Tilburg University

Amicitia in Renaissance peace and alliance treaties (1450-1530)

Lesaffer, R.C.H.

Published in:
Journal of the History of International Law

Publication date:
2002

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Lesaffer, R. C. H. (2002). Amicitia in Renaissance peace and alliance treaties (1450-1530). *Journal of the History of International Law*, 4(1), 77-99.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

***Amicitia* in Renaissance Peace and Alliance Treaties (1450-1530)**

Randall Lesaffer

Ordinarius Professor of Legal History, Tilburg
Professor at Law, Leuven

“De amicitia omnes ad unum idem sentiunt: ... sine amicitia vitam esse nullam.”¹

This quotation is taken from the well-known Ciceronian dialogue *De amicitia*. In the dialogue, Gaius Laelius (186-ca. 123 B.C.) who just lost his friend Publius Cornelius Scipio Africanus minor (185-129 B.C.), discusses friendship among individuals. The quote can easily be applied to friendship among states.

Interstate friendship as a juridical concept has been known in the Mediterranean and European world since Antiquity. Inasmuch as it is the expression of the sole existence of peaceful and international relations, the vicinity to the quote of Cicero stands. On the other hand, the Ciceronian argument that friendship and virtue are inseparable, could hardly be applied to interstate friendship.² To Cicero benevolence was the essence of friendship.³ His definition of private friendship approaches the concept of interstate friendship: benevolence as the expression of a vague and flexible mutual willingness to develop relations that are advantageous to all parties concerned.

There have been lots of scholarly studies and discussions on interstate *amicitia* in Greek and Roman treaty practice. The Italian scholar Bruno Paradisi stated that *amicitia* was of the utmost importance during Antiquity and the Middle Ages, but that – though it never disappeared from treaty practice – during the Middle Ages it lost the particular function it had before. He implied that *amicitia* has nowadays all but disappeared as a juridical concept.⁴ Not a word is said about the evolution in the Late Middle Ages and

¹ Marcus Tullius Cicero (106-43 B.C.), *De amicitia* 86.

² “Ita fit verum illud, quod initio dixi, amicitiam nisi inter bonos esse non posse”, Cicero, *De amicitia* 65.

³ “Namque hoc praestat amicitia propinquitati, quod ex propinquitate benevolentia tolli potest, ex amicitia non potest; sublata enim benevolentia amicitiae nomen tollitur, propinquitatis manet”, Cicero, *De amicitia* 19.

⁴ “L’expression ‘amitié internationale’ a presque complètement perdu, à notre époque, son contenu et son importance juridiques. Bien qu’aujourd’hui encore des traités d’amitié entre Etats soient conclus, on doit reconnaître que leur signification pour l’organisation juridique moderne soit plutôt limitée ... Le traité d’amitié moderne est seulement le dernier vestige d’une institution juridique qui a eu dans l’antiquité et au moyenâge une importance extraordinaire. Quoique l’on puisse penser à l’égard de sa première formation, on doit être d’accord pour

in the Early Modern period. The truth is that there has not been any research whatsoever on the subject covering these periods.

The purpose of this article is to establish the juridical contents and function of *amicitia* in Renaissance peace and alliance treaties, dating from between 1454 and 1529. Firstly, the contents and function of Roman and medieval *amicitia* as assessed by modern scholarship is summarized. Secondly, the concept of *amicitia* as it emerges from Renaissance treaties is analyzed. And thirdly, some remarks will be made on the relationship between the Roman and the Renaissance concept.

***Amicitia* in Antiquity and the Middle Ages**

The classical doctrine on *amicitia* has long been dominated by the shadow of the great German scholar Theodor Mommsen. Mommsen argued that according to Roman law war was the natural condition between independent political entities.⁵ Only by a treaty of friendship – informal though it could be and according to Mommsen mostly was – could that situation be altered. Consequently, *amicitia* was the juridical precondition to all kinds of interstate relations, be they juridical, political or commercial. Each form of interstate relationship presupposed the existence of at least an oral agreement of friendship. *Amicitia* could only originate from a specific interstate treaty.⁶

Mommsen held that *amicitia* and *hospitium* were originally one and the same thing. This idea was further elaborated by his countryman Täubler. Täubler sought the origins of *amicitia* in the humanization of the treatment of prisoners of war. According to the German author, prisoners of war were traditionally slaughtered and sacrificed. Later on, they were kept alive and held as hostages to secure the peace. Inside the city walls of the captor state, they could live freely. The *hospitium* contained the conditions under which they could live. The peace agreement the hostages guaranteed was laid down in a written treaty.⁷

admettre qu'elle a joué un rôle de premier ordre dans les origines de l'organisation juridique internationale", B. Paradisi, "L'amitié internationale: les phases critiques de son ancienne histoire", *Recueil des Cours de l'Académie de Droit International*, 77 (1951) pp. 329-330.

⁵ "Nach römischer Rechtsanschauung ist dem Ausländer gegenüber die gegenseitige Rechtslosigkeit die Regel, welches Verhältniss auch wohl minder genau als dauernder Kriegszustand gefasst wird, das internationale Rechtsverhältnisse die Ausnahme", T. Mommsen, *Das römische Staatsrecht* Vol. 3-1, Leipzig 1887, pp. 590-591.

⁶ "Wenn der Vertrag nicht, wie zum Beispiel der Waffenstillstand und das für einen bestimmten Zeit eingegangene Kriegsbündniss, transitorisch ist, sondern für ewige Zeiten gelten soll, so entsteht durch denselben ein dauerndes internationales Rechtsverhältniss, nach römischer Bezeichnung das öffentliche Gastrecht (*hospitium*) oder die wesentlich damit zusammenfallende Freundschaft (*amicitia*)", Mommsen, *Römisches Staatsrecht* Vol. 3-1, p. 591.

⁷ E. Täubler, *Imperium Romanum. Studien zur Entwicklungsgeschichte des römischen Reichs* Vol. 1, Leipzig 1913, pp. 395-406.

Mommsen's and Täubler's theses were pulled to pieces by another German, Alfred Heuss. Heuss rejected the concept of natural enmity. He also rejected that *amicitia* was a type of treaty. According to Heuss, *amicitia* was a general condition of interstate relationship that resembled personal friendship. As much as in Mommsen's opinion, *amicitia* was still the precondition of each kind of juridical relation, the natural situation now being one of a total absence of relations before the emergence of *amicitia*. Heuss also argued that a specific treaty of *amicitia* never existed in the centuries of the formation of the concept (3rd-1st centuries B.C.). There were references to and elaborations on *amicitia* in all kinds of treaties like peace and alliance treaties, but there was no such thing as a specific, original treaty that constituted friendship. The condition of *amicitia* could be brought about by simple acts such as sending ambassadors or the exchange of gifts.⁸ Any kind of peaceful relations – including treaties – could indicate the beginning of *amicitia*.⁹ According to Paradisi, *amicitia* transcended its own source.¹⁰ It might be better to state that the inaugurating act was in fact the declaration or recognition of the existence of *amicitia* in itself.

Heuss's thesis has been confirmed and adopted by many subsequent scholars.¹¹ But while Heuss rejected even the possibility of an autonomous, constitutive treaty of friendship, some scholars thought that such a treaty was not necessary as a means to constitute friendship, but was however one possible way of doing so.¹² Francesco de

⁸ A. Heuss, "Die völkerrechtlichen Grundlagen der römischen Aussenpolitik in republikanischer Zeit", *Klio, Beihefte*, 13 (1933) pp. 1-59.

⁹ "Die Betrachtung lehrt also, dass am Anfange eines Freundschaftsverhältniss keineswegs der 'Freundschaftsvertrag' zu stehen braucht. Vielmehr ist die Tatsache der völkerrechtlichen *amicitia* durch jede Art friedlichen, zwischenstaatlichen Verkehrs gegeben und vollkommen unabhängig von dem Akt einer formellen Begründung", Heuss, "Die Völkerrechtlichen Grundlagen", p. 46.

¹⁰ "L'*amicitia* si manifesta in ogni relazione internazionale pacifica, ma la trascende, perché essa è il presupposto da cui questa si svolge e quasi l'ambiente in cui è contenuta", B. Paradisi, "L' *amicitia* internazionale nell'alto medio evo", in *Civitas maxima. Studi di storia del diritto internazionale* Vol. 1, Florence 1974, p. 342.

¹¹ W. Dahlheim, *Struktur und Entwicklung des römischen Völkerrechts im dritten und zweiten Jahrhundert v. Chr.*, Munich 1968, pp. 3-4, pp. 136-162 and pp. 260-274; D. Kienast, "Entstehung und Aufbau des römischen Reiches", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 85 (1968) pp. 330-335; K.-H. Ziegler, "Das Völkerrecht der römischen Republik", in H. Temporini, (ed.), *Aufstieg und Niedergang des römischen Welt* Vol. 1-1, Berlin and New York 1972, pp. 83-87; F. de Martino, *Storia della costituzione romana* Vol. 2, Naples 1973, pp. 16-35; M. R. Cimma, *Reges socii et amici populi romani*, Milan 1976, pp. 25-27; K.-H. Ziegler, "Der Freundschaftsvertrag im Völkerrecht der römischen Antike", in *Pensamiento juridico y sociedad internacional. Estudio Antonio Truyol y Serra*, Madrid 1986, pp. 1264-1265.

¹² H. Triepel, *Hegemonie. Ein Buch von führenden Staaten*, Aalen 1961, p. 472; Ziegler, "Völkerrecht der römischen Republik", p. 88; De Martino, *Storia della costituzione romana* Vol. 2, pp. 26-29; Ziegler, "Der Freundschaftsvertrag", pp. 1267-1270.

Martino stated that the formula “*ut pia et aeterna pax sit*”¹³ would have summed up the contents of such a treaty.

