The Twelve Years Truce (1609)

*Peace, Truce, War and Law in the Low Countries at
the Turn of the 17th Century*

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From Antwerp to Munster (1609/1648)

Truce and Peace under the Law of Nations

Randall Lesaffer, Erik-Jan Broers and Johanna Waelkens

Introduction

On 27 August 1609, Pierre Jeannin (1540–1622), the French representative at The Hague, appeared together with the diplomatic representatives from England and the German princes before the States General of the United Provinces. In the weeks before, the negotiations for a peace treaty between the United Provinces and the Archdukes Albert (1559–1621) and Isabella (1566–1633) had broken down on the Spanish refusal to withdraw or mitigate their demands regarding freedom of worship for Catholics in the Northern Netherlands and the exclusion of the Dutch from the Indies.¹ Jeannin had now come to the States General, after having well prepared the ground on different sides, to revive the negotiations by suggesting that the warring parties try to reach a long-term truce rather than a peace treaty. In his speech, Jeannin laid out the main conditions under which the truce would be made: the United Provinces would be recognised as ‘Estats libres’, implying, at least to those who wanted to hear this, full say over internal religious matters as well as the right of free trade in the Indies, Spain and the Southern Netherlands.² The idea to try and achieve a long-term truce rather than a peace treaty was not new and had been suggested before. The Armistice of 24 April 1607 which had been made to

- 1 For a survey regarding the negotiation process, see Paul C. Allen, *Philip III and the Pax Hispanica, 1598–1621. The Failure of Grand Strategy* (New Haven/London, 2000), 172–233; Miguel Antonio Echevarría Bacigalupe, *La diplomacia secreta en Flandes, 1598–1643* (Bilbao, 1984); Simon Groenveld, *Het Twaalfjarig Bestand 1609–1621. De jongelingenjaren van de Republiek der Verenigde Nederlanden* (The Hague, 2009), 33–59; W.J.M. van Eysinga, *De wording van het Twaalfjarig Bestand van 9 april 1609* (Verhandelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afdeling Letterkunde, n.s. 66.3; Amsterdam, 1959); Jesús María Usunáriz, *España y sus tratados internacionales: 1516–1700* (Pamplona, 2006), 233–272; Martine Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595–1615)* (Leyden/Boston, 2006), 189–358.
- 2 J.A.C. Buchon (ed.), *Négotiations diplomatiques et politiques du Président Pierre Jeannin (1598–1620)* (Paris, 1875), 405–406; H.H.P. Rijperman (ed.), *Resolutiën der Staten-Generaal 1607–1609* (Rijks Geschiedkundige Publicatiën, Grote Serie 131; The Hague, 1970), vol. 14, 443–444.

allow negotiations between the belligerents for an encompassing settlement had already referred to the possibilities of both permanent peace as well as a truce of twelve, fifteen or twenty years.³ Later on, at the actual peace negotiations in The Hague in March 1608, Johan van Oldenbarneveltdt (1547–1619), Grand Pensionary of Holland, had suggested to lift the matter of the Dutch trade in the Indies from the peace treaty and suffice with a temporary solution – a nine years truce – on this point, or even to continue hostilities in the Indies.⁴ The Spanish government in Madrid, which shouldered the larger part of the war effort, had been in favour of a long-term but temporary agreement, all along, hoping to benefit from a break to restore the strength and finances of the Spanish Monarchy and to resume the war afterwards with more success. Halfway through July 1608, two weeks before the Spanish had to agree to concede on religion and trade for the Dutch not to break off negotiations, the Spanish King Philip IV had already indicated his willingness to accept a truce in a letter to Archduke Albert.⁵

The Spanish, the French and the other mediators, as well as some on the Dutch side now all favoured a long-term truce because they believed that it would bring many of the benefits of a peace, while it allowed reserving some major issues for future settlement, either through peaceable or forcible means. In the words of Jeannin, the truce would allow the Dutch to enjoy ‘en effet par les moyens d’icelle de toutes commoditez & avantages que la paix vous eust donnés’.⁶ It would take a lot of pressure from the French, including King Henri IV (1589–1610) himself, on Stadholder Maurice van Nassau (1585–1625) before he gave up his resistance against a truce and the States General agreed on the idea (14 November 1608).⁷ In the ensuing negotiations about the truce, Jeannin played a pivotal role as chief mediator. In September 1608, Brussels had suggested to expand the existing armistice which had been in place since 24 April 1607 with another seven months.⁸ This was a minimal solution as it demanded no further negotiations, but would also imply a general *status quo*, meaning

3 Armistice of 24 April 1607 and ratification by Philip III in Jean Dumont, *Corps universel diplomatique du droit des gens* (Amsterdam/The Hague, 1726–1731), vol. 5.2, 83–84.

