Delenda est haec Carthago: The Ostend Company As A Problem Of European Great Power Politics (1722-1727)

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Summary

The Ostend Company (1722-1731) is a symbol of present-day Belgium’s strangle by European Great Power politics in the Ancien Régime, and more specifically of the limitations imposed on the Southern Netherlands by the Dutch Republic in 1648. The present contribution analyses the right of Emperor Charles VI to send out ships to the East Indies. Pamphlets by Abraham Westerveen and Jean Barbeyrac, argued for the exclusion of the Southern Netherlands based on the Treaty of Munster. Against this, Patrice de Neny and Jean du Mont invoked the peremptory character of the natural law-rules governing free trade. However, the Treaty of Commerce concluded between Charles VI and Philip V, King of Spain, on 1 May 1725, constituted a strong basis to refute the Dutch attacks. Yet, norm hierarchy between the balance of power inscribed in the Peace of Utrecht and secondary bilateral treaties between sovereigns dominated multilateral diplomacy after 1713 and prejudiced the “Belgian” East India trade.

Keywords

International Law, Legal History, International Relations

Introduction

[Les Nations] les plus prudentes cherchent à se procurer par des Traités, les secours & les avantages, que la Loi Naturelle leur assureroit, si les pernicieux conseils d’une fausse Politique ne la rendoient inefficace.

Vattel, Le Droit des Gens

Concerning the OSTEND COMPANY […] DELENDA EST HAECA CARTHAGO

The Importance of the Ostend-Company consider’d, 1726

In Belgian historiography, the Imperial East India Company created in Ostend (1722-1731) is often presented as an example of the sorry fate the Southern Netherlands had to suffer from the Dutch Revolt to the end of the French Revolutionary Wars. Politically relegated to the status of but one of several

1 Abbreviations used in this article: CUD (Corps Universel Diplomatique du Droit des Gens, see footnote 6); NA (National Archives), SP (State Papers Foreign) (see footnote 190); AMAE (Archives du Ministère des Affaires Étrangères et Européennes), CP (Correspondance Politique), M&D (Mémoires et Documents) (see footnote 192).

2 The present article has been presented in an earlier stage to the Dutch-Belgian Study Group for the Reception of Roman Law at Leiden University on 21 October 2011. My thanks go to the audience for their remarks on my initial ideas, as well as to Dirk Heirbaut, Georges Martyn, Rik Opsommer, Magnus Ressel and Klaas Van Gelder, who commented on a later version of the draft.


4 The Importance of the Ostend-Company consider’d, London: Roberts, 1726, p. 52.

dominions ruled by a far-away monarch, economically strangled on the conditions of the Treaties of Munster⁶, the former “staple of Europe” with cities as Antwerp, Malines, Brussels or Ghent had become a dormant territory in the heart of Europe, and nothing more than the privileged battlefield for first-rank powers such as France, Spain and Austria, Britain or the Dutch Republic.

The present contribution argues the fate of the Ostend Company was not a bilateral quarrel between North and South, dictated by anonymous or coincidental arrangements between Great Powers⁷, symbolising the triumph of Realpolitik over principles of natural law⁸. A reductionist view of the Ostend conflict ignores the European structure of international relations. On the one hand, the combination of political events and the Dutch Republic’s own legal logic offered a possibility for “Belgian” trade with the East Indies to flourish. On the other hand, explaining the Company’s demise by the Emperor’s desire to see his daughters succeed him in the Habsburg hereditary lands, is only a fragmentary explanation. The predominance of an international guarantee for his “Pragmatic Sanction” was not a mere chimera pursued by Charles VI⁹, but a consequence of a quest for international legitimacy shared by the main actors¹⁰, and of the changing legal discourse of the Peace of Utrecht (11 April 1713¹¹). To this end, an analysis of bilateral legal pamphlet literature¹² (i) ought to be complemented with diplomatic correspondence and the operation of international law in minds (ii) within the European Society of Princes¹³.

The commercial enterprises leading to the Ostend Company were produced by Thomas Ray, a naturalised Irishman who had landed in Ostend in 1698, joining a growing disparate group of Irish merchants¹⁴. Ray found financial support in Ghent, Bruges and Dunkirk, to send an Ostend-based ship, the *Sint-Matthiæsus*, to

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⁶ Treaty between Philip IV and the States-General, Munster, 30 January 1648, *DU MONT DE CARELLS-KROON* (ed.), *Corps Universel Diplomatique du Droit des Gens, contenant un recueil des traités d’alliance, de paix, de treve, de neutralité, de commerce, d’échange, de protection & de Garantie, de toutes les Conventions, Transactions, Pacts, Concordats, & autres Contrats, qui ont été fait en Europe, depuis le Regne de l’Empereur Charlemagne jusques à present* [*Further* : CUD], The Hague, Hussin & Levier, 1728, vi/1, nr. CCXXXI, p. 429-41.


¹² For a broader survey of pamphlets on the Ostend Company, I refer to Kris VAN DER MYNISBRUGGE, *De pamphletenvoorlog rond de Oostende Compagnie*, UGent: Faculty of Arts and Philosophy (master thesis in History), 1999-2000, p. 68-123 and 175-182. My thanks goes to one of the anonymous referees for this article.


¹⁴ PARMENTIER, “The Irish Connection The Irish Merchant Community in Ostend and Bruges during the late Seventeenth and Eighteenth Centuries” in *Eighteenth Century Ireland XX* (2005), p. 37.
Surate in the East Indies, on 17 June 1714\textsuperscript{15}. When the ship left Ostend, the Peace Treaty of Rastatt had been concluded three months earlier\textsuperscript{16}. Louis XIV and Charles VI, representing the two main contending parties in the conflict over the Spanish Succession (1659-1715), had just put an end to the latest continent-wide war, which had divided Europe from 1701 on. Charles had been allotted the Spanish Netherlands, or the remaining ten provinces loyal to their Habsburg ruler after the split of the XVII Provinces\textsuperscript{17}. During the war, as the Imperial candidate for the Spanish throne, Charles had claimed much more than merely the territories by the North Sea. The partition of the Spanish inheritance between Charles and the French candidate, Philip of Anjou, was, however, inevitable\textsuperscript{18}. Neither the House of Habsburg nor that of Bourbon could be allowed to dominate the continent, threatening to engulf the other sovereigns. The expedition left before the conclusion of the Treaty of Antwerp on 15 November 1715\textsuperscript{19}, which opened the way to the effective transfer of the Southern Netherlands to Charles. From 1706 on, effective control of most of the “Belgian” provinces had been exercised by the joint Anglo-Dutch occupation forces that had driven out those of Louis XIV and his grandson\textsuperscript{20}.

If the Habsburg claim on Spain had fully succeeded, Charles VI would have ruled over circa the same territories as, two centuries earlier, Charles V\textsuperscript{21}. Control of the Burgundian inheritance, which served as the building block of Habsburg power in the late fifteenth and early sixteenth centuries, was crucial in the contest between Charles VI and the new King of Spain, Philip V (1683-1746)\textsuperscript{22}.

Second, Thomas Ray had all reason to move to a Catholic country. As a naturalised Irishman, he can be seen as part of the “Jacobite diaspora”\textsuperscript{23}, which supported the claims of James II, the chased Catholic King of England (1633-1701). James fled to France in 1688. The Battle of the Boyne (12 July 1690) consolidated the British isles for his rival, William III of Orange (1650-1702). With the installation of Georg Ludwig of Hanover (1660-1727) as King of England\textsuperscript{24} accepted by all major European powers by August 1714, the chances of the Stuarts ever returning to the throne were significantly reduced. In order

\textsuperscript{15} Ibid., p. 38-42.

\textsuperscript{16} Peace Treaty between Charles VI and Louis XIV, Rastatt, 6 March 1714, CUD, VIII/1, nr. CLXX, 415-423.

\textsuperscript{17} Klaas VAN GELDER, “L’empereur Charles VI et "l’héritage anjouin” dans les Pays-Bas méridionaux (1716-1725))”, in Revue d’histoire moderne et contemporaine LVIII (2011), No. 1, p. 53-79.


\textsuperscript{19} Treaty of the Barrier between Charles VI, George I and the States-General, Antwerp, 15 November 1715, CUD, VIII/1, nr. CLXXX, p. 458-468.


\textsuperscript{21} LEÓN SANZ, Carlos VI. El Emperador que no pudo ser Rey de España, Madrid, Aguilar, 2003.


\textsuperscript{23} Patrick CLARKE DE DROMANTIN, Les réfugiés jacobites dans la France du XVIIIe siècle: l’oeuvre de toute une noblesse pour cause de religion, Pessac : Presses universitaires de Bordeaux, 2005.

\textsuperscript{24} HATTON, George I, New Haven (Conn.), Yale UP, 2001 [1978] (Yale English Monarchs).
to return to Britain, James “III” (1688-1766), son of the deceased Catholic monarch, could only hope for a continental and Catholic coalition against Britain. To this effect, his supporters actively lobbied the courts of Versailles, Madrid and Rome25. It should come as no surprise that a first series of British statutes against the Ostend enterprise were issued on 17 March 1714 and 18 October 171226. The Jacobite network was not only political, but also commercial. It spanned the continent and was important for trade between Spain, Portugal, France and Britain27. Nine out of ten members of the officer’s council on the Sint-Mattheus were of Irish origin28. In the future Ostend Company’s ventures, one sailor out of five29.

The scene seemed set for a classical opposition between the Protestant Maritime Powers and one of the two Catholic monarchs in Versailles or Vienna. After Louis XIV’s decease in September 1715, Britain was busy negotiating a new deal with Charles VI, involving Italy and the recognition of the Emperor’s succession30. The 1715 Barrier Treaty31 between the Maritime Powers and Charles VI was set up as a safeguard against French invasion, in order to prevent the scenario of the previous wars32. Direct French aggression against the Dutch Republic had to be rendered impossible, thanks to the occupation of a string of fortresses, paid for by Charles VI 33.

Yet, a decisive combination of issues caused George I to change sides and abandon his reconciliation with the Emperor. In France, Louis XIV’s death had opened the way for a Regency, assumed by the Duke of Orléans (1674-1723), cousin to the late Sun King. France’s regime was a matter of consensus between the remaining court parties34. Philip of Orléans had all advantage in keeping out Philip of Anjou, Louis XIV’s second grandson, who ruled in Spain since 1700. As King of Spain, Philip V did not want to abandon the dream to return to Versailles and claim the crown. He challenged the validity of the British-imposed

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26 Dates refer to the Old Style or Julian calendar, used in Britain until 1756. Gerald B. HERTZ, “England and the Ostend Company”, in English Historical Review [further: EHR] XXII (1907), No. 86 (Apr), p. 255-279.
28 Ibid., p. 41.
29 Ibid., p. 42.
30 Theo GEHLING, Ein englischer Diplomat am Kaiserhof zu Wien, François Louis de Pesne, Seigneur de Saint-Saphorin, als englischer Resident am Wiener Hof, 1718-1727, Bonn, Röhrscheid Verlag, 1964 (Bonner historische Forschungen. Bd. 25) p. 119, 123; Derek MCKAY, Allies of convenience: diplomatic relations between Great Britain and Austria, 1714-1719, New York, Garland, 1986 (Outstanding theses from the London School of Economics and Political Sciences). In the line of the Grand Alliance against Louis XIV, George I’s enthronization as British monarch could be seen as a sign of a stronger Austro-British relationship. Georg Ludwing had supported Charles’ claims to the Spanish inheritance and continued the struggle at the Emperor’s side after the British defected from the Alliance (HATTON, Diplomatic relations between Great Britain and the Dutch Republic, 1714-1721, London, East and West, 1950).
31 Traité entre Charles VI, Empereur des Romains & Roi Catholique des Espagnes d’une part, George ROI de la Grande-Bretagne & les Seigneurs Etats Generaux des Provinces-Unies des Pays-Bas, d’autre part, pour la Restitution, à sa Majesté Impériale & Catholique de tout le Pais-Bas Espagnol, sous la reserve d’une forte & solide Barrière aux miennes Pais-Bas en faveur de Leurs Hautes Puissances, Antwerp, 15 November 1715, CUD, VIII/1, nr. CLXXX, p. 458-468.
32 Thirty Years War (1635), War of Devolution (1667), Dutch War (1672), War of the Réunions (1683), Nine Years’ War (1688) and War of the Spanish Succession (1701). See John A. LYNN, The Wars of Louis XIV, 1667-1714, London, Longman, 1999 (Modern wars in perspective).
declaration of renunciation to the French throne. Consequently, Philip of Orléans’ political fate depended on the Treaties of Utrecht.