Once the condition of *amicitia* was present, any kind of interstate relations could be elaborated. *Amicitia* was the necessary starting point and precondition for any sort of interstate relationship. In many treaties, especially in peace and alliance treaties, one referred to *amicitia*. In general, scholars agreed that the concept of *amicitia* came down to the existence of peaceful relations. But *amicitia* implied more than peace as in absence of war. It implied a positive qualification of peace. In peace and alliance treaties the obligation to have a favourable attitude to each other, the promise not to damage each other and the prohibition to help one another's enemies were implied. *Amicitia* consequently meant benevolent neutrality, that was materialized for instance in the prohibition of giving free passage to the troops of the enemy of an *amicus*.¹⁴ *Amicitia* also extended to the subjects of the other entity. In that way friendship was related to *hospitium*.¹⁵ Under the Roman republic, *amicitia* was often referred to in alliance and peace treaties. Thus evolved a terminological confusion with the word *societas* or military alliance.¹⁶ *Amicitia* and *societas* however went on as two different juridical

¹³ In his oration *Pro Balbo* Cicero quoted this formula as being the essence of the treaty between Rome and Gades (206/205 B.C.). Cicero, *Pro Balbo* 35. De Martino, *Storia della costituzione romana* Vol. 2, p. 32; Ziegler, “Völkerrecht der römischen Republik”, p. 88; idem, “Der Freundschaftsvertrag”, p. 1267.

¹⁴ The term neutrality does not refer to the modern concept of neutrality which implies a strict impartiality of the non-belligerent nation. Neutrality merely implied that a state did not directly participate in the war. It could however through non-belligerent acts favour one of the belligerents. Before the eighteenth century this could even mean rendering troops or money. See on the development of neutrality: L. Strisower, “Die Geschichte des Neutralitätsgedankens”, *Zeitschrift für öffentliches Recht*, 5 (1926) pp. 184-204; P.C. Jessup and F. Deak, *Neutrality. Its history, economics and law* Vol. 1, New York 1935, pp. 3-49; W.G. Grewe, *Epochen der Völkerrechtsgeschichte*, Baden Baden 1984, pp. 433-450; S. Oeter, “Ursprünge der Neutralität. Die Herausbildung des Instituts des Neutralitäts im Völkerrecht des frühen Neuzeit”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 48 (1988) pp. 447-488; R.A. Bauslaugh, *The Concept of Neutrality in Classical Greece*, Berkeley 1991, pp. 3-83; S. Neff, *The Rights and Duties of Neutrals. A general history*, Manchester 2000.

¹⁵ “Da tale obbligo nascevano impegni vari, i quali potevano creare una condizione di neutralità attiva consistente nel divieto di recare aiuti a chi si trovasse in guerra con una delle due parti e di consentire ad esso di traversare il proprio territorio, ovvero altre condizioni”, De Martino, *Storia della costituzione romana* Vol. 2, pp. 32-33; Paradisi, “L’amicitia internazionale nella storia antica” in *Civitas maxima. Studi di storia del diritto internazionale* Vol. 1, Florence 1974, pp. 325-326; idem, “L’amicitia internazionale nell’alto medio evo”, pp. 351-352; E.S. Gruen, *The Hellenistic World and the Coming of Rome*, Berkeley 1986, pp. 76-94; K.-H. Ziegler, *Völkerrechtsgeschichte. Ein Studienbuch*, München 1994, p. 47.

¹⁶ W. Dahlheim, *Deditio und societas: Untersuchungen zur Entwicklung der römischen Aussenpolitik in der Blütezeit der Republik*, München 1965, pp. 128-154; idem, *Struktur und Entwicklung des römischen Völkerrechts*, pp. 158-162.

concepts. Each alliance contained *amicitia*; *amicitia* on the other hand did not automatically imply *societas*.¹⁷

Maria Rosa Cimma made a distinction between *amicitia* as a political and as a juridical concept. As a juridical concept, *amicitia* could only be brought about by some kind of treaty. This distinction is however only a matter of terminology.¹⁸ Furthermore, Cimma overstretched the implications of the political use Rome made of the concept for the juridical validity of it. The political and juridical flexibility and usefulness of *amicitia* were brilliantly described by the American Erich Gruen.¹⁹

Bruno Paradisi studied the further evolution of the concept of *amicitia* in Byzantine, Roman-Germanic and Western European treaty practice until the twelfth century. He concluded that the original function of *amicitia* as the precondition to any kind of interstate relationship gradually became superfluous. The concept consequently lost its broad and flexible meaning. Instead, the contents of *amicitia* were increasingly determined by the treaty stipulations that referred to it.²⁰ *Amicitia* became a more technical legal concept from treaty law and practice.²¹

Three main characteristics of the Roman concept of *amicitia* can be deduced from all this. Firstly, *amicitia* originally was the general condition that marked the starting point of any relationship between two independent political entities. In that way, it was the precondition to all interstate, peaceful and juridical relations. Secondly, *amicitia* could be brought about by any expression of the will to sustain peaceful relations. Thirdly, *amicitia* came down to a mutual favourable attitude and the prohibition to cause any damage to each other, more specifically, by giving aid to each other's enemies. More generally, it referred to the mere existence of a common juridical order.

***Amicitia* in Renaissance Peace and Alliance Treaties**

The treaty practice of the Renaissance is most interesting for the study of a juridical concept that concerns the very foundations of the European legal order. The second half of the fifteenth century and the first decades of the sixteenth century were marked by the conflict between the old, medieval idea of Europe as the political and ideological

¹⁷ J. Plescia, "The *ius pacis* in Ancient Rome", *Revue internationale des droits de l'antiquité*, 3rd series, 41 (1994) pp. 324-325. Ziegler held the opinion that the connection between the two concepts had to be understood in the context of Roman imperialism. Ziegler, "Völkerrecht der römischen Republik", p. 88.

¹⁸ Cimma, *Reges socii et amici*, p. 96 and pp. 331-336.

¹⁹ Gruen, *The Hellenistic World and the Coming of Rome*, pp. 54-95.

²⁰ "Mais passer de la première forme à la seconde signifiait changer profondément la nature de l'amitié. Elle devint en effet de la sorte, une expression apte à indiquer certains des buts que le traité se proposait et qui, par ce terme, étaient rappelés dans leur ensemble comme désormais la coutume les avait formés", Paradisi, "L'amitié internationale", p. 368.

²¹ Paradisi, "L'amitié internationale", 367-377; idem, "L'*amicitia* nella storia antica", pp. 330-338; idem, "L'*amicitia* internazionale nell'alto medio evo", pp. 348-397.

unity of the *respublica christiana* and the emerging reality of the sovereign prince. The early 1500s were overshadowed by the conflict between the house of Habsburg and the house of Valois over the hegemony in Europe. The period starts with the end of the Hundred Years' War and the re-emergence of France as a leading power in 1453 and ends with the consolidation in 1530 of Spanish hegemony in the heartland of the strife: Italy.

The treaties that are studied were selected using a juridical neutral criterion. At least one of the major players of those days – France, Spain, the emperor, England or Burgundy – should be involved. From the treaties which then remained, were selected those thirty agreements that were politically the most important.²² The peace of Lodi, the alliance of Venice and the peace of Bagnolo that included the five leading Italian powers were selected too.²³ Eight of the seventeen peace treaties also include an alliance

²² On diplomatic history as it concerns these treaties: X. Liske, "Der Congres zu Wien im Jahre 1515", *Forschungen zur deutschen Geschichte*, 7 (1867) pp. 463-558; P. Schweizer, "Die Verträge von Blois vom 22. September 1504", *Forschungen zur deutschen Geschichte*, 19 (1879) pp. 1-30; H. Heidenheimer, "Zu den Verträgen von Blois vom 22. September 1504", *Forschungen zur deutschen Geschichte*, 20 (1880) pp. 617-623; M. Mignet, *Rivalité de François Ier et de Charles-Quint*, 2 Vol., Paris 1886; A. Schneller, *Der Brüssler Friede von 1516* (Historische Studien 83) Berlin 1910; G. Soranzo, *La lega italiaca (1454-1455)*, Milan 1924; G. Mattingly, "An Early Non-Agression Pact", *The Journal of Modern History*, 10 (1938) pp. 1-30; G. Nebbia, "La lega italiana del 1455: sua vicende e sua rinnovazione nel 1470", *Archivio Storico Lombardo*, new series, 4 (1939) pp. 115-135; R. Cessi, "La 'lega italiana' e la sua funzione storica nella seconda metà del sec. XV", *Atti del Reale Istituto Veneto di Scienze, Lettere ed Arti*, 102 (1943) pp. 99-176; J.M. Doussinague, *La política internacional de Fernando el Católico*, Madrid 1944; Y. Labande-Mailfert, "Trois traités de paix, 1492-1493", *Le Moyen Age*, 60 (1954) pp. 379-401; V. Ilardi, "The Italian League, Francesco Sforza and Charles VII (1454-1461)", *Studies in the Renaissance*, 6 (1959) pp. 129-166; G. Pillinini, *Il sistema degli stati italiani 1454-1494*, Venezia 1970; M. Mallett, "Diplomacy and War in later fifteenth-century Italy", *Proceedings of the British Academy*, 67 (1981) pp. 275-288; idem, "France and Milan: the Uneasy Alliance, 1452-1466" in *Gli Sforza a Milano e in Lombardia e i loro rapporti con gli stati italiani ed europei (1450-1530)*, Milan 1982, pp. 415-446; J. Dickinson, *Peacemaking in the Renaissance*, Philadelphia 1986, pp. 93-132; J. R. Hale, *Renaissance Europe 1480-1520*, London 1986, pp. 87-100; N. Rubinstein, "Das politische System Italiens in der zweiten Hälfte des 15. Jahrhunderts", *Zeitschrift für historische Forschung. Beihefte*, 5 (1988) pp. 105-119; R.J. Knecht, *Renaissance Warrior and Patron: The Reign of Francis I*, Cambridge 1994, pp. 62-87 and pp. 165-290; A. Kohler, *Karl V. 1500-1558, eine Biographie*, München 2000.

