO.2017.05.

269 Poyntz to Newcastle, 6 February 1729, *o.c.*, 112r°.

270 Copy of a letter of Robert Walpole to Chauvelin with French answer, Compiègne, 15 May 1729, NA, SP, 78, 191, f. 84v°-86r°.

man of war had seized Tripolitanian subjects on a ship sailing under British flag.[271] In another, French interlopers had shot at a British military ship, killing a crew member. For the former, article 17 of the bilateral treaty of commerce concluded in Utrecht was the British point of reference.[272]

In July 1729, George Lyttelton wrote back home that the Spanish galleons had brought home 'two and twenty millions of piastres', with a fourth of this amount for the King of Spain, 'allowing […] *dîmes, droits d'entrée,* &c., and a moderate indulto'. The latter, which was settled at 5% in the Convention of the Pardo, could be raised to 13 or 14%, since the merchant community understood the 'extraordinary charges' of bringing the galleons home. Yet, the limits of sovereign greed were not out of sight: if Philip 'arbitrarily resolves to take more, he so far exasperated France, that he may depend upon their entering vigorously into a war against him'.[273]

Neutrality

The early modern concept of neutrality is generally seen as the logical consequence of the demise of just war-thinking in medieval terms.[274] Non-belligerents would have acquired the right to declare themselves neutral with regards to a quarrel between two other polities. However, a unilateral declaration of neutrality could not sufficiently protect the neutral state once more powerful belligerents decided to trespass on its territory or in its waters.[275] An illustration

271 See petition (in Arab) by Tripolitanians asking for help: NA, SP, 78, 191 f. 392v°.

272 Treaty of Commerce and Navigation between Louis XIV and Queen Anne, Utrecht, 11 April 1713, 28 *CTS* 1. The French official response was that Guyon, the commander of the French man of war, might have made a mistake, and had presumed that the men arrested were soldiers. However, Britain was reproached to have used the same practice during the siege of Gibraltar in 1727, when French commercial vessels were stopped if they were thought to carry goods destined to Spain. Although the siege had been lifted, no restitution had yet taken place. French memorandum in response to Robert Walpole's letter, Compiègne, 15 May 1729, NA, SP, 78, 191, f. 85v°. See also a French memorandum on two British members of a pirate ship's crew, detained in La Rochelle (*Ibid*., f. 393v°).

273 George Lyttelton to Thomas Lyttelton, Hautefontaine, 6 July 1729, in Ayscough 1774, p. 688.

274 Stephen C. Neff, *The Rights and Duties of Neutrals. A General History*, Manchester University press, Manchester, 2000, p. 7; Schnakenbourg 2013, pp. 21-30.

275 E.g. Prussia's trouble in the Great Northern War. Frank Göse, *Friedrich I. (1657-1713): ein König in Preußen*, Pustet, Regensburg, 2012, pp. 271-282; Id., *Friedrich Wilhelm I. Die vielen Gesichter des Soldatenkönigs*, WBG Theiss, Darmstadt, 2020, pp. 328-339.

of this is the attempt of the Elector Palatinate to negotiate the neutrality of his territories with France.[276] The interest of this prince was quite evident, due to the proximity with Alsace. Moreover, the Elector was a vassal of the Landgrave of Alsace, a title taken over by France at the Peace of Westphalia.[277] Finally, the French guarantee of the succession in Julich and Berg to the Palatinate-Sulzbach branch of the House of Wittelsbach (see further) was an attractive advantage.[278]

This can be seen as the prolongation of bygone practices to conventionally recognise a political actor's neutrality.[279] As such, this practice was a negation of the formal equality of states under the law of nations. Moreover, from the Empire's side, remaining neutral was impossible if the Diet had declared a *Reichskrieg*.[280] France had proceeded likewise for the Duchy of Lorraine.[281] Duke Francis Stephen (the later Emperor Francis I Stephen, 1708-1765), who would marry Maria Theresia, the Emperor's oldest Archduchess (1717-1780). His father, Duke Leopold I of Lorraine and Bar (1679-1729) requested an act recognising his duchy's 'perpetual' neutrality.[282] He could not do this at the congress, since France extended its refusal to recognise the *jus legationis* of other German princes than the Electors, to the Duchy.[283] Fleury and Chauvelin, however, suggested both Britain and the Dutch Republic to recognise the neutrality of Lorraine in the 'same form' as France:

> 'which does in effect make the Neutrality void, if reasons of war should

276 Poyntz to Newcastle, 14 January 1729, *o.c.*, f. 39v°.

277 Mémoire sur la souveraineté du Roi sur la Haute et Basse Alsace par Monsieur de Grevenbrock à M. Chauvelin, 1728 (copy), AMAE, M&D, France, vol. 1468, ff. 13r°-17v°.

278 Stanhope, Walpole and Poyntz to Townshend, Paris, 1 June 1729 (copy), NA, SP, 78, 191, f. 232v°.

279 See Axel Gotthard, *Der liebe vnd werthe Fried: Kriegskonzepte und Neutralitätsvorstellungen in der Frühen Neuzeit*, Böhlau, Köln, 2014.

280 Joachim Whaley, *Germany and the Holy Roman Empire: Volume II: The Peace of Westphalia to the Dissolution of the Reich, 1648-1806*, Oxford University Press, Oxford, 2011, p. 122.

281 Stephen Poyntz to the Duke of Newcastle, Paris, 19 January 1729, NA, SP, 78, 190, f. 76r°; See also Phil McCluskey, «Louis XIV, Duke Leopold I and the Neutrality of Lorraine, 1702-1714», *European History Quarterly* 44 (2015), pp. 34-56.

282 Stephen Poyntz to the Duke of Newcastle, Paris, 26 January 1729, NA, SP, 78, 190, f. 84r°.

283 Chauvelin to Fénelon, 15 August 1728, cited in Le Dran, *Histoire du Congrès*, f. 189r°. See also memorandum on diplomatic ceremonial, Paris, 18 August 1728, AMAE, M&D, France, vol. 498, f. 248r°: '*les Electeurs ont toujours joüy en la personne de leurs Ministres des honneurs Royaux*'.

require it.'[284]

Interestingly, Chauvelin communicated to Poyntz that the Duke of Lorraine refused to share copies of his 'Acts of neutrality' with France, since the text differed from his agreement with the Emperor. The former would have contained reservations absent in the latter, 'and might […] occasion the Imperial Court to reproach him with partiality towards France.'[285] Consequently, Chauvelin advised Britain to recognise Lorraine's neutrality 'in the same conditions' as France had, but without citing them literally.

The Ostend Company, a *casus belli* ?

'*Causa Belgarum nostrorum causa omnium gentium est*'[286]

'*Jay de la peine a penser que l'Empereur veüille donner par titre aux hollandois ce qu'ils n'ont que par la possession*.'[287]

'*La suppression a perpetuité de la Comp[agni]e des Indes établie a Ostende, est de nécessité indispensable, et il ne peut y avoir de paix sans cela [...] ce seroit semer sur les Sables de la Mer que de s'opiniatrer a vouloir un etablissement dont le maintien est demontré impossible*.'[288]

284 Poyntz to Newcastle, 26 January 1729, *o.c.*, f. 85r°.

285 Poyntz to Newcastle, 2 March 1729, *o.c.*, f. 246r°.

286 Charles Philippe Pattyn, *Mare Liberum Ex Jure Naturae, Gentium & Civili Assertum, Vindicatum, Redivivum,* Hieronymus Lenzius, Regensburg, 1727, s.p. Pattyn's publication in Regensburg is not a coincidence. Huisman remarked that Chavigny, the French envoy at the Imperial Diet, had already worked in 1727 to counter Pattyn's treatise with pamphlets arguing that the Ostend Company could not lead to a *Reichskrieg*, and had to be seen as the Emperor's private affair. The Austrian Low Countries did not contribute to the common charges of the Empire, and would -in Chavigny's view- have lost the right to claim the protection of the Empire. Hence, he hoped that the Empire as a whole would be 'neutral' in a possible war between the leagues of Hanover and Vienna. Of course, this thesis was refuted by Imperial commissioner Furstenberg, who argued that the Austrian Low Countries, as *Vormauer* of the Empire, could only be useful to the Empire if their trade flourished. Thus, abolishing the Ostend Company would endanger the rights of the Germanic Body (Huisman 1902, pp. 418-419; Jean Dureng, *Mission de Théodore Chevignard de Chavigny en Allemagne: septembre 1726 – octobre 1731: d'après ses mémoires inédits et sa correspondance politique, conservés aux archives du Ministère des affaires étrangères à Paris*, Impr. du Sud Ouest, Toulouse, 1911, pp. 20-31 ; De Pauw 1960, pp. 224-225). See also Imperial Commission Decree, Regensburg, 14 March 1727, *CUD* VIII/2, pp. 142-144.

287 Fleury to Chauvelin, June 1728, *o.c.*, f. 48r°.

288 Pecquet sr., Mémoire sur plusieurs articles…, *o.c.*, s.f.

The draft memorandum on the League of Hanover's commercial claims equally mentioned the 'Privileges given to the subjects of His Imperial Majesty', causing damage 'not only to our own nations, but moreover against all most solemn treaties.'[289] This referred to the commercial convention concluded between the Emperor and Philip V in 1725, whereby access to trade with the Spanish colonies was offered to Charles VI's subjects.[290] Although nothing seems more within the perimeter of a sovereign's freedom than granting commercial privileges to those of another sovereign, the Maritime Powers thought this undermined the commercial hierarchy established at the Peace of Utrecht. They insisted on obtaining more than normal trading relations with Spain: the Ostend Company had to be abolished.

When a report of Ripperda's own recollections of the negotiations was presented to Fleury by Poyntz, Fleury thought a simple '*Le Roy d'Espagne maintiendra la Compagnie d'Ostende*' would have been 'too general' to count as a credible promise.[291] In other words, Fleury seemed to doubt whether Philip V would have been serious at all in promising support for the Ostend Company. However, from the British side, Spanish ambassador Monteleón's sudden defence of the Ostend Company after the conclusion of the Ripperda treaties was seen as a sign that a military alliance with the Emperor had been genuine, including Spanish military support in favour of the Company, 'notwithstanding his former acknowledgements of the injustice of that Octroy'.[292] Finally, Fleury's intuition concerning Philip V seemed to have been correct. In June 1729, in order to lure France, Britain and the Dutch Republic over to Seville, Philip V's ministry returned to 'the language and the maxims' it had adhered to before the sudden switch of the Ripperda Treaty of April 1725.[293]

Although certain voices in French diplomacy pleaded for the Spanish restitution

289 'Mémoire', *o.c.*, f. 19v°.

290 Treaty of Navigation and Commerce between the Emperor and Spain, Vienna, 1 May 1725, 32 *CTS* 105. Goslinga 1915, p. 131 and Dureng 1911, p. 11 even see the Ostend Company as the 'only raison d'être' for Charles VI's alliance with Spain.

291 Poyntz to Newcastle, 22 February 1729, most private, *o.c.*, s.f.

292 *Ibid*. On Monteleón: Victoria López-Cordón, «Le marquis de Monteleón : une vie au-delà de la correspondance» in Bély, Hanton & Poumarède 2019, pp. 99-117.

293 Joint instructions for Benjamin Keene (George II) and Count Brancas (Louis XV), Paris, s.d., NA, SP, 78, 191 f. 344r°. See Representations of Philip V against the Ostend Company presented by ambassador Pozobueno, London, 26 April 1724, *CUD* VIII/2, p. 85.

claim concerning Gibraltar -and thus for an alliance against Britain-, Fleury is depicted in the Hop Archives as postponing and softening the discussion, in order to keep his central position as *de facto* mediator.[294] An explanation for this can be found in the memorandum of 28 June 1728, signed by Fleury himself in Soissons, at the start of the Congress. France could 'without any inconvenience' adopt the Dutch demands concerning Ostend, either as 'guarantor' or as 'interested party'. But wouldn't this open the way to following more expansive views, which the 'English are likely to produce'? France would be 'embarrassed' if this turned out *ex post* to be seen as a 'dangerous precedent'.[295] Of course, the term 'guarantor' is intriguing. Under what circumstances could France have agreed to provide a 'guaranty' for Dutch claims, including their demand that the Ostend Company would be suppressed forever?

The answer is quite simple: under those of the League of Hanover. The French plenipotentiaries were wary to explicitly renew the treaty, because it was directed against Spain. The Parisian preliminaries were interpreted in such a way, that they had terminated France's anti-Spanish obligations.[296] In a remarkable act of sophistry, the plenipotentiaries thought that the point of reference for the *Foy des Traitez* had become… the Parisian preliminaries, and not the League of Hanover! *Lex posterior deriogat priori*! The former was portrayed as '*nos engagements connûs de toute l'Europe*'. In other words, France's equidistant position ought to ensure its political sway as sole mediator and arbiter, rooted in clauses of a treaty that had averted a general war.[297] Louis XV had to defend the reconciliation of *all interests* as his sole objective, and reassure the court of Spain that the 'allies of Vienna worked together (*de concert*) with those of Hanover.'[298] Concluding a treaty under these auspices would consolidate France's 'superior position in

294 E.g. Hop Archives, f. 27r°.

295 Memorandum by Fleury to Chauvelin, Soissons, 28 June 1728, AMAE, M&D, France, vol. 497, ff. 18r°-19v°. Hence the impression of 'deadlock' of the British plenipotentiaries in letters sent on the same day.

296 *Ibid*., f. 20r°.

297 *Ibid*., f. 20v°. Similarly: Jeremy Black's conclusion in «French Foreign Policy in the Age of Fleury Reassessed», *The English Historical Review* 103, 407 (1988), p. 384.