On the other side of the Channel, George I’s position as King of Great Britain was guaranteed internally by the Act of Settlement. However, James III’s supporters denied the legal validity of Parliament’s chasing James II in 1688, which only intervened after an invasion by the Dutch. Thus, George I needed an international back-up too, which could be found in the recognition of the Protestant Succession in Britain, as expressed in the Treaties of Rijswijk and Utrecht. George I was King of Great Britain, but a German Elector as well. As Duke of Hanover, he saw his interests compromised in Northern Germany. Emperor Charles VI delayed the issuing of letters of investiture for the acquisition of the duchies of Bremen and Verden. Moreover, in the Great Northern War, a conflict dragging on since 1700, George had fought Sweden, but feared an alliance between Russia, Sweden, Spain and Pretender James III. When Czar Peter the Great (1672-1725) stationed 40,000 troops in the Duchy of Mecklenburg, bordering on Hanover, Dubois’ offer of an alliance with France was finally accepted. George I and his principal minister James Stanhope (1673-1721) opted for France in November 1716. This fundamentally altered the whole of European politics, “North” and “South” combined.

The Anglo-French alliance, elaborated in the Summer and Fall of 1717, obtained Dutch accession, in the so-called Triple Alliance of 4 January 1717. The Dutch Republic guaranteed Britain’s and France’s choice to discard constitutionally legitimate heirs to the throne. This new combination tied three previously unlikely partners together and left the Emperor afloat of three big powers neighbouring his possessions in the Southern Netherlands. When Philip V of Spain invaded Charles VI’s island Sardinia, barely six months later, the Dutch steered an independent course and let the multilateral intervention to France and Britain.

Dutch absence in the so-called Quadruple Alliance (where the Republic’s place was left open, to be never filled) implied Dutch absence at the Congress of Cambray (1722-1725), designed to settle the quarrel between Philip V and Charles VI.

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36 Which provided his own Bourbon-Orléans branch with a remote possibility to claim the crown if Louis XV came to die without male issue (See Émile BOURGEOIS, La Diplomatie secrète au XVIIIe siècle, Paris, Armand Collin, 1909, I).


38 Art. IV, Treaty of Peace between Louis XIV and Queen Anne, Utrecht, 11 April 1713, CUD, VIII/1, nr. CLI, p. 340.


41 Robert Walpole and Charles Townshend quit cabinet (the so-called “Whig Split”), but would continue a pro-French and anti-Imperial policy after Stanhope’s decease allowed them to return to government in 1721 (John Joseph MURRAY, George I, the Baltic and the Whig Split of 1717. A Study in Diplomacy and Propaganda, London, Routledge & Kegan Paul, 1969). The link between Jacobitism and foreign policy was further exploited by Stanhope, when the Swedish ambassador Gylenborg was arrested (29 January 1717) on rumours of a plot threatening the Protestant Succession (DHONDIT, Balance of Power, p. 72-78).


43 "Contre les partisans de la légitimité royale, le Régent passait un contrat avec les partisans du droit des peuples, avec les pays républicains" BOURGEOIS, Diplomatie secrète, p. 173-174.

44 Treaty between Charles VI, Louis XV and George I, London, 2 August 1718, CUD VIII/2, nr. CCII, p. 531-541.
Consequently, whereas the Maritime Powers had been united in 1715 for the status of the Southern Netherlands, Britain went with France, as it had done before at the end of 1711, when separate Franco-British peace preliminaries showed the blueprint for the end of the War of the Spanish Succession. A major element of tension in European international relations during Louis XIV's reign, the opposition between France and the Protestant Maritime Powers, was relegated to the background. The application, interpretation and amending of the Peace of Utrecht united French and British diplomats.

The consequences for the status of the Austrian Netherlands were considerable. On the basis of the abovementioned diplomatic movements, Charles VI obtained leverage on Britain and the Dutch Republic. In order to solve a problem at the European table, French involvement was indispensable. As long as Charles remained in a deadlock with Philip V of Spain, France and Britain could make any concession towards the Emperor conditional on his acceptance of the broader diplomatic framework imposed by the Peace of Utrecht. Once Charles and Philip would have solved their bilateral issues, they could try to challenge the new consensus between the main power at sea, Britain, and the main land power, France. While the main powers in Europe were rapidly changing their positions, trade in Ostend continued: on 30 August 1716, the *Saint-Mathieu* returned from Surate on the Indian West coast and generated enormous profits for its initial investors.

**Bilateral restraints: self-interest and opportunistic argumentation**

*Le Commerce est naturellement jaloux, & intéressé. Comme son objet prochain, & imminent est le gain, & qu'on ne l'entreprend jamais, que pour gagner, c'est aussi toujours de ce coté là que se tourne la principale attention de ceux, qui s'en mèlent.*

Du Mont, *La Vérité*, 35-36

The Dutch Republic and its East India Company (VOC) questioned the legitimacy of the Ostend trade, and were eventually prepared to use force to compel Charles VI. Already on 27 April 1719, the *Marquis de Prié* was confiscated at Cape Lahou, forty miles ahead of the Dutch fortress Laxim and thus well off the African coast. On 4 July of the same year, sales of tea shipped to Ostend from Canton by the *VOC* alone amounted to a million florins. Determined not to let the seizure of the *Marquis de Prié* pass, captain De Winter took the Dutch yacht *Company*, filled with African elephant teeth, on 23 October 1719.

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48 DU MONT DE CARELS-KROON, *La Vérité du fait, du droit, et de l'intérêt de tout ce qui concerne le commerce des Indes établi avec Païs Bas Autrichiens par octroi de Sa Majesté Impér. Et Catholique*, s.l., s.n., 1726, p. 35-36.


50 Victor ENTHOVEN, “Dans maar oorlog! De reactie van de Republiek op de Oostendse Compagnie, 1715-1732”, in PARMENTIER (ed.), *Noord-Zuid in Oost-Indisch Perspectief*, Zutphen: Walburg Pers, 2005, p. 131-148. The threat to use force was not only directed at the Emperor, but at potential investors as well. E.g. on 9 August 1723, a thousand copies of the VOC’s memorandum was printed and distributed in Antwerp, were substantial capital had been raised for the Company (Michel HUISMAN, *La Belgique commerciale sous l’empereur Charles VI : la Compagnie d’Ostende: étude historique de politique commerciale et coloniale*, Bruxelles, Lamertin, 1902, p. 240).

off the Belgian coast, an action approved by the Council of State in Brussels\textsuperscript{52}. Southern Netherlands founded trade posts on the Coromandel coast and in Bangladesh. Emperor Charles VI formalised the enterprise, now operating as a joint stock corporation, granting its formal permission on 19 December 1722\textsuperscript{53}. Few months later, on 5 April 1723, the Dutch resident Pesters presented memoranda drafted by the States-General and the VOC (drafted by their avocaat, de la Bassecourt) to the Marquis of Prié\textsuperscript{54}. Simultaneously, Hamel Bruynincx (1661-1738), envoy of the Republic in Vienna, presented the same texts to Charles VI\textsuperscript{55}. In essence, Dutch argumentation constituted a 180 degree turn away from Grotius’ famous seventeenth-century stand for free navigation on the high seas in \textit{De Iure Praedae}\textsuperscript{56}. Whereas the famous jurist had argued that neither the Kings of Spain and Portugal\textsuperscript{57}, nor the King of England, could claim the exclusion of the Dutch from the ranks of the seafaring nations, the interests of the Republic were better served by the opposite point of view, a century later.

**The Dutch East India Company and her legal weapons**

Two more substantial, separately published treatises represent the Dutch vituperations against Ostend. Jean Barbeyrac (1674-1744)\textsuperscript{58}, professor of Public Law at Groningen, and Abraham Westerveen (°1647), former lawyer for the East India Company, attacked the Imperial Company with arguments from treaty law\textsuperscript{59}. The Peace Treaty of Munster between Spain and the Dutch Republic, concluded in 1648, constituted the core of Dutch pamphlets. Philip IV, at that time King of Spain, Duke of Brabant, Count of Flanders, Lord of Malines and sovereign in the remaining provinces left to him by Charles V, Philip II (1527-1598) and Philip III (1578-1621), conceded to the Seven Provinces of the North on multiple points. First, final recognition of the statehood assumed by the former Spanish provinces. Second, recognition of their colonial and commercial expansion. Finally, exclusion of his own subjects from trade in the Indies.

It was crucial for the VOC to prove that these limitations had been transmitted from Philip IV and his successor Charles II to Charles VI, who had been recognised as sovereign in the Southern Netherlands by Britain and the Dutch Republic in the Treaty of the Grand Alliance\textsuperscript{60}. This document constituted the core

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\textsuperscript{53} \textit{Lettres Patentes d'Ostend, accordées par l'Empereur Charles VI. pour le terme de trente années à la Compagnie des Indes dans les Pays-Bas Autrichiens}, Vienna, 19 December 1722, CUD, VIII/2, nr. XIX, p. 44-51. The formalisation of the Ostend enterprise should not obscure the abovementioned private initiatives from Ostend or “Flemish” participation in e.g. French smuggling trade with the East Indies (DEGRYSE, “De vrienden van 'Mijnheer Crozat' of de Zuid-Nederlandse betrokkenheid bij de Franse handel op de Stille Zuidzee (1710-1719)”; in PARMENTIER & S. SPANOCHGE (eds.), \textit{Orbis in Orben. Liber Amicorum John Eversaart}, Gent, Academia Press, 2001, p. 157-170.

\textsuperscript{54} E.g. Memorandum presented by Ernst Pesters, resident of the States-General in Brussels (1717-1728) to the Marquis of Prié, Brussels, 5 April 1723, DU MONT, \textit{La Vérité du fait, op. cit.}, p. 85-87.

\textsuperscript{55} DU MONT, \textit{La Vérité du fait, op. cit.}, p. 22.


\textsuperscript{58} Not “Barbeyron” (DUMONT, \textit{L'époque de la Compagnie}, p. 197). Barbeyrac had been active as a classics teacher in Berlin, where he translated Pufendorf’s \textit{De Jure Naturalis et Gentium} (1706) to French. In Lausanne, Barbeyrac taught droit et histoire from 1710 to 1717, to be called to Groningen as professor ordinarius \textit{in droit public et particulier}. In 1724, Barbeyrac completed his translation of Grotius’ magna opus \textit{De Iure Belli ac Pacis Libri Tres}, following a critical edition in 1720. Barbeyrac’s translations were of paramount importance for diplomatic practice, since his French translations were more accessible than the Latin originals.

\textsuperscript{59} Abraham WESTERVEEN, \textit{Vertoog van het regt, Dat de Verenigde Nederlandische Oost-Indische Maatschappye Heeft op de Vaaart en Koophandel Naar Oost-Indiëen Tegen de Inwoonders van de Spaanse, nu de Oostindysche Nederlanden}, Amsterdam, Johannes de Ruyter, 1722. See as well, in a shorter version, CUD, VIII/2, nr. XXI, p. 78-80.

\textsuperscript{60} Tractatus Foederis inter Sacram Caesaream Majestatem Leopolum I. Regiam Majestatem Britanniae Wilhelmum III. Necnon Praepotentes Ordines Generales Foederatarum Belgii Provinciarum, ad procurandum Suae Caesareae Majestati ratione praetensionis suae in Successionem Hispanicam satisfactionem aequam & rationi
of the grand coalition against Louis XIV and his grandson Philip V. Charles of Habsburg, at that time Archduke and younger brother to Archduke Joseph (1683-1711), King of the Romans (and thus his father’s designated successor as Emperor), had been promised nothing more than a just and reasonable satisfaction in the Spanish Succession. This was even more true when Charles was elected Emperor himself, after Joseph’s unexpected decease in April 1711. In the Grand Alliance, the Southern Netherlands had been identified as the prime bulwark against future French aggression (obsec et repagulum, vulgo Barrière). The formal recognition of Charles VI’s sovereignty happened at the Treaties of Utrecht (11 April 1713, France/Britain) and Rastatt (6 March 1714, France/Emperor), stating that the Southern Netherlands would be transferred to the Emperor in the same status they had belonged to Charles II of Spain (tols que feu le Roy d'Espagne Charles II. les a possédés ou dû posséder, conformément au Traité de Ryswick). The Barrier Treaty confirmed in a general way all relevant trade clauses of the Treaty of Munster. If the exclusion of all Spanish subjects included inhabitants of the Spanish Netherlands, this limitation had to be continued under Austrian rule.