²³ As a peace treaty is considered a treaty that actually ends a war. As an alliance treaty is considered a treaty that prepares or organizes the partners involved for a war that is already going on or that could start. There are also treaties which imply both peace and alliance agreements. The peace treaties studied in this article are: treaty of Lodi of 9 April 1454 (published in J. Dumont, *Corps universel diplomatique du droit des gens* Vol. 3-1, Amsterdam 1726, pp. 202-206, further referred to as Dumont); treaty of Arras of 23 December 1482 (Dumont Vol. 3-2, pp. 100-107); treaty of Bagnolo of 7 August 1484 (peace and alliance, Dumont Vol. 3-2,

agreement. In at least five of them this was much more the expression of a vague intention than a real alliance imposing specific obligations on the treaty partners.²⁴

In all but four peace treaties references to *amicitia* are included. The exceptions are the Milanese-Venetian peace of Lodi of 1454, the Burgundian-French peace of Arras of 1482, the Ladies Peace of Cambrai of 1529 and the peace and alliance treaty of Bologna of 1529/1530 between the emperor and the pope. These include three of the eight mere peace treaties. In the case of two of the other five – the treaties of Blois of 1504 and of Cambrai of 1508 – a separate alliance treaty supplemented the peace treaty. Six of the fifteen analysed alliances do not refer to *amicitia* either. Those include the both leagues of Venice of 1454 and 1495, the Burgundian-Milanese alliance of 1475, the two anti-Venetian leagues of Blois of 1504 and of Cambrai of 1508 and the anti-Spanish alliance of Cognac of 1526. It is no coincidence that these six treaties all

pp. 128-134); treaty of Etaples of 3 December 1492 (Dumont Vol. 3-2, pp. 291-296); treaty of Barcelona of 19 January 1493 (peace and alliance, Dumont Vol. 3-2, pp. 297-302); treaty of Senlis of 23 May 1493 (Dumont Vol. 3-2, pp. 303-310); first treaty of Blois of 22 September 1504 (published in P. Mariño and M. Moran, eds., *Tratados Internacionales de España. Carlos V* Vol. 3-1, Madrid 1982, pp. 52-64, further referred to as Mariño); first treaty of Cambrai of 10 December 1508 (Mariño Vol. 3-1, pp. 175-201); treaty of London of 23 March 1510 (peace and alliance, Dumont vol 4-1, pp. 125-127); treaty of London of 7 August 1514 (peace and alliance, Dumont Vol. 4-1, pp. 183-188); treaty of Noyon of 13 August 1516 (peace and alliance, Mariño Vol. 3-2, Madrid 1984, pp. 77-164); treaty of Brussels of 3 December 1516 (Mariño Vol. 3-2, pp. 165-180); treaty of Madrid of 14 January 1526 (peace and alliance, Mariño Vol. 3-3, Madrid 1986, pp. 122-177); treaty of Barcelona of 29 June 1529 (Dumont Vol. 4-2, pp. 1-7); first treaty of Cambrai of 5 August 1529 (Dumont Vol. 4-2, pp. 7-17); second treaty of Cambrai of 5 August 1529 (peace and alliance, Dumont Vol. 4-2, pp. 42-48); treaty of Bologna of 23 December 1529/3 March 1530 (peace and alliance, Dumont Vol. 4-2, pp. 53-58). The alliance treaties are: treaty of Venice of 30 August 1454 (Dumont Vol. 3-1, pp. 221-224); two treaties of Westminster of 25 Juli 1474 (Dumont Vol. 3-1, pp. 485-486 and pp. 486-487); treaty of Moncalieri of 30 January 1475 (Dumont Vol. 3-1, pp. 496-497); treaty of Medina del Campo of 27 March 1489 (Dumont Vol. 3-2, pp. 219-224); three treaties of Woking between the later emperor Maximilian I (1493-1519) and England of 11 and 12 September 1490 (Dumont Vol. 3-2, pp. 254-256 and pp. 256-258; the third one published in Luis Suarez Fernandez, *Política internacional de Isabel la Católica. Estudios y documentos* Vol. 3, Valladolid 1969, pp. 210-216, further referred to as Suarez); treaty of Venice of 21 March 1495 (Suarez Vol. 4, Valladolid 1971, pp. 327-347); anti-Venetian league of Blois of 22 September 1504 (Mariño Vol. 3-1, pp. 70-94); anti-Venetian league of Cambrai of 10 December 1508 (Mariño Vol. 3-1, pp. 202-243); treaty of Malines of 4 April 1513 (Dumont Vol. 4-1, pp. 173-175); marriage agreement and alliance treaty of Paris of 24 March 1515 (Mariño Vol. 3-2, pp. 3-72); treaty of London of 19 October 1516 (Dumont Vol. 4-1, pp. 240-245); treaty of Cambrai of 11 March 1517 (Mariño Vol. 3-2, pp. 181-214); treaty of London of 2 October 1518 (Mariño Vol. 3-2, pp. 215-235); league of Cognac of 22 May 1526 (Dumont Vol. 4-1, pp. 451-455).

²⁴ The exceptions were the Bagnolo peace treaty of 1484 and the London treaties of 1510 and 1514.

contained relatively detailed agreements on military assistance and/or war aims and eventually the partition of the spoils. With a partial exception for some of the powers involved in the two anti-Venetian leagues of 1504 and 1508, the treaties did not alter the relations between the powers involved fundamentally, but were the consequence of an already existent objective alliance and only built further on mutual interests that were already present, however recently.

The alliance treaties of Medina del Campo between Spain and England of 1489, of London between France and England of 1510 and of Paris between Spain and France of 1515 contained references to *amicitia*. In these treaties mutual military assistance was agreed upon. Each of these treaties were signed shortly after the coming to power of a new prince or even a new dynasty in at least one of the kingdoms concerned. The treaties thus inaugurated peaceful and friendly relations between princes who had not or hardly dealt with one another before over political matters of the utmost importance. The treaty of Westminster of 1474 between England and Burgundy was an offensive alliance with very detailed stipulations and was similar to the six treaties without references to *amicitia*. The Westminster agreements consisted in fact of two separate treaties, the first holding a general promise of *amicitia*, the other elaborating on the military agreement. The alliance of Woking of 1490 between the later emperor Maximilian I and Henry VII of England (1485-1509) was also a set of several treaties. The first contained the general outlines of the alliance agreement and the second concerned the execution of the offensive against France planned by the two princes.

The treaties of Malines of 1513, of London of 1516 and 1518 and of Cambrai of 1517 were holy leagues and ought to unite all the main European powers and to restore peace within the *respublica christiana*. Inasmuch as they were presented as anti-Turkish and holy alliances, they were declarations of a goodwill to sustain peaceful relationships and not effective alliances.²⁵

²⁵ These alliances were all originally bi- or trilateral agreements. The parties invited other powers to join the alliance. Notwithstanding the fact that they were holy leagues, these alliance agreements also contained specific military stipulations only binding the original signatories. The treaty of Malines was signed by England, the pope and Maximilian. They invited Ferdinand of Aragon (1474-1516) to join the league. It was actually aimed at France: treaty of 5 April 1513, preamble and Art. 2 (Dumont Vol. 4-1, p. 173). "Eruntque iidem Confoederati, & eorum quilibet non defensionibus ac tuitionibus Sanctae Romanae Ecclesiae ac Personarum & Statuum suorum, eorundemque Haeredes & Successores, necnon Imperii, Regnorum, Patriarum, & Dominiorum jam per ipsos aut eorum aliquem possessorum, aut postea Jure Belli vel quovis alio modo recuperandorum aut possidendorum, contra praesatum Ludovicum Francorum Regem communem eorum Hostem ... non solum sibi invicem Amici, sed etiam Amicorum Amici, & Inimicorum Inimici, sine exceptione quacumque", Art. 2 (Dumont Vol. 4-1, p. 173). The 1516 treaty of London was signed by the later emperor, Charles V (1519-1555) and Henry VIII (1509-1547). The pope and the Swiss confederation, as well as each Christian prince, were invited to join. In fact it was once again an anti-French alliance: treaty of 19 October 1516, preamble, Art. 1, 2, 3, 4, 6 and 7 (Dumont Vol. 4-1, pp. 240-242). The treaty of London of 1518 lived more up to its anti-Turkish character. The 1518 treaty of London was a reply to the unilateral papal decision to proclaim a five years truce in Europe to facilitate a crusade, bull of 6 March 1517 (published in

These conclusions on the absence and presence of any references to *amicitia* in alliance treaties, already show that *amicitia* still was a broad concept and that it still indicated the intention to develop peaceful relations.

References to the concept of *amicitia* are to be found in the preambles and the main articles of peace and alliances treaties. The word *amicitia* was used in the enumerations of terms which indicated the general condition and relationship that was brought about by the peace or alliance treaty. In peace treaties it appeared among other terms and concepts such as *alliance*, *concordia*, *confoederatio*, *foedus*, *fraternitas*, *intelligence*, *liga*, *pax* and *unio*.²⁶ The same terms were used in alliance treaties.²⁷

E. Charrière (ed.), *Négociations de la France dans le Levant ou Correspondance, Mémoires et Actes diplomatiques* (Collection des Documents inédits sur l'histoire de la France, 1st series, Vol. 66), Paris 1840, pp. 63-68. Originally it included France and England. Charles V ratified the treaty on 19 January 1519. See: Mariño Vol. 3-2, pp. xxxviii-lx.