4 M.L. Van Deventer, *Gedenkstukken van Johan van Oldenbarnevelt en zijn tijd* (The Hague, 1865), vol. 3, 188.

5 Allen, *Philip III*, 218; Van Esinga, *Wording van het Twaalfjarig Bestand*, 129; Letter of Philip III to Albert of 15 July 1608, Henri Lonchay and Joseph Cuvelier (eds.), *Correspondance de la Cour d’Espagne sur les affaires des Pays-Bas au XVIIe siècle* (Brussels, 1923), vol. 1, 284–286, nr. 661.

6 Buchon, *Négociations du Président Jeannin*, 405.

7 Van Eysinga, *Wording van het Twaalfjarig Bestand*, 127–134.

8 On 9 September 1608, Van Eysinga, *Wording van het Twaalfjarig Bestand*, 129.

that the belligerents would retain all their possessions, rights as well as claims as they had them at the time of the end of the hostilities in 1607. The 1607 Armistice held very few stipulations. It entailed an agreement to end hostilities – originally only on land, but later extended to sea warfare in Europe – and implicitly affirmed the *status quo*. Its main purpose was to freeze all military action in order for negotiations on a definitive peace or a truce to take place. Its main legal implication was that in the armistice the Archdukes conceded that they would negotiate with the United Provinces as ‘free states’ on which they held no pretences.⁹

But once the negotiations really took off, the parties rejected this minimal solution and produced a far more encompassing treaty. In the end, the Treaty of Antwerp of 9 April 1609 became an elaborate treaty which contained many detailed stipulations similar to those in peace treaties. Moreover, the Antwerp Treaty was later supplemented by two additional and interpretative treaties, which detailed its clauses even more and made it further resemble a proper peace.¹⁰

Contrary to what Jeannin and others had hoped, the Antwerp Truce was not prolonged and did not evolve into a definite peace. After its expiration in 1621, the war between the Spanish Monarchy and the Dutch Republic was resumed. However, when in 1646, negotiations between the Spanish and the Dutch for a new settlement began in earnest at Munster, the Antwerp Treaty text resurfaced. In their initial phase, the Munster negotiations did not aim at a final peace settlement, but at a new truce. When the Dutch plenipotentiaries arrived at Munster at the beginning of 1646, their brief was to conclude a new truce for at least twelve years and to do this on the basis of the 1609 text.¹¹ On 17 May 1646, the Dutch diplomats tabled a draft truce of 71 Articles.¹² These articles, of which 60 were accepted by the Spanish with only minor amendments, had for the larger part been taken from the 1609 Antwerp Truce and the two additional treaties of 1610. The negotiations on the truce and the major points of contention went so well in 1646 that in September of that year the States of Holland proposed converting the negotiations into proper peace

9 Dumont, *Corps universel*, vol. 5.2, 83–84, see also Papel n° 5 ‘Cessación de armas para ocho meses’, Brussels and The Hague, 24 April, 1607, Biblioteca Nacional de España, Manuscript 11.187, fols. 8r–v and Papel n° 6 ‘Cessación de las armas por la mar’, The Hague, 1 June 1607, BNE, MS 11.187, fols. 9r–10r.

10 Treaties of 7 January and 24 June 1610, in Dumont, *Corps universel*, vol. 5.2, 119–120 and 142–143 and in Cornelis Cau, Simon van Leeuwen et alii, *Groot Placcaet-boeck* (The Hague, 1658–1797), vol. 1, 71–80 and vol. 2, 581–586.

11 Instruction of the States General of 28 October 1645 in Lieuwe van Aitzema, *Verhael van de Nederlandsche Vreede Handeling* (The Hague, 1650), vol. 1, 570–607, esp. Arts. 4–6.