Once this bilateral and conventional argument was accepted, Barbeyrac and Westerveen needed to buttress it against challenges stemming from natural law. Didn’t the Digest state that the navigation on the high seas, necessary means of communication between nations, was a natural right? Even more, Hugo Grotius had famously leaned on this statement to defend Dutch pretentions against Spain and Portugal, a century earlier. The VOC’s advocates turned to the ruse of mare natura liberum, pactis clausum (“the sea is free by nature, but can be closed by treaties”). Although navigation on the high seas pertained to all nations, they could renounce this right merce facultatis in a convention. Renunciations were coupled with reciprocal advantages, and would not have been contracted without cause. However, if one assumed the opposite position (namely that free navigation on the high seas constituted a peremptory norm of natural law, overriding contrary treaty clauses concluded between states), another hot issue in North/South-relations resurfaced. The Treaty of Munster had closed the navigation of the Scheelt and other embouchures on the North Sea, which reflected the military state of affairs from early in the Dutch Revolt. Neny, who defended the Southern Netherlands’ point of view, had put this at the same level as

convenientem, uti & ad adipiscendum pro Rege Magnae Britanniae & Dominis Ordinis Generalibus securitatem particulararem & sufficientem, The Hague, 7 September 1701, CUD, VIII/1, nr. XIII, p. 89-91.


63 Art. XXVI, Barrier Treaty: sur le pâe établi, & de la manière portée par les Articles du Traité fait à Munster le 30. Janvier 1648.

64 Vattei, Le Droit des Gens, op. cit., Book II, § 132: La propriété n’a pu être aux Nations le droit général de parcourir la terre, pour communiquer ensemble, pour commerçer entre’elles, & pour d’autres justes raisons.


66 Theodor Graver, Dissertatio juridica inauguralis, de mari natura libero, pactis clausum, Utrecht, Willem vande Water, 1728.

67 Huisman, La Belgique commerciale, p. 5.

68 Patrice de Neny, Demonstration de l’injuste et chimerique pretention 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 Pays-bas Autrichiens pour l’Etablissement d’une Compagnie de Commerce & de Navigations aux Indes Orientales & Occidentales, s.l., s.d., 1724. Patrice de Neny, originally Patrick Mac Neny (1675-1745), studied law at the University of Leuven (1691-1702). An avocat at the Council of Brabant (1703), he climbed to the rank of councillor in the Council of Finance (1713) at the end of the War of the Spanish Succession. At the 1718-1719 negotiations on the amendment of the Barrier Treaty, Neny was sent to The Hague. In 1724, Eugene of Savoy, governor-general of the Southern Netherlands, appointed him as Secretary of State and War, a position which he occupied until his death. Neny was the main person of confidence for the Marquis of Prié (1658-1726), minister plenipotentiary of Charles VI in Brussels. See Bruno Bernard, “Patrice Mac Neny (1676-1745) Secrétaire d’État et de Guerre”, Études sur le XVIIIe siècle xii (1985) (Hervé Hasquin & Roland Mortier (eds.), Une famille de hauts fonctionnaires : les Neny), Bruxelles,
the supposed renunciation of the Southern Netherlands’ right to sail to the Indies: *un entier renversement des Laic du Droit des Gens, parce qu’on y prive toutes les Nations du Monde de la Liberté Naturelle que Dieu Leur a donnée, par l'Interdiction qu'on leur a faite d'entrer dans les Provinces de Brabant, & de Flandres avec Leurs propres Vaiseance & Marchandise*.

Barbeyrac’s *Défense du droit de la Compagnie Hollandaise des Indes Orientales* appeared on 17 January 1725. By then, the Congress of Cambrai had been busy for almost a year. The treatise was framed as a response to Neny. Just as with his French translations of Pufendorf and Grotius, Barbeyrac reached a more substantial audience in French-speaking Europe than with a treatise in Latin or Dutch, wherein Westerveen published his defence of the VOC. Neny, by contrast, had written in French and thus potentially harmed the Dutch case by reaching out wider. Like Westerveen in a second version of his *Dissertatio*, a year earlier, Barbeyrac offered to correct Neny’s errors, *d’éplucher tout, & de ne rien laisser passer, qui ne fût une répétition toute pure*. If the Dutch based their defence on the 1648 Treaty of Munster, chronological coincidence seemed to be on the Austrian side. Grotius’ major works coincided with important evolutions in the Eighty and Thirty Years’ War, the conflicts that ended in 1648. If Grotius stated in *De Iure Praedae* (XII, 1-216) that all peoples equally enjoyed the right to visit other nations and carry on their trade, how could this argument of natural law be cast aside by the positive law of nations?

As a professor of public law at Groningen and a recognised expert in the law of nations (on the basis of his translations, as well as the edition of treaties from Antiquity), Barbeyrac claimed the objectivity of his method equalled that of other types of scholarly activity. In spite of Barbeyrac’s reputation as a systematic thinker, he composed a hodgepodge of diverse arguments drawn from any possible source. For instance, he took the long delay between the origin of times and 1722 as a sign that the inhabitants of the Southern Netherlands forfeited their right to navigation, or implicitly recognized they were under a limitation based on the Treaty of Munster. Barbeyrac, in his defence of the Republic’s exclusive rights, even quoted Zypaeus, who defended the claims of the King of Spain on maritime dominium in the seventeenth century: *Mare non liberum, ut voluit Grotius, sed potius Iberum bode sit ensendum*.

**Primary natural law v. voluntary law of nations**

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74 Hoc igitur jus ad cunctas gentes aequatorli pertinet: quod clarissimi jurisconsulti enique producant, ut negent ullam rempublicam aut Principem prohibere in universum posse, quominus ali ad substos suis accedant et cum illis negotientur.
75 Barbeyrac, *Défense du droit*, op. cit., Avertissement: j'ai examiné les matières non seulement avec beaucoup d’attention, mais encore avec la même indifférence & la même impartialité, que si j’avais eût à discuter un point de l’Histoire Ancienne, & à chercher, par exemple, le vrai sens d’un Traité fait entre Philippe de Macedoine, & les Athéniens.
76 Barbeyrac, *Défense du droit*, op. cit., p. 2. Vattel. *Le Droit des Gens*, op. cit., Book 1, §285) refuted this: although any state can decide not to engage in commerce or renounce it on a contractual basis, this implies an act of will. In absence of this prescription (i.e. the mere passage of time) cannot provoke the loss of this faculty. Moreover, Du Mont argued that, while under Spanish domination, the Southern Netherlands were deprived of the exercise of their legal capacities: *Non valentis aggere non currit praescriptio* (Du Mont, *La Vérité du fait*, op. cit., p. 33).
According to Barbeyrac, the VOC’s right to trade and navigate was grounded on Privilèges & Traitez solennels qui les lui ont assurez d’une manière irrevocab. par rapport aux Habitans des Païs-Bas Autrichiens78 : by not questioning the VOC’s right to sail to the Indies and conversely abstaining from doing the same, Philip IV’s and Charles II’s subjects had both forfeited their own right79 and confirmed that of the Dutch. Westerveen supported this position leaning on Baldus’ commentary on the Digest, according to whom distinctions between states could be applied at sea as well as on land80, on the Church Father Ambrosius or John Selden (whose theses had been opposed to those of Grotius in the seventeenth century81). Moreover, Spanish state practice to exclude foreign nations from direct commerce with Spain’s colonies in the Indies provided the world with clear boundaries, which were an essential precondition to international stability82. Finally, the right thus accorded to the Dutch by treaty did not necessarily amount to full dominium. In analogy with civil law, real property rights of use or enjoyment, including the right to exclude third party-access, could be granted to states, distinct from property83.

Barbeyrac tackled the issue of free navigation head-on: Le vaste Océan n’est à personne: d’accord […] Mais qu’est-ce qui empêche que deux Princes ou deux Peuples conviennent entre eux, que l’un ne mettra point de vaisseaux en mer, ou qu’il n’en enverra que jusqu’à un certain endroit de l’Océan, ou de quelque autre Mer moins vaste, ou qu’il n’ira point commencer en tel ou tel endroit84 ? In other words, Barbeyrac distinguished between a hard right to navigate, and a (soft) possibility to exercise that right, the latter leading to a reliable promise to another sovereign, whose consent is needed to recover the initially forfeited right. Mare liberum is thus turned into a disposition of supplementary law: mare liberum… pactis clausum. Barbeyrac found a legitimacy for renunciation in the general reciprocity between nations: we forfeit our right to navigation “en comptant sur ce que les autres veulent à leur tour nous ceder des leurs85.” In the “Belgian” case, Philip IV acted on behalf of his territories by the North Sea, and rightly so, as their legitimate sovereign. Philip ratified the treaty as King of Castille, Duke of Brabant and Count of Flanders, obliging all of his vassals and subjects alike86. In case his subjects would not have consented to the imposition of this limitation, they had to make this known within a reasonable lapse of time87.

Westerveen distinguished between situations leading to an opposable claim on international trade. The Dutch trading companies had acquired their exclusive right to sail to the part of the Indies they controlled at the ‘Treaty of Munster. This Peace Treaty ended the Eighty Years’ War. Consequently, the Dutch Republic had obtained an exclusive right, following the Spanish renunciation on behalf of Philip IV’s citizens, on the basis of a right of conquest. The outcome of an armed conflict could put the rules of the initial state of nature, wherein navigation on the high seas was free, aside. Just as the state of nature between individuals did not know appropriation yet, the status of the high seas as the common heritage of men was a merely transitory one. The Dutch Republic could thus acquire the exclusive right to sail to the

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78 BARBEYRAC, Défense du droit, op. cit., p. 11.
79 Après quoi, il ne sauroit légitimement se plaindre, de ce qu’il n’a plus la liberté de disposer à sa fantaisie d’une chose qui lui appartenoit (sic) à l’exclusion de tous les autres. A plus forte raison, aurait-on mauvaise grâce que de vouloir revenir d’une Renonciation, qui a pour objet des choses aucquelles auparavant on n’avait qu’un droit commun (BARBEYRAC, Défense, p. 4).
80 Ad L. I. Dig. De Rer. Div.
81 WESTERVEEN, Vertoog van het regt, op. cit., p. 3; Andrea WEINDEI, “Grotius’s Mare Liberum in the Political Practice of Early-Modern Europe”, Grotiana XXX (2009), No. 1, p. 131-151.
82 WESTERVEEN, Vertoog van het regt, op. cit., p. 4.
84 BARBEYRAC, Défense du droit, op. cit., p. 4.
85 Ibid.
86 WESTERVEEN, Vertoog van het regt., op. cit., p. 22.
87 BARBEYRAC, Défense du droit, op. cit., p. 5.
Indies for the VOC. Conversely, the Ostend Company could not unilaterally claim the same without right of conquest or sovereign (Dutch) consent concerning the King of Spain’s renunciation of his subjects’ right98. Erecting trade posts, fortifications or settlements on the Dutch’s East Asian shores, unilaterally claiming part of the VOC’s profit without consent, equalled restarting the military conflict between the States-General and the sovereign of the Southern Netherlands99.

**Positive law**

According to Barbeyrac, the Southern Netherlands’ treaty-based exclusion from navigation did not date back to 1648 or 1598, but to 1609, at the time of the Twelve Years’ Truce between Philip III, the Archdukes Albert of Austria (1559-1621) and the Infant Isabella of Spain (1566-1633), on the one hand and the Dutch Republic, on the other hand90. Initially, the treaty restored trade between North and South. Yet, this is immediately limited to the “Royaumes, Provinces, Pays & Seigneuries qu’il n’'t exprimé nooit, but to 1609, at the time of the Twelve Years’ Truce between Philip III and the Dutch Republic, op. cit. 91. Initially, the treaty restored trade between North and South.

Yet, this is immediately limited to the “Royaumes, Provinces, Pays & Seigneuries qu’il [Philip III] tient & possede en Europe91”. Trade outside of Europe was subject to royal approval. Barbeyrac and Westerveen92, however, read this as including the VOC’s (national) privilege of 1602, and applying only to inhabitants over whom the King of Spain still exerted control. In their view, in 1621, at the creation of the Dutch West India Company (WIC), the Southern Netherlands did not utter any protest. At the conclusion of the Truce, a declaration interpreting article IV as including Spanish territories outside Europe as well, had been accepted by Philip III’s delegates93.

The Treaty of Munster brought Spanish recognition for both VOC and the WIC94. Philip IV renounced to all establishments in both Indies occupied by any of the Dutch companies, and extended their privileges to all Spanish possessions within Europe95. However, article V of the Treaty of Munster created difficulties for Barbeyrac. The Spanish negotiators had opted for the term Castillans or Espagnols to designate Philip IV’s subjects. Preparatory meetings and memoranda from both companies used the terms indistinctly for all subjects, argued both Westerveen96 and Barbeyrac: article VI relating to the West Indies mentioned all subjects of Philip’s Kingdoms and Provinces and should be read as an elaboration of the preceding article97.