²⁶ "... inter Partes ipsas ... vera Pax, firma Concordia, integra & fidelis Amicitia ...", treaty of Bagnolo of 7 August 1484, Art. 1 (Dumont Vol. 3-2, p. 129); "Pax, Amicitiae, & Foedera ...", treaty of Etaples of 3 December 1492, Art. 1 (Dumont Vol. 3-2, 292); "... bonam, veram, puram, integram & perfectam Ligam, Confoederationem, Concordiam, & inseparabilem Amicitiam ...", treaty of Barcelona of 19 January 1493, Art. 1 (Dumont Vol. 3-2, p. 298); "... bonne Paix, Union, Alliance, & Amitié ...", treaty of Senlis of 23 May 1493, Art. 1 (Dumont Vol. 3-2, p. 304); "... bona, vera, segura, fidelis, sincera atque perpetua pax, unio, amicitia, fedus et confederacio ...", treaty of Blois of 22 September 1504, preamble (Mariño Vol. 3-1, p. 58); "... unam bonam, veram, sinceram et indissolubilem inter se fraternitatem, fedus et confederationem et amicitiam ...", Art. 1 (Mariño Vol. 3-1, p. 58); "... una bona, vera, fidelis, legalis, sincera ac indissolubilis pax, unio, amicitia, liga, fraternitas et confederacio ...", treaty of Cambrai of 10 December 1508, Art. 1 (Mariño Vol. 3-1, p. 180); "... bonae, cincerae, firmae, & perfectae sint ... Pax, Amicitia, Foedera, & Concordia ...", treaty of London of 7 August 1514, Art. 1 (Dumont Vol. 4-1, p. 183); "... bonne, seure, vraye, loyalle et indissoluble amictié, unyon, fraternité, intelligence, confederacion et alliance perpetuelle ...", treaty of Noyon of 13 August 1516, Art. 1 (Mariño Vol. 3-2, p. 87); "... bonne, seure, vraye, loyalle et indissoluble paix, amitié, fraternité, confederacion et alliance perpetuelle ...", treaty of Brussels of 3 December 1516, Art. 1 (Mariño Vol. 3-2, pp. 168-169); "... sea y se entienda ser estableçida, concluyda e confirmada perpetuamente y para syempre jamás, buena, entera y segura paz, amistad, aliança, unión, ynteligencia, confederación e verdadera hermandad ...", treaty of Madrid of 14 January 1526, Art. 1 (Mariño Vol. 3-3, p. 130); "Pax, Unio, Amicitia, Intelligentia, Liga, & Confederatio ...", treaty of Barcelona of 29 June 1529, Art. 1 (Dumont Vol. 4-2, pp. 2-3); "... bona, sincera, vera, integra, perfecta, & firma Amicitia, Liga, Confoederatio, Pax & Unio ...", second treaty of Cambrai (between Charles V and England) of 5 August 1529, Art. 1 (Dumont Vol. 4-2, p. 43).

²⁷ "... sit bona, sincera, vera, integra, perfecta, firma, sancta, & perpetua Pax & Amicitia, Liga, Confoederatio, & Unio ...", first treaty of Westminster of 11 September 1490, Art. 1 (Dumont Vol. 3-2, p. 254); "... bona, realis, sincera, vera, integra, perfecta, & firma Amicitia, Concordia, Liga, Unio, Confoederatio, & Pax ...", treaty of Medina del Campo of 27 March 1489, Art. 1 (Dumont Vol. 3-2, p. 219); "... sit una vera, firma, & inviolabilis Pax & Amicitia ...", first treaty of Woking of 11 September 1490, Art. 1 (Dumont Vol. 3-2, p. 254); "... bonae, sincerae, firmae, perfectae sint & inviolabiliter habeantur & observentur Pax, Amicitia, & Foedera ...", treaty of

The use of the subjunctive or the future indicates the intention of the parties involved to bring about the condition of, e.g., *alliance*, *amicitia* or *pax*. It shows that these words are not meant to point at the treaty itself, but at the condition determined by the treaty. This is confirmed by some of the preambles in which is stated that the treaty is made to attain the condition of *alliance*, *amicitia*, *pax* etc.²⁸ In the treaties of Malines of 1513, Paris of 1515 and Cambrai of 1517 one refers to an already existent condition of friendship that is to be strengthened by the new treaty.²⁹ In the Cambrai treaty the existent condition is said to be brought about by the previous peaces of Noyon and Brussels.³⁰

The term *pax* is the most common word referring to the condition of peace. *Alliance*, *confoederatio*, *liga* and *unio* refer to the condition of alliance. *Concordia*, *fraternitas*, *intelligence* have a more general meaning just as *amicitia* has. The use of the word *pax* is not restricted to peace treaties.³¹ The fact that it is used in alliance treaties in an enumeration together with terms as *liga* and *unio* does not mean it has the same implications as those. The fact that there has not been a war, does not prevent the condition of peace to be accentuated. The use of the words referring to alliance is not restricted to treaties that actually constitute an alliance.³² The treaties concerned radiate a willingness for lasting understanding and peaceful relations. Anyway, the use of these terms is from a strictly juridical point of view incorrect and indicates that the terms were loosely chosen and easily confused.

London of 23 March 1510, Art. 1 (Dumont Vol. IV-1, p. 125); "... perpetua, bona, pura, sincera, vera, integra, fidelis, perfecta, & firma Amicitia, Unio, Liga, Confoederatio & Pax ...", treaty of Malines of 5 April 1513, Art. 2 (Dumont Vol. IV-1, p. 173); "... pour l'introduction, fondement perpetuelle et indissolue suerté d'icelle amitié, alliance, union et intelligence ...", first treaty of Paris of 24 March 1515, preamble (Mariño Vol. 3-2, p. 6); "... une ferme, entiere, seure et parfaicte union, intelligence, confederacion et amitié ...", second part, Art. 1 (Mariño Vol. 3-2, p. 14); "... bona, sincera, vera, integra, fidelis, perfecta, & firma Amicitia, Unio, Liga, Intelligentia, Confoederatio, & Pax ...", treaty of London of 19 October 1516, Art. 1 (Dumont Vol. IV-1, p. 240); "... sit bona, sincera, vera, integra, perfecta, fidelis et firma amicitia, unio, liga, intelligentia, confoederatio et pax ...", treaty of London of 2 October 1518, Art. 1 (Mariño Vol. 3-2, p. 221).

²⁸ "... pro firma Pace, fideli Amicitia & vera Concordia ...", treaty of 23 March 1510, preamble (Dumont Vol. 4-1, p. 125); "... pro firma Pace, fideli & Amicitia & vera Concordia inter eundem Potentissimum & Christianissimum Regem nostrum & praesatum Illustrissimum Principem Henricum Angliae Regem eorumque Alligatos, Confoederatos, & Subditos ...", treaty of 7 August 1514, preamble (Dumont Vol. 4-1, p. 183).

²⁹ Treaty of Malines of 4 April 1513, Art. 1 (Dumont Vol. 4-1, p. 173); "... d'avoir ledit Seigneur Prince, ses pays et subjectz en bonne amour, amitié et intelligence, et pour fondement, seurté et perpetuel lyen d'icelle amitié, lui donner et accorder à mariage ...", first treaty of Paris of 24 March 1515, preamble (Mariño Vol. 3-2, p. 5).

³⁰ Treaty of Cambrai of 11 March 1517, preamble (Mariño Vol. 3-2, pp. 185-186).

³¹ It is used, e.g., in the alliance treaties of Westminster, Medina del Campo and Woking.

³² Peace of Arras, of Etaples, of Senlis, of Noyon and of Brussels.

This confusion allows for the conclusion that the specific contents of each term were not strictly determined and that the stipulations of each treaty could alter its implications. This applied as much to *amicitia* as to other terms. Consequently we do not aim at examining the exact implication of *amicitia* in each single treaty. Our aim is to determine the general implications of *amicitia* as they came forward out of the analysis of all the studied treaties. For that reason, no further distinction should be made between peace and alliance treaties.

Before we come to this analysis, it is necessary to point out that references to *amicitia* are to be found yet in other clauses than in those indicating the kind of relationship that was brought about by the treaty. In many treaties a provision was made that each party could include its allies into the treaty. In a distinct article the parties nominated the powers they wanted to be included in the treaty as allies or provided for the possibility to do so later on.³³ These inclusion clauses have not been studied for the Late Middle

³³ Treaty of Lodi of 9 April 1454, Art. 6-10 and 30-31 (Dumont Vol. 3-1, p. 203 and p. 205); treaty of Venice of 30 August 1454, Art. 9-11 (Dumont Vol. 3-1, pp. 222-223); treaty of Bagnolo of 7 August 1484, Art. 1-2 (Dumont Vol. 3-2, pp. 128-129); treaty of Medina del Campo, Art. 11 (Dumont Vol. 3-2, p. 222); treaty of Etaples of 3 December 1492, Art. 12 (Dumont Vol. 3-2, p. 294); treaty of Senlis of 23 May 1493, Art. 17-18 and 33 (Dumont Vol. 3-2, p. 305); treaty of Venice of 21 March 1495, Art. 7 (Suarez Vol. 4, p. 332); “Item, conventum est, quod predicti serenissimi et excellentissimi Romanorum, Franciae et Castellae reges poterunt infra tres menses a die pacis factae numerandos suos confederatos, quos in hac pace intelligunt esse comprehensos alter alteri nominare, et ex nunc prefatus Christianissimus Francorum rex declarat et nominat pro suo primo et precipuo confederato Sanctissimum Dominum Nostrum Julium II Papam modernum ...”, peace treaty of Blois of 22 September 1504, Art. 7 (Mariño Vol. 3-1, pp. 62-63); anti-Venetian league of 22 September 1504, Art. 12 (Mariño Vol. 3-1, p. 74); treaty of London of 23 March 1510, Art. 10 (Dumont Vol. 4-1, p. 126); treaty of London of 7 August 1514, Art. 23 (Dumont Vol. 4-1, p. 186); “En cest amitié sont compris les allyez, amis et confederez de chacun des dits Seigneurs Roy et Prince, lesquelz endedens six mois s’ilz y veulent estre comprins, seront tenuz en faire declaracion par leurs lectres patentes et les envoyer à icellui quy les aura denommez pour le faire savoir à l’autre, lesquelz allyez, amis et confederez seront nommez dedens huyt jours par chacun des dits allyez, amis et confederez estoient reffuzans ou delayans de baillier leurs lectres declaratoires de l’acceptacion d’icelle amitié endedens le temps dessus dit, ou après les avoir baillez, feissent quelque chose contraire et au prejudice d’icelle amitié, en ce cas ilz seront fourcloz du benefice de ladite amitié; ladite amitié néanmoins quant aus dits Seigneurs Roy, Prince et autres denommez qui l’entretiendront, demeurant en sa force et vigueur”, second treaty of Paris of 24 March 1515, Art. 2 (Mariño Vol. 3-2, pp. 15-16); treaty of Noyon of 13 August 1516, Art. 3 (Mariño Vol. 3-2, pp. 88-90); treaty of London of 19 October 1516, Art. 6 (Dumont Vol. 4-1, p. 242); treaty of Brussels, 3 December 1516, Art. 3 (Mariño Vol. 3-2, p. 170); treaty of London of 2 October 1518, Art. 10 (Mariño Vol. 3-2, p. 226); “Item, que en esta paz, amistad y alianza, de acuerdo y consentimiento de los dichos Señores Emperador y Rey Christianísimo, serán comprehendidos, sy lo quisieren ser, primeramente nuestro muy Sancta Padre el Papa y la Sancta Sede Apostólica, los Reyes de Inglaterra y de Ungria, de Polonia, de Dinamarca, de Portugal y de Escoçia, el muy alto e muy poderoso Príncipe Don Herando, Ynfante de España, Archiduque de Austria, Duque de Vierterberga, Conde de Tirol, ..., Madama