298 Memorandum by Fleury to Chauvelin, Soissons, 28 June 1728, *o.c*.. Similarly, a draft provisional treaty drawn up by the French delegation mentioned that the Preliminaries ought to be cited as the basis of the new treaty, rather than the alliances. AMAE, M&D, France, vol. 498, f. 150r°.

Europe'.[299]

The Dutch Republic and Britain, 'whose ships were accustomed to anchor in the Flemish ports,[300] had burdened the '*Paybas aujourdhuy autrichien*'[301] with a system of frozen tariffs in 1715. A new settlement required the consent of the Maritime Powers (art. XXVI, Barrier Treaty).[302] The imperial ministers complained that this article had unreasonably 'locked up' their sovereign.[303] Furthermore, they had stipulated in the Barrier Treaty that Charles VI would rule over these lands with the same restrictions as Charles II of Spain had until 1700 (art. I, Barrier Treaty). From this clause, the Dutch Republic derived that the internal Spanish restriction for inhabitants of other realms than 'Castille' to engage in trade with the colonies, had remained in force. In 1648, at the Peace of Munster, Philip IV had promised that his own subjects would not sail to the East Indies occupied by the Dutch Republic's commercial company VOC. According to the VOC's advocate Abraham Westerveen and the famous French Huguenot law professor in Groningen, Jean Barbeyrac, this prohibited any long distance-trade from the Austrian Low Countries to the Indies.[304]

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299 Remarks by the French plenipotentiaries to Chauvelin, Soissons, 22 August 1728, AMAE, M&D, France, vol. 499, f. 4v°.

300 *Ibid*., f. 9v°.

301 *Ibid*. On the barrier: René DOLLOT, *Les origines de la neutralité de la Belgique et le système de la Barrière (1609-1830)*, Alcan, Paris, 1902, pp. 283-417; Guy THEWES, *Stände, Staat und Militär. Versorgung und Finanzierung der Armee in den Österreichischen Niederlanden 1715-1795*, Böhlau, Wien, 2012; Klaas VAN GELDER, «The estates of Flanders manning the barricades for territorial integrity: the protest against the barrier treaty of 1715», in : Georges MARTYN, René VERMEIR & Chantal VANCOPPENOLLE (eds.), *Intermediate Institutions in the County of Flanders in the Late Middle Ages and the Early Modern Age*, Algemeen Rijksarchief, Brussel, 2012, pp. 114-137. Border corrections in the Low Countries agreed to between the Dutch Republic and the Emperor had still not been executed by the time of the congress (GOSLINGA 1915, p. 230).

302 Treaty between the Emperor, Britain and the Dutch Republic, Antwerp, 15 November 1715, 29 *CTS* 333. Memorandum by the Imperial plenipotentiaries, September 1728, AMAE, M&D, France, vol. 499, f. 74r°.

303 *Ibid*., f. 75r°.

304 Memorandum by the WIC (Dutch West Indies Company) to the Estates-General against the Ostend Company, 1724, *CUD* VIII/2, p. 78. Memorandum by the VOC to the Estates-General, against the Ostend Company, 1724, *Ibid*. pp. 78-80 (signed Westerveen); Jean BARBEYRAC, *Défense du droit de la Compagnie Hollandoise des Indes Orientales, contre les nouvelles Prétensions des Habitans des Pays-Bas autrichiens, Et les Raisons ou Objections des Avocats de la Compagnie d'Ostende*, Thomas Johnson, La Haye, 1725 ; Abraham WESTERVEEN, D*issertatio de jure quod competit societati privilegiatae Foederati*

In the ensuing heated debate, the imperial lawyer Patrick Mac Neny (1676-1745) argued for the Estates of Brabant that the Dutch arguments ran counter to peremptory natural law.[305] He invoked the right of free navigation on the high seas, precisely preached by the Dutch lawyer Hugo Grotius a century earlier. Moreover, Neny argued that the composite Spanish monarchy's structure allowed for further distinctions, whether could render it doubtful that the 'Burgundian lands' had ever been under a formal interdiction.[306] These arguments were deemed 'frivolous' in the French secret instructions for the Congress.[307]

The diplomatic *revirement* of 1725 (i.e. the Ripperda treaties) could do away with most of the Dutch arguments. If the interdiction to sail to the Spanish colonies had been of an internal Spanish nature, why couldn't Philip V be able to undo it again? Furthermore, what precluded the Emperor from concluding a treaty with the King of Spain? Jean Dumont (1666-1727), compiler of the *Corps Universel Diplomatique du Droit des Gens* and active drafter of the commercial treaty, defended the Emperor's arguments elegantly.[308]

The prospects of the Ostend Company seemed rosy on paper. However, the ensuing formation of the Leagues of Vienna and Hanover created a situation whereby a general war seemed imminent. The Emperor agreed to suspend the Company for seven years at the Parisian and Viennese Preliminaries (1727). The Congress of Soissons was entrusted with the conclusion of a final peace treaty, whereby the Company's fate ought to be settled as well. During the Congress,

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Belgii ad navigationem et commercia Indiarum Orientalium adversus incolas Belgii Hispanici (hodie) Austriaci, Wetstenios, Amsterdam, 1724.

305 X [Patrick Mac Neny], *Demonstration de l'injuste et chimerique pretension que les Directeurs de la Compagnie des Indes en Hollande forment afin de faire revoquer, ou du moins rendre inutile l'Octroy que Sa Majesté Imperiale & Catholique a accordé à ses Sujets des Païs-bas Autrichiens pour l'Etablissement d'une Compagnie de Commerce & de Navigation aux Indes Orientales & Occidentales. Dédiée à Messeigneurs les Etats Generaux des Provinces-unies*, s.n., s.l., 1724.

306 See also Remonstrances by the Three Estates of the Country and Duchy of Brabant to Charles VI concerning the Ostend Company, Brussels, 23 March 1724 (and response to the VOC's arguments), *CUD* VIII/2, pp. 80-85.

307 French secret instructions, *o.c.*, f. 118r°.

308 X [Jean Dumont], *La vérité du fait, du droit, et de l'intérêt de tout ce qui concerne le commerce des Indes, etabli aux Païs Bas Autrichiens par octroi de sa Majesté Impér. et Catholique*, s.n., s.l., 1726. I refer to Dhondt, «Delenda est haec Carthago» 2015 for an elaborate discussion of the arguments.

Dutch plenipotentiaries even came to ask France for permission to send a squadron cruising off the coast of Ostend, to intercept and seize Austrian ships.[309]

Of course, by acceding to the Alliance of Hanover, the Estates-General had astutely obtained Franco-British backing for their demands.[310] The Dutch Republic's arguments focused on the articles V and VI of the bilateral treaty of peace with King Philip IV of Spain concluded in Münster on 30 January 1648.[311] Spain and the Dutch Republic had promised that their respective subjects and inhabitants would abstain from navigating to territories controlled by the other contracting party. Freedom of trade and navigation between each side's subjects was restricted to Europe alone.[312] The Dutch were shocked that Philip V and Charles VI had not mentioned this, but had concocted a system of free trade and navigation for all 'harbours, coasts, gulfs and provinces, without any kind of restriction or limitation'.[313] The factual trade undertaken by the '*Flamands*'[314] or inhabitants of the Low Countries since 1714 had, for the Dutch already constituted a breach of this obligation. Charles VI's granting a formal charter had contributed to worsening this illegal situation, which had been suspended in 1727. As a logical consequence, this entailed:

> 'an entire cessation, for always, without it being allowed for whoever from the said [Low] Countrys, to navigate and traffic to the Indies, at any time, or in any possible way, directly, or indirectly'.[315]

The Dutch tried to undermine the Ripperda treaty by pointing to two elements. First, Philip V had undertaken the obligation not to alter the navigation system to

309 Note by Chauvelin, s.d., AMAE, M&D, France, vol. 498, f. 137r°.

310 Hop Archives, f. 33r°, stating that the session of 30 June 1728, whereby the Dutch demands against the Emperor and the King of Spain were presented, had been prepared in a tripartite meeting whereby their French and British counterparts had been 'proven' that the Ostend Company constituted an 'infraction' to the Treaty of Münster.

311 Dutch memorandum on the Ostend Company, presented in the League of Hanover's name to the League of Vienna, Soissons, 30 June 1728, NA, SP, 188, ff. 152r°-158r°. See also Hop Archives, f. 32r°.

312 Dutch memorandum, *o.c.*, f. 156r°.

313 Hop Archives, f. 41r°.

314 Expression used in art. 2 of a draft final treaty, August 1728, AMAE, M&D, France, vol. 498, f. 132r°. See on the lexical matter Sébastien DUBOIS, *L'invention de la Belgique: genèse d'un Etat-Nation, 1648-1830*, Racine, Bruxelles, 2005, pp. 92-101.

315 Dutch Memorandum on Ostend, *o.c.*, f. 153r°. In Dutch: '*een absolute, volkomene, en altyd durende Stakinge*' (Hop Archives, f. 34r°).

the Indies in a treaty of commerce concluded at Utrecht and had to grant MFN-treatment to the subjects of the Estates-General, who were at least entitled to the same 'Privileges, Franchises, Exemptions, Immunities and Securities' granted to the inhabitants of the Austrian Low Countries.[316] In March 1726, the Estates-General had invoked the general principle *pacta sunt servanda* to castigate Philip V's commercial treaty with the Emperor.[317] Remarkably, Philip V had had to promise the Dutch Republic that he would respect:

> 'the fundamental laws of Spain, which forbid absolutely to any foreign nation, the entry and trade in the Indies, reserving this solely for the Spanish subjects of His Catholic Majesty'.[318]

In 1714, the Dutch had allowed for the 'unique exception' of the Asiento and the British annual free vessel.[319] In its bilateral treaty relationship with the Dutch, Spain could thus not allow the inhabitants of the Austrian Low Countries access to its colonial trade, and would in any case need to extend any possible kind of privilege to Dutch merchants as well. Second, Philip V had already stated that the Ostend Company was illegal… before the Ripperda treaty with the Emperor had been concluded. In fact, during the Congress of Cambrai, Philip V tried to lure France and Britain into a conflict with the Emperor.[320] Only once his dynastic interests made it more advantageous to side with Charles VI, did Spain's position change dramatically.[321] Yet, Philip V's change of position 'did not alter the [legal] nature of the affair'.[322] The commercial treaty concluded in 1725 was judged

> 'doubtful, contrary and prejudicial to the treaties between the King of Spain and the Lords Estates-General'[323]

316 Art. XXXI and XVII, Treaty of commerce between Philip V of Spain and the Dutch Republic, Utrecht, 26 June 1714, 29 *CTS* 97; Dutch memorandum, *o.c.*, f. 154v°.

317 Resolution of the Estates-General of the Dutch Republic, 16 March 1726, cited in Emer de Vattel, *Le droit des gens ou principes de la loi naturelle, appliqués à la Conduite & aux Affaires des Nations & des Souverains*, Aux Dépens de la Compagnie, Leide, 1758, Part II, Chapter XV, §221.

318 Dutch memorandum, *o.c.*. f. 154v°. In Dutch: '*en conform aan de Grondwetten van Spanjen*' (Hop Archives, f. 39).

319 *Ibid*.

320 Dhondt, *Balance of Power* 2015, p. 387.

321 Dutch memorandum, *o.c.*. f. 154v°, referring to Spanish ambassador Jacinto de Pozobueno y Belver (1659-1729)'s memorandum of 26 April 1724, *CUD* VIII/2, nr. XXVI, 85.

322 Dutch memorandum, *o.c.*, ff. 153v°-154r°.

323 *Ibid*., ff. 157r°-v°. In Dutch: '*twijffelagtig, contrarie, en nadeelig aan de Tractaaten'* (Hop Archives, f. 43r°). During the Congress, various other pamphlets appeared to sup-

Jean-Baptiste van Loo (1684-1745), The Rt. Honorable Stephen Poyntz of Midgeham, Berkshire Yale Center for British Art, YCBA/lido-TMS-1266. Google Art Project,

From the Imperial side, the Ostend Company was defended by having recourse to natural law, which enshrined the 'equity and justice' of the Austrian Low Countries' trade.[324] Articles V and VI of the Treaty of Münster were seen as an object of interpretation and contention, in no ways as a clear-cut prohibition.[325] A revocation of the Company's charter was described by Sinzendorf as 'inadmissible' and 'damaging to the Emperor's dignity'.[326] As mediator between the Emperor and the Dutch Fleury clarified that, for Sinzendorf, the commercial treaty of Vienna, concluded *recta intentio*,[327] did not necessarily harm the trade of the allies, and did not contain a single explicitly obnoxious clause.[328]

The Flemish judge Charles Philippe Pattyn (1687-1773), councillor at the Grand Council of Malines, was entrusted with the publication of a more consistent treatise to refute the Dutch arguments, and to onderline the *Mare Liberum*-principle.[329] Pattyn was present at Soissons, at the recommendation of governor-

port the Dutch position, which had already been defended by the VOC's lawyer Abraham Westerveen (Westerveen 1724) and the famous law professor Jean Barbeyrac (Barbeyrac 1725).

324 Imperial response to the Dutch memorandum, Soissons, 5 July 1728, NA, SP, 78, 188, f. 172r°. This memorandum had been written on the basis of Pattyn's treatise. According to Huisman, Sinzendorf altered and softened its tenour, in order to achieve a compromise. Huisman 1902, p. 438.

325 Hop Archives, f. 47r°.

326 June 1728, Hop Archives, f. 18r°.

327 *Ibid*., f. 60r°.