12 Aitzema, *Vreede Handeling*, vol. 2, 54–78.

negotiations. The motion of Holland was carried in the States General and the Spanish were ready to accept this. The draft truce was speedily rewritten into a peace treaty, mainly through the addition of some articles, bringing the total up to 79. By 27 December, the parties had reached an agreement on the text, which afterwards only underwent slight changes before the peace was finally signed on 30 January 1648. By and large, the 1609 Antwerp Truce was kept intact throughout the Munster negotiations as the basis for the 1648 peace instrument.¹³

Since at least the 13th century, jurists had been aware of the distinction between short-term armistices and long-term truces and had discussed the nature of the latter. Did a truce pertain to the domain of war or did it constitute a kind of temporary peace? But few if any of the medieval or early-modern writers prior to 1609 had delved all too deeply into the matter and doctrine had failed to provide a clear definition of what a 'truce' was or a clear description of what it entailed. Due to its negotiation history and particularly due to its relation to the 1648 Munster Peace Treaty, the Antwerp Truce of 1609 may shed an interesting light of what constituted a truce at the beginning of the 17th century and what its relation to a proper peace treaty was.

This chapter falls into three parts. In the next section, a brief survey of what medieval and early-modern jurists up to Hugo Grotius (1583–1645) had to say on the subject of truce will be offered. In the following section, the implications of the distinction between truce and peace at Antwerp and Munster will be examined, through the comparative study of three texts: the Antwerp Truce of 1609, the Dutch draft truce of May 1646 and the final Munster Peace Treaty of 1648. In the concluding section, a brief comparison with other early modern long-term truces will be added.

Indutiae, Treuga, Pax in Late-Medieval and Early-Modern Doctrine

Truce and its relation to peace were already subject to debate among the civilians and canonists of the Late Middle Ages (12th–15th centuries). Both the

13 Aitzema, *Vrede Handling*, vol. 2; Jonathan Israel, *The Dutch Republic and the Hispanic World 1606–1661* (Oxford, 1982), 347–374; Randall Lesaffer and Erik-Jan Broers, 'Private Property in the Dutch-Spanish Peace Treaty of Münster (30 January 1648)', in Michael Jucker, Martin Kintzinger and Rainer Christoph Schwinges (eds.), *Rechtsformen internationaler Politik. Theorie, Norm und Praxis vom 12. Bis 18. Jahrhundert* (*Zeitschrift für Historische Forschung*, Beihefte 45; Berlin, 2011), 174–175; J.J. Poelhekke, *De Vrede van Munster* (The Hague, 1948).

authoritative sources of Roman and canon law contained references to the matter, allowing the medieval jurists to comment and expand upon. Digest 49.15.19.1 held a definition of *indutiae* by the classical jurist Paul:

Indutiae sunt, cum in breve et in praesens tempus convenit, ne invicem se laceessant: quo tempore non est postliminium.¹⁴

The term *indutiae* was not absent from the canonist text tradition, as Saint Isidorus of Seville (c. 560–636) had included it in his definition of *jus gentium*,¹⁵ but it had been superseded by the term ‘treuga’. The *Liber Extra* (1234) of Pope Gregory IX (1227–1241) contained a title ‘De treuga et pace’. This title cited two decretals by Pope Alexander III (1159–1181) of 1179, which actually dealt with the peace and truce of God – the immunity of some categories of persons from violence and the prohibition to fight at certain times –,¹⁶ but later on, canonists would use this title as a *sedes materiae* to elaborate on peacemaking and truces in general.¹⁷ In all, the comments and expositions of medieval civilians and canonists on the subject of armistice, truce and peace and their interrelation remained brief and sketchy. The *Tractatus Universi Juris*, a huge collection from the late 16th century of mainly 15th- and 16th-century treatises written by canonists contained two treatises entitled ‘De treuga et pace’, but these added little to existing discussions and opinions.¹⁸ For more systematic expositions on truces, one had to await the great treatises on the laws of war of the later 16th century, such as those of Pierino Belli (1502–1575),¹⁹ Balthasar Ayala (1548–1584)²⁰ and Alberico Gentili (1552–1608).²¹ In his *De jure belli ac pacis* of

14 There is an armistice if one agrees that, for a short time entering immediately, one will not attack one another. During that time, there is no *postliminium*.

15 *Etymologiae* 5.6 Quid sit ius gentium.

16 X. 1.34.

17 Some canonists made a distinction between conventional and canonical truces; the former term referring to negotiated truce and the latter to the peace and truce of God. See Hostiensis, *Summa aurea*, *De treuga et pace* 5.

18 In book 11 of the collection, entitled ‘De judiciis criminalibus’, treatises by Octavianus Volpelli and Nicolaus Moronus, actually dealing with conflicts and violence between persons in general. *Tractatus Universi Juris* (apud Franciscum Zilettum, Venetiis, 1583–1586, 18 vols.).