Ages and the Early Modern times, except for the Italian treaty practice of the fifteenth century.³⁴ The exact consequences of the inclusion are not as yet established by modern scholarship. It can however be assessed that the nominated allies were not always expected to ratify the treaty itself, but that their acceptance or ratification of the nomination could do.³⁵ It also goes without saying that not all the detailed stipulations of treaties could be applied to the nominated allies without further negotiations. This argument is confirmed by the distinction made in some treaties between parties who later on joined the treaty as full partners and nominated allies.³⁶

The precise involvement of the nominated allies could be different in each distinct treaty. But there were always minimal consequences to being included in the treaty as nominated ally. For this study, it is not that important that those nominated allies were often referred to as *amici*.³⁷ This is a mere reference to the condition of *amicitia* already

Margarita, ... los electores y otros príncipes del Imperio ..., los señores de las antiguas ligas y cantones de las Altas Alemañas, con los otros que dentro de seys meses después de la publicación desta presente capitulación se podrán de común consentimiento nombrar y comprehender ...”, treaty of Madrid, 14 January 1526, Art. 43 (Mariño Vol. 3-3, pp. 169-170); treaty of Cognac of 22 May 1526, Art. 20 (Dumont Vol. 4-1, p. 454); first treaty of Cambrai of 5 August 1529, Art. 43-45 (Dumont Vol. 4-2, pp. 12-13); second treaty of Cambrai of 5 August 1529, Art. 11 (Dumont Vol. 4-2, p. 44); treaty of Bologna of 23 December 1529 – 6 March 1530, Art. 14-15 (Dumont Vol. 4-2, p. 56).

³⁴ G. Soranzo, “Colligati, raccomandati, aderenti negli Stati italiani dei secoli XIV e XV”, *Archivio Storico Italiano*, 99 (1941) pp. 3-35. Some relevant remarks on it in N. Rubinstein, “Das politische System Italiens in der zweiten Hälfte des 15. Jahrhunderts”, *Zeitschrift der Historische Forschung. Beihefte*, 5 (1988) pp. 108-109.

³⁵ “Item quod quaelibet partium praedictarum teneatur infra terminum mensium duorum inchoandorum à die celebrationis praesentis Contractus in scriptis nominare suos Colligatos, Adhaerentes, Recommendatos, complices, & sequaces; qui quidem sic nominandi infra terminum quatuor mensium numerandorum à die stipulationis praesentis Contractus ratificasse, & praedictam denominationem approbasse teneantur, quo casu beneficio presentis unionis gaudere possint, aliter non ...”, treaty of Venice of 30 August 1454, Art. 9 (Dumont Vol. 3-1, p. 222). Other examples of ratification of nomination: treaty of Paris of 24 March 1515, Art. 15 (Mariño Vol. 3-2, pp. 15-16); treaty of London of 2 October 1518, Art. 13 (Mariño Vol. 3-2, pp. 268-269). Ratification of the treaty: treaty of London, 19 October 1516, Art. 6 (Dumont Vol. 4-1, 242).

³⁶ Treaty of Medina del Campo of 27 March 1489, Art. 11-12 (Dumont Vol. 3-2, p. 222); treaty of London of 2 October 1518, Art. 1, 11-13 (Mariño Vol. 3-2, p. 221 and pp. 226-228); first treaty of Cambrai of 5 August 1529, Art. 43 (Dumont Vol. 4-2, p. 12). For more corroboration of these arguments, see R. Lesaffer, “Tussen *respublica christiana* en *ius publicum europaeum*: de ontwikkeling van de Europese rechtsordening in alliantieverdragen van de vroege Nieuwe Tijd (1450-1600)” in B. Jacobs (ed.), *De rechtspraktijk in beeld. Van Justinianus tot de Duitse bezetting*, Tilburg 1997, pp. 110-118.

³⁷ Other terms were *alligati*, *colligati*, *adhaerentes*, *recommendati*, *confoederati*, *alliez*: treaty of Bagnolo of 7 August 1484, Art. 1 (Dumont Vol. 3-2, p. 129); “... omnes subditi, vasalli, amici

existing between the nominating and the nominated power. It could be rewarding to examine whether these relations were always founded on a treaty or not, but this transcends the scope of this article.

The fact that it was often stipulated that the conditions of *amicitia*, *pax* or alliance would apply to the nominated *amici* and allies as well as to the main parties is much more fundamental.³⁸ Since only general obligations could automatically and generally be applied to the nominated allies, these references underline the general character of *amicitia* as a juridical concept having legal consequences, however vague, independent of the actual treaty provisions.

To assess the contents and the function of *amicitia* as a legal concept it is necessary to look for the general explanations and stipulations on *amicitia* that can be found in both the peace and alliance treaties. Before doing that, it might be interesting to take a closer look at the first of the two Westminster alliance treaties of 25 July 1474 between Eduard IV of England (1461-1483) and Charles the Bold (1467-1477), duke of Burgundy. As mentioned before, the alliance agreement was laid down in two main instruments, the first with some general stipulations about the relationship established by the treaty and the second with detailed regulations for an offensive, anti-French alliance.

In the first article of the first treaty it is declared that from now on there will be “Pax & Amicitia, Liga, Confoederatio, & Unio, per Terram, Mare, & dulces Aquas, omni aevo atque tempore duratura, inter eos, eorumque Haeredes, Successores, Regna, Patrias, Dominia, Vasallos, & Subditos quoscumque praesentes, & futuros, quam Seculares,

et confederati utriusque partis ...”, peace treaty of Cambrai of 10 December 1508, Art. 3 (Mariño Vol. 3-1, p. 181); “... Amici, Alligati, & Confoederati ...”, treaty of London of 23 March 1510, Art. 10 (Dumont Vol. 4-1, p. 126); treaty of London of 7 August 1514, Art. 23 (Dumont Vol. 4-1, p. 186); “... en cette amictié et confederacion seront compris les amys, alliez et confederez de chacun des dicts Seigneurs Roys ...”, treaty of Noyon, Art. 3 (Mariño Vol. 3-2, p. 88); “... quod in praesenti tractatu pacis et amicitiae comprehendantur amici, alligati et confoederati omnium partium ...”, treaty of London of 19 October 1518, Art. 10 (Mariño Vol. 3-2, p. 226).

³⁸ It was said that the conditions were meant “... per se, soi Colligati, Adherenti, Confederati, complici, sequaci, Recomendati, Subditi & Soldati ... Intendano che le dicte parte, & subditi loro, & soi Colligati, Adherenti & Recomendati & seguaci inclusi en la presente Pace, debbiano ... vivere etc., & vicinar insieme amichevolmente, fraternamente come se suol fare, & se fatto per lo passato ...”, treaty of Lodi of 9 April 1454, preamble (Dumont Vol. 3-1, p. 202). “... e per tutti li loro Fioli, Heredi, & Successori, Colligati, Adherenti, & Reccomendati, Complici, & Sequaci, Soldati, & Subditi ...”, treaty of Bagnolo of 7 August 1484, Art. 1 (Dumont Vol. 3-2, p. 128); “... pro se et successoribus suis canonice ... suisque adherentibus commendatis et subditis ...”, treaty of Venice of 21 March 1495, Art. 1 (Suarez Vol. 4, p. 329); treaty of London of 7 August 1514, preamble (Dumont Vol. 4-1, p. 183). The stipulations quoted in note 30 amount to much the same.

cujuscumque gradus & conditionis existant”.³⁹ The quote indicates that the conditions determined by the treaty would be valid anywhere and for all subjects of both parties.

The second article elaborates on the rights and obligations of the subjects of both princes. Three elements are agreed upon. Firstly, the subjects of both princes will treat each other favourably. Secondly, they will obtain the right to travel to and from the lands of the other monarch and can move about their goods. Thirdly, the parties agree that subjects of the treaty partner are entitled to appeal to the same laws and courts as their own subjects.⁴⁰

In the third article the king of England and the duke of Burgundy promised to include each other in every *confoederatio* or alliance treaty they would make with a third party in the future.⁴¹ The fourth and last article contained two stipulations. Firstly the promise not to render any aid to all the known enemies of the other party.⁴² And secondly the promise to assist each other in case of need with as much armed men as was needed and feasible.⁴³

³⁹ “There will be Peace & Friendship, League, Alliance, & Unity, on land, sea and on the rivers, for all times, between themselves and their heirs, successors, their realms, fatherlands, dominions, vassals, & all their subjects, present and future, secular and of all ranks and postures.” Dumont Vol. 3-1, p. 485.