328 Conference of 29 June 1728, *Ibid*., ff. 36r°-37r°.

329 Charles Philippe Pattyn, *Le Commerce maritime fondé sur le droit de la nature et des gens, sur l'autorité des loix civiles et des traitez de paix et rétabli dans sa liberté naturelle, traduit du latin de M. Pattyn* (transl. Gilles chanoîne D'Hermanville), Van der Elst, Malines, 1727 ; Unfortunately for Pattyn, this enriched French translation of an earlier version of his original 1726 treatise (*Mare liberum, ex jure naturae, gentium et civili assertum, vindicatum, redivivum*, Typis Laurentii Vander Elst, Mechlinae, Summer 1726) came out at the very same moment of the signature of the Parisian Preliminaries. The first copies were printed in Malines and sent to Vienna on 20 May 1727 (De Pauw 1960, p. 149). Huisman 1902, pp. 390-403 ; Frans De Pauw, *Het Mare Liberum van Grotius en Pattijn*, Die Keure, Gent, 1960, pp. 87-90. After the congress, Pattyn was promoted to the Brussels Secret Council. In 1732, he would replace Wynants in the High Council for the Low Countries in Vienna. In 1741, Maria Theresia appointed him as President of the Council of Flanders, the main court in the County of Flanders. He would remain influential in public affairs (famously welcoming Louis XV in Ghent during the War of the Austrian Succession in June 1745) until blindness caused him to resign in 1771 (*Ibid*., pp. 93-98). Charles VI created an emphemerous chair of public law at the University of Leuven to defend his positions, but to no avail. See Ernest Nys, «Une chaire de droit public et de droit des gens à l'ancienne

general Maria Elisabeth, archduchess of Austria and the Emperor's own sister (1680-1741).[330] The judge insisted on opposing the Dutch Republic firmly.[331]

Seen from a French perspective, the Imperial treatment of the Ostend Company was a way to stall the treatment of other issues, without necessarily aiming at a full recognition.[332] Lowering the applicable tariffs (dating back to 1680, under the reign of Charles II of Spain) with a new commercial treaty between the Emperor and the Dutch was seen as a possible minor compensation and a minimal fallback-position.[333] As foreseen, Sinzendorf solicited either permission for a limited continuation of the East India trade, or for an amendment of the Barrier Treaty's financial burdens.[334]

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université de Louvain», *Revue de droit international et de législation comparée* (third series) 25, 1913, pp. 372-380 ; De Pauw 1960, p. 147.

330 He was joined by Pietro Proli (1671-1735), born in Como (Duchy of Milan), but naturalised citizen of the Low Countries from 1705 on. In 1728, Proli was director and shareholder of the Ostend Company. *Freymüthige* 1728, p. 86. See also Michel Huisman, «Proli (Pierre)» in: *Biographie nationale de Belgique vol. XVIII,* Bruylant, Bruxelles, 1905, col. 278-282.

331 E.g. His *Démonstration succincte que la France n'a aucun intérêt de s'opposer à l'établissement de la compagnie d'Ostende, au contraire qu'elle trouve son avantage à la maintenir, avec quelques réflexions sur le traité de Hannover par rapport à l'estat du commerce des Païs-Bas Autrichiens*, 14 July 1728, cited by Huisman 1902, pp. 439-441. Huisman relates that Sinzendorf accompanied Fleury to Fontainebleau, and cut short Pattyn's attempts to strongly refute the arguments of the Maritime Powers, mostly the 'irascible' Dutch plenipotentiaries, one of whom would have declared to have been willing to 'cut his own throat rather than granting our Company the least faculty' (Pattyn to Visconti, 23 July 1728, cited in *Ibid*., p. 440). The Estates of Brabant complained in Vienna on Sinzendorf's perceived inaction and insensitivity to the Low Countries' interests. Huisman deducts that Sinzendorf's leaving Soissons was a consequence of the Emperor's '*désaveu*' of Sinzendorf's weakness (Belgian State Archives, Estates of Brabant, Register 48, Deliberation of 12 October 1728, cited in *Ibid*., 443).

332 French instructions for Soissons, *o.c*., f. 104r°.

333 *Ibid*. f. 104v°. In the drafts of a provisional treaty written by the French plenipotentiaries, the idea of a separate tariffs treaty conference in Brussels regularly pops up, evoking present-day diplomatic trade negotiations e.g. AMAE, M&D, France, vol. 498, f. 239r°. In 1737-1738, a trilateral commercial conference was organised in Antwerp, but it failed to produce a result (De Pauw 1960, pp. 95-96). See also Instructions for Kinsky and Fonseca, Vienna, 31 August 1729, published in Höfler, *Soissons*, p. 125. French diplomats had made this promise to the Emperor in the run-up to the Parisian preliminaries in 1727 (Huisman 1902, p. 415).

334 French instructions for Soissons, *o.c*., f. 104r-v°. The inverse position was also taken by Sinzendorf, e.g. Hop Archives, *o.c*. f. 24r°, where the count insinuated that the Dutch Republic was entitled to arrears due under the Barrier Treaty, which could be paid if… some

Why, for instance, if articles V and VI were not that clear-cut, couldn't the Ostend Company preserve part of her China trade?[335] Reports of three ships being fitted out in Ostend to leave for the Indies were met with polite denial by Sinzendorf: private persons ought to abstain from these acts, which were contrary to Charles VI's intentions.[336] Another variant was the one-off sending of a 'little ship' to collect the Company's factors and servants in the Indies.[337] This could in part be argued by invoking the negotiators' sympathy for the Company's staff, who should not be left '*a la mercy des habitans du pays*'.[338] Moreover, allowing for the return of the Ostend Company's vessels could be likened to the return of the Spanish galleons.[339] Yet, the risk of Dutch aggression was real, if this final ship's carriage did not correspond to what could be reasonably expected or written down beforehand in a treaty.[340] Fonseca tried to extract an estimate in money to compensate for the future lost annual income that the Ostend Company generated.[341] Yet, the Dutch replied that the barrier fortresses' cost already exceeded the annual subsidy the Emperor paid them. Wouldn't the Republic be better off abandoning 'most, if not all places of the Barrier, rather than continue to occupy them to the Emperor's benefit, and to the Republic's burden?'[342]

leniency could be obtained for the Ostend Company.

335 *Ibid*., f. 48r°.

336 September 1728, Hop Archives, *o.c*.., f. 126r°.

337 '*een Scheepie'* (Hop Archives, f. 127r°). A possible variant (debated between Dutch and British delegates) was a voyage from Ostend to the Indies, ending in Trieste (*Ibid*., f. 145r°).

338 Remarks by the Imperial plenipotentiaries, Soissons, 14 August 1728, AMAE, M&D, France, vol. 498, f. 203r°.

339 Huisman 1902, p. 416.

340 Idées de la Pacification par voye de Tréve, s.l., September 1728, *o.c*., f. 159v°.

341 Stanhope, Walpole and Poyntz to Newcastle, Compiègne, 25 May 1729, NA, SP, 78, 191, f. 119v°. The 'annalisation' of the Ostend Company's suppression was a consequence of Sinzendorf's 'misunderstanding' Fleury, who had suggested that permission for a limited number of ships would have been agreeable to the Dutch, whereas this thought had been of his own fabrication, and had been suggested by the Company's director Proli (See also Huisman 1902, p. 406, 425-426). The suggestion was rapidly downsized to a one-off last voyage of two ships (e.g. Stanhope, Walpole and Poyntz to Townshend, Paris, 6 June 1729, NA, SP, 78, 191, f. 244v°), in combination with a payment of a million[lt] (e.g. Stanhope, Walpole and Poyntz to Townshend, Paris, 10 June 1729, NA, SP, 78, 191, f. 262v°).

342 Hop Archives, f. 50r°. Goslinga 1915, p. 134 thought that this went against French interests, since Dutch troops in the Austrian Low Countries were seen as a less formidable obstacle than the Emperor's own troops. Yet, Huisman has been able to demonstrate, based

The Imperial delegates did not want to generate a situation whereby the Emperor would openly be seen to 'abandon his subjects in the Austrian Low Countrys'.[343] However, Hop and Goslinga argued that Dutch private individuals and firms had advanced the Emperor a considerable amount of capital when he needed it, during the War of the Spanish Succession, and had still not been paid, although the Emperor had acknowledged his obligation by treaty![344] The mutual exchange of possible amendments and hard limits rendered clear that a compromise was not impossible. Sinzendorf declared that 'His Imperial Majesty would envisage all that was possible to achieve the salutary objective, if only the outcome would be reasonably conformable to his rights and the welfare of his subjects.'[345]

In this sense, Ostend could serve as a '*variable d'ajustement*' to obtain agreements on other points (East Frisia, Mecklenburg), leading to a separate agreement and the end of the League of Vienna, or to split off the Dutch (who insisted most on the Company's suppression) from the French and British.[346] From the Austrian side, a 'full suspension' of the Ostend trade would require 'some consideration', or a countervailing concession by the other powers.[347] 'Some temperament', 'such as […] a limited trade' as a compensation would be necessary.[348]

Yet, Fleury assured The Hague that if the Estates-General, 'whose natural interest ought to be in a union with France',[349] chose to 'maintain their Right

on the Imperial archives in Vienna, that the Austrian financial and military situation would rather have resulted in the opposite (Huisman 1902, p. 411). The financial burden of the Barrier Treaty amounted to 57% of the average net income of the Austrian Low Countries between 1715 and 1719, and was around 21% at the time of the Congress (Figures collected and commented on by Klaas Van Gelder, *Regime Change at a Distance. Austria and the Southern Netherlands Following the War of the Spanish Succession (1716-1725)*, Peeters, Leuven, 2016, pp. 113-144.

343 Hop Archives, f. 47r°.

344 *Ibid*., f. 50r°.

345 *Ibid*., f. 59r°.

346 Poyntz to Newcastle, 6 February 1729, *o.c*., f. 109v°.

347 Stephen Poyntz to the Duke of Newcastle, 26 April 1729, NA, SP, 78, 190, f. 412r°.

348 Envoy Marcus Baron de Fonseca, quoted in Poyntz to Newcastle, 5 March 1729, *o.c*., f. 254r°.

349 French secret instructions, *o.c*., f. 107v°.

by a war' for Ostend, France would 'joyn in it'.[350] He was intimately convinced that 'disowning or abandoning' an 'exclusive right', would 'never be accepted in Holland'.[351] A limited trade was associated with 'fraud and abuses'.[352] Moreover, Fleury had clearly explained to the Dutch plenipotentiaries, who were actively spying on the Ostend Company's Directors,[353] that they could count on French and British military might only to repress an immediate violation of a total interdiction of the Ostend trade. Their help would not be assured in the future if debates on the violation of the limited trade were to erupt.[354] In other words, the Dutch could only be sure that their allies would help them in the immediate future. Without a full interdiction, there would not be a sufficiently strong *casus belli*.

Imperial suggestions that the institutional structure of the Austrian Low Countries might be amended or even fortresses ceded to France, were seen as a 'most dangerous trap'.[355] Partitioning the Austrian Low Countries would arouse British suspicion.[356] It would be impossible to split up these territories without giving a part to Britain. That, in turn would put an end to the constant French policy of 'shutting the British in their isle', and avoid all possible 'establishments' on 'our' [sic] continent.[357]

350 Poyntz to Newcastle, 29 March 1729, *o.c.*, f. 314v°; Poyntz to Newcastle, Paris, 6 April 1729, NA, SP, 78, 190, f. 358r°.

351 Poyntz to Newcastle, 6 April 1729, *o.c.*, f. 359v°. Similarly, Le Dran, 'Memoire sur plusieurs articles', *o.c.*, s.f. : '*Il est de notoriété* [sic] *publique que les traittés de Munster et de Westphalie confirmés sur cet article presque par tous les autres traittés subsequents sont absolument contraires a cet Etablissement, que des Ecrits mis au jour pour le deffendre, éludent la difficulté sans la résoudre et* […] *ne convaincront jamais aucun esprit solide qui cherchera de bonne foy la vérité*.'

352 Poyntz to Newcastle, 6 April 1729, *o.c.*, f. 360v°.

353 Goslinga 1915, p. 145.

354 Poyntz to Newcastle, Paris, 6 May 1729, NA, SP, 78, 191, f. 5v°.

355 French secret instructions, *o.c.*, f. 119r°.

356 *Ibid*.

357 *Ibid*, f. 119v°. See on this specific theme a revealing exchange of letters between Charles Townshend and Horatio Walpole, where a plan of partition between the Dutch, Britain and France is rejected, among other reasons because the stubbornly 'popish' inhabitants would not suffer a Protestant sovereign: Frederik Dhondt, «So Great A Revolution: Charles Townshend and the Partition of the Austrian Netherlands, September 1725», *Dutch Crossing: Journal of Low Countries Studies* 36, 1 (2012), pp. 50-68, DOI 10.1179/0309656411Z.0000000002. A similar partition plan is said to have been conceived in 1726 between the Allies of Hanover, see Huisman 1902, p. 408.