How could Philip have meant to exclude his non-Castillian subjects? The Dutch Republic would have lost its advantage in contracting such a restricted commercial renunciation clause. Contracts ought to be interpreted according to party intent, and —following Cicero- the requirements of good faith push to

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98 Westerveen, Vertog van het regt, op. cit., p. 14: zoedanige verschillen moeten afgedaan worden, na ’t eerste Volk-regt, volgens welk by na alles gemeen was, daar nogtans geleerden en ongeleerden beyde bekend is, dat door ’t regt, ’t geen nu plaats heft, en by alle volkeren even zeer werd bewaard, vele dingen onderscheyden zyn, die in ouder tyd niet onderscheyden waaren.
99 Westerveen, Vertog van het regt, op. cit., p. 14, referring to the Dutch East Indies trade as the main reason for the end of the Twelve Years’ Truce.
91 Barbeyrac, Défense du droit, op. cit., p. 7.
92 Westerveen, Vertog van het regt, op. cit., p. 6.
94 The WIC also published a memorandum against the Ostend Company, CUD, VIII /2, nr. XXIV, p. 78.
95 Barbeyrac, Défense du droit, op. cit., p. 9.
96 In line with the VOC’s remonstrances to the States General, The Hague, 1723, Du Mont, La Vérité du fait, op. cit., p. 87-92.
97 Westerveen, Vertog van het regt, op. cit., p. 22.
recognize dubious words as creating obligations, rather than as discharging debtors from what is due to their creditors. Eliminating all non-Castilian subjects of Philip IV would equal the exclusion of the inhabitants of the conquered parts of North Brabant and Flanders (Generalitéslanden) on the Dutch side. Taken together with Philip III's restricted royal authorisation to his Castillian subjects to navigate and trade, the inhabitants of the Southern Netherlands should be seen as excluded from participation in it.

At the end of the sixteenth century, the Act of Cession (6 May 1598) issued by Philip II to confer sovereignty over the Southern Netherlands to his daughter Isabella and her husband, Archduke Albert of Austria, did contain an explicit interdiction in its eighth article, which was effectively applied on an Antwerp vessel sailing to the East Indies in 1600. Westerveen further pointed to the Bastiaan Brouwer-case, where a subject of Philip IV had sailed to Batavia in 1653. The local Dutch court, the Hooge Raad der Nederlandsche Indiën, had used article V of the Treaty of Munster to forbid the activities of this Spanish merchant.

Imperial passports granted to individuals sending out vessels for the Ostend Company contained an interdiction clause, containing the African coasts, or other places où il n’est pas permis suivant les Traitez, aux Sujets de Sa Maj. Imper. & Cath. de commercer. Following the VOC’s argumentation, Barbeyrac launched the obvious rhetorical question: Quels sont donc ces Traitez, si ce n’est celui de Munster & les derniers qui le confirment? Charles VI denied being under any limitation concerning the navigation of the high seas, and - at the same time - confirmed the existence of positive law-limitations! If looked closer at the Barrier Treaty, the instrument containing the precise conditions of the transfer to Charles VI, article XXII stated that the new sovereign would execute all obligations pending on Charles II, mainly concerning the military expenses paid by the Maritime Powers to chase the French and Spanish from the Southern Netherlands.

Barbeyrac sees here an indication of the more general nature of Charles VI’s accession to the inheritance of Charles II, referring back to the general rule in the law of nations, according to which sovereigns generate obligations for themselves and their successors as well. The analogy with civil law was obvious, with reference to the VOC’s initial memorandum: selon le Traité de Munster, mais aussi selon Droit par la nature même de la chose, savoir que celui, qui succède par Droit de Succession en la place du defunt, est tenu, & engage d’observer, & d’exécuter tous les Traités & engagements, que le defunt à (sic) fait, & contracté avec d’autres. The more considerable the part received by the Emperor, the less likely he could be considered as a specific legatee. If, moreover, the Emperor was held answerable for the debts contracted by Charles II for the preservation of his part of the inheritance, it would be more likely to see the Austrian Habsburgs as general successors,

98 Westerveen, Vertoon van het regt, op.cit., p. 25. Which is the opposite of the normal rules of interpretation, restricting dubious words against the drafter.
99 Since the Generalitéslanden (Generality Lands; see Israel, The Dutch Republic, op. cit., p. 297-300) did not form part of the seven provinces which seceded from the XVII Provinces, they were put under direct administration by the States-General in The Hague.
100 An impression reinforced by the existence of the Casa de Contratacion in Seville, which served as a mandatory hub for foreign merchants trading with the Spanish West Indies (Huisman, La Belgique Commerciale, op. cit., p. 12).
101 Georges Martyn, “How ‘sovereign’ were the Southern Netherlands under the Archdukes?” in Lesaffer (ed.), The Twelve Years Truce (1609-1621), Leiden, Martinus Nijhoff, 2014 (Studies in the History of International Law; 6), 2014, p. 196-209.
102 L’Infante & Son Époux ni aucun de Leurs Successeurs […] ne feront aucun Commerce, trafic, ou contractation dans les Indes Orientales, ou Occidentales, ni n’enverront dans ces Pays-là aucune sorte de batimens sous quelque titre, nom, ou pretexte, que ce puisse être Barbeyrac, Défense du droit, op. cit., p. 6; Du Mont, La Vérité du fait, op. cit., p. 89; Westerveen, Vertoon van het regt, op.cit., p. 7.
103 Westerveen, Vertoon van het regt, op.cit., p. 8.
104 Barbeyrac, Défense du droit, op. cit., p. 108.
105 Memorandum VOC, Du Mont, La Vérité du fait, op. cit., p. 89. See as well G. Réal de Curban, La Science du gouvernement, t. 5: contenant le droit des gens. Qui traite les Ambassades; de la Guerre; des Traités; des Titres; des Prerogatives; des Prétentions, & des Droits respectifs des Sovereins, Paris, Les libraires associés, 1764, p. 620.
106 Memorandum VOC, Du Mont, La Vérité du fait, op. cit., p. 89.
for benefits as well as burdens. A sovereign bound to a treaty cannot lift his obligations arising from the latter by concluding another treaty contrary to it.

From the British side, commercial competition—in this case for the East India Company—was not the only argument used. The anonymous pamphlet *The Importance of the Ostend-Company consider'd*, which appeared in London in 1726, had a double argument. On the one hand, the “Netherlands” or Austrian Netherlands had proven their commercial genius in the past. The renaissance of Antwerp, Malines, Brussels, Oudenarde, Courtrai, Ghent or Bruges would put an end to a mere transitory episode since the separation of the XVII Provinces. As formerly, those countries would become the “staple of Europe”, popish merchants returning to the South from the Dutch Republic. On the other hand, the decline of Dutch commerce would inevitably lead to the demise of the state as such, leaving Britain alone to uphold the balance of power between Protestants and “Popery”, more specifically the Catholic House of Austria. Yet, the utility of religiously framed arguments was principally domestic. The diplomatic probability of a Catholic alliance between France, Spain and the Emperor was rather small, and remained so until the end of the War of the Polish Succession (1733-1738). French long-term geopolitical interest in dividing the Holy Roman Empire against the Habsburgs dominated.

**In Defence of Flanders and the Emperor: Neny and Du Mont**

Un droit de la nature & des gens, auquel [les bons & fideles Sujets] n'ont jamais renoncé.

*Remonstrance by the States of Brabant on the Ostend Company, 23 March 1724*[^116]

Un droit primordial, qui autorise celle du Pais-Bas Autrichien à porter son Commerce aux Indes; [...] ce droit [...] n'est autre que le Droit Naturel, & des Gens. Droit aussi ancien que le Monde, dont l'étendue embrasse tout le circuit du Globe terrestre, dont l'étendue embrasse tout le circuit du Globe terrestre, dont l'évidence est au dessus de toute preuve, & la durée au de là de toute Prescription. C'est ce droit, qui fait le Premier Titre de nos Belges Autrichiens.

Jean Du Mont de Carels-kroon, *La Vérité*[^117]

Neny’s *Demonstration de l'injuste et chimerique pretention*[^118] was directed at the official VOC memorandum and its more elaborate version written by Westerveen. Neny positioned his pamphlet as restricted to the

[^116]: Remonstrances by the States of the Duchy of Brabant to Charles VI, on the subject of the Ostend Company, Brussels, 23 March 1724, CUD, VIII/2, nr. xxvi, p. 80-82

[^117]: *Du Mont, La Vérité du fait*, op. cit., p. 23.
analysis of positive emanations of the law only, sans citations des Auteurs. The allegations of des Ecrivains mal appliquées had obscured the core of the dispute between North and South in such a way, that it had become unrecognisable. The Ostend Company’s fate ought to be decided as un cas de fait, qui n’admet pas des interprétations arbitraires, ni subtilités du Barreau. The reaction to Barbeyrac did not come from a Southern Netherlander, but from Jean Du Mont de Carels-Kroon, Imperial historiographer and author of the most impressive treaty compilation of the age, the Corps Universel Diplomatique du Droit des Gens, later continued by Jean Rousset de Missy (1686-1762). Both Du Mont and Rousset were Huguenots. Barbeyrac’s treatise consisted of 285 paragraphs in 131 pages, but Du Mont remarked it scantily answered the arguments of Neny. His own treatise tried to formulate the Company’s case in a period of international tension between Charles VI and the Maritime Powers, which ended on 31 May 1727 with the Parisian Preliminaries of Peace, which signed the Company’s death sentence. Karel Filips Pattijn (1687-1773)’s treatise, which was distributed at the Congress of Soissons (1728-1730) following the Preliminaries, could not alter the participants’ views, even those of the Imperial representatives, who had buried the Company.

Free navigation on the high seas as a peremptory norm

No private person could claim ownership or any exclusive right on the high seas, its use and the freedom of trade, “des choses incontestablement imprescriptibles.” Neny found it striking that other nations could carry on their activities where the Ostend Company was active, without provoking Dutch anger. How could the VOC argue that it had acquired an exclusive right in those parts of the East Indies sailed by other nations? Wasn’t trade by its nature changeant & mutable and thus inappropriate to lead to the acquisition of full dominium? Even if the VOC and WIC existed for over a century, what did this change to the imprescriptible nature of free navigation on the high seas? Next, according to Du Mont, couldn’t the...
Spanish and Portuguese, who had sailed the world seas for nearly a century without competition, have excluded the Dutch based on this argument\textsuperscript{130}? What to think of French, British or Danish expeditions\textsuperscript{131}? Moreover, if the Southern Netherlanders had abstained from sailing to the Indies, this was a consequence of the opulence which was theirs in the sixteenth century, before the Dutch Revolt: Mais pour peu qu'on fasse réflexion, à la richesse du Commerce dont ces Peuples étaient alors uniques Possesseurs, on comprendra aisément, qu'ils n'avoient pas sujet de porter envie à celui la. Ils regardoient les Castillans comme des Avanturiers, qui n'ayant que le Cape, & l'Espée, ne faisoient pas mal d'aller chercher fortune en ces Regions sauvages & éloignées\textsuperscript{132}.

The Treaty of Munster did not concern La Nation Belgique\textsuperscript{133}.

Neny tried to distinguish two aspects of the Spanish Habsburg rulers of the Netherlands. On the one hand, he saw them continuing the Burgundian heritage, on the other hand, they wore the crown of Spain. In 1648, Philip IV would have ruled over the Spanish Netherlands as George I did in 1714 over Hanover\textsuperscript{134}. Consequently, treaties contracted into as head of the Burgundian territories, could not bind Spanish subjects and vice versa. Barbeyrac refuted this distinction. First, Charles V inherited Brabant and Flanders from his grandmother Mary of Burgundy, and explicitly detached the Southern Netherlands from the Holy Roman Empire at the Transaction of Augsburg\textsuperscript{135} (26 June 1548). Consequently, Spain and the XVII Provinces had always been tied together. Seeing a distinct succession by Charles VI, as Archduke in Austria, King of Bohemia, King of Hungary, King of Sardinia, Duke of Milan and the other “Austrian”

\textsuperscript{130} DU MONT, La Vérité du fait, op. cit., p. 13.
\textsuperscript{131} Ibid., p. 23.
\textsuperscript{132} Ibid., p. 18.
\textsuperscript{133} Ibid., p. 17.
\textsuperscript{134} NENY, Démonstration de l'injustice et chimerique pretention, op. cit., p. 5.
\textsuperscript{135} The question was actually a matter of debate between Spain and the Austrian Habsburgs in the 17th century. The revenues in the Duchy of Brabant assigned to the contribution for the Imperial Chamber Court remained unpaid for several years, in spite of a condemnation by the Council of Brabant. Although the Circle of Burgundy remained a part of the Holy Roman Empire, calls for assistance by Spanish representatives at French invasions under Louis XIV remained unanswered as well. Neither side executed the obligations contained in the Transaction of Augsburg! Leopold I (1640-1705) called for assistance of the Circle of Burgundy at Louis XIV’s aggression in 1683, but most of these troops were stuck in the parallel siege of Vienna. During the Nine Years’ War (1688-1697), requests from the Spanish Netherlands were subject to a discussion on the nature of their specific status as a Circle of the Empire. Was a financial contribution to the military forces of the Empire sufficient to be counted as a full member, or had the Spanish Netherlands been merely associated to the Empire in case of military peril?