⁴⁰ “Item, quod omnes utriusque Principis Vassalli & Subditi ubivis locorum sibi invicem faveant, seseque mutuis officiis prosequantur & honesta affectione pertractent, possintque tute & libere hininde ad Portus, Dominia, & Districtus quoscumque ipsorum Principum citra & ultra Mare accedere, in eis commorari quamdiu volent, & secure abire quotiens duxerint abeundem, cum suis aut conductis vel commodatis Navigiis, Plaustis, Vehiculis, Equis, Armaturis, Mercimoniis, Sarcunilis, Bonis, & Rebus Quibuscumque, absque ullo impedimento, tam in Terra quam in Mari & Aquis dulcibus, quemadmodum propriis in Patriis haec omnia ipsis licerent; ita quo alio nullo salvo conductu generali aut speciali indigeant; salvis tamen semper Regionum, Urbium ac Locorum Legibus, Statibus, & Consuetudinibus, quibus nichil quoad caetera per praemisa censetur derogatum”, Art. 2 (Dumont Vol. 3-1, p. 485).

⁴¹ “Item, quod Serenissimus Dominus Rex, & sui pro tempore Haeredes & Successores, in quibuscumque Confoederationibus, cum quovis Principe, Universitate, Communitate, Societate, aut alia qualibet Persona contrahendis, semper teneantur expresse & nominatim reservare Illustrissimum Dominum Ducem, suosque Haeredes & Successores; & vice versa ...”, Dumont Vol. 3-1, pp. 485-486.

⁴² “Item, conventum & concordatum extitit quod neutra Partium praestabit auxilium, consilium, vel favorem notoriis inimicis, hostibusve alterius Partis per Terram, Mare, vel Aquas dulces ...”, Dumont Vol. 3-1, p. 486.

⁴³ “... sed bonâ fide se mutuis auxiliis Militaribus gentium armatorum adjuvabunt quotiens opus fuerit: in quorum auxiliorum praestatione, quoad numerum attinet armatorum, habenda erit facultatis ratio illius Partis quae de ferenda ope rogabitur seu interpellabitur; ut scilicet, non in pius teneatur quam tunc facere poterit commodè, consideratâ temporis oportunitate ac statu eorum suarum ...”, Dumont Vol. 3-1, p. 486.

This treaty of ‘peace, friendship and alliance’ came down to four obligations: the obligation of the subjects of both parties to treat each other favourably; the obligation to allow each other’s subjects to travel and trade in the own territory and to apply the same laws to them as to the own subjects; the obligation to include each other in all future alliances; the prohibition to aid each other’s enemies. The promise to render mutual military assistance concerned of course more *liga*, *confoederatio* and *unio* than *amicitia* and referred to the offensive alliance treaty that followed.

The question now arises if these stipulations sum up the contents of *amicitia* or if there are any other obligations often to be found in other treaties that are among others described as treaties of friendship.

The stipulations concerning the mutual favourable attitude of the subjects of the treaty parties and the freedom of movement can be found in different peace and alliance treaties.⁴⁴ The peace treaty of Etaples of 1492 stipulated that all contributions and taxes that were imposed on the former enemy during the last thirty years should be abolished and that only the old pre-war trade regulations would be applied.⁴⁵ Similar clauses were included in the English-Spanish 1489 alliance of Medina del Campo⁴⁶ and in the English-French peace and alliance treaty of London of 23 March 1510.⁴⁷ The English-French peace agreement of Etaples of 1492 as well as the 1510 and 1514 peace and alliances treaties of London between the same powers also implied the promise not to arrest one another’s subjects nor to seize their goods by letters of reprisal.⁴⁸ In some treaties the allies of the both parties were included to benefit from this regulation.⁴⁹

⁴⁴ Alliance treaty of Medina del Campo of 27 March 1489, Art. 2 (Dumont Vol. 3-2, p. 221); peace treaty of Etaples of 3 December 1492, Art. 3 (Dumont Vol. 3-2, p. 293); peace and alliance treaty of London of 23 March 1510, Art. 3 (Dumont Vol. 4-1, p. 125); peace treaty of London of 7 August 1514, Art. 4 (Dumont, Vol. 4-1, pp. 183-184); “... par laquelle iceulx Seigneurs Roy et Prince et leurs hoirs s’entreaimeront, cheriront et favoriseront l’un l’autre comme bons parents et amiz ...”, alliance treaty of Paris of 24 March 1515, Art. 1 (Mariño Vol. 3-2, p. 15) (there was no mentioning of a favourable attitude between subjects, though the princes promised that they should cherish and favour each other); peace treaty of Madrid of 14 January 1526, Art. 2 (Mariño Vol. 3-3, pp. 130-131) (in this article the obligation to treat each other favourably is replaced by the prohibition to cause injury; in case of infringement reparation is due); peace and alliance treaty of Cambrai between England and France of 5 August 1529, Art. 1 (Dumont Vol. 4-2, p. 43).

⁴⁵ Treaty of Etaples of 3 December 1492, Art. 4 (Dumont Vol. 3-2, p. 293).

⁴⁶ Art. 2 (Dumont Vol. 3-2, p. 221).

⁴⁷ Over a period of forty-seven years this time; Art. 4 (Dumont Vol. 4-1, p. 125).

⁴⁸ Peace treaty of Etaples of 3 December 1492, Art. 3 (Dumont Vol. 3-20, p. 293); peace and alliance treaty of London of 23 March 1510, Art. 3 (Dumont Vol. 4-1, p. 125); peace treaty of London of 7 August 1514, Art. 4 (Dumont, Vol. 3-2, p. 184); see also the peace treaty of Madrid of 14 January 1526, Art. 2 (Mariño Vol. 3-3, p. 131).

⁴⁹ Peace treaty of Etaples of 3 December 1492, Art. 3 (Dumont Vol. 3-1, p. 293); peace and alliance treaty of London of 23 March 1510, art 3 (Dumont Vol. 4-1, p. 125); peace treaty of London of 7 August 1514, Art. 4 (Dumont Vol. 4-1, p. 184).

The obligation to include each other in future alliances was mentioned in none of the peace treaties. Article 4 of the Barcelona peace and alliance treaty prohibited the conclusion of treaties that were in contradiction to the present one.⁵⁰ Article 4 of the alliance treaty of London of 1516 explicitly prohibited the parties to enter an alliance without the consent of the other one.⁵¹ These stipulations were even more strict than the one in the treaty of Westminster. Article 5 of the treaty last mentioned contained the promise not to cause any damage to each other, not even by way of signing a treaty unfavourable to the ally.⁵² This last clause was quite common.⁵³

The prohibition to offer aid to one another's enemies was the most common. In many treaties, it was stipulated in a more general way than it was in the Westminster treaty. The parties promised not to cause any damage to one another's interests.⁵⁴ In some cases this was supplemented by the prohibition not to render aid to one another's enemies.⁵⁵ Other treaties only mentioned rendering help to the enemy. It was mostly stipulated that parties should not damage each other's interests nor render help to the enemy *be it directly or indirectly*. In some treaties the prohibition not to damage each other nor to help the other's enemies, was stretched to each partner's allies.⁵⁶ Expressions

⁵⁰ Peace and alliance treaty of Barcelona of 19 January 1493, Art. 4 (Dumont Vol. 3-2, p. 298).

⁵¹ Alliance treaty of London of 19 August 1516, Art. 4 (Dumont Vol. 4-1, p. 241).

⁵² Dumont Vol. 4-1, pp. 241-242.

⁵³ Peace treaty of Etaples of 3 December 1492, Art. 6 (Dumont Vol. 3-2, p. 293); peace treaty of Barcelona of 29 June 1529, Art. 1 (Dumont Vol. 4-2, p. 3); peace and alliance treaty of Cambrai (second treaty) of 5 August 1529, Art. 2 (Dumont Vol. 4-2, p. 43).

⁵⁴ Peace treaty of Barcelona of 29 June 1529, Art. 1 (Dumont Vol. 4-2, p. 3).

⁵⁵ Peace treaty of Etaples of 3 December 1492, Art. 6 (Dumont Vol. 3-2, p. 293); peace and alliance treaty of London of 23 March 1510, Art. 6 (Dumont Vol. 4-1, p. 125); peace and alliance treaty of London of 7 August 1514, Art. 7 and 12 (Dumont Vol. 4-1, p. 184); Art. 2-3 of the peace and alliance treaty of Cambrai (second treaty) of 5 August 1529 (Dumont Vol. 4-2, p. 43).

⁵⁶ Peace treaty of Etaples of 3 December 1492, Art. 6 (Dumont Vol. 3-2, p. 293); peace and alliance treaty of London of 23 March 1510, Art. 6 (Dumont Vol. 4-1, p. 125); peace and alliance treaty of London of 7 August 1514, Art. 7 and 12 (Dumont Vol. 4-1, p. 184). Treaties where this was not expressed: the alliance of Medina del Campo of 27 March 1489 only prohibited the rendering of help to France, Art. 5 (Dumont Vol. 3-2, p. 222); "... quod neuter eorum dabit unquam directe vel per indirectum sub quocumque colore, causa aut occasione, que dici aut excogitari possit ulli principi, domino, communitati aut potentatui seu alicui quicumque sit, favorem, opem, auxilium aut subsidium contra et adversus omnes et singulos cuiuscumque status aut conditionis existant eis seu alteri eorum bellum inferentibus ...", peace treaty of Blois of 22 September 1504, Art. 1 (Mariño Vol. 3-1, p. 58); alliance treaty of Paris of 24 March 1515, Art. 1 (Mariño Vol. 3-2, p. 15); alliance treaty of Cambrai of 11 March 1517, Art. 2 (Mariño Vol. 3-2, p. 187); peace and alliance treaty of Madrid of 14 January 1526, Art. 1 (Mariño Vol. 3-3, p. 130); peace treaty of Barcelona of 29 June 1529, Art. 1 (Dumont Vol. 4-2, p. 3); peace and alliance treaty of Cambrai (second treaty) of 5 August 1529, Art. 2-3 (Dumont Vol. 4-2, p. 43).

of willingness to love, cherish and favour each other were frequent.⁵⁷ The princes were said to promise to regard and treat each other as brothers or family. It was common practice in the Middle Ages and early modern times that princes addressed each other as brothers and cousins, without being necessarily that closely related.⁵⁸ The prohibition to help the enemies of the treaty partner was often elaborated upon. Prohibitions to provide the enemy with food and supplies, weapons, artillery, troops, money were stipulated.⁵⁹ Free passage had to be denied as well.⁶⁰

Sometimes it was implied that subjects should not be allowed to cause damage.⁶¹ This indicated that there was a close relationship between the first and the fourth obligation studied here.