The instructions as drafted for Stanhope, Walpole and Poyntz on 31 March 1729 stated that the Emperor 'had been in the wrong' when issuing the Ostend Company's statute. Charles VI had to 'declare an actual Renunciation of that Right, without something for it.'[358] British frustration at 'an affair of an endless nature to give long memorials into the Congress, for asserting or refuting a Right which had been for several years canvassed by papers publisht [sic] on both sides all over Europe'[359] was certainly not alien to the inhabitants of the Austrian Low Countries, whose voices were more than smothered in the process. Yet, the Ostend Company was described as nothing more than a 'nicety', upon which 'the Congress should be broken.'[360] Even more, Ostend was precisely cited as a point deliberately added to overburden the agenda, so

> 'the delivering of memorials on each side might serve no other purposes but spinning out the Congress into a length that exceeded the time stipulated by the Preliminarys and also that of exasperating matters without coming to a final and amicable decision.'[361]

Britain had lost its patience with the Emperor's response to a Dutch memorandum demanding the 'intire Cessation' of the Ostend trade.[362] The Dutch delegation had waited for months after Sinzendorf's departure in late November 1728. Letter after letter after letter sent from Vienna to Fonseca in Soissons failed to mention the Ostend Company.[363]

358 Annex to the instructions for Stanhope, Walpole and Poyntz, *o.c.*, f. 339r°.
359 *Ibid*, f. 339r°.
360 *Ibid*, f. 339r°.
361 *Ibid*, f. 339v°.
362 *Ibid*, f. 341r°.
363 June 1729, Hop Archives, f. 197r°.

The Pragmatic Sanction

> '[A war] with the emperor is little to be feared, considering […] the difficulties that prince lies under from the unsettled state of the succession […] he will come into peaceful measures, as more conformable to his situation and the humour of his ministers, who are all of them averse to war.'
>
> George Lyttelton[364]

It is generally accepted that Emperor Charles VI made foreign policy issues dependent on the international recognition of his 'Pragmatic Sanction', a document which attempted to uniformise succession rules in the various Habsburg hereditary lands, to the benefit of Archduchess Maria Theresia.[365] Charles VI did not have a son. Succession by female members of the House of Habsburg was possible, but Charles had to rule out that Maria Theresia's position could be challenged. The alternative to the recognition of the Sanction was support for the rights of Emperor Joseph I (1678-1711)'s daughters. Charles VI's older brother had died unexpectedly in April 1711. Maria Amalia (1701-1756) was married to the Elector of Bavaria. Her sister Maria Josepha (1699-1757) had married the Electoral Prince of Saxony, who was likely to be elected King of Poland and Grand Duke of Lithuania at his father's decease. If France, Britain and the Wittelsbach Electors could constitute a league, Poyntz surmised that the Elector of Bavaria, who was married to Archduchess Maria Amalia, a daughter of Charles VI's older brother Joseph, would and could demand the cession of part of the Habsburg lands.[366]

With so much depending on the physical continuity of the ruler's dynasty, hearsay and gossip were inevitably present in dynastic affairs. Hence, a postscript insisting that in The Hague, Sinzendorf would have told 'a friend' in confidence that 'the Empress is breeding […] which, if true, may spoil many fine projects' was seen as sufficiently important to be included in Poyntz's dispatch from Paris to Keene in Madrid.[367] Likewise, rumours on the Empress's bad health and the

364 George Lyttelton to Thomas Lyttelton, Paris, 13 August 1729, *o.c.*, 691.

365 Bély 1999, pp. 353-354.

366 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 145v°.

367 Poyntz to Keene, most private, 5 February 1729, *o.c.*, f. 133v°. A rumour of pregnancy al-

William Aikman (1682-1731), Portrait of Sir Robert Walpole, 1st Earl of Oxford (1676-1745), Prime Minister , National Trust Collection ID 355487

corresponding hope of a male heir born in a second marriage could dispel the necessity of international recognition of the Pragmatic Sanction.[368] These two alternative storylines illustrate how diplomatic correspondence serves to spread news from one end of the continent to the other, but also how all actors counted with contingent twists and turns, that could make succession scenarios crumble.

'Mecklenburg affected all the States of the Empire by its consequences'[369]

> 'Since it was visible the uneasiness both in Ostfrise and Mecklenburg had been sett on foot with the same view, an abatement of animosity in the one might be lookt on as a sure forerunner of the like moderation in the other.'
>
> Poyntz to Newcastle, 19 January 1729[370]

> 'forming a Party in the Empire without distinction of Religions, checking the Emperor's arbitrary views, and by finding him employment at home, might put him out of a condition to support his engagements with Spain for disturbing the repose or endangering the Libertys of Europe.'
>
> Poyntz to Newcastle, February 1729[371]

The dispute between Duke Charles Leopold of Mecklenburg-Schwerin (1678-1747) and his Estates is a classic episode used to illustrate the growing power of the Emperor during the reign of Charles VI.[372] The Duke was accused of acting as a 'tyrant' with his subjects, trampling their privileges and neglecting justice to a point where 'theft, murder, brigandage and the ravishing of women' were no longer punished.[373] The Emperor supported the Estates against the 'unjust and violent conduct' of their territorial prince.[374] George II (as Elector of Hanover) and

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so circulated concerning Enrichetta d'Este (1702-1777), spouse of the last Farnese duke of Parma and Piacenza ('*on dit la duchesse grosse*', AMAE, M&D, France, vol. 499, f. 201r°).

368 French secret instructions, *o.c.*, f. 109v°.

369 Poyntz to Newcastle, 6 February 1729, *o.c.*, f. 108r°.

370 Poyntz to Newcastle, 19 January 1729, *o.c.*, f. 71v°.

371 Poyntz to Newcastle, 6 February 1729, *o.c.*, f. 100r°.

372 Whaley, *Holy Roman Empire*, pp. 142-149.

373 Instructions for Fonseca on Mecklenburg, s.l., s.d., NA, SP, 78, 191, f. 57r° en 61r°.

374 Imperial Patent, 17 January 1729 (French translation), s.f., NA, SP, 78, 190. See Imperial Rescript to Duke Christian Ludwig of Mecklenburg as Imperial Administrator, Vienna, 30 August 1729, concerning the Mecklenburg *Ritter- und Landschaft* against the Duke, Jean Rousset de Missy, *Supplément au Corps Universel Diplomatique du Droit des Gens, Tome*

his relative Duke Augustus Wilhelm of Brunswick-Wolffenbüttel (1662-1731) had been entrusted with the execution of a sentence pronounced by the Imperial Aulic Chamber.[375] The decease of George I in 1727 had been the occasion for Charles VI's lawyers to argue that the Imperial Commission in Mecklenburg was *intuitu personae* (of a personal nature).[376] It had thus expired at the decease of one of the executors, who had been appointed *in solidum* (jointly).[377] Hence, Charles VI thought it fit to add Elector Frederick William I of Brandenburg, King in Prussia, to the Elector of Hanover and the Duke of Brunswick-Wolffenbüttel. Should this be seen as 'revenge' for Britain setting up the League of Hanover ?[378] Brandenburg-Prussia coveted Mecklenburg. Although related to the Guelfs (which ruled in Hanover and Brunswick), the House of Hohenzollern was also a competitor within the Empire and the college of Protestant princes.

Charles VI decided to suspend the Duke and confer the regency provisionally to his brother Christian Ludwig.[379] George II's diplomats were told to fight Charles VI's decision vehemently, and portray the Emperor's decision as an usurpation. The Emperor had been tied by his Imperial Capitulations in 1711 to request the Imperial Diet's consent.[380] His decision was seen as equal to the deprivation of the Duke's right to rule as a Member of the Empire, subject to the mandatory consent of the Diet.

Britain tried to implicate France in the Mecklenburg question. Charles VI's political action was described as 'arbitrary'[381], 'contrary to the Laws, and

II. Partie II, Janssons à Waesberge, Wetstein & Smith, & Z. Chatelain/de Hondt, Veuve de Ch. Levier, & J. Nealme, Amsterdam/La Haye, 1739, p. 264.

375 Michael Hughes, *Law and politics in eighteenth century Germany: the Imperial Aulic council in the reign of Charles VI*, Royal Historical Society, London, 1988.

376 Instructions for Fonseca on Mecklenburg, *o.c.*, f. 60r°.

377 *Ibid*.

378 Reported suggestion by Fleury, Poyntz to Newcastle, 19 January 1729, *o.c.*, f. 73v°.

379 Letter from the King of Sweden to Charles Leopold of Mecklenburg (French translation), November 1728, NA, SP, 78, 190, s.f. See also Imperial Decrees to transport the administration of Mecklenburg to Prince Christian Ludwig, 11 May 1728, published in Rousset de Missy 1739, pp. 210-211.

380 Wolfgang Burgdorf, *Protokonstitutionalismus die Reichsverfassung in den Wahlkapitulationen der römisch-deutschen Könige und Kaiser 1519 - 1792*, Vandenhoeck & Ruprecht, Göttingen, 2015, pp. 84-88.

381 Poyntz to Newcastle, Paris, 14 January 1729, *o.c.*, f. 40r°.

destructive to the Libertys of the Empire'.[382] A league of the four Wittelsbach Electors of Cologne (ecclesiastical), Trier (ecclesiastical),[383] Bavaria (secular) and the Palatinate (secular) ought to unite with the Protestant princes of Hanover and Brunswick-Woffenbüttel, to oppose the Emperor's power.[384] If the House of Wittelsbach would obtain the Electorate of Mainz (which came with the Arch-Chancellorship and the directorship of the Diet), the alliance could be translated more specifically in a check on the Imperial Vice-Chancellor Friedrich Karl von Schönborn (1674-1746), who had produced a stream of conservative feudal legal arguments at the Congress of Cambrai.[385]

In other words, British diplomats sought to overcome the religious oppositions within the Empire, arguing that France ought to protect the rights of the Members of the Empire, regardless of confession. Yet, since the Wittelsbachs opposed the House of Hohenzollern in the quarrel over the succession of Jülich and Berg, concluding an alliance with the Wittelsbachs would severely hamper the relationship with Brandenburg-Prussia.[386]

One should not exaggerate the desire of the British diplomats to overcome the religious divide within the Empire, as resistance to the 'arbitrary and ambitious' views of Charles VI is easily associated to both French defence of the 'Libertys of the Empire' and the 'Protestant cause'.[387] George II's diplomats even suggested to write a 'New Treaty for the Empire', based on 'those concluded with Sweden

382 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 148r°.

383 Francis Ludwig of the Palatinate-Neuburg (1664-1732), who would be elected as Archbishop-Elector of Mainz. Poyntz panicked that 'he was so sett on marrying, that he would not take the further orders', and thus forfeit the advantage of his coadjutorship. Poyntz to Newcastle, 11 February 1729, *o.c.*, 149v°. This plan to marry was shelved, according to Schleinitz, because Elector Carl Philip refused to cede Julich and Berg to his brother. A combination of Mainz and Trier in a single person's hands would infringe the constitution of the Empire, as the Golden Bul of 1356 determined the minimal number of Electors, prescribing three ecclesiastical electors. Memorandum by Schleinitz on the combination of electoral dignities, s.l., s.d., NA, SP, 78, 190, ff. 272v°-274r°.

384 Jörg Ulbert, *Frankreichs Deutschlandpolitik im zweiten und dritten Jarhzehnt des 18. Jahrhunderts,* Duncker & Humblot, Berlin, 2004; Dureng 1911.

385 Poyntz to Newcastle, 11 February 1729, *o.c..*, 149v°. Dhondt, *Balance of Power* 2015, pp. 253-400; Franck Lafage, *Les comtes Schönborn 1642-1756. Une famille allemande à la conquête du pouvoir dans le Saint Empire romain germanique, tome I: Les fondateurs. Tome II: Les héritiers*, L'Harmattan, Paris, 2008.

386 E.g. Chauvelin to Poyntz, Versailles, 13 January 1729, NA, SP, 78, 190, f. 52v°.

387 Poyntz to Newcastle, Paris, 6 February 1729, *o.c.*, f. 107r°.

and France in the last Century, more general and unexceptionable'.[388] The joint support of Catholic and Protestant princes was tied to the goal of having them accept… George II with the powers of:

> 'the principal conduct, possessing the sole confidence of the Protestant Party in the Empire, strengthened by that of such Catholicks as have the maintenance of their civil Libertys at heart.'[389]

Yet, as described in a premonitory analysis by baron Johann Christoph Schleinitz, Augustus Wilhelm of Brunswick-Wolffenbüttel's envoy in Paris,[390] the chances were rather limited for France to intervene as guarantor of the Peace of Westphalia, if the Emperor obtained the Diet's consent *per majora*.[391] If the Emperor proceeded within the limits of the 'fundamental laws and conditions of the government of the Empire', Cardinal Fleury ruled out a formal intervention.[392] Attempts to quickly confront Charles VI were discouraged, as Fleury preferred to respect the law of the Empire. The correct procedure consisted in approaching the Emperor first within the Circle (*Kreis*) of Lower Saxony, and then the Diet in Regensburg. If a war was to break out within the Empire, France could only intervene as guarantor, if those fighting the Emperor, had 'the justice of their cause' established, a clear reference to Christian just war-thinking.[393]

Preventing that the 'Emperor would come slowly to treat the Princes of the Empire as he pleased' was certainly a French objective, but within the limits of the applicable rules.[394] France's objective to avoid the 'return of oppression and

388 *Ibid*.

389 *Ibid*., f. 107v°. This can be seen as en enlarged conception of Polwarth and Witworth's idea at the Congress of Cambrai to have George I guarantee the Peace of Westphalia as King of Great Britain, analogous to the guarantee provided by France and Sweden. Dhondt, *Balance of Power*, 2015, pp. 323-324. See Patrick Milton, «The Mutual Guarantee of the Peace of Westphalia in the Law of Nations and Its Impact on European Diplomacy», *JHIL* 22, 1 (2020), pp. 101-125, DOI 10.1163/15718050-12340132.

390 Jeremy Black, *Politics and Foreign Policy in the Age of George I, 1714-1727*, Ashgate, Farnham, 2014, p. 192.

391 Extract of a report by Schleinitz to Augustus Wilhelm, Paris, 8 January 1729, NA, SP, 78, 190, f. 24r°. On the question of guarantees and intervention in the Holy Roman Empire: Patrick Milton, «Intervening Against Tyrannical Rule in the Holy Roman Empire during the Seventeenth and Eighteenth century», *German History* 333, 1 (2015), pp. 1-29, DOI 10.1093/gerhis/ghu114.