In the preamble to the Treaty of the Grand Alliance (7 September 1701), Britain and the Dutch Republic had invoked the rights of the Holy Roman Empire to the Southern Netherlands, qualifying them as fiefs of the Empire, just as the Spanish domains in Italy (DU MONT, La Vérité du fait, p. 48). During the War of the Spanish Succession, the Empire counted the Southern Netherlands as contributors to the common military effort, but without any countervailing advantage. Joseph Clement of Bavaria, Bishop of Liège and Elector-Archbishop of Cologne, allowed French troops from the Southern Netherlands in his own fortresses, pretending they ought to be considered as troops of an Imperial circle. The Imperial court of Joseph I, however, preferred contingents from the Westphalian Circle and considered the Circle of Burgundy as not an integral part of the Holy Roman Empire. Max Emanuel of Bavaria did saw them as part of the Empire, but only in case he would rule over them as a sovereign as a compensation for the loss of Bavaria after the battle of Blenheim (1704), in order to keep his influence in Imperial politics. In the Wittelsbach’s view, Philip V’s accession to the Spanish throne was linked to the quality of ruler of the Southern Netherlands, automatically classifying his troops as Imperial ones, sent out by an Imperial Circle. Joseph 1 and Leopold I, however, firmly denied that Lorraine and the Southern Netherlands were ordinary members of the Holy Roman Empire. They served as mere keys and borders to the Empire, and could only count on the Emperor’s personal RATH and THAT (verbal and physical support). See Émile DE BORCHGRAVE, Histoire des rapports de droit public qui existèrent entre les provinces belges et l’Empire d’Allemagne depuis le démembrement de la monarchie carolingienne jusqu’à l’incorporation de la Belgique à la République Française Bruxelles, Palais des Académies, 1871 (Mémoires de l’Académie Royale de Belgique; XXXVI), p. 292, 304, 313-314, 327-329 and 331. De Borchgrave finds support in Johann Jakob MOSER’S Trottiches Staatsrecht, Frankfurt/Leipzig, s.n., 1774, I, p. 317-319. The situation was not without relevance the British diplomacy in the multilateral game around the Company, since George 1, as Elector of Hanover, could not be seen to commit aggression on a member of the Empire (Brendan SIMMS, Three Victories and a Defeat: The Rise and Fall of the First British Empire, London, Penguin, 2008, p. 193-194).
possessions on the one hand, and his dominions in the Southern Netherlands, as heir to the Dukes of Burgundy, on the other, was contrary to common sense. Charles VI received the Southern Netherlands as heir of part of Charles II’s composite monarchy, and not separately as the successor of the House of Burgundy, as Nény alleged on the basis of the Rastatt and Barrier Treaties. For Nény, the mention of the union between the Austrian Netherlands and the hereditary dominions of the House of Austria within the Empire equalled the construction of the dominions of Maximilian I of Habsburg. Charles VI was nothing but a specific legatee in Charles II of Spain’s will. He could only have succeeded as a universal heir to the Spanish throne, if the latter document would have appointed him so. Instead, Charles II’s will, which designated Philip of Anjou as his successor, ruled out the possibility to appoint Charles of Habsburg as King of Spain. Nény further supported his claim by pointing to the distinction made in article II of the Barrier Treaty, which stipulated a link between sovereignty over any part of the Southern Netherlands, on the one hand, and the sovereignty over the Habsburg hereditary dominions in the Holy Roman Empire, on the other. The Barrier Treaty thus excluded a transfer of sovereignty to a French (or Wittelsbach, Farnese…) prince, linking the Southern Netherlands to the traditional Habsburg family.

Moreover, Nény contested that the conditions under which Charles VI obtained the Southern Netherlands, were of the same nature as those they were under during Charles II’s reign. In reality, the Barrier Treaty established an entirely new legal regime for the Southern Netherlands. Consequently, Charles ought to be seen as a specific legatee, and not as a universal heir. Thus, obligations and limitations of all kinds pending on the Spanish Netherlands before 1715 could not be applicable any more without explicit confirmation… and Charles VI’s royal consent.

Nény’s third argument was based on an alleged right of conquest on the basis of which Charles VI would have obtained the Southern Netherlands, allowing the Emperor to start with a clean sheet. As far as the military events of the War of the Spanish Succession were concerned, Nény allowed himself a great deal of liberty. He had to reconcile two opposites: one the one hand, Charles VI needed the right of conquest in order to undo the existing limitations on his sovereignty in the Southern Netherlands. On the other hand, mainly British and Dutch-financed German troops had effectively conquered his new territories. In his zeal to serve Charles VI’s cause, Nény obscured the substance of the Dutch assistance in beating the French in Flanders, and even accused them of lack of sincerity in their commitment to the general obligations foreseen by the Treaty of the Grand Alliance. As a proof of this, the States-General allegedly refused to cede the Spanish residence in The Hague to Charles VI, despite strong instances by Sinzendorf. This is without doubt the weakest part of Nény’s argumentation: Archduke Charles’ accession to the Imperial throne had been unforeseen, after his brother Joseph I’s sudden decease. This course of events pushed Britain, not the Dutch Republic, to desert the Grand Alliance and agree to French proposals of peace, which had previously been refused by Imperial general Eugene of Savoy (1663-1736), the British commander Marlborough (1650-1722) and Heinsius, pensionary of Holland (1641-1722). As far as the war was concerned, the Dutch did fight by the Emperor’s side until the Battle of Denain (24 July 1712), whereas the Duke of Ormonde, commander of the British forces, had received his famous “restraining orders” from Whitehall (31 May 1712), where a peace-inclined Tory government...

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136 Nény, Démonstration de l'injuste et chimerique pretention, op. cit., p. 5.
137 Ibid., p. 7.
138 Ibid.
139 Ibid.: le droit de Conquête, qui l'exempte de toutes les obligations, conventions & contracts de quelque nature qu'ils soient, que les autres Possesseurs pourraient avoir fait, & par consequent les Sujets en demeurent aussi libres, & independants sous la Domination du nouveau Souverain Conquerant.
140 Nény did not deny this, but found it nothing both a natural consequence of the Grand Alliance, for which no reward was due to them (NENY, Démonstration de l'injuste et chimerique pretention, op. cit., p. 26).
141 E.g. concerning the conquest of Italy, which was left to the Austrians.
142 Nény, Démonstration de l'injuste et chimerique pretention, op. cit., p. 32.
was negotiating with Louis XIV. Neny further accused the Dutch of passive bribery. The city and citadel of Lille, the most formidable conquest of Louis XIV (1667), which had fallen in 1708, was returned to France at the Treaty of Utrecht. According to Neny, France and the Princess of Épinoy had paid the Dutch plenipotentiaries at Utrecht to return this important place in the Southern Netherlands to France, and thus take it from Charles VI, in whose name the town had been conquered. The conclusion of the Peace at Utrecht without Imperial consent, finally, constituted a betrayal and a violation of article VIII of the Treaty of the Grand Alliance.

Barbeyrac, on the other hand, clung on to the possession of the Southern Netherlands in the same state Charles II had enjoyed it. Accessorium sequitur principale: limitations contracted by Philip IV for the whole of his territories and still intact at the time of Charles II’s decease, did not disappear at Charles VI’s accession. *Cela est fondé sur une règle incontestable du Droit des Gens, aussi bien que du Droit Civil.* Secondly, if Neny considered the Burgundian Netherlands as a separate entity, from Maximilian I to Charles VI, would this imply that all intervening acts of public law, such as the Augsburg Transaction or the Treaty of Munster, would not apply? *On ne sauroit se persuader, que Sa Majesté Impériale approuve cette manière de plaider devant le Tribunal de toute l’Europe, & les contradictions où nos deux Avocats de la Compagnie d’Ostende font tomber leur Auguste Souverain.*

In spite of his strong arguments on the general nature of Charles of Habsburg’s accession to the Southern Netherlands, Barbeyrac did in part misread Neny’s argument. The latter did not contend that the inhabitants of the Southern Netherlands were excluded from overseas trade at the time of the conclusion of the Treaty of Munster. Articles V and VI only concerned *les Espagnols Castillans qui négociennent seuls aux Indes & y possèdoient des Seigneuries, Villes, Forteresses,* &c. In other words, there was no reason for Philip IV to present an extensive interpretation of the word “Castillans”, since his Spanish subjects were the only ones actually allowed to sail to the Indies. Consequently, any bans on the liberty of his subjects in the Southern Netherlands were a purely domestic affair, and not guaranteed to the Dutch Republic as a treaty partner on the inter-sovereign level. Irrespective of the above-mentioned discussion on the nature of Charles VI’s succession (specific or universal legatee, answerable or not for debts and limitations imposed by the deceased), the international nature of the impediments imposed on the inhabitants of the Southern Netherlands can be seen as doubtful. Prohibitions such as that of 1598 decreed by Philip II or by Philip III in 1604 were a domestic affair, concentrating the organisation of the composite Spanish monarchy, and thus not pertinent to the international and bilateral question between the Dutch Republic and the sovereign in the Southern Netherlands. The latter had the competence to forbid, as well as to give his

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144 Neny, *Démonstration de l’injuste et chimérique pretention, op. cit.,* p. 31.
145 Ibid. On this question, see Réal de Curban, *Science du Gouvernement,* V, p. 637: alliance partners cannot—in this French author’s view—be unreasonably compelled to stick to their initial alliance, if the initial objective has been reached. Charles VI’s insistence on continuing the war with France could thus be seen as unreasonable, since he had already obtained the Spanish Netherlands, Milan, Sardinia and Naples.
146 Art. I, Barrier Treaty.
147 Barbeyrac, *Défense du droit, op. cit.,* p. 105.
148 Ibid., p. 112.
150 Restricting all trade with the Spanish Indies to Spaniards or Portuguese, excluding all foreigners, including his own non-Castilian subjects, such as Neapolitans, Aragonese or Sicilians (Israhel van Meurs, *Histoire de l’État van Alle Volkereen,* Amsterdam, Isaak Tirion, 1738, X, p. 449; Memorandum VOC, Du Mont, *La Vérité du fait, op. cit.* p. 88).
151 Huisman (La Belgique commerciale, op. cit., 11) accessoriely pointed to the granting of a general commercial concession in the East Indies to his subjects in the Spanish Netherlands by Philip IV in 1640, cancelling out the Transport’s eighth article (see as well letter from the Cardinal-Infant, Governor-General of the Spanish Netherlands, to the Anwerp Magistrate, Brussels, 25 October 1640, Du Mont, *La Vérité du fait, op. cit.,* p. 84: *Sa Majesté […] pour bénéficier les bons Fideles Sujets de par deça, Elle leur à fait ouverture du Commerce des Indes Orientales avec faculté d’y pouvoir entrer, ensemble à tous les Inhabitants du Septentrion,* non obstant que cela n’ait été permis jusques aujourd’hui.
152 Neny, *Démonstration, p. 17.*
subjects permission ("to bind as well as to unbind"). *Ejus est solvere, eujus est ligare*, cf. infra). Consequently, on instigation of the Count of Bergeyck (1644-1725)153, Charles II allowed the creation of a Compagnie Roial de Pais-bas (7 June 1698) with the explicit competence to trade aux Indes Orientales, et en la Guinée [...]. Sans contrevenir aux Traitez de Paix que nous avons avec la France, l'Angleterre, les Provinces-Unies, et autres Princes, et Eostats de l'Europe154.