⁵⁷ Peace treaty of Barcelona of 29 June 1529, Art. 1 (Dumont Vol. 4-2, p. 3).

⁵⁸ References to *fraternitas* and *consanguinitas* were also common in later Roman, Germanic and Byzantine treaty practice: Paradisi, "L'amicitia internazionale nella storia antica", p. 316; idem, "L'amicitia internazionale nell'alto medio evo", pp. 353-397. "... seront ... bons, vrays et loyaulx frères, confederez et alliez, amys d'amys et ennemis d'ennemis ...", peace and alliance treaty of Noyon of 13 August 1516, Art. 1 (Mariño Vol. 3-2, p. 87); same expression in the peace treaty of Brussels of 3 December 1516, Art. 1 (Mariño Vol. 3-2, p. 169); much the same expression in the alliance treaty of Cambrai of 11 March 1517, Art. 2 (Mariño Vol. 3-2, p. 187); "... s'entreaimeront, cheriront et favoriseront l'un l'autre, comme bons parents et amiz ...", alliance treaty of Paris of 24 March 1515, Art. 1 (Mariño Vol. 3-2, p. 15). Treaties where no references are made to brotherhood or family-bonds: peace and alliance treaty of Madrid of 14 January 1526, Art. 1 (Mariño Vol. 3-3, p. 130). The expression "friends of friends and enemies of enemies" was a *topos* used in alliance treaties that dated from ancient Greek treaty practice, continued during the Roman, Germanic and Byzantine times and the Middle Ages. See E. Baltrusch, *Symmachie und Spondai. Untersuchungen zum griekischen Völkerrecht der archaischen und klassischen Zeit* (8.-5. Jahrhundert v. Chr.), Berlin and New York 1994, pp. 17-68; Gruen, *The Hellenistic World and the Coming of Rome*, pp. 26-27.

⁵⁹ Alliance treaty of Paris of 24 March 1515, Art. 1 (Mariño Vol. 3-2, p. 15); "Mesmement ne donneront passage, ayde, faveur, assistance ou recueil par leurs villes et pays soit de viures, artillerie, gens, argent ou autres choses à celluy ou ceulx qui par invasion pourroient ou vouldroient porter nuysance ou grevance l'un à l'autre directement ou indirectement en quelque manière que ce soit ...", peace and alliance treaty of Noyon of 13 August 1516, Art. 1 (Mariño Vol. 3-2, p. 87-88); peace treaty of Brussels of 3 December 1516, Art. 1 (Mariño Vol. 3-2, p. 169); alliance treaty of Cambrai of 11 March 1517, Art. 2 (Mariño Vol. 3-2, p. 187). In article 6 of the alliance of London of 2 October 1518 the parties agreed that their subjects would not be allowed to serve in the army of each others enemies (Mariño Vol. 3-2, p. 225).

⁶⁰ Alliance treaty of Paris of 24 March 1515, Art. 1 (Mariño Vol. 3-2, p. 15); peace and alliance treaty of Noyon of 13 August 1516, Art. 1 (Mariño Vol. 3-2, p. 87); peace treaty of Brussels of 3 December 1516, Art. 1 (Mariño Vol. 3-2, p. 169); alliance treaty of London of 2 October 1518, Art. 5 (Mariño Vol. 3-2, p. 224); alliance treaty of Cambrai of 11 March 1517, Art. 2 (Mariño Vol. 3-2, p. 187).

⁶¹ Peace and alliance treaty of London of 7 August 1514, Art. 12 (Dumont Vol. 4-1, p. 184).

There was a fifth kind of general stipulation in some peace treaties. It concerned the agreement not to use any kind of violence in case of conflict or of infringements of treaty provisions. Though restricted to peace treaties and consequently not typical of *amicitia*, these arrangements were related to the first two and the fourth stipulation and allow for a better insight in those. It was often laid down that in case of infringement to the treaty only the culprit would be held liable and be punished. More in general, reprisal was excluded. Only when justice was denied to the injured party, could reprisal be considered.⁶² In other treaties parties agreed to solve further differences in court or by way of arbitration.⁶³

It is now possible to draw some conclusions on the juridical implications of *amicitia* as a concept from Renaissance peace and alliance treaties. *Amicitia* amounted to the express declaration by the treaty partners not to damage each other's interests. This mostly encompassed the promise not to give any kind of aid to the enemies of the treaty partner nor to use violence as a way of solving conflicts between the princes involved or their subjects. The promise not to cause any damage to the other party also included restrictions on the *ius pactandi* of each party. Furthermore, the intention to sustain peaceful relations was applied to the subjects of the princes concerned as well as to their allies. These general implications could easily be applied to included allies without the need for negotiations over specifics. Consequently, it seems safe to assess that the general and minimal function of the inclusion of nominated allies was the application of *amicitia*. The inclusion of subjects implied that the rule of law would apply between the princes and their mutual subjects.⁶⁴

Roman and Renaissance *Amicitia*

Amicitia had never disappeared from treaty practice during the Middle Ages.⁶⁵ Nevertheless, a brief look on medieval treaties teaches that references to *amicitia* were rather exceptional during the High and Late Middle Ages and became more common yet again from the Renaissance onwards. After 1530, references – both direct as through

⁶² Peace treaty of Etaples of 3 December 1492, Art. 14 (Dumont Vol. 3-2, p. 294); peace and alliance treaty of London of 7 August 1514, Art. 10-11 (Dumont Vol. 4-1, p. 184); peace and alliance treaty of London of 23 March 1510, Art. 7 and 9 (Dumont Vol. 4-1, p. 125); peace and alliance treaty of Cambrai (second treaty) of 5 August 1529, Art. 5 (Dumont Vol. 4-2, p. 43).

⁶³ Peace treaty of Senlis of 23 May 1493, Art. 2 (Dumont Vol. 3-2, p. 304); peace treaty of Brussels of 3 December 1516, Art. 7 (Mariño Vol. 3-2, p. 173).

⁶⁴ K. Neitmann, *Die Staatsverträge des deutschen Ordens in Preussen 1230-1449. Studien zur Diplomatie eines spätmittelalterlichen deutschen Territorialstaates* (Neue Forschungen zur Brandenburg-Preussischen Geschichte Vol. 6) Cologne and Vienna 1986, pp. 433-434.

⁶⁵ Paradisi, "L'*amicitia* internazionale nell'alto medio evo", pp. 390-397. See on the Early Middle Ages V. Epp, *Amicitia. Zur Geschichte Personaler, Sozialer, Politischer und Geistlicher Beziehungen im frühen Mittelalter* (Monographien zur Geschichte des Mittelalters Vol. 44) Stuttgart 1999, pp. 176-234.

inclusion clauses – were even more frequent. The Renaissance and early modern concept had quite the same contents as *amicitia* had during the period of Roman expansion outside Italy. Of course it was not the necessary precondition to peaceful and juridical relations between political entities that were strangers to each other before.

Nonetheless, the re-emergence of *amicitia* had something to do with its ancient role. During the Renaissance, and especially during the first decades of the sixteenth century, the Latin West was in deep turmoil. Two opposing factors can be discerned. Firstly, these decades were marked by a sharp revival of the old idea of the Latin West as a *respublica christiana*. During the Middle Ages the Latin West conceived of itself as a religious, cultural and to a certain extent political and juridical unity. Though Christian Europe consisted of many more or less autonomous political entities – ranging from powerful territorial kingdoms to small fiefs and towns – they all considered themselves to be part of a universal – read Latin – hierarchical *continuum* under the supreme if theoretical leadership of the Holy Roman emperor and the pope. The spectacular conquests by the Ottoman Turks in the Eastern Mediterranean and the Balkan between 1453 and 1529 revived the idea of a common counteroffensive, a crusade. Peace among the Christian princes was a necessary precondition for such an undertaking. While the spiritual leadership of the pope was more readily accepted, the question who as a *monarcha universalis* and true secular leader of the West would lead this crusade, was not so easily answered. It became one of the factors in the strife between Valois and Habsburgs. Thus, the struggle over the question who would lead the crusade caused the undoing of the endeavour itself.

Secondly, there was the struggle between the two or three leading powers of the period – the Valois and Habsburg-Spanish dynasties – over the hegemony in Italy and the West itself. More generally, the Renaissance saw the emergence of dynastic powers which increasingly challenged the limitations of their freedom of action the old order of the *respublica christiana* still implied. Though it would take to the seventeenth century for the sovereign state really to assert itself, the new reality of the sovereign prince already proved too strong for the old theoretical construct that was the *respublica christiana*. In Italy, the emergence of the embryonic sovereign state preceded the evolution in the rest of Europe by over a century. It helps to explain why the references to *amicitia* became more frequent earlier there than in the rest of Europe.

The revival of the medieval ideal of the *respublica christiana* during the Renaissance, proved to be the last convulsion of the old. The Renaissance itself was still marked by the clash between the old ideal and the new reality. Before 1530 the old order can be said to have been in crisis, but was still more or less in place. After 1530, it broke down fastly. The Reformation was the most important cause for this sudden collapse.⁶⁶

All this helps to explain why references to *amicitia* became so frequent during the Renaissance, and even more in the decades after it. Of course *amicitia* could not have

⁶⁶ R. Lesaffer, “War, Peace, Interstate Friendship and the Emergence of the *ius publicum Europeaeum*” in Ronald Asch, Wulf Eckart Voss and Martin Wrede (eds.), *Frieden und Krieg in der frühen Neuzeit. Die europäische Staatenordnung und die aussereuropäische Welt*, Munich 2001, pp. 106-109.

kept its original, ancient function of inaugurating peaceful and juridical relations. But its new function was not all that different. As the old juridical order was increasingly challenged and crumbled down, it became less natural to sustain peaceful relations based on a law system common to all – the medieval *ius commune*. It was felt to be necessary to express the desire to sustain such relations more frequently than before. It is striking that once the new order of the sovereign state system was finally in place – around 1700 – the express references to *amicitia* as well as the inclusion clauses lost much of their meaning and gradually disappeared.