392 Report by Schleinitz, January 1729, *o.c*.., f. 24r°.

393 *Ibid*., f. 24v°.

394 Letter by Chambrier, Prussian resident in Paris, to Frederick William I of Prussia, quoting

the times of Ferdinand II' was still valid.[395] However, Hanover and Brunswick-Lüneburg had to bring their complaints against the 'irregular proceeding of the Imperial Aulic Council' to Regensburg, where 'Princes and State of the Empire were assembled'.[396] Finally, the legal arguments invoked by the Duke of Mecklenburg, Fleury pointed out, did not include that France ought to intervene as guarantor of the Peace of Westphalia.

Poyntz was alarmed that Fleury and Chauvelin had requested legal advice from a 'secret Oracle […] who leans very much towards asserting the Power of the Emperor'[397]. Schleinitz and the Hanoverian envoy at the Imperial Diet, Johann von der Reck, were counted on to produce 'a Paper towards rectifying the mistaken notions this person endeavours to implant in the French Ministry'.[398]

Further complications in the disjointed Franco-British views on the Empire transpire when Chauvelin aims at the alliance of Mainz to use Coblenz as a focal point of a military intervention the Holy Roman Empire.[399] If the House of Wittelsbach would acquire five electoral votes (i.e. when another member of the family would be elected as elector of Treves when the archbishop would have moved to Mainz), this caused the alarm of George II and Fleury alike: could the Wittelsbach family be trusted with a majority in the Electoral College ?[400]

Chauvelin, s.l., 10 January 1729, NA, SP, 78, f. 160r°.

395 Chauvelin in Chambrier to Frederick William, 10 January 1729, *o.c.*, f. 161r°.

396 Report by Schleinitz, January 1729, *o.c.*., f. 24v°.

397 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 149r°.

398 *Ibid*.

399 *Ibid*., f. 150v°. For this reason, the Elector Palatinate had already been approached in 1727, when the Allies of Hanover had a 'plan of operations' ready. Poyntz to Newcastle, *o.c.*, f. 215r°.

400 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 150v°; Poyntz to Newcastle, 27 February 1729, *o.c.*, s.f. It was quite clear that votes in the chapter of Treves would have to be 'gained by money' (Poyntz to Newcastle, 5 March 1729, *o.c.*, f. 255r°), just as the royal election in Poland, which Fleury thought Augustus the strong would secure by 'throwing large sums of money on mortgages to be made to the King of Prussia' (Poyntz to Newcastle, 23 March 1729, NA, SP, 78, 190, f. 311r°). Likewise, the decease of bishop Christoph Franz von Hutten of Würzburg, who had been a party to the alliance built up by Brunswick-Wolffenbüttel, opened the opportunity for the Elector of Bavaria to promote baron Sickingen. To support the candidacy, count Louis Joseph d'Albert, minister plenipotentiary in Paris, suggested Poyntz to procure him with a 'reasonably small sum of money', which could 'facilitate the election'. Poyntz to Newcastle, Paris, 6 April 1729, *o.c.*, f. 360r°. Another *modus operandi* linked to bribing is the accusation that Charles VI used

Duke Charles Leopold of Mecklenburg appealed to the general *ius resistendi* ('*demande d'un secours contre l'oppression*') against the Emperor, as well as against the 'invasion' of his lands by the troops of Hanover and Brunswick.[401] His behaviour, however, was described by Charles VI's minister plenipotentiary Fonseca as 'unjust and cruel'.[402] Mecklenburg was depicted as a province of anarchy, where 'cruel and barbarous decisions of justice' were executed in the Duke's name.[403] The Imperial ministers could exploit this image to justify the intervention of the Emperor as 'supreme judge', who had been so kind as to first address 'salutary admonitions' to Charles Leopold. Nothing but 'paternal concern' for the inhabitants of Mecklenburg motivated the Emperor to intervene.[404]

The 'bloodthirsty'[405] and 'scandalously stubborn'[406] Duke was portrayed as a tyrant, who did not respect his subjects' privileges and did not refrain from spilling innocent blood in that process.[407] Where Charles Leopold insisted on his freedom as ruler of an immediate fief of the Empire, Charles VI's ministers could point to the countervailing duties of Imperial vassals, and to the right of their subjects to appeal to the Imperial Aulic Council.[408] Immediacy was not independence, but

'comprotectorials' (individual letters of protection) to buy councillors of princes in the Empire at the courts of Württemberg (Poyntz to Newcastle, 14 April 1729, *o.c.*¸ f. 364r°).

401 Report by Schleinitz, January 1729, *o.c.*., f. 26r°. See also Circular Letter of Duke Charles Leopold of Mecklenburg to the members of the Empire, Danzig, 5 March 1729, Rousset de Missy 1739, pp. 250-252.

402 Memorandum by Fonseca on Mecklenburg, s.l., s.d., NA, SP, 78, 191, f. 54v°.

403 *Ibid*., f. 55r°. See Imperial Commission Decree, Imperial Commission Decree to the Diet, Regensburg, 11 June 1729, published in Rousset de Missy 1739, p. 264: '*le Conseiller Wolfrath a été décapité par Sentence de ce Tribunal* […] *Le Secretaire* [sic] *Privé Scharf, après avoir été plusieurs fois mis à Question, où on lui a fait souffrir de cruels tourmens, en lui jettant sur le Corps du Souffre fondu, & en lui mettant sur la Tête une Couronne de Souffre brûlant, étant mort dans la Prison, son Corps, qui suivant la Sentence ne devoit être que roué, avoit été écartelé* […] *& les quatre quartiers avec la tête exposez sur des Pieux hors la Ville* […] *Le Bourgemaître de Domitz Prasch étant mort en Prison avant le tems de son exécution, son Corps avoit été trainé sur une Claye par des Mousquetaires, & enterré sous la Potence; que la Femme de ce Bourgemaître a été fouettéee, marquée & bannie du Païs*.'.

404 Memorandum by Fonseca on Mecklenburg, s.l., s.d., *o.c*., f. 57v°.

405 *Ibid*., f. 56v°.

406 *Ibid*., f. 58r°.

407 *Ibid*.,, f. 55r°.

408 See Göse 2020, pp. 411-421 and Tobias Schenk, «Der Reichshofrat als oberster Lehnshof. Dynastie- und adelsgeschichtliche Implikationen am Beispiel Brandenburg-Preu-

implied a '*dependence* [sic] *de l'Empereur*'.[409] Even more: Charles Leopold's behaviour amounted to an outright attack on the Emperor. The Duke encouraged the publication of 'scandalous' libels against Charles VI, but also menaced those who would execute imperial instructions with criminal prosecution and the death penalty.[410] Finally, criminal justice in Mecklenburg was portrayed as totally dysfunctional ('*extrêmement mal administrée*'), with 'theft, murder, brigandage and rape of women' rampant in Charles Leopold's lands.[411] The country would have been so badly ruled, that it could barely generate enough money to pay for the costs of the execution.[412]

Although the outcome of the proceedings seemed thus quite predictable, the detailed development of British (Hanoverian) and Brunswick-Wolffenbüttel arguments show a complex and detailed intermingling of Imperial law and anti-hegemonic argument. The Emperor's refusal to abdicate his right as 'Judge Supreme' of the Empire was framed as an attempt to undermine the constitutional arrangement of 1648. The Members of the Empire were confronted with claims by their Estates and nobility, challenging the territorial rulers' decisions before the Imperial Aulic Council. This quasi-constitutional jurisdictional check on their power was not desirable.

Schleinitz's paper[413] is one of the rare instances where doctrine is explicitly used to argue a legal position in the negotiations. The starting point is an exaggeration of the Imperial point of view, rhetorically necessary to make the Guelfs prevail. The court of Vienna is accused of 'insinuating that the Sovereignty or Supreme Power of the Empire resides in the person of the Emperor alone'.[414] The rights of the members of the Empire would then only count as exceptions to this general rule. The limits on the exercise of imperial power contained in the Imperial

ßens», in: Anette Baumann & Alexander Jendorff (eds.), *Adel, Recht und Gerichtsbarkeit im frühneuzeitlichen Europa*, De Gruyter, Berlin, 2014, pp. 255-294, DOI 10.1524/9783110347135.255.

409 Memorandum by Fonseca on Mecklenburg, s.l., s.d., *o.c.*, f. 58r°.

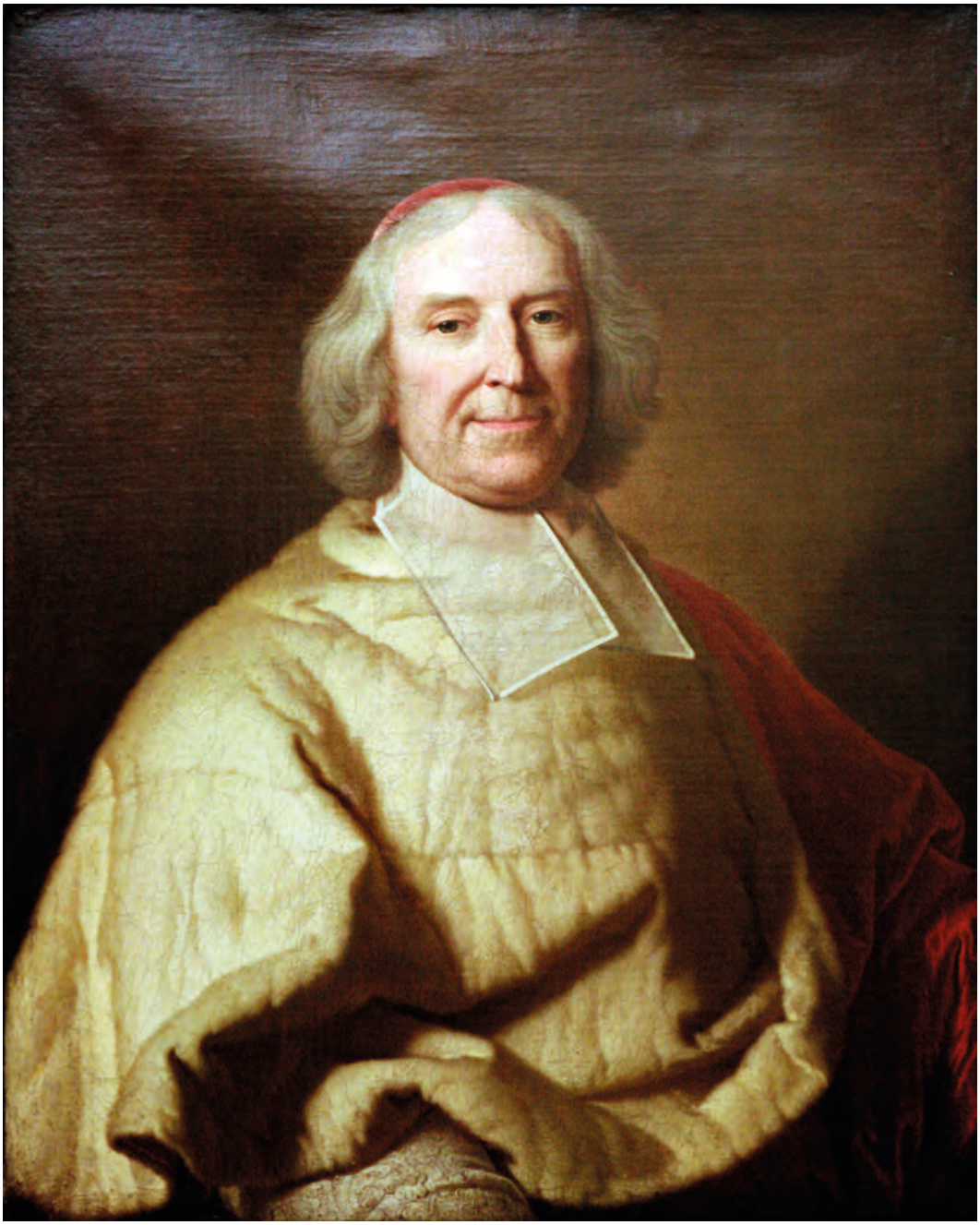
410 *Ibid.*, f. 58r°.

411 *Ibid.*, f. 61r°. See also Instructions for Fonseca concerning the affairs of Mecklenburg, 1729, published in Rousset de Missy 1739, pp. 215-217.

412 Sinzendorf to Fleury, Laxenburg, 14 May 1729, NA, SP, 78, 191, f. 264v°.

413 Schleinitz' paper on Mecklenburg, NA, SP, 78, 190, ff. 210v°-214r°.

414 *Ibid.*, f. 210v°.