Du Mont, finally, reformulated the application *ratione personae* of article V in rhetorically appealing terms. First, the Spaniards or Castillians mentioned in article V of the Treaty of Munster, were the inhabitants of the Iberian peninsula who could trade with the Indies, not the inhabitants of the Southern Netherlands, excluded in 1598 by Philip II and afterwards by Philip III155. Thus, how could Philip IV have excluded them from a trade they were not involved in156? Secondly, the Treaty of Munster could not treat them as Spaniards, since they were only part of a composite monarchy: *Les Peuples du Pais Bas Autrichien ne sont Estagnols ni par Nature, ni par Conquete, ni par Subjection, ni par Dependance, ni par Incorporation, ni par aucune sort d'Union politique*157. Finally, if "Spaniards" in article V had to be read as "subjects and inhabitants of the Southern Netherlands", how could Barbeyrac or Westerveen explain the sentence stipulating that *he inhabitants and subjects [...] would keep their Navigation as they have it at present in the East Indies, without any further extension of it*?158 If only the Castillian subjects of Philip IV were allowed to sail to the East Indies, the interdiction of article V could not have been applicable to Aragonese, Neapolitans, Valencians, Catalans or any other people of the Spanish Monarchy. Consequently, Du Mont could present his European readers with a simple syllogism. The Spaniards in article V were those who had the right to sail to the East Indies, in 1648 (Maior). The inhabitants of the Southern Netherlands, even if we assume they were Spaniards, did not have the right to sail and trade there (Minor). Thus, the inhabitants of the Southern Netherlands were not included in the reservation Philip IV made towards the United Provinces (Conclusion)159.

*Cause theory*

Neny further argued that, even if the Treaty of Munster had been applicable to the Southern Netherlands, the main motive for Philip IV to introduce a limitation on trade with the Indies, was that he could set one category of his subject apart, and favour another, i.e. the inhabitants of Spain itself. Charles VI, however, did not have this faculty, and was confronted with a purely comminatory clause, that was not any more counterbalanced by an advantage. Neny applied the causation theory from general contract law to the agreement between Philip IV and the Dutch Republic and concluded that the limitations imposed on Philip IV’s Belgian subjects were not any longer justified160.

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155 Leaning on the conditionality of the donation of the Southern Netherlands by Philip II to Albert and Isabella, Du Mont (La Vérité du fait, op. cit., p. 30) argued that the archdukes’ childless existence had revoked the entire act, including the trade restrictions. Consequently, the only interdiction the Spanish Netherlands were under, in his view, was the internal one, imposed by Philip III, becoming applicable at the extinction of Philip II’s act. Qui ne sait, que cette Donation ne subsiste plus ? Et quel Droit peut on tirer d’un Contract éteint, & fini, en vertu de ses propres Stipulations, il y a plus de cent ans ?

156 Du Mont, La Vérité du fait, op. cit., p. 29.

157 Ibid., p. 28.

158 Ibid.

159 Ibid., p. 29.

160 Du Mont, La Vérité du fait, op. cit., p. 15 argued that Charles II of Spain had obtained trading privileges for the Southern Netherlands on an indirect basis. Negotiating trade agreements with Britain (23 May 1667 and in July 1670), Spanish diplomats had asked for the same trading advantages in the Indies as the Dutch had obtained.
Barbeyrac, again, saw this as an ungrateful attitude by Charles VI as an heir to part of the Spanish monarchy. Accepting the gains from an inheritance implied paying for the annexed debts as well\(^{161}\). Moreover, in the VOC’s argumentation, the Dutch Republic would never have consented in the Treaty of Munster without the exclusion of the Spanish Netherlands from the East India trade. In other words, the cause theory was used on the Dutch side as well. If Charles VI unilaterally removed the essential motive for the 1648 peace treaty, it would become void as a whole\(^{162}\). This had consequences for Munster’s confirmation in the Barrier Treaty as well: if the exclusion had been the core of the peace treaty, this could not have been ignored at the time of the 1714-1715 Antwerp conferences.

However, the imbalance between gain and cost for Charles VI was striking. The Emperor started as sovereign with a clean sheet and new burdens incomparable to those put upon the Southern Netherlands under Charles II’s sovereignty. The Emperor acquired Tournay, but had to agree to the cession of several smaller entities in Flanders and Guelders to the States-General\(^{163}\). Not only the debts contracted before and during the War of the Spanish Succession, the closure of the Scheldt or the alleged limitations in trade with the Indies, but foremost the stationing of Barrier garrisons and the upkeep of considerable armed forces at his own expense\(^{164}\), had been alien to the previous regimes in the Southern Netherlands. The customs regime was tailor-made for the Dutch, who abused of the simultaneous Austro-Turkish war (1716-1718) in the Balkans to impose their tyrannique Domination in import and export duties\(^{165}\). Article XXVI of the Barrier Treaty, relative to trade, was strictly limited to the latter aspects and could not be extended to the Indies\(^{166}\). Moreover, the Dutch soldiers at Namur, Ypres, Menin, Tournay, Furnes or Ternonde were exempt of import duties, which they abused to sell Dutch cheese, fish and butter to the local population, to the detriment of Belgian merchants\(^{167}\). During their administration of the greater part of the Southern-Netherlands (the so-called “Anglo-Dutch Condominium in Flanders and Brabant”\(^{168}\)), Neny judged the Dutch had extorted the population and corrupted public institutions\(^{169}\).

Finally, Neny remarked with irony that the Dutch invocation of Alexander VI’s partition of the Indies in 1494 between Spain and Portugal equalled recognising a state of affairs which all powers in Europe\(^{170}\), including the Dutch themselves, strongly challenged in the seventeenth century\(^{171}\). What else did the Republic try to impose in articles V and VI of the Treaty of Munster, than a partition of the world between two sovereigns?

*The sovereignty of the Dutch Republic and the VOC, an usurpation?*

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\(^{161}\) BARBEYRAC, *Défense du droit*, op. cit., p. 107 : qui refusait de payer ses Dettes ; ou de se soumettre à la Condition imposée ; sous prétexte que par là il ne retirerait pas de la Succession tout le profit qu’il en aurait autrement.

\(^{162}\) VOC memorandum, DU MONT, *La Vérité du fait*, op. cit., p. 90. Supplementary, the violation of articles V and VI could be seen as rendering the whole treaty void, following Grotius, who prescribed the explicit mention of any incidental nullities (VATTÉ, *Le Droit des Gens*, op. cit., Book II, §202).


\(^{164}\) Art. XX, Barrier Treaty; Neny, *Demonstration*, p. 27.

\(^{165}\) NENY, *Démonstration de l’injuste et chimérique pretention*, op. cit., p. 28.

\(^{166}\) DU MONT, *La Vérité du fait*, op. cit., p. 30, not applicable to trade between Charles VI’s subjects and other nations.


\(^{169}\) NENY, *Démonstration de l’injuste et chimérique pretention*, op. cit., p. 26 : tant par les exactions rapines qu’ils y ont pratiquées de toute manière, que par la vente de plusieurs Emplois qui étoient vacants.


In his closing remarks, Neny challenged the opponent’s very existence in public international law. Basing his reasoning on the mention of Emperor Rudolph II (1552-1612) on the donation by Philip II of the Southern Netherlands to Albert and Isabella, Neny equaled the omission of Emperor Ferdinand (1608-1657) in the Treaty of Munster to a breach of Imperial law, leading to nullity. The States-General of the Dutch Republic lacked any *Tritre competent & legitime* to count as sovereigns, but were in reality mere *Sujets & Vassaux de Sa Majesté Impériale et Catholique, à qui Ils doivent obéir comme à Leur Souverain legitime*\(^{172}\). Recognition by the elder branch of the House of Habsburg (that of Philip IV) was independent from that of the younger (Austrian), the Treaty of Munster between Spain and the Republic lacking the Emperor’s ratification concerning the Southern Netherlands, territories of the Empire\(^{173}\). The restitution of Maastricht and the illegal retention of ecclesiastical goods (art. XI, Treaty of Munster) were further signs of the implacable hatred of the Dutch Regents against their Southern neighbours\(^{174}\). If healthy competition from the Ostend Company drove prices down to more reasonable levels, to the common benefit of the Republic’s population, the Dutch trading companies were solely concerned with their shareholders’ interest, most of them not even residing in the Seven Provinces\(^{175}\).

Du Mont respected the Treaty of Munster regarding the Republic’s recognition by Philip IV. However, he had trouble in conceiving the *Hern XVI*, or the VOC’s principal administrative organ, as exercising the organisation’s sovereign powers in Asia. How could these men be subjects of the Dutch Republic’s provinces, and, at the same time, wield sovereign power thousands of kilometres away? The seizure of Ostend ships was mainly the work of the VOC, who represented in their own right to the States-General, and against whom Neny and du Mont had to argue\(^{176}\).

\textit{Etius est solvere, cuius est ligare: Charles V I could undo what Philip III had imposed}

In his 1726 memorandum, Du Mont de Carelskroon referred to the adagium *ejus est solvere, cuius est ligare, & cui unum competit, eadem utique & alterum*. This religious phrase was frequently used in canon law, and signifies that the authority conferred upon a person or institution to dissolve, or to pronounce sanctions, is indispensably linked to the capacity to found or to bring together\(^{177}\), since both are two sides of the same (contractual) medal\(^{178}\). E.g. a bishop cannot forgive an excommunicated individual without papal instruction, since only the pope has the competence to admit and exclude from the Church\(^{179}\). It is impossible to unilaterally quit a contractual relationship, if its existence was dependent on the other party’s

\(^{172}\) Ibid, p. 41.

\(^{173}\) Ibid, p. 39.

\(^{174}\) Ibid, p. 25.

\(^{175}\) Ibid, p. 25.

\(^{176}\) *Il est inconcevable, qu’une Société de mille personnes au plus, qui sont Presque tous Bourgeois de quelque Ville de Holande, responsables en leurs biens, & en leurs tis à sa Jurisdiction civile & criminelle du Magistrat, & qui ont pour Chefs, ou plutôt pour premiers Administrateurs, dix sept Hommes, soumis comme eux à la Puissance Souveraine, & Municipale de la Province, & de la Ville, où ils habitent […] que ces mille Particuliers forment en Asie une Republique, formidable à tous les Princes de ces Region la, à l’exception peut-être du Sophy, du Mogol, & des Rois de la Chine, & du Japon (DU MONT, La Vérité du fait, op. cit., p. 36). On the VOC and its incipient stages in East Asia, see J. A. SOMERS, De VOC als volkwenrechteijke actor [SI-EUR], Gouda, Sanders, 2001.

\(^{177}\) E.g. Pierre Toussaint DURAND DE MAILLANE, Dictionnaire de droit canonique et de pratique bénéficiaire, conféré avec les maximes et la jurisprudence de France, Lyon, Benoit Duplain, 1770, p. 175 ; J. Pontas, Dictionnaire de cas de conscience ou decisions des plus considérables difficultez touchant la Morale & la Discipline Ecclésiastique, Paris , Le Mercier, 1726, p. 975 (a priest suspended by a sentence pronounced by an ecclesiastical court of law can only be absolved of it by the bishop or Metropolitan who is his hierarchical superior).

\(^{178}\) François BABIN, *Conférences ecclésiastiques du diocèse d’Angers, sur les censures, Anger/Paris , Dubé, Guerin, 1767*, p. 608 : l’ordination & le bénéfice qui y était toujours joint, formaient une espèce de contrat inaliénable, dont une des obligations de la part du clerc ordonné, était de demeurer fixe dans le poste qui lui était assigné. CE contrat passé avec l’égéne ne pouvait se dissoudre que par l’évêque qui était son représentant ; c’est ce qui a donné lieu d’appliquer aux démissions des bénéfices, les maximes, ejus est solvere cajus est ligare ; illius est destituer cajus est instituer.

\(^{179}\) Michel ANDRÉ, *Cours alphabétique et méthodique de droit canon dans ses rapports avec le droit civil ecclésiastique*, Paris, Boullotte, 1859, p. 286.
If the Treaty of Munster did not apply to the Southern Netherlands and Philip III did install an internal prohibition on his “Belgian” subjects, Charles VI, as his successor, could lift it again, just as Charles II had done when allowing for the creation of a Company in 1698. William III and the States-General had not uttered a single reproach at that time. Consequently, the Dutch Republic had to abstain from intervention in these internal matters. Si cette Règle est bonne entre les particuliers, elle vaut à plus forte raison entre le Souverain, & son Peuple, & quand ces deux sont d’accord, les Étrangers n’ont rien à y revir181.

**Multilateral diplomacy**

Il me paroit que c’est une affaire désespérée; ils [the plenipotentiaries at the Soissons Conference] avoient que le droit de Sa Majesté [Charles VI] est clair, mais un droit de convenance qu’ils appellent, est entièrement en faveur de Leurs Hautes Puissances [States-General], et n’est d’aucune considération pour les sujets des Pays-Bas autrichiens.