19 Pierino Belli, *De re militari et bello tractatus* (1563, original text and translation, Classics of International Law; Oxford, 1936, 2 vols.).

20 Balthasar Ayala, *De jure et officiis bellicis et disciplina militaris libri tres* (1582, original text and translation, Classics of International Law; Washington DC, 1912, 2 vols.).

21 Alberico Gentili, *De jure belli libri tres* (1598, text of 1612 and translation, Classics of International Law; Oxford/London, 1933, 2 vols.).

1625, Hugo Grotius (1583–1645) treated the subject of truces somewhat extensively.²²

Already some of the medieval civilians acknowledged that a distinction could be made between short-term and long-term suspensions of hostilities. The distinction reflected reality, as both in ancient and medieval practice instances of both kinds of agreements were to be found. A sharp dividing line in terms of duration cannot be indicated, but one has to think in terms of days to months, possibly one or a couple of years for short-term agreements and in terms of many years, decades or even a century for long-term agreements. But there is more to divide these two types of suspension of hostilities than their duration. Whereas truces – as we will henceforward call long-term agreements – normally apply to all hostile actions between two belligerents and are generally entered into by the sovereign, armistices – as we will henceforward call short-term agreements – can be made by battlefield commanders as well as sovereigns and often are limited to certain theatres of war.²³

In the *Glossa Paciscuntur* at D. 2.14.15, Accursius († 1263) defined *treuga* as a long-term agreement and *induciae* as a short-term agreement.²⁴ This distinction and use of terminology were adopted by several civilians and canonists during the Late Middle Ages.²⁵ From the Roman historical sources, which became important sources for the study of the laws of war under the influence of humanism, the jurists of the 16th century and later knew that the Romans had at times entered into long-term agreements of suspension of hostilities, lasting years, decades or even a century.²⁶ But as Pierino Belli indicated, they had used the term *indutiae* for these treaties, just as the term *treuga* was used by the canonists without much distinction as well.²⁷

The problem of the distinction between a short armistice and a long-term truce was vexing to many of the later authors, precisely because it raised the question of what the relation of a long-term truce of many years to peace was. That question became all the more relevant, as in the second half of the 15th and first half of the 16th century the terminological distinction between truce

22 Hugo Grotius, *De jure belli ac pacis libri tres* (1625, text of 1646 and translation, Classics of International Law; Oxford, 1925, 2 vols.).

23 See for Roman practice, Karl-Heinz Ziegler, 'Kriegsverträge im antiken römischen Recht', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung*, 102 (1985) 40–90.

24 '(...) Ut treugas sunt in longum tempus. Item inducias sunt in breve (...)'.

25 E.g. Angelus de Ubaldis (1328–1407), *Consilia et responsa* (Antonius de Carcano et Zaninus Ripa, Pavia, 1478), *Treuga et indutie*.

26 Ziegler, 'Kriegsverträge'.

27 Belli, *De re militari* 5.1.1.

and peace was sometimes abandoned in treaty practice and during the same period, peace treaties were sometimes limited to the lifespan of one or both of the signing princes, with or without some additional years. While this held together with the private, *intuitu personae* character of peace treaties which were rather to be considered contracts between persons than public treaties between bodies politic, it did help confound the questions about the character and implications of truces.²⁸ By 1550, these limitations had disappeared; long-term truces for a certain number of years, however, continued to exist.²⁹

There were four major problems relating to the character of a truce that were debated in late-medieval and Renaissance literature. The first problem pertained to the question of who held authority to make a long-term truce. This matter was particularly of interest to the writers of the 16th and 17th centuries. These were writing at a time when princes and central governments tried to increase their control over foreign relations and matters of war and peace. Moreover, they could refer to the Roman distinction between a *sponsio*, a less formal treaty which could be made by the commander on the battlefield, and a formal *foedus* which was made by the priests of the college of *fetiales*, directly committing the Roman people, and later by the emperor.³⁰

Among the medieval jurists, there had been no consent whether a commander could enter an armistice. Whereas Bartolus of Saxoferrato (1314–1357) had affirmed this, others such as Alexander de Tartagna (c. 1423–1477) rejected it. The 14th-century commentator Raphael Fulgosius accepted the right of a commander to sign a short-term armistice, but rejected that he held the right to enter a long-term truce.³¹ There thus was broad consent that a commander could not enter a long-term truce. While he did not really volunteer a clear opinion on truces, Belli accepted that commanders held a right to make short-term armistices, referring to Greek practice and citing several recent

28 Jörg Fisch, *Krieg und Frieden im Friedensvertrag. Eine universalgeschichtliche Studie über Grundlagen und Formelemente des Friedensschlusses* (Stuttgart, 1979), 349–359; Randall Lesaffer, 'Peace Treaties from Lodi to Westphalia' in Randall Lesaffer (ed.), *Peace Treaties and International Law in European History: From the End of the Middle Ages to World War One* (Cambridge, 2004), 20–22.