Hyacinthe Rigaud (1659-1743), Portrait of Cardinal André-Hercule de Fleury (1653-1743), Metz Museum No. 11464. Photo Rama, CC SA 2.0 France

Capitulations would be seen by Vienna as 'concessions' by the Emperor.[415]

Schleinitz, having taken this extreme position as starting point of his reasoning, invokes the 'most evident notions of universal jurisprudence', 'the most certain principles of public law', and 'the most clear insights, the history of Germany can provide us'.[416] This starts with a definition of sovereignty as 'the faculty or power to direct and regulate the actions of the members of the civil society for its general welfare'. What the sovereign does, orders or establishes cannot be undone by any other man. Or, 'as Grotius explains':

> 'his acts are independent of any other superior power, meaning that they cannot be cancelled by any human will'.[417]

Hence, the sovereign's legislative, jurisdictional, administrative and military power, his right to contract treaties and alliances, to wage war and conclude peace, to send ambassadors and tax, flow as logical consequences.[418] Quite cogently, Schleinitz deduces that the mandatory consent of the Imperial Diet made it impossible to assimilate the Emperor's position to that of other rulers. Limitations to his power derive primarily from 'usage, which preceded even written laws', but mostly from article 8 of the Peace of Westphalia and article 2 of his electoral capitulation. The Emperor lacked the power to interpret imperial laws, according to the latter. Article 20 curtailed the power to put members of the Empire under the ban. The arch-functions (*Ertz-Ämter*), such as that of arch-treasurer, preyed on by George II, could only be granted by the electors and other powers assembled in the Diet. The right to wage war and conclude peace, to make alliances, or to send out ministers, was subject to the same consent pursuant to article 8 of the Peace of Westphalia and articles 4 and 6 of his capitulation.[419]

Quite logically, sovereignty resided in the '*Corps Germanique*', not in the Emperor's person. Anything the Emperor did or ordered contrary to the

415 *Ibid*, f. 210v°.

416 *Ibid*., f. 210v°.

417 *Ibid*, f. 210v°, with reference to *De jure belli ac pacis*, Book I, Chapter III, paragraph 7 (in margine). See Gustaaf Van Nifterik, «Ideas on Sovereignty. Soto, Vázquez and Grotius», in: Erik De Bom, Randall Lesaffer and Werner Thomas (eds.), *Early Modern Sovereignties. Theory and Practice of a Burgeoning Concept in the Netherlands*, Martinus Nijhoff/Brill, Leiden/Boston, 2020, pp. 48-62.

418 Schleinitz' paper on Mecklenburg, *o.c*., ff. 210v°-211r°.

419 *Ibid*., ff. 210r°-211v°.

constitutions of the Empire, could be cancelled by the Diet, whose decisions could not be undone by any authority, as article 17 of the Peace of Westphalia and article 10 as well as the epilogue of the Imperial Capitulations prescribed.[420] By contrast, since the Members of the Empire held the right of 'territorial superiority', they were free to make laws, punish, make war, to conclude treaties of alliance, send out envoys, levy tax and issue coins. No imperial consent or permission was required to exercise these rights.

Schleinitz even went a step further, by stating that 'no human will had the Rights to cancel their acts', provided they did not violate the Law of the Empire, which, considered from the Members of the Empire's point of view, 'were conventions'.[421] However, the Empire still had its feudal basic structure. Couldn't the Electors and Princes be seen as vassals of the Emperor and the Empire? Again, Grotius was invoked, since he had proven that 'feudatory powers could be sovereigns'.[422] Feudal terminology was just a question of 'ambiguous wording' and 'external appearances'.[423] Members of the Empire had a double quality. On the one hand, they were 'masters of a certain territory, on which they are sovereign'. On the other hand, 'as members of a Civil Society', which they entered under certain conditions, the principal of them being that the 'sovereign power of the whole corps' resided both with the Empire and the States, 'which meant that no essential act could be posed without approbation, consent and actual concurrence of the States'.[424]

This state of affairs had been turned into positive law by the Peace of Westphalia, but, as Schleinitz reiterated, the rights of states had already been recognised as a 'very ancient ordinary usage', referring to the work of Dupui [sic], 'an illustrious Defensor of the Rights of the States in the Empire.'[425] The

420 *Ibid* f. 211v°.

421 *Ibid.,* f. 211v°.

422 *Ibid*, f. 212r°, referring to Grotius, *De iure belli ac Pacis*, Book I, Chapter III, paragraphs 10 and 23.

423 Schleinitz' paper on Mecklenburg, *o.c.*, f. 212r°.

424 *Ibid*, f. 212r°.

425 *Ibid*, f. 212r°, mentioning *in margine* that the work 'deserved to be read, since he had been written before the states had fixes and solemnly confirmed its content in the Peace of Westphalia.' The work in question is 'Traité sur le fait de l'Electeur de Trêves et comme il est au pouvoir des princes Allemans de faire des traitez avec les Princes Estrangers, sans offenser l'Empereur', March 1637, published in Pierre Dupuy, *Traitez touchant les droits du Roy*

Emperor, moreover, could only be considered as Emperor or King of the Romans after having signed the capitulation put forward by the Electors, prescribing in the name of all 'Members of the Empire', the conditions of his election.[426] Acceptation by the Emperor is an essential condition. The capitulations, conversely, ought to be conformable to the Laws of the Empire and 'actually acquired Rights' of the states. Schleinitz gave the example of Emperor Leopold I (1640-1705), who threatened in 1658 to forfeit the position of Emperor if his harsh capitulation was not changed. As the Elector of Cologne reminded the future Emperor that only the Electoral College could prescribe these conditions, Leopold could only 'open his big mouth without making any answer.'[427] The Emperor, Schleinitz pursued, was nothing but a '*partie compaciscente*' (contracting party), and could thus not dictate the conditions of a synallagmatic convention to the others.[428]

Schleinitz situated the origin of territorial power in the 14th century, well before the Peace of Westphalia or the appearance of imperial capitulations with Charles V's election. Article 4 of the capitulations stated explicitly that the Emperor recognised the territorial superiority and the mandatory concurrence of the Members to exercise Supreme Power.[429] Hence, article 8 was only a confirmation of the obligations violated by certain Emperors to respect the general rights and prerogatives of the members.[430] The lack of respect for this fundamental principle generated the risk that the Empire would be turned into a Monarchy, 'the greatest of all mischiefs that could happen to Europe'.[431] The Balance between the powers governing the continent would have disappeared, and the 'absolute master of Germany' would soon become master of all the rest, and establish a fearsome 'universal monarchy'.[432]

Hence – not unimportant if we keep in mind that the paper is directed at France

très-chrestien sur plusieurs estats et seigneuries possédées par divers Princes voisins…, Laurens Maurry, Rouen, 1670, pp. 337-342. On Dupuy, see Guido Braun, *La connaissance du Saint-Empire en France 1643-1756*, DeGruyter, Berlin, 2010, p. 92, note 177.

426 Schleinitz' paper on Mecklenburg, *o.c.*, f. 212v°.

427 *Ibid.*, f. 213r°.

428 *Ibid*. f. 213r°.

429 *Ibid o.c.*, f. 213r°.

430 *Ibid*, *o.c.*, f. 213v°.

431 *Ibid*, *o.c.*, f. 213v°.

432 Schleinitz' paper on Mecklenburg, *o.c.*, f. 213v°.

– Henry II, Louis XIII and Louis XIV had consistently been the champions of German liberty. The French secret instructions for the Congress asserted that the Imperial court tried to restrict or even extinguish the German princes' *jus legationis*![433] If Charles VI's legal discourse in Mecklenburg and East Frisia showed anything, according to Schleinitz, it was his aspiration to become a new Ferdinand II (1578-1637), the tyrannical Emperor who had triggered the Thirty Year's War![434] Further details on the Imperial Commission would only overburden his memorandum.

In the British/Hanoverian point of view, Charles VI had *de facto* dethroned Charles Leopold, and had absolved his subjects from their oath of loyalty.[435] Yet, as Schleinitz's earlier intuition showed, Fleury remained hesitant to accept the idea that the Imperial Aulic Council was acting '*ultra vires*' for Mecklenburg. He invoked the Diet's approbation of the administration of Bavaria and Cologne during the War of the Spanish Succession. Both Electors had been put under the ban of the Empire by Emperor Joseph I. The affair of Mecklenburg would moreover be a 'civil' cause, and not 'of a criminal nature', a point left to the Emperor's court 'long ago' by the Diet.[436] Although Poyntz could argue that the administration of Bavaria and Cologne was a consequence of a decision taken beforehand with the consent of the Diet, Fleury's prudence is clear.

The British plenipotentiaries counted on a constructed majority in the Diet to overrule the Imperial Aulic Council, and declare that its decisions on Mecklenburg violated the constitution of the Empire.[437] This was a further extension of the idea that the four Wittelsbach Electors and the House of the Guelfs could unite in the same team, '*sans distinction de religion*'.[438] However, this majority or 'judgment of the whole germanick body'[439] never emerged in Regensburg, in spite of all

433 French secret instructions, *o.c.*, f. 115r°.

434 Schleinitz' paper on Mecklenburg, *o.c.*, f. 214r°. See also GOSLINGA 1915, p. 226.

435 E.g. Comments on Fonseca's Memorandum, s.l., s.d., NA, SP, 78, 191, f. 112v°.

436 Stephen Poyntz to the Duke of Newcastle, Paris, 2 March 1729, NA, SP, 78, 190, f. 245v°. See also comments on the Imperial commission in Mecklenburg, s.l., s.d., NA, SP, 78, 191, ff. 110v°-117r°.

437 Stanhope, Walpole and Poyntz to Townshend, Secretary of State for the Northern Department (and thus in charge of German relations), Paris, 1 June 1729, f. 130r°.

438 Article 10, Draft treaty for the four Wittelsbach electors, agreed between the British plenipotentiaries and Chauvelin, s.l., s.d., NA, SP, 78, 191, f. 200v°.

439 Stanhope, Walpole and Poyntz to Townshend, 1 June 1729, copy, NA, SP, 78, 191, f.

warnings of '*les grands pas de l'Autriche vers le despotisme*'.[440] It is remarkable that the draft treaty of alliance between France, Britain, the Dutch Republic and the Wittelsbach electors (proposed by count Albert, envoy of Bavaria)[441] formally conformed to the basic norms of the Empire, e.g. emphasising the treaty's aim was the preservation of the '*Bien Public*', or stating that the troops kept on foot to 'prevent evil within the Empire' could only be used for a common Imperial war (*Reichskrieg*) or rented out to combat the Ottomans.[442]

The presence of imperial affairs at the congress was symbolised by the appearance of three new actors at the formal meetings in the Castle's conference room. In any case, the formal presence of German princes was limited to the Electors only, as France did not recognise the *jus legationis* beyond this restricted circle. It was thus not possible for the Duke of Holstein to be formally accepted as plenipotentiary at the Congress.[443] The Elector Palatinate's minister Johann Bernhard von Francken (1668-1746) arrived on 3 September 1728 in Soissons, mainly to keep an eye on Julich and Berg.[444] His master's sibling, the Elector of Bavaria, sent his minister Johann Georg Graf von Königsfeld (1679-1750) to join him.[445] This introduced formal representatives who would address issues the Emperor would have wished to keep out of Soissons![446]

The dossier of East Frisia, a fief of the Holy Roman Empire bordering on the Dutch Republic, where an imperial execution was underway against the city of

233v°.

440 Extract from a letter from Paris, 21 June 1729, NA, SP, 78, 191, f. 458v°. See the Imperial Commission Decree to the Diet, Regensburg, 11 June 1729, *o.c.* ,pp. 264-283.

441 Louis-Joseph comte d'Albert (1672-1758), see Neil Jeffares, «Between France and Bavaria: Louis-Joseph d'Albert de Luynes, Prince de Grimberghen», *The Court Historian* 17, 1 (2012), pp. 61-85, DOI 10.1179/cou.2012.17.1.004.

442 Preamble and art. 4 *in fine*, draft treaty between Louis XV, George I, the Estates-General of the Dutch Republic, Charles I Albert of Bavaria, Charles III Philip of the Palatinate, Francis Louis of the Palatinate-Neuburg (Archbishop-Elector of Trier) and Joseph Clement of Bavaria (Archbishop-Elector of Cologne), , s.l., s.d., NA, SP, 78, 191, ff. 141v° and 143v°.

443 Chauvelin to Brancas and Fénelon, 28 August 1728, cited in Le Dran, *Histoire du Congrès*, f. 192v°.

444 Hop Archives, f. 109r°.

445 *Ibid*. Due to the inactivity at the congress in September 1728, Königsfeld, as well as the equally recently arrived Gedda, headed for Fontainebleau to join the French court (*Ibid*., f. 117r°).

446 *Ibid*., f. 110r°. Dureng 1911, p. 60.

Emden,[447] was cited in the French secret instructions in the same category as the Wittelsbach and Hohenzollern claims to Jülich and Berg, religious quarrels in the Empire and the limits of Alsace and Luxembourg: '*les affaires qui pourroient* […] *donner lieu à de nouvelles divisions*'.[448] In contrast with Mecklenburg, the Emperor supported the local ruler in East Frisia against his estates.[449] The Dutch Republic held a garrison in the county's main city Emden and in Lieroort, and were adamant on the respect of local privileges. The case was highly sensitive, and was repeatedly brought to Fleury's attention, from the start to the end of the Congress. For Sinzendorf, East Frisia ought not to have been on the congress's table, as it pertained solely to the jurisdiction of the Empire.[450] Quite logically, the Imperial Aulic Chancellor frustrated the Dutch ministers in Fontainebleau, announcing his willingness to discuss East Frisia, without finally engaging in a real conversation.[451]

Paradoxically, the impatient Dutch ministers received the dry answer from Chauvelin and Fleury (who professed to be on their side) that the Republic's constitutional system created suspicion. Since the ministers were obliged to write home to the Council of State and the Estates-General, 'overtures' would certainly leak out! It was no surprise if Sinzendorf and Fleury remained prudent…[452] The same reproach surfaced in May 1729, when the allies of Hanover were devising a provisional treaty with Spain, that had to remain unknown to the Emperor. Consequently, the Dutch ministers wrote to pensionary Simon van Slingelandt, at

447 Including 'sequestration of the City's domains, posting troops until just under the city's canon, but mostly imposing and collecting fines', Hop Archives, f. 70r°. On East Frisia, see the documents published in 1731 by Rousset 1731, V, pp. 252-324 and Goslinga 1915, pp. 150-155, 242-243, 273-275 and 298-300.