Karel Filips Pattijn to Visconti, Austrian representative in London, 1728182

Rhetoric on the Ostend Company should not be framed as a mere bilateral dispute around the freedom of navigation on the high seas. Bilateral aspects of the Ostend Company-quarrel, as examined until now in this contribution, belong to a classical scheme of diplomatic and legal history183. Yet, our analysis could not be complete without the implication of Europe’s multilateral diplomatic system, as the words of Karel Filips Pattijn quoted above indicate184. The working of international relations is not a product of crude power configurations and political compromise. Implicit norms or habits shape the expression of the latter, and constitute the essential nexus between diplomatic history and academic attempts at systematisation through legal concepts185. Classical international law in scholarly treatises186 and political practice consolidated in preceding treaties187 were elements of a diplomatic culture, serving as building blocks for reasoning.

Manuals such as those of Wicquefort188, Caillières189 or la Sarraz190 emphasized the intricate links between legal theory and diplomatic practice. Although the latter was considered as the sole and privileged way to

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180 *Encyclopédie méthodique*, Paris/Liège, Panckoucke/Plomteux, 1783, III, “démission”, p. 609: l’ordination et le bénéfice qui y était toujours joint, formoient une espèce de contrat sinallogmatique, dont une des obligations de la part du clerc ordonné, étoit de demeurer fixe dans le poste qui lui étoit assigné. Ce contrat passé avec l’église ne pouvoit se dissoudre que par l’effet que le droit de Sa Majesté ne l’autorisait point à l’exercer. Il me paroit que c’est une affaire désespérée; ils [the plenipotentiaries at the Soissons Conference] avoient que le droit de Sa Majesté [Charles VI] est clair, mais un droit de convenance qu’ils appellent, est entièrement en faveur de Leurs Hautes Puissances [States-General], et n’est d’aucune considération pour les sujets des Pays-Bas autrichiens.

181 *Du Mont*, *La Vérité du fait*, op. cit., p. 33.

182 *Quoted in Huisman*, *La Belgique commerciale*, op. cit., p. 438.

183 *De Pauw*, *Marc Liberum*, op. cit..


The construction of the Anglo-French alliance

Most of European diplomacy between 1717 and 1731 turned around the apportioning of the duchies of Parma, Piacenza and the Grand-Duchy of Tuscany. The Emperor had obtained a dominating position on the Italian peninsula after the Utrecht treaties, following the confiscation of the Duchy of Milan in 1700 and the conquest of Naples in 1707. Previously, Spain did hold the upper hand in the Italian balance, as a result of Charles V’s military campaigns in the 16th century and the inheritance of his grandfather, Ferdinand of Aragon. As the cards were redistributed during the War of the Spanish Succession, Britain had foreseen to install the Duke of Savoy as King of Sicily, as a counterweight.

The remaining Italian princes, however, feared Imperial pressure would lead to German domination. Duke Francesco Farnese of Parma-Piacenza (1678-1727), whose agent Alberoni had risen to Philip V of Spain’s royal favourite, hoped for a return of the traditional Bourbon-Habsburg antagonism. If Spain’s new monarch reclaimed the position once held by the Spanish Habsburgs, Charles VI would have a fully-fledged opponent. A “Spanish Risorgimento” in the Mediterranean after Utrecht did not only access the inner workings of the international system, its conceptual language was asserted to be drenched in legal terms and the broader intellectual tradition of Roman and natural law. Primary legal documents, such as treaties, conventions, declarations or manifesto’s, were eagerly published in collections such as Abraham Friedrich Glafey’s update of the Theatrum Europaeum and the widespread Les Intérêts présens des puissances de l’Europe, a French adapted version by Jean Rouset de Missey. Combined with memoranda and day-to-day correspondence in the vast French and British diplomatic archives, historians and jurists alike can unearth the practical legal culture of the “Trente Heureuses” following the Treaty of Utrecht, which have until now mostly been explained as a transitory parenthesis, the product of coincidental cordial relations between the main protagonists (Dubois, James Stanope, Fleury, Horatio Walpole).

et entre leurs ministres représentatifs suivant leurs différents Caractères. Pour servir de supplément à l’ambassadeur et ses fonctions de Mr. de Wissemburgh, Amsterdam, François l’honoré, 1746.


Jean de LA SARRAZ DU FRANQUESNAY, Le ministre public dans les Cours étrangères, ses fonctions, et ses prérogatives, Amsterdam, Au dépens de la compagnie, 1731.

Frank-Steven Schmidt, Praktisches Naturrecht zwischen Thomasius und Wolff. Der Völkerrechtler Adam Friedrich Glafey (1692-1753), Baden-Baden, Nomos Verlag, 2007 (Studien zur Geschichte des Völkerrechts; 12); Christoph Herrmann SCHWEDER, Theaterm Historicum praetensium et controversiarum illustrium, oder historischer Schauplatz der Ansprüche und Streitigkeiten ihrer Potentaten und anderer regierender Herrschaften in Europa, s.l., s.p., 2.v.


Archives du Ministère des Affaires Étrangères et Européennes (La Courneuve) [further: AMAE], series Correspondance Politique [further : CP] and Mémoires et Documents [further : M&D].

National Archives [further : NA], series State Papers [further: SP], France (78).


Gehling, Saint-Saphorin, op. cit.


Bourgeois, La diplomatie secrète au XVIIIe siècle, Paris, Arman Collin, 1910, II.
benefit Spain itself, but was welcomed by Italian rulers. The children born from Philip V's marriage with Elisabeth Farnese could thus be seen as Parmesan, as well as Bourbon princes. Their succession in the duchies of Parma and Piacenza, as well as in the Grand-Duchy of Tuscany, where the Medici-family faced extinction in the male line, would prevent an Imperial take-over of these fiefs of the Empire.

France and Britain did intervene when Spain invaded first Sardinia and then Sicily, but were not averse to a more balanced distribution of power on the peninsula. When Philip V was forced to adhere to the clauses of the Treaty of the Quadruple Alliance in February 1720, the solution imposed on him was not punitive. France and Britain imposed themselves as mediators, guaranteeing a strict observance of the partition of the Spanish composite monarchy agreed at the end of the War of the Spanish Succession. In an ongoing permanent process of negotiation, the diplomatic efforts deployed by the mediators continued the coercive work of their armies. The States-General did pass a resolution in favour of accession to the Quadruple Alliance. Yet, Amsterdam, worried about the fall in Dutch commerce with Spain since the death of Charles II, preferred to stay aloof from the alliance. Consequently, the Republic acted as mediarius in bello, able to trade with all contending partners alike.

Cambrai

Amsterdam-induced abstention in the War of the Quadruple Alliance switched to active engagement once the Ostend Company was on the table. As the general picture of Dutch commercial activity turned grim, with diminishing returns from the Spanish dominions or the Levant, the East India markets were the prime asset of the Republic's trade. The Dutch, party to, invoked this treaty to bring both Britain and France to military action. Charles V's decision to grant permission for the Ostend Company, published on 28 July 1723, constituted a casus foederis. After his unsuccessful remonstrances, Pesters, usually based in Brussels, was sent to Hanover, George I's Summer residence, to convince George I's ministers that the Ostend affair fell within the perimeter of the bilateral Anglo-Dutch Treaty of Guarantee of 1716 and, thus, required action. On 2 October 1723, a new anti-Ostend bill completed earlier decisions of 26 April,

200 Christopher STORRS, “The Spanish Risorgimento in the Western Mediterranean and Italy 1707-1748”, in European History Quarterly 12.2 (2012), No. 4, p. 555-577.
204 ISRAEL, The Dutch Republic, op. cit., p. 988.
206 Commercial competition constituted a valid motive for the union of the Maritime Powers. In situations where one of them kept out of an armed conflict, it could reap profits from trade diverted from its competitor. During Louis XIV's Dutch war, Britain was first allied to France (Treaty of Dover, 1670), but quit the conflict in 1674. Consequently, (mainly Amsterdam-based) merchants implored William III not to prolong the conflict needlessly, in view of the loss of traffic to the British (ISRAEL, The Dutch Republic, op. cit., p. 824).
208 VATTEL, Le Droit des gens, op. cit., Book III, § 88: Le Casus Foederis […] se trouve dans le concours des circonstances pour lesquelles le Traité a été fait, soit que ces circonstances y soient marquées expressément, soit qu'en les ai tacitement supposées.
punishing participation in the Company with confiscation, lifelong imprisonment or death. Townshend followed the Dutch resident’s point of view and suggested joint military action under the terms of the Triple Alliance.210

However, Ostend did not amount to a casus belli for France. In the words of Antoine Pecquet sr., senior adviser to Morville (1686-1732), secretary of state for foreign affairs: Les puissances maritimes ont leurs raisons de parler ainsi, Elles ressentent déjà les effets de l'Establissement de la Compagnie d'Ostende qui leur cause un notable prejudice; mais à l'Égard de la France, il semble qu'elle doit considérer si pour elle un mal a venir, et peut être tres eligé doit l'engager dans une guerre où elle s'exposerit à plus perdre qu'elle n’a à gagner.211 Seen from Versailles, a slight tension between Charles VI and the Dutch Republic was preferable to a full-blown military conflict.212

In January 1724, the Congress of Cambrai was finally set to start major discussions.213 Ostend and the recognition of Charles VI’s Pragmatic Sanction were no core matters on the agenda, but were used in a reciprocal game of deterrence by Spain and the Imperial delegates Windischgrätz and Penterriedter, who happened to have been shareholders in the Company.214 Dissatisfied with the slow advancement of the talks, the Spanish ambassador Pozzobueno presented a memorandum against the Ostend Company at George I’s court. This might seem surprising, as Spain had but scant interest in the affair of the East India trade. However, Spain’s first objective was to bring Charles VI to concessions at the Cambrai negotiating table. In that particular setting, France and Britain had an ambiguous role as both mediators (Treaty of the Quadruple Alliance, 1718) and allies of the King of Spain, the latter as the result of alliances posterior to the Quadruple Alliance itself (1721). A military conflict with Charles VI had been foreseen as a possibility.217 For the Spanish, the lex posterior derogat priori-principle (recent treaties override older ones) had to play. The mediators, however, clung to the priority of the Utrecht settlement over incidental bilateral promises.

Moreover, the Dutch attitude in 1718 had left the British plenipotentiaries at the conference sceptical: The Dutch would not enter into any engagements which were taking for the Publick Tranquillity of Europe; and yet pretended to make use of them whenever their Private Interests were concerned. By which they would share the advantage

211 AMAE, M&F, France, 495, Antoine PECQUET sr. (1666-1728), “Réflexions sur les differens motifs qui ont pû déterminer la France a prendre des Engagemens avec l'Angleterre, la Hollande, et autres alliez”, f. 2r°.
212 By doing just enough to encourage them in the Spirit of opposition rather than design to assist them heartily in obtaining satisfaction by a total Suppression of the Company at Ostend (NA, SP, 78, 174, Polwarth and Whitworth to Newcastle, Cambrai, 11 May 1724, ff. 1v°-2r°).
214 HUISMAN, La Belgique Commerciale, op. cit., p. 243. See as well Jelten BAGUET, De Oostendse Compagnie, haar directeurs en de Oostenrijkse Bewindvoerders. Een casuïstische analyse van hun onderlinge interactie (1722-1731), UGent: Faculty of Arts and Philosophy (master thesis in history), 2012-2013
215 Jacinto de Pozobueno y Belver (1659-1729), born in Ninove (Spanish Netherlands), military career under Charles II of Spain, governor of Trapani (Sicily, 1699), resident in London between 16 December 1720 and 17 January 1727 (Didier OZANAM & Denise OZANAM, Les diplomates espagnols au XVIIIe siècle, Madrid/Bordeaux, Casa de Velázquez – Maison des Pays Ibériques, 1998 (Collection de la Casa de Velázquez; 64 - Collection de la Maison des Pays Ibériques; 72), p. 403.
217 It is however interesting to note that Townshend insisted on a guarantee of non-invasion of the Austrian Netherlands, which Dubois adamantly refused (AMAE, CP, Angleterre, 336, Destouches to Dubois, London, 11 May 1721, f. 150r°, quoted in BOURGEOS, Diplomatie secrète, op. cit., III, p. 274).
France and Britain insisted on the vagueness of promises made to Philip V, *inter alia* the restitution of Gibraltar, which was constitutionally impossible for George I. Frustrated with the slow course of affairs, Spain tried to provoke a conflict between Charles VI and the mediators in other issues, such as the Ostend Company. The latter was not foreseen as part of the agenda in Cambrai. The congress was solely directed towards the final details of the Spanish Succession quarrel. The Imperial delegations could retort by bringing the recognition of Charles VI’s succession on the table and supported reprisals in case of British or Dutch depredations on the Ostend Company’s trade. This deadlock made the conference grind to a halt.