29 An important example thereof, apart from the Twelve Years Truce, is the Truce of Nice of 18 June 1538, in Dumont, *Corps universel*, vol. 4.2, 169–172.

30 Christian Baldus, 'Vestigia pacis. The Roman peace treaty: structure or event?' in Lesaffer, *Peace Treaties and International Law*, 120–122; David Bederman, *International Law in Antiquity* (Cambridge, 2001), 194–202; Coleman Philipponson, *The International Law and Custom of Ancient Greece and Rome* (London, 1911), vol. 1, 375–404; Karl-Heinz Ziegler, 'Friedensverträge im römischen Altertum', *Archiv des Völkerrechts*, 27 (1989) 53–54.

31 All ad D. 2.14.5.

examples.³² Ayala shared Belli's opinion regarding short armistices – which he referred to as *cessatio pugnae* –, quoting examples from Roman history. He held firm, however, to the opinion that they could not enter into truces, here again with reference to Roman practice. Ayala also argued for the difference because short armistices 'do not put an end to the war' whereas long truces 'are rather by way of putting an end to the war'. In this respect, truces were, like peace, considered the preserve of the sovereign.³³

The second problem pertained to the question whether the belligerents needed to formally declare war at the end of a truce if they wanted to resume hostilities, as of course was necessary after a peace treaty. Among the medieval jurists, the general opinion was that no new declaration of war was necessary. The commentator Baldus de Ubaldis (1327–1400) had defended this position, but confounded it by adding that one needed a declaration of war if there had been no war before the truce, contradicting himself on the main question at some point.³⁴ The question became of greater interest to the jurists of the 16th and 17th centuries, as the significance of declarations of war grew. Due to the Military Revolution and the growing monopoly of central governments over the business of war, over the 16th and 17th centuries, wars became ever more encompassing and disruptive of peace, involving the whole 'state' and not just the prince and his retinue and armies. Whereas Grotius would be the first to articulate it in those terms, contemporary writers on the laws of war started to think in terms of a state of war as opposed to a state of peace.³⁵ Whereas during peacetime, the laws of peace applied, during war normal peaceful relations and the laws that applied to them were suspended. To the state of war, the laws of war applied. In this context, formal declarations of war gained in importance. They did not only serve to appraise the enemy of the fact that one intended to wage war, they also served to appraise their own subjects of that fact. Moreover, declarations of war often stipulated a series of measures taken against the enemy, his subjects and property, thus suspending the laws of peace. As such, the declaration served to indicate the point in time at which the state of peace ended and the state of war commenced.³⁶

Belli applied the distinction between armistices and truces to the matter. According to the Italian jurist, a declaration of war was necessary after a truce

32 Belli, *De re militari* 5.1.3.

33 Ayala, *De iure et officiis bellicis* 1.7.6.

34 De pace Constantiae, 9 and Ad D. 29.2.77.

35 Grotius, *De iure belli ac pacis* 1.1.2.1.

36 Randall Lesaffer, 'Alberico Gentili's *ius post bellum* and Early Modern Peace Treaties' in Benedict Kingsbury and Benjamin Strauman (eds.), *The Roman Foundations of the Law of Nations. Alberico Gentili and the Justice of Empire* (Oxford, 2010), 210–214.

for a long period.³⁷ Gentili touched upon the issue when he discussed an opinion rendered by the humanist jurist Andrea Alciato (c. 1492–1550) in which the latter seemed to hold that a war interrupted by a truce actually constituted two wars.³⁸ This implied that the truce had ended the war, not suspended it. Gentili rejected this, stating as proof that it was not necessary to declare war after a truce, but he conceded that the case might be different for ‘very long truces which partake of the nature of peace and therefore are not granted by the military officers’.³⁹ Grotius held firmly to the opinion that a new declaration of war was not necessary as the state of war had only been suspended and not ended. He acknowledged that the Romans had sometimes acted differently, but that was because of their love of peace, not because it was necessary.⁴⁰