448 French secret instructions, *o.c.*, f. 117r°.

449 Goslinga 1915, p. 242.

450 E.g. Hop Archives, f. 24r° (reporting a conversation held on 17 June 1728): 'Count Sinzendorf assured that it was neither his intention, nor that of the Emperor to torment your High Lords, but that the deliberations of the Imperial Aulic Council were very slow (*langweilig*), although this institution was well intentioned to settle the manner conformably to the Emperor's intention.'

451 *Ibid.*, f. 129r°.

452 *Ibid.*, f. 135r°. Conversely, Huisman attributed the Dutch inability to live up to military commitments to the provincial *Staten* (Estates)'s unwillingness to vote the necessary taxes for that (Huisman 1902, p. 407). Slingelandt, the province of Holland's pensionary, invoked the system to make concessions on the Ostend Company harder: any kind of concession below the bar of revocation would require unanimity (Goslinga 1915, p. 181).

the insistence of France and Britain:

> 'secrecy must be kept with the utmost prudence. The Emperor cannot become aware of this delicate and important negotiation.'[453]

The British delegation, contrary to Fleury, considered East Frisia as a *casus foederis*, especially while the congress seemed to have fallen into complete 'inaction' for the first time, in August 1728.[454] The Dutch Republic's insistent and repetitive interventions on behalf of the 'reninents', who quarrelled with the ruling count, who was accused of using violence[455] and breaking privileges and internal 'agreements and conventions, the fundamental laws of the country',[456] would eventually prove successful at the Treaty of Vienna in 1731.[457]

In the course of the debates, it is remarkable that treaty law and imperial law seem to be invoked against one another again.[458] The Dutch Republic clung to the right to keep its garrison in Emden, on the basis of a pre-existing treaty. It evoked the rights of the local Estates and citizens' 'good and blood' against their ruler.[459] Yet, Imperial diplomats could point to the existing '*lois germaniques'*, which allotted competence to the Imperial Aulic Council, and solidified the 'Supreme Authority' of the Emperor.[460] This included the right to grant amnesty to the Count's unruly subjects, or to be 'clement, equitable and good' even for those who had been excluded of this measure, on the ground of the 'atrocious crimes' they had committed.[461] The Count's subjects remained '*dependant*' on the Emperor and the Empire.[462] Fleury hinted that France would intervene on the Dutch Republic's side if the Emperor used too much violence.[463] Yet, Chauvelin

453 Hop Archives, f. 191r°. Le Dran, *Histoire du Congrès*, f. 176r°.

454 Late July 1728, Hop Archives, f. 92r°.

455 Poyntz to Newcastle, 6 February 1729, *o.c.*¸ 109v°. *Ibid.*, ff. 70r°-71r°.

456 Draft letter of Chauvelin to Busy, French chargé d'affaires in Vienna, Paris, s.d., f. 289r°.

457 France was willing to intervene in East Frisia, but only if the reninents would receive too harsh a treatment (Poyntz to Newcastle, 6 May 1729, *o.c.*, f. 4r°). See also the documents in *CUD* VIII/2, pp. 163-216.

458 'Sur les affaires d'Ostfrise', s.l., s.d., NA, SP, 78, 190, f. 77v°.

459 *Ibid.*, f. 78r°; '*goed en bloed*', *Ibid.*, f. 103r°.

460 *Ibid.*, f. 78v°. Anonymous memorandum on East Frisia (copy), s.l., s.f., NA, SP, 78, 190, f. 188v°.

461 Anonymous memorandum on East Frisia (copy), *o.c.*, ff. 189r°-189v°.

462 'Sur les affaires d'Ostfrise', f. 78v°.

463 'the Cardinal made us understand that he had turned East Frisia into his own case', Hop to Fagel, 12 August 1728, Hop Archives, f. 102r°; Poyntz to Newcastle, Paris, 6 May 1729,

Hyacinthe Rigaud (1659-1743), Portrait of Graf Philipp Ludwig Wenzel Sinzendorf (1671-1742), Kunsthistorisches Museum Wien, Public Domain

was highly sceptical on the legal basis of the rights invoked by the Dutch:

> 'It is an embarrassing situation to answer someone who asks you for the recognition of a right that he cannot even prove himself.'[464]

Finally, bilateral frictions between Hanover and Prussia, which were already clear in the Mecklenburg case,[465] were a cause for alarm in the Summer of 1729. Frederick William I was said to have fifty thousand soldiers ready to march on Hanover if he was refused satisfaction in his quarrel over the kidnapping of able tall men to serve in his army.[466] A Prussian invasion of Hanover, backed by the Emperor and his allies, would trigger a general fire in Germany, and was seen as a serious threat by the Dutch as well.[467] Frederick William I was depicted as

> '*de toutes les têtes couronnées de l'univers* […] *la plus insensée*.'[468]

NA, SP, 78, 191, f. 4r°. See also Hop Archives, f. 213r°.

464 Le Dran, *Histoire du Congrès*, f. 315v°.

465 Adding Brandenburg to the Imperial Commission (Hanover/Brunswick-Wolfenbüttel) in 1727 at the decease of George I was seen as logical by the Court of Vienna, since the commission was considered to have been granted '*singuli in solidum, conjunctim et divisim'* (Memorandum on Mecklenburg, s.l., s.d., *o.c.*, 60v°). The King of Prussia insisted on Hanover and Brunswick leaving the duchy (Le Dran, *Histoire du Congrès*, f. 314r°). For the succession in Jülich and Berg, which the alliance with the Wittelsbach electors had promised to the Palatinate-Sulzbach branch of that family, British decision-makers had opted to support the '*Maison Palatine*' to 'possess' the lands in question, 'until a legitimate judgment would have been given' in the case, or an 'amicable agreement reached'. Notes to the Bavarian proposal of an alliance between the four electors and the allies of Hanover, s.l., s.d., NA, SP, 78, 191, ff. 163v°-165r°.

466 George Lyttelton to Thomas Lyttelton, Paris, 30 August 1729, in Ayscough 1774, p. 695.

467 Goslinga 1915, p. 359, citing the province of Holland's eagerness to raise the quota of troops.

468 George Lyttelton to Thomas Lyttelton, Paris, 30 August 1729, *o.c.*, 695. Conversely, it was clear from the Imperial side that the French right to intervene in the Empire as guarantor on the basis of the Peace of Westphalia was completely alien to the bilateral quarrel between George II and Frederick William I. See Mémoire instructif pour le Comte Etienne de Kinsky et le Baron de Fonseca, Vienna, 8 August 1729, published by Höfler, *Der Congres von Soissons*, p. 145.

'A plan of operations': the League of Hanover, a military alliance?

> 'So much the better; then I will make war upon Portugal and conquer it'.
>
> Philip V, allegedly, quoted by Fleury[469]

> '*Il paroitroit prudent de rester armé* […] *il ne faut pas douter que les grands préparatifs de Guerre qui ont eté faits, n'ayent beaucoup contribué a faire accepter ce qui a formé la conciliation preliminaire*.'
>
> Anonymous memorandum, June 1728[470]

The parties present at Soissons had promised to respect a term of seven years of 'cessation of hostilities' (art. 6) and had become 'Guarantys to one another against the Commission of any Hostilities in the Indies or elsewhere'.[471] The discussion on the possibility of a 'universal war' made it necessary to have a consistent military force on foot. In the words of Cardinal Fleury, whose 'excessive Oeconomy in money'[472] complicated more ambitious designs:

> 'The expence [sic] to which we in France, and you in England, as well as the Dutch, are subjected, is no longer supportable, and we will sign no Treaty that shall not ease us of this load.[473]

The financial exhaustion of the Dutch Republic seemed to be a fact of general knowledge, as rumours circulated that the Estates-General were 1,2 million guilders a year short to pay for the mobilised forces of 1729.[474] Fleury explained this using three variables: first, the lack of 'provision, as we have done, for discharging the Debts contracted in the late War' [the War of the Spanish Succession]. Second, the 'great jealousy between their maritime and inland Provinces, a still greater between Holland and the rest, the same between the

469 Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 173v°.

470 AMAE, M&D, vol. 498, f. 29r°.

471 Annex to the instructions of Stanhope, Walpole and Poyntz, *o.c.*, f. 341v°.

472 Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 177r°.

473 Poyntz to Newcastle, 6 February 1729, *o.c.*, 111v°; Poyntz to Chesterfield, 1 April 1729, *o.c.*, f. 353v°.

474 Poyntz to Newcastle, 29 March 1729, *o.c.*, f. 313r°. See more in general David Onnekink and Gijs Rommelse, *The Dutch in the Early Modern World: A History of a Global Power*, Cambridge University press, Cambridge, 2019, pp. 183-217, DOI 10.1017/9781316424131.006/

towns of Holland and Amsterdam',[475] and finally, 'that they can find no way of taxing they moneyed citizens in proportion to their wealth.'[476]

In spite of this alleged prudence and France's perceived parsimony in spending on German princes,[477] Poyntz reports 'eight millions' spent by the French government in filling 'Magazines both of ammunition and Provision', doubling the militia from what it had been in 1728[478]. The country was thought capable to 'find resources for seven or eight vigorous campaigns'.[479] The financial troubles of the Regency seemed to be over. He noted with interest that d'Asfeld, director of fortifications, visited Fleury in Versailles with numerous maps and plans, to guide him in a 'long March over the Frontiers […] of Germany'.[480] Fleury was said to use 'M. Feche, a Swiss Gentleman' to 'obstruct the Spanish Levys in Switserland'.[481]

In Britain, Parliament had allowed funding for 15 000 seamen, justified by the commercial tensions with Spain.[482] Philip V's 'erratic' behaviour and propensity to indulge in the nostalgia of previous battles lost, made the threat credible.[483] Moreover, Spain had actually responded by sending 3 000 land troops to the West Indies.[484] Fleury insisted on Britain furnishing 'more than 12 000 men' in land troops.[485] France was keeping its army mobilised throughout 1729, as it had

475 The reaction of Amsterdam was -as often- seen as decisive for that of Holland and the Dutch Republic as a whole, e.g. as in Pontz to Newcastle, 26 April 1729, *o.c.*, f. 413v°.

476 Poyntz to Newcastle, 29 March 1729, *o.c.*, f. 313r°.

477 *Ibid.*, f. 313r°.

478 Poyntz to Keene, most private, 5 February 1729, *o.c.*, f. 133v°.

479 Poyntz to Newcastle, 6 April 1729, *o.c.*, f. 358r°.

480 Claude François Bidal d'Asfeld (1665-1743), Poyntz to Newcastle, 8 March 1729, f. 260v°. Two years earlier, Fonseca claimed the opposite: all Frenchmen, 'from the greatest nobleman to the lowest ranks, cries Barabbas against war' (Fonseca to Sinzendorf, 14 January 1727, cited in Huisman 1902, p. 408).

481 Poyntz to Newcastle, 14 April 1729, *o.c.*¸ f. 364r°.

482 Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 178v°. Poyntz's papers contain a list of over forty Spanish ships in August 1728, most of them heavily armed. NA, SP, 78, 190, s.f.

483 Jones Corredera 2021, p. 32.

484 Poyntz to Newcastle, 14 April 1729, *o.c.*, 361v°.

485 Poyntz to Newcastle, 27 February 1729, *o.c.*, s.f. Various numbers circulated to equal subsidy payments and the mobilisation of troops, e.g. AMAE, M&D, Soissons, vol. 499, f. 70v°: a thousand cavaliers equalled 30 000 Dutch guilders a month, a thousand men infantry cost a third of that amount. One men of war afloat equalled 650 men infantry. A projected common anti-Imperial fleet of 23 men-of-war, consisting of eight Spanish men-of-war

already done in the preceding year.[486] Rumours of a planned Spanish assault on Jamaica were of course used in the continuous process of persuasion to keep Fleury aboard. Highly secret British military preparations were approved by the Cardinal, but not without doubting the 'entire credit of the intelligence'. Fleury thought it impossible that Spain would 'act in so perfidious a manner'.[487]

The Emperor seemed least of all prepared to go to war, which could be explained by the priority of the Pragmatic Sanction.[488] The latter, moreover, was seen by France as 'inseparable from our consent to this [Maria Theresia's] marriage'.[489] Repeated allegations of financial problems spawned doubts on Charles VI's preparedness for battle.[490] As a consequence, the Emperor's perceived weakness was thought to benefit France in pending bilateral border issues.[491] Franco-British efforts to build up an alliance within the Empire were used to convince the court of Seville that Charles VI would not be of much use in a war between the Leagues of Vienna and Hanover.[492] The Habsburg hereditary lands would be at risk, and Charles would be in need of quickly renewing his alliances with 'Muscovy', Prussia and Saxony-Poland.

In other words, he would not be ready for any kind of war, and would invest Spanish subsidies, promised in 1725, to defend himself rather than to assist Philip V.[493] For these reasons, it was suggested to the Spanish delegation in Soissons that

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and five supplementary ships per ally, was seen as sufficient to bring the Emperor to reason in Italy. France, Britain and Spain would use eight thousand men infantry and four thousand cavaliers each in case of a rupture with the Emperor (Idées de la Pacification par voye de Tréve, s.l., September 1728, *o.c.*, f. 165v°; AMAE, M&D, France, vol. 500, f. 201v°).