*Mare liberum, pactis apertum!* Cursing in the public coffee-house of Europe

*Les Couronnes de France & d’Espagne demeurent séparées & désunies [...] Les Majestés Royales prendront un soin sincère & feront leurs efforts, afin que rien ne donne attendance à ce fondement du salut public, ni ne puisse l’ébranler.*

Art. VI, Treaty of Peace between Louis XIV and Queen Anne, Utrecht, 11 April 1713

As expounded previously (I.B), Neny and Dumont had challenged the contractual basis for the exclusion of Charles VI’s Belgian subjects. They lost the battle in doctrine, as e.g. Vattel copied Barbeyrac’s pro-Dutch point of view concerning the alienability of the right to navigation on the high seas. Diplomatic practice, however, added a legal performance that brought the very essence of treaty law to the front. If Westerven and Barbeyrac founded the exclusion on a voluntary act by two sovereigns, they could hardly oppose a norm of the same value.

On 30 April/1 May 1725, Charles VI and Philip V provoked what seemed a revolution in the European diplomatic system. They had been bitter enemies. At Cambrai, France and Britain got exasperated by their unwillingness to compromise. Whereas, in 1717, Charles VI had sent out corsairs from Ostend to cruise on Philip V’s vessels, both men were all of a sudden reconciled, boosting the Ostend trade. Philip’s clandestine agent in Vienna, the Dutch “adventurer” Johan Willem Ripperda (1682-1737), transmitted Elisabeth Farnese’s wrath with the disloyal behaviour of France. The Duke of Bourbon (1692-1740), Prime Minister of the 14 year-old Louis XV after Orléans’ decease, had decided to cancel the projected marriage between the still minor infant Maria Anna Victoria (°1718) and his sovereign (°1710). Moreover, during the Cambrai talks, French and British mediators played out Spain and Austria against each other. Ripperda persuaded Eugene of Savoy and Sinzendorf to bury the war hatchet and jointly oppose the mediators. Coupled with a projected marriage between Don Carlos (°1716), son of Philip V

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218 Polwarth and Whitworth (plenipotentiaries for George I) to the Duke of Newcastle (secretary of State for the Southern Department), Cambrai, 11 May 1724, very private, SP, 78, 174, f. 1v°.
219 The letter of George I to Philip V, dated 12 June 1721, can be found in AMAE, CP (suppl.), Angleterre, 7, f. 14r°. Its wording explicitly refers to parliamentary consent: *Je ne balançais plus a assurer V.M. de ma promptitude à la satisfaire par rapport à sa demande touchant la restitution de Gibraltar lui promettant de me servir des premières occasions favorables pour régler cet article du consentement de mon Parlement.*
220 *CUD* VIII/1, nr. CLI, p. 340.
222 Peace Treaty between Charles VI and Philip V, Vienna, 30 April/1 May 1725, *CUD* VIII/2, nr. XXXVI, p. 106-113; Treaty of Alliance between Charles VI and Philip V, Vienna, 30 April/1 May 1725, *CUD* VIII/2, nr. XXXVIII, p. 113-114; Peace Treaty between Charles VI (as Holy Roman Emperor) and Philip V, Vienna, 7 June 1725, *CUD* VIII/2, nr. XXXIX, p. 121-125.
and Elisabeth Farnese, with an archduchess (one of Charles VI’s three daughters), the new alliance could dominate the continent\textsuperscript{225}.

The Commercial treaty reversed the prevailing legal logic and confirmed Charles’ Belgian subject’s right to navigation. Whereas Nény had argued that the liberty of the Southern Netherlanders rested on a pure application of peremptory natural law, the VOC had preferred stressing self-inflicted limitations on this right. Yet, the latter strand of argumentation came under pressure. If access to the high seas had been conditional on the absence of a bilaterally concluded renunciation by the ruling Spanish monarch in the 17\textsuperscript{th} century, the latter could cease to exist decades later, when his successor Philip V explicitly opened the Spanish Indies to merchants under Charles VI’s sovereignty. Spain could incur a separate bilateral liability to the Dutch Republic, if the Treaty of Munster was still operative, in the sense read by Barbeyrac and Westerven. Yet, between the new ruler of the Southern Netherlands and the sovereign in the Spanish Indies, no impediment existed.

The Treaty of Commerce and Navigation negotiated by Ripperda merits more attention than it has hitherto received\textsuperscript{226}. Dutch arguments according to which the Spanish exclusion of Philip IV’s former subjects in the Southern Netherlands was a proof of the possibility to conventionally close navigation on the high seas, were completely shipwrecked, to sink to the bottom of the sea at dazzling speed. Philip V allowed the “Belgians” what had been taken away under his Habsburg predecessors. The Dutch East and West India Companies’ legal objections had been spectacularly emasculated: if a treaty could have closed the sea to Belgian entrepreneurs, it had now been opened at large by a new one\textsuperscript{227}.

In 47 articles, drafted by Du Mont\textsuperscript{228}, Philip V conceded extensive privileges to the subjects of Charles VI operating on Spanish soil (art. XXI-XXIV)\textsuperscript{229}, as well as to the Ostend trade. Unlimited access to the Spanish colonies (art. IV, Treaty of Alliance, art. II, IX and XIII, Treaty of Commerce and Navigation) shredded the commercial dominance obtained by Britain in the War of the Spanish Succession. Next to Philip’s renunciation to the French throne, Britain had imposed an annual so-called “permission vessel” sailing from Cadiz to the Spanish Americas, as well as the contract allotting the monopoly on the black slave trade, the so-called Asiento de Negros.\textsuperscript{230} Philip V took the liberty to modify the pecking order


\textsuperscript{227} Du Mont saw precedents throughout the seventeenth century: e.g. when Spain concluded bilateral treaties of commerce and navigation, it had to consent to the other contracting party the same advantages and privileges enjoyed by the Dutch, e.g. in the Anglo-Spanish Treaty of 23 May 1667 (DU MONT, La Vérité du fait, op. cit., p. 15).


\textsuperscript{229} Ana HERNANDEZ CRESPO, “El Interés público y el interés particular: una visión comparativa en las representaciones de los mercaderes flámencos en la corte de Felipe V”, in Réne VERMEIR, Mauritis EBBEN & Raymond FAGEL (eds.), Agentes e Identidades en Movimiento. España y los Países Bajos Siglos xvi-XVII, Madrid, Silex, 2011, p. 373-402. Du Mont, who drafted the treaty, explicitly referred to the pre-existing “Confreres de la Chapelle de St André” in his own treatise on Ostend (DU MONT, La Vérité du fait, op. cit., p. 20).

between European trade partners (art. XLVII231), imposed at Utrecht, which equalled cursing in the public coffee-house of Europe. All factories and trade posts in the East Indies were recognized. Letters of reprisal against Spanish or Habsburg subjects cancelled, and seizures against common enemies projected (art. XLI-XLIII). Finally, the “Flemish” nations in Spain obtained their own extraterritorial jurisdiction (art. XXVII-XXX) and could count on a bilateral system of judiciary assistance and ambassadorial services for international successions, which guaranteed the transmission of family patrimony to individual merchants (art. XXXI-XXXII).

The “Austro-Spanish commercial cartel” thus constructed not only threatened the geopolitical balance in Europe, but British and Dutch commercial primacy as well232. In 1725-1726, the Ostend Company controlled half of European tea imports233. The alliance was drafted to the detriment of Spain in general. The projected marriage between Don Carlos and one of the Austrian Archduchesses was hypothetical, but annual payments amounting to 3 million florins to the court of Vienna were not234. Already in June 1725, protest against the treaty appeared in the Madrilene press235.

The Republic had no other choice but to join the Alliance of Hanover (3 September 1725236). Not only to supress the Ostend Company. The combination of Spain and Austria was a potential geopolitical threat. Moreover, a conflict with them could escalate if Brandenburg-Prussia stepped in on the side of the Emperor, which would endanger the Republic’s eastern border237.

231 “We have convened that everything granted in favour of the subjects of the British nation by the Treaties of Madrid (23 May 1667, 1 July 1670), as well as the Peace and Commerce treaties done at Utrecht in 1713, or posterior conventions, & which is not expressed, or sufficiently explained in the present, will be held for expressly inserted, in favour of the subjects of [Charles VI], for as far as they will be applicable to them. Idem for all that has been accorded to the subjects of the States-General, by the Peace Treaty of Munster (1648), the marine Treaty of The Hague (1650), or the Peace and Commerce Treaty of Utrecht (1714)” (my translation from Latin).

232 SIMMS, Three Victories and a Defeat, op. cit., p. 185.


Conclusion

The suppression of the Ostend Company became central to the Republic’s foreign policy in the 1720s. Pensioner Simon Slingelandt (1664-1736), in function from 1727 on, even convinced the City of Amsterdam to accept a rise in the verponding (real estate tax) pursuant to a recalculation of the land register, with the prospect of hard action against the competitor in the Southern Netherlands.

The managers of European international relations between 1713 and 1740 avoided the sudden eruption of a continent-wide military conflict. In order to succeed in this objective, all pending bilateral issues had to be solved conformable to the power consensus imposed by arms during the War of the Spanish Succession and translated into legal language at the conclusion of the peace treaties. Bilateral argumentation, such as that of the VOC, could not intervene in the conclusion of a treaty between Philip V and Charles VI, opening trade in the Indies to the Ostend Company. Yet, one overarching principle was the touchstone of all European affairs: the upholding of the European balance. By tying the commercial treaty to a projected marriage between Don Carlos and an Austrian archduchess, Charles VI and Philip V had openly violated the balance of power. The latter was not a mere power configuration, but the expression of a system of legal hierarchy, delimiting the scope of any legal instrument. Between treaty law and constitutional law, but between fundamental and secondary treaty norms as well. At the draft of the Ripperda treaties, the balance principle was invoked, but only to obscure its violation in the ensuing paragraphs.

At the Congress of Soissons (1728-1730), Horatio Walpole (1678-1757) and William Stanhope (1690-1756), British plenipotentiaries, insisted on seeing the Ostend Company as an application of a more general reasoning. As an accessorium to the general power distribution in Europe, its legal status fell under the 1713 Great Power consensus, which was still intact. The contrevening Dutch arguments, presented by Slingelandt, according to which Philip V could not have opened access to the Spanish Indies without prior consultation of the Dutch Republic, with whom he had to respect the Treaty of Munster just as Charles VI had, or without violation of the loix fondamentales de l’Espagne, forbidding access to and trade in the Indies for all foreign nations, were not relevant any more. Multilateral decision-making, implying Charles VI’s consent to drop the Company successively in 1727 and 1731, decided on its fate. Yet,


240 If looked at Philip V’s or Orléans’ renunciations or the recognition of George I to the detriment of James III. Dhondt, “From Contract to Treaty”.

241 We observed that France has the same grounds with His Majesty & the States to complain against the Treaty of Commerce concluded at Vienna, & having jointly with them entered into the Treaty of Hanover for obviating the Mischiefs apprehended from the Treatys made between the Emperor & Spain, it would have a better appearance of Union between the allies, if France, instead of having a particular article for preserving their Rights and Privileges of Trade with Spain as seems intended [...] should be made a party to this article jointly with His Majesty and the States. (NA, SP, 78, 188, Notes on a conference between Chauvelin (French Secretary of State for Foreign Affairs, 1727-1737), Horatio Walpole (British envoy extraordinary at Paris 1723-1730) and William Stanhope (ambassador at Madrid, 1721-1727, Secretary of State for the Northern Department, 1730-1740) on a draft peace treaty for the Congress of Soissons, Paris, s.d., f. 551v°).

242 NA, SP, 78, 188, “Memoire des Demandes faites au Congrés de Soissons par les Plenipotentaires des Provinces Unives des Pays-Bas, présenté au Nom des Alliés d’Hanover aux alliés de Vienne”, Soissons, 20 June 1728, f. 527v°. The memorandum took over arguments from Westerven and de la Bassecourt’s reactions (“les fougouex publicistes”, Huisman, La Belgique commerciale, p. 332) to the Ripperda commercial treaty. I limited myself to the most substantial memoranda on the Ostend question. See further: DE PAUW, Mare Liberum, op. cit. and Huisman, La Belgique commerciale, op. cit., p. 379-403.

this process had not been arbitrary or induced by domestic preoccupations, but was the expression of an implicit legal logic in the structure of day-to-day diplomatic process.