The third problem related to the second. It was the question whether a truce constituted peace, war or something in between? Which laws applied during the time of truce, those of war or those of peace? What actions could be condoned during the truce? Or in the terms of the Grotian distinction between the state of war and peace, did a truce restore the same conditions as under the state of peace, or only partially so? Did it reach further than a mere prohibition to use force? Did it, among others, mean that reprisals or contributions were suspended too or that sequestered property had to be returned, or not? Several medieval civilians and canonists made statements to the effect that a truce equalled a peace, but there was no consent. In the *Glossa Lacessant* at D. 49.15.19.1, Accursius stated that a long-term *treuga* was a *foedus*. In his *Glossa Foederati* at D. 48.15.7 he held that a *foedus* made the partners into *foederati*. This amounted up to saying that they were true treaty partners who lived in peace and friendship and that a truce was thus a peace limited in time.⁴¹ The 14/15th-century canonist Petrus de Ancharano distinguished three conditions – war, peace and truce – with truce as an intermediary category.⁴² Sometimes medieval jurists would go into questions relating to particular rights, often because they had been asked to render a learned opinion in a pending dispute. Belli applied the distinction between short and long suspensions of war. According to him, a short armistice was more akin to war, whereas a long one was more akin to peace.⁴³ Gentili did not come much further than

37 Belli, *De re militari* 5.2.3 and 5.3.21-2.

38 Alciato, *Consilia* 5.17.

39 Gentili, *De iure belli* 2.12.305-6.

40 Grotius, *De iure belli ac pacis* 3.21.3.

41 Karl-Heinz Ziegler, ‘The influence of medieval Roman Law on peace treaties’ in Lesaffer, *Peace Treaties and International Law*, 155.

42 *Consilia* 88.

43 Belli, *De re militari* 5.2.

stating that long truces seemed 'to be a kind of peace', but were in fact not the same as a peace. But he neither went into the particular consequences of these statements, except in relation to the former question of declaration of war.⁴⁴ Grotius' line of argument came close to the one he had held on the issue of the declaration of war. He started by quoting the Roman writer Aulus Gellius (2nd century) who held 'nam neque pax est indutiae – bellum enim manet, pugna cessat'.⁴⁵ According to Grotius, this implied that everything valid during war would also be valid under the suspension of hostilities – that is, in so far as the armistice agreement did not derogate from it. But somewhat further, Grotius recognised that parties to a long-term truce may have had the intention to equal the state of affairs during the truce to the state of peace. In short, the early modern writers did not offer much clarification on the question what rights the parties had during the time of truce. They did not move much beyond the statement that while a truce did not constitute a full state of peace, it might in reality come close to it. Yet, a general rule underlying all these musings can be gleaned, namely that, as a truce only suspended war and did not constitute a full return to the state of peace, the state of war endured *insofar* as it was not – according to Grotius, expressly or intentionally (tacitly) – suspended by the truce treaty. Or, *a contrario*, that the state of peace was only restored to the extent that the parties expressly decided on. In the end, it was up to the parties to decide what the effect of the truce on the state of war was. The effects had thus to be gleaned for each truce from the stipulations of the treaty or the actions of the treaty partners during the time of the truce.

The fourth and final main question about the relative character of truce and peace related to the eternal or permanent character of peace. Over the Middle Ages and the Early Modern Age, in peace treaties it was generally said that the peace would be 'perpetual' or 'eternal'.⁴⁶ Rather than being a mere and seemingly naïve expression of the desire of the former belligerents never to resort to war again, the notion of (perpetual) peace had a quite specific legal implication. Baldus de Ubaldis, among many others, defined peace as 'discordiae ultimis finis, et perpetua et inviolabilis concordia'.⁴⁷ The words 'discordiae finis' or 'discordiae ultimis finis' were used by many canonists and jurists. This meant to imply, as Gentili stated clearly, that a peace agreement had to

44 Gentili, *De jure belli* 2.12.302-4.

45 *Noctes Atticae* 1.25.1. 'Because an armistice is not peace – for the war endures, but the fighting stops'. (My translation)

46 Fisch, *Krieg und Frieden*, 349–361.

47 Baldus, *Commentaria in Decretalium*, De Treuga et pace. Peace is the end of discord and perpetual and inviolable concord (my transl.).