The Renaissance concept of *amicitia* did not differ a lot from the Roman one as this was assessed by modern scholarship. It had general and minimal implications regardless of the specific contents it could have in a particular treaty. These implications were much alike those of the Roman era. *Amicitia* was frequently referred to in alliance and peace treaties so that it was developed as a concept of treaty practice. Consequently, the understanding of *amicitia* could slightly differ from treaty to treaty. There was a terminological confusion with terms referring to both alliance and to peace – this very last element being rather new.

The question arises if this similarity was due to the study of Roman law during the Middle Ages and the Renaissance. It seems not. Firstly, the scholarly assessment of *amicitia* only dates from the nineteenth and twentieth centuries. The analysis of the concept as summarized above was not known nor to the Romans nor the jurists of the Middle Ages and the Renaissance. There was no doctrine of *amicitia* neither in classical Roman law, nor in the medieval Roman law of the *ius commune*.

Secondly, there were only some very small and in fact quite insignificant fragments, one in the *Corpus Iuris Civilis* and a few in literary Roman texts such as Livy, Caesar, Cicero or Virgil where *amicitia* as an international legal concept was mentioned.⁶⁷

⁶⁷ “In pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium neque foedus amicitiam factum habemus, hi hostes quidem non sunt, quod autem ex nostro ad eos pervenit, illorum fit ...”, D. 50, 15, 5, 2; “... cum proximis civitatibus pacem et amicitiam confirmare ...”, Caesar, *De bello Gallico* I.3; “... indicia societatis populi Romani atque amicitiae ...”, Cicero, *In Verrem* II.ii.35.88; “... hic primus instituta omnium, consuetudinem a maioribus traditam, condicionem amicitiae, ius societatis convellere et commutare ausus est ...”, idem, *In Verrem* II.iii.6.15; “Se per istum erepta Siculis maiorum nostrorum beneficia, ius ipsorum, condicionem societatis, amicitiae, foederum reddidisse ...”, idem, *In Verrem* II.iii.53.123; “... tum vero, ut quaeque nobiscum maxime societate, amicitia, sponsione, pactione, foedere est coniuncta ...”, idem, *Pro Balbo* 29; “... nullum eis ius societatis amicitiaeve erat ... ne a quibus nullam iniuriam acceperant socios populi Romani atque amicos oppugnarent ...”, Livy V.xxxv.5; “Esse autem tria genera foederum, quibus inter se paciscerentur amicitias civitates regesque: unum, cum bello victis dicerentur leges; ubi enim omnia ei qui armis plus posset dedita essent, quae ex iis habere victos quibus multari eos velit, ipsius ius atque arbitrium esse; alterum, cum pares bello aeque foedere in pacem atque amicitiam venirent; tunc enim repeti reddique per conventionem res est, si quarum turbata bello possessio sit, eas aut ex formula iuris antiqui aut ex partis utriusque commodo componi; tertium esse genus cum, qui numquam hostes fuerint, ad amicitiam sociali foedere inter se iugendae coeant; eos neque dicere nec accipere leges; id enim victoris et victi esse ...”, idem XXXIV. lvii.7-9; “... et num prius societas et

According to modern nineteenth and twentieth century scholars, the Livian and Ciceronian quotes indicated that there was a difference between *amicitia*, *societas* and *foedus*. These interpretations were however only the very meager spoils of modern scholarship.⁶⁸ Actually, with the exception of Livy V.xxxv.5 and XXXIV.lvii.7-9, it has to be doubted that these fragments point at the existence of a consciousness of such a difference. It might be more accurate to argue that they pointed at the confusion of terminology.

It is very significant that medieval nor early sixteenth century scholarship made any extensive comments regarding international *amicitia*. As far as I know, there were no comments on the Ciceronian and – even after Livy’s work had come to the foreground thanks to the endeavours of Francesco Petrarca (1304-1374) – Livian fragments either.⁶⁹ It is an important indication that even Nicolò Machiavelli (1467-1527) did not comment on Livy V.xxxv.5 in his *Discorsi*.⁷⁰ This however does not alter the fact that through the *Digest* and through authors as Polybius, Cicero and Livy scholars were aware of concepts as *ius fetiale*, *amicitia*, *societas*, *foedus* and the Roman habit to confuse especially *amicitia* and *societas*.⁷¹ This last element was however not characteristic for Roman law alone. It was also an ancient Greek practice.⁷²

The similarity of Roman and Renaissance *amicitia* was not the result of influence by medieval and Renaissance jurisprudence nor by scholarship in general. There was of course a basic knowledge of Roman concepts, but it took until the nineteenth century

amicitia eis renuntianda esset quam bellum indicendum ...”, idem XXXVI.iii.8; “... si foedus ratum est, si societas et amicitia ex aequo observatur ...”, idem XXXIX. xxxvii.10; “... dic, in amicitiam coeant et foedera iungant ...”, Virgil, *Aeneid* VII.546.

⁶⁸ De Martino, *Storia della costituzione romana*, Vol. 2, pp. 21-22. See also Ziegler, “Völkerrecht der römischen Republik”, p. 86.

⁶⁹ See e.g. Accursius (ca. 1263), *Glossa in Digestum novum* 49,15, 5; Bartolus (1314-1357), *In Primam Digesti Novi Partem Commentaria*; F.de Vitoria (ca. 1480-1546), *Relectio de Iure Belli*, 9 and 51.

⁷⁰ N. Machiavelli, *Discorsi sopra la Prima decade di Tito Livio*.

⁷¹ Ziegler, “Die römische Grundlagen des europäischen Völkerrecht”, *Ius Commune*, 4 (1972) pp. 9-18. This last confusion was not made in medieval and Renaissance treaties. Since Saint Augustin (354-430) *societas* was more used to refer to communities as a whole than to refer to bi- or even multilateral alliances, e.g. Vitoria, *Relectio de potestate civili* 4-5. Though related, the concept of alliance had undergone almost no influence from the *societas* of Roman law. If anything *societas* in Roman treaty practice was what *symmachia* was in Greek treaty practice. On *societas* and *symmachia* in Greek and Roman antiquity: Baltrusch, *Symmachie und Spondai*, pp. 17-91; E. Bickerman, “Remarques sur les droit des gens dans la Grèce classique”, *Revue Internationale des Droits de l’Antiquité*, 3 (1950) pp. 99-116; Dahlheim, *Deditio und societas*, pp. 115-127; K. Tausend, *Amphiktyonie und Symmachie*, Stuttgart 1992, pp. 188-256.

⁷² Gruen, *The Hellenistic World and the Coming of Rome*, p. 69. It was influenced by the clause that stated that both parties would share the same enemies and friends, see Baltrusch, *Symmachie und Spondai*, pp. 15-18.

before Roman *amicitia* was studied and assessed in such a way so that the similarity could have been consciously brought about. It must be added that a doctrine of treaty law was not developed before the seventeenth century. The comments of the pioneers of that doctrine such as Hugo Grotius (1583-1645), Christian Wolff (1679-1754) or Emer de Vattel (1714-1767) were rather brief. Grotius's comments relevant to *amicitia* were general and vague. At one stage, he discussed *D. 50, 15, 5, 2*. Here he was more concerned with the *ius postliminii* – as Pomponius, the author of this single reference to *amicitia* in the *Digest* had been. According to Grotius allies and friends were one and the same thing. At another stage, he equated *amicitia* and peace when he discussed the problem of breach of treaty.⁷³

This leads to an interesting conclusion. The similarity of Roman and Renaissance *amicitia* was not in the first place the result of the study and elaborations on the *ius commune*. It was however partly the result of a certain continuity of the use of *amicitia* as a concept in treaty practice, already pointed out by the Italian scholar Bruno Paradisi. This however cannot explain the fact that the concept when it regained importance during the fifteenth and sixteenth centuries, took a meaning and function that was quite similar to Roman practice. Why this similarity occurred, has already been explained. How it occurred can, as was pointed out, only very partially be explained by the renaissance of Roman law.

The only remaining answer is quite obvious. *Amicitia* as a precondition to peaceful relations was an universal concept on which neither the Romans had a monopoly in the last centuries B.C.⁷⁴ The terminology and some basic ideas were certainly transferred from Roman law to later medieval and Renaissance law by way of medieval and early modern jurisprudence, the knowledge of ancient literary sources and by the mere fact that the concept never wholly disappeared. This however does not alter the conclusion that *amicitia* was in fact a concept natural and necessary to the Mediterranean and European legal traditions.

This puts the relevance of the study of ancient Roman law in a new daylight. The Roman treaty law and practice of the late republic as assessed by modern scholarship elaborated on a universal legal concept. Due to the lack of sources and historical tradition it would be much harder to get the same insight in more or less the same concept by way of studying any other ancient legal system. Moreover, the legal skill and technique of the Romans make the analysis of Roman *amicitia* very rewarding. Therefore, the study of Roman treaty law and practice is an extraordinary way to understand a concept that kept its importance during the Middle Ages and modern times. Though Roman

⁷³ H. Grotius, *De Iure Belli ac Pacis libri tres* (1625) III.ix.2 on *postliminium* and III.xx.40-41 on peace and friendship. Grotius however clearly stated that *amicitia* should not always be brought about by way of treaty: "Sic quae contra amicitiam sunt, rumpunt pacem quae sub amicitiae leges lege contracta est: quod enim inter caeteros solius amicitiae officium exigeret, hic etiam pacti iure praestandum est", Grotius, *De Iure Belli ac Pacis* III.xx.40.

⁷⁴ Gruen, *The Hellenistic World and the Coming of Rome*, p. 95; Paradisi, "L'amitié internationale", pp. 329-343; Ziegler, *Völkerrechtsgeschichte*, p. 36, p. 39 and p. 47.

law might not have had the greatest of influence on treaty law and practice regarding the concept of *amicitia*, it can still be of service to understand the concept in our own European legal tradition.