486 Hop Archives, f. 149r°.

487 Poyntz to Newcastle, 8 March 1729, *o.s.*, f. 263r°.

488 Poyntz to Newcastle, 11 February 1729, f. 144v°.

489 Fleury to Chauvelin, Soissons, June 1728, *o.c.*, f. 46r°.

490 E.g. Anonymous Memorandum, June 1728, *o.c.*, f. 29r°.

491 E.g. Memorandum whereby Fleury is asked to insist on the cession of Chimay and Beaumont with their dependences and annexes, s.l., s.d., AMAE, M&D, France, vol. 499, ff. 36r°-39r°. On the French negotiations with the Emperor and the Prince-bishopric of Liège, see Sébastien Dubois, *Les bornes immuables de l'état: la rationalisation du tracé des frontières au siècle des lumières (France, Pays-Bas autrichiens et principauté de Liège)*, UGA, Heule, 1999.

492 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 145r°.

493 *Ibid.*, f. 145r°. Furthermore, Charles VI's debts towards other German princes were said to be earmarked for reimbursement on Spanish subsidies. Poyntz to Newcastle, 22 February 1729, *o.c.*, f. 176r°.

Charles VI would 'furnish troops, without engaging directly in the War.'[494] Yet, doubts on Spain's financial health made the payment of subsidies very unlikely.

Conversely, British suspicions on a plot to install the Pretender presented a different image of Charles VI's military strength two years earlier, in 1727, when the allies of Hannover had equally devised a plan of operations.[495] When reporting on the conversations Ripperda had held in London, the British minister plenipotentiary tried to convince Fleury that Charles VI's 'long and expensive march of a strong body of his best Troops' and 'filling all his Magazines', as well as 'large subsidys […] payd to his Allys in the Empire' counted as a proof that a 'vigorous war' had been possible.[496] In 1729, the payment of an estimated sum of 'twelve Millions of Piastres' by Spain was rumoured to allow the Emperor to raise thirty thousand men 'due' under the Alliance of Vienna.[497] Likewise, the Emperor was also rumoured to have kept a considerable army ready in Italy, to exert pressure on Gian Gastone de'Medici.[498]

The reference above to Saxony-Poland made clear that all pending issues in Europe seemed to be linked. The Emperor's alliance with Russia was tied with the promise to Augustus the Strong of Saxony (1670-1733) who, according to Fleury, 'had but little regard for faith or justice'[499] to elect his son as King of Poland at his decease… in exchange for the Elector of Saxony's willingness to drop his wife's claim on the Habsburg hereditary lands. Could Saxony provide 15 000 men for Charles VI?[500] Would 'Muscovy' acquiesce in the throne of Poland's becoming quasi 'hereditary' in the Wettin family?[501]

The Polish question was treated elaborately in an anonymous letter 'from Dresden by a member of the Polish gentry to his friends'. Augustus was accused of transforming the elective Polish monarchy into a hereditary system, with

494 Poyntz to Newcastle, 11 February 1729, *o.c.*, f. 146v°.

495 Poyntz to Newcastle 26 February 1729, *o.c.*, f. 214v°. This plan 'was not a secret in Vienna', according to Chauvelin.

496 Poyntz to Newcastle, 22 February 1729, most private, *o.c.*, s.f.

497 Poyntz to Newcastle, 27 February 1729, *o.c.*, s.f.

498 Idées de la Pacification par voye de Tréve, s.l., September 1728, f. 160v°.

499 Poyntz to Newcastle, 29 March 1729, *o.c.*, f. 311r°.

500 Project 'proving' that the Emperor could strengthen his alliances if he were obliged to wage war and bring the Allies of Hanover to reason without actually waging it, s.l., s.d., NA, SP, 78, 190, s.f.

501 Poyntz to Newcastle, 29 March 1729, *o.c.*, f. 311r°.

Simon van Slingelandt (1664-1736),
by Mattheus Verheyden Philip van Dijk, The Hague, Hoge Raad van Adel.

the military support of the Emperor, Russia and Saxon soldiers 'dressed as Brandenburgers'.[502] Protestants were depicted as the victims of a permanent Saxon presence on the throne, as Augustus was likened to the devout Catholic Emperor

502 Letter from Dresden, 'late in February 1729', NA, SP, 78, 190, f. 386v°.

Leopold I, who was accused of having 'used a theologian to obtain the crown of Hungary.'[503] Soon would the house of Wettin 'extirpate' the Protestant religion. All liberty would be lost ('*Vae Libertas*').[504] King Sigismund Vasa (1566-1630) had been the 'Pater Patriae', but Augustus was nothing but its 'Devastator'.[505] As in the Spanish case, Augustus's health provoked speculations in all courts.[506]

Gossip on troop mobilisations and fleet movements was eagerly noted, and could sometimes hardly be disproved, due to the practical impediments to a swift circulation of reliable information. In February 1729, when interrogated by Austrian and Russian disquiet at an alarm caused by a British squadron in the Baltic, Poyntz stated he could not remember any British enterprise of the kind.[507] In general, speculations on the armed forces of the various powers in Northern and Eastern Europe were common as well, for instance when Poyntz and Fleury thought Sweden could raise up to eighty thousand men.[508]

503 *Ibid*., f. 387r°.

504 *Ibid*., f. 387v°.

505 *Ibid*.,, f. 388r°.

506 Stanhope, Walpole and Poyntz to the Duke of Newcastle, Hautefontaine, 7 May 1729, *o.c*., f. 16v°.

507 Poyntz to Newcastle, 22 February 1729, *o.c*., f. 178r°.

508 Poyntz to Newcastle, 29 March 1729, *o.c*., f. 311r°.

CONCLUSION :
THE SLEEPING CONGRESS ?

> '*Le repos public et l'équilibre si nécessaire en Europe.*'
>
> Preamble to a draft 'suspensive treaty', September 1728[509]

> '*Le Congrès de Soissons ou plus tôt le sort de l'Europe dépendra-t-il toujours des caprices d'un Roi imbécile et d'une Reine emportée et ambitieuse ?*'
>
> Slingelandt, January 1729[510]

In March 1729, the court of St James's irritation at the 'fruitless conferences' pushed George II and the Duke of Newcastle to issue more strident instructions for Poyntz, Horatio Walpole and William Stanhope.[511] Pursuant to article 8 of the preliminaries, the 'Discussion & Decision of Pretensions' at Soissons ought to have been 'limited to the Space of 4 months'.[512] Talks lasted endlessly because neither Spain nor the Emperor would move on the essential points contained in the Parisian preliminaries of 1727, and mostly because of

> 'the method of proceeding, that occurred by the private conversation between the respective Parties upon other points.'[513]

Wouldn't it be possible to conclude a treaty that brought 'the most essential matters to a general pacification'?[514] Draft articles ought to contain a confirmation 'of all former Treatys & Conventions antecedent to the year 1725', in order to 'preserve the Tranquillity of Europe by reinstating Things upon their former foot'. Second, an explicit statement that the 'Treatys of Vienna, had been an infraction of former Treatys'. Third, all 'other lesser matters that might be of a tedious discussion' had to be referred to 'discussion & determination' to the 'Examination of Commissarys', without 'any Interruption or Impediment of the Peace, or full

509 Le Dran, *Histoire du Congrès*, f. 225r°.

510 Simon van Slingelandt to Sicco van Goslinga, 6 January 1729 (draft), quoted in GOSLINGA 1915, p. 306.

511 Instructions for Stanhope, Walpole and Poyntz, London (St James's court), 31 March 1729, NA, SP, 78, 190, f. 331v°.

512 Annex to the Instructions for Stanhope, Walpole and Poyntz, *o.c.*, f. 340v°.

513 *Ibid.*, f. 339v°.

514 *Ibid.* f. 340r°.

enjoyment and Exercise of the Privileges of Trade, pursuant to former Treatys'.[515]

Antoine Pecquet jr. (1700-1762), a top civil servant who opposed Franco-British cooperation, thought that Britain had been perfectly trapped into the congress setting. In reality, according to Pecquet, France had been in the centre of the diplomatic game throughout the Congress. If Britain would have wanted to get out of the talks, this would create a serious problem regarding the Imperial-Dutch relationship. In a report for the King's Council of 8 November 1729, he advised Chauvelin that:

> 'if the Congress would be interrupted, this would constitute a breach of the Preliminaries [of Paris and Vienna, 1727]. Consequently, we can consider the latter's first article to be void and null: the Ostend trade would then be resumed, without any chance of reconciliation.'[516]

The failure to conclude a treaty including both the King of Spain and the Emperor can be equated with a failure of the 'sleeping' Congress of Soissons *sensu stricto*.[517] However, we should not overemphasise the immediate outcome of the physical gathering at Soissons. The analysis of diplomatic correspondence and published letters makes clear that the continuous European diplomatic conversation rose and retreated as waves on the beach, but never stopped. The Treaty of Seville[518] deprived the congress of meaning. Spanish pressure, and Franco-British commercial interests, deviated the physical seat of the talks to the south of Spain, leaving the congress in a '*parfaite suspension*' from the Summer of 1729 on.[519] On 28 July 1729, Philip V finally ordered the release of the assets held on the galleons from the Indies.[520] A year earlier, reconciliation between the allies of Hanover and Spain had already been suggested as the most desirable outcome for France, and it seemed to have become true.[521]

515 *Ibid.,* f. 340v°.

516 Pecquet jr., 8 November 1729 cited by Le Dran, *Histoire du Congrès*, f. 275r°.

517 De Pauw 1960, p. 92.

518 Treaty of Peace, Union and Mutual Defence between France, Britain and Spain, Seville, 9 November 1729, 33 *CTS* 253. Rousset 1731, V, pp. 325-462.

519 E.g. Keene to Newcastle, Seville, 19 May 1727 (copy), *o.c.* f. 309v°: 'upon this condition [the Introduction of Spanish Troops into Tuscany and Parma] Spain will not barely resume the Course of the Negotiations at Soissons'.

520 Alfred Baudrillart, *Philippe V et la Cour de France. T. III: Philippe V, le duc de Bourbon et le Cardinal de Fleury*, Firmin-Didot, Paris, 1890, p. 527.

521 French secret instructions, *o.c.*, f. 109r°.

The manifold potential *casus belli* should not obscure the pervasive *esprit de modération* in diplomatic language. The game of persuasion was a polite one, even if the actors disagreed.[522] This spirit was not solely confined to Soissons. Philip V and Elisabeth Farnese seemed to have forced all the other powers to bring negotiations to Spain. In reality, the permanent network of bilateral diplomacy was active in pacifying the continent as well, and Fleury would not allow the new agreement to lead to a war against Charles VI.[523] Proposals raised by Fleury, Sinzendorf, Walpole or Goslinga in Soissons could be amended by the ministers and diplomats at the court in Seville or Madrid.[524] In the *Conseil du Roy*, where policy options were discussed, even a 'not all too dangerous' war was rejected by the sceptical Chauvelin, since:

> '*ce parti est contraire aux vües pacifiques*.'[525]

In the long-term, Elisabeth Farnese's insistence on getting her offspring installed in Italy paid off well beyond what had been agreed in the Treaty of London. The War of the Polish Succession (1733-1735) allowed Spain to conquer the Kingdom of Naples for don Carlos. Parma and Piacenza were left to Charles VI, and Tuscany would be ruled by Francis Stephen of Lorraine, who had renounced his ancestral Duchy to the benefit of Stanisław Leszczyński, Louis XV's father-in-law. The Ostend Company was suppressed at the Treaty of Vienna in 1731, two years before this war.[526] Chauvelin's anti-Habsburg stance prevailed, in the sense that French armies fought on the Rhine and in Italy again, as in the War of the Spanish Succession. Nevertheless, the Maritime Powers would only remain neutral for as long as France would not disturb the balance, which made – in the end – the spirit of moderation prevail again. The complex movements and manoeuvres of European diplomacy between 1722 and 1735 were accompanied

522 E.g. the Dutch delegates on their communication with the Imperial court in August 1729 concerning East Frisia: '[their answer was] accompanied with many civilities, to which we responded just as courteously' (Hop Archives, f. 209r°).

523 Kamen 2001, pp. 175-178.

524 E.g. the intervention of Josef Lothar Graf von Königsegg-Rothenfels, Imperial ambassador in Spain, in October 1728 (Hop Archives, f. 134r°).

525 Chauvelin, Conseil du Roy, 8 November 1729, cited by Le Dran, *Histoire du congrès*, f. 271v°.

526 See Stefan Meisterle, «Kaiserlich Ostindien – die indischen Niederlassungen Karls VI.», in: Seitschek & Hertel (eds.), *Herrschaft und Repräsentation*, pp. 269-282, DOI 10.1515/9783110670561-013.

by invocation of various legal arguments. Conserving the status quo of Utrecht was difficult, due to the inevitably resurfacing dynastic claims in the Society of Princes.[527]

A Dutch attempt, in September 1728, to add a general article in the eventual treaty that ought to conclude the congress, on the meaning of the 'balance of power in Europe', is quite telling:

> 'it should be stipulated as a necessary thing that keeping the balance (*équilibre*) of power (*de puissance*) in Europe, requires that the hereditary lands of the House of Austria, except those possessed by Spain at the decease of the Catholic King Charles II, cannot, for the duration of the present treaty, be possessed either in ownership or whatever manner, by the Prince who would during that time occupy the throne of Spain.'[528]

This article can be interpreted as an affirmation of the anti-hegemonic nature of the Alliance of Hanover against the marriage of don Carlos with Maria Theresia (or another archduchess). Taken more broadly, one could suggest that don Carlos's effective conquest of Naples in 1733-1735 brought the House of Bourbon dangerously close to this formulation. [529] Nevertheless, the Kingdom of Naples having been under Spanish rule since 1504 until Charles II's decease, and its loss having been compensated with Tuscany, Parma and Piacenza, the balancing logic was respected.

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