definitely settle all the disputes underlying the war.⁴⁸ By consequence, the peace exhausted the right of the treaty partners to resort to war over the disputes settled in the peace. However, none of the medieval or early-modern writers stated this latter conclusion straightforwardly before the 18th century.⁴⁹ The late medieval and Renaissance authors did however expressly state the reverse, from which *a contrario* this rule could be deduced. They stated that if a new war broke out between the treaty partners for a new cause which had not been settled in the peace treaty, the peace (treaty) was not considered to be broken.⁵⁰ As Gentili had it, a peace agreement which did not exhaustively settle the controversies that had given rise to the war, was nothing but a truce.⁵¹

It is indeed the, albeit qualified, perpetual character of peace that makes for its fundamental distinctiveness from a truce. However long the period of a truce may be and however encompassing the abolition of the state of war and the return to the state of peace, a truce remains fundamentally different from a peace in that the peace exhausts the right of the parties to resort to war for the causes the war has been fought over,⁵² while a truce does not.

Truce and Peace in Antwerp and Munster

In this section, we will try to assess what distinguished the Antwerp Truce of 1609 from a peace treaty. On the first two questions which were discussed above, the answer can easily be given. First, the Twelve Years Truce did not differ from a peace treaty as far as the involvement of the sovereign was concerned. It was negotiated and made under the same procedure as a peace

48 Gentili, *De jure belli*, 3.14.590-1, see also 3.24.708-11.

49 Christian Wolff (1679–1754) and Emer de Vattel (1714–1767) would do so. Christian Wolff, *Jus gentium method scientifica pertractatum* (1749, text of 1764 and translation, Classics of International Law; Oxford 1934, 2 vols.), 8.987 and Emer de Vattel, *Le droit des gens ou principes de la loi naturelle* (1758, text and translation, Classics of International Law; Washington, 1916, 3 vols.), 4.2.19.

50 Baldus, *Consilia* 2.195; Ludovicus Romanus, *Consilia*: ‘Pacem rumpere non dicitur ille qui offensam insert ex nova causa superveniente et non ex antecedenti propter quam prius inimicus fierat simile de sententiae et transactione (...)’; Belli, *De re militari*, 10.2.27-8, 35 and 53, 5.2.3.

51 Gentili, *De jure belli* 3.14.591.

52 Generally speaking, because either they have been settled in the peace or because the parties declare that they will resolve their disputes about them through the use of peaceable means alone.

treaty, whereby a sovereign empowered his diplomatic representatives to negotiate and sign a treaty which he subsequently ratified.⁵³ Second, when at the end of the Twelve Years Truce war was resumed, no new declaration of war ensued.⁵⁴ For the latter two questions, a comparison will be made between three main and two additional texts. The main texts are those of the Twelve Years Truce of 9 April 1609, the draft for a new twelve years truce tabled by the Dutch delegation at Munster on 17 May 1646 and the Peace Treaty of Munster of 30 January 1648.⁵⁵ The two additional texts are the two interpretative Treaties of 7 January and 24 June 1610.⁵⁶

Generally, one can distinguish three categories of clauses in early-modern peace treaties. First, there are the political concessions made and won by the signatories. In these, the claims for which the war has been waged are settled or reserved for future settlement by peaceful means. The second group brings the state of war to an end and settles all claims arising out of it. The third group regulates future relations between the former belligerents and restores and defines the state of peace. Under this last category, there are also provisions to stabilise and safeguard the peace. We will use this triple division to structure the comparison between the three texts and assess the Antwerp Truce for its resemblance to a peace treaty.

First, there is the political settlement of the disputes and conflicts between the belligerents. Here is not the time and the place to go into the political clauses of the Antwerp and Munster Treaties and compare them. It is clear that

53 Lesaffer, 'Peace Treaties from Lodi to Westphalia', 22–24.

54 On the resumption of the war in 1621, Jonathan Israel, *The Dutch Republic and the Hispanic World 1606–1661* (Oxford, 1982), 66–98.

55 For the Antwerp Truce, the official Dutch text of 24 April 1609 as published in Simon Groenveld, *Unie-Bestand-Vrede. Drie fundamentele wetten van de Republiek der Verenigde Nederlanden* (Hilversum, 2009), 115–127, will be used, as well as the English version from 1609, *Articles of a Treatie of Truce, Made and concluded in the Towne and Citie of Antwerp, the 9. of April 1609 (...)* (G. Potter and N. Bourne, London, 1609). For the 1646 draft, the text in Van Aitzema, *Vrede-Handeling*, vol. 2, 54–78 will be used. For the Munster Peace Treaty, the Latin and Dutch editions published in 1648 and printed in Gerd Dethlefs (ed.), *Der Frieden von Münster/De Vrede van Munster 1648. Der Vertragstext nach eineme zeitgenössischen Druck und die Beschreibungen der Ratifikationsfeiern/De verdragstekst naar een contemporaine druk en de beschrijvingen van de ratificatievieringen* (Munster, 1998), 70–118 and 119–143.

56 For these, we use the following editions: *Verdrach ghemaect ende besloten inden Hage in Hollandt, den sevenden Januarii seshien hondert ende thien (...)* (Hillebrandt Jacobsz., The Hague, 1610) and *Puncten ende Articulen verdraghen ende geacordeert inden Hage in Hollandt, den xxxiii Junii inden Jare seshien-hondert ende thien (...)* (Hillebrant Jacobsz., The Hague, 1610).

the main issues which concerned the belligerents and the negotiators in 1607–1609 and 1646–1648 were fairly similar. Next to the question of the freedom or sovereignty of the United Provinces, which was settled as a precondition to further negotiations, these covered territorial issues, trade rights and related tax issues, the rights of Catholics in the United Provinces and the Dutch navigation and trade in the Indies. Of course, on some points the outcome of the negotiations differed, but this had mostly to do with the political process as an outcome of the military and diplomatic situation, rather than with the distinction between truce and peace. The main question which interests us here is whether the political settlement of 1609, according to the treaty partners exhausted their right to go to war again over the same issues. It is quite clear that this was not the case. The whole purpose behind the option to make a long-term truce and not a perpetual peace was precisely to reserve the right to return to war over issues over which the belligerents could not reach a satisfactory, definite understanding. The fact that after 1621, the parties *did* resume war and that the same issues were at the centre of negotiations at Munster as they had been almost three decades before sufficiently proves the point.

This was also the case for the all-important point of the Spanish recognition of the freedom of the Republic. From the earliest stages of the negotiations before the Truce, the recognition of their freedom had been a precondition of the Dutch to open talks with Brussels and Madrid. In the armistice of 24 April 1607, the Archdukes had declared that they treated with the United Provinces ‘as free States, to which [they] held no pretentions’.⁵⁷ In his ratification, the Spanish King Philip III had confirmed these words but had expressly added that his ratification would be null and void if no peace or truce would follow the armistice as it was intended.⁵⁸ The recognition of their freedom was not only a precondition for the States General to open negotiations on a peace or truce in 1607, they also demanded that a similar recognition would be included at the inception of the treaty. The negotiations about the text and its implications – mainly in relation to religion – continued well into the phase where the peace negotiations had broken down and a long-term truce had become the goal of the negotiations. The final treaty text held that the Archdukes were pleased to enter into the treaty, in their own names as well as in the name of the King, with the United Provinces in their quality ‘and as holding, accounting and esteeming them to be free Countryes, Provinces and Estates, wereunto they pretend not any Right and Title of Sovereignty’.⁵⁹ At least to the Spanish,

57 Dumont, *Corps universel*, vol. 5.2, 83–84, my transl.

58 Ratification of 18 September 1607, see Dumont, *Corps universel*, vol. 5.2, 84.

59 Art. 1.

this did not in any way mean a definite cession of their rights and pretences. In the understanding of King Philip and his ministers, the recognition of freedom would only last as long as the truce would.⁶⁰ The text of the royal ratification of 7 July 1609 stressed that the stipulations of the Treaty would last for the term of the truce.⁶¹ At Munster, the point of the freedom of the United Provinces was quickly ceded by the Spanish, but from a legal perspective the important element is that it still needed to be ceded.⁶² In the end, whereas Article 1 of the Truce stated that the Archdukes were pleased to enter into the Truce with the United Provinces as being free states, Article 1 of the Munster Treaty stated that the Spanish King recognised them as free and sovereign states to which neither he nor his successors and descendents pretended anything or would ever pretend. Remarkably, Article 1 of the draft truce of May 1646 contained already more or less the same text, adding that this would also be so after the expiration of the treaty. In other words, if the Munster negotiations had led to a truce, the fundamental difference between peace and truce would have been blurred on the issue of the sovereignty of the Republic.

Second, there are the clauses which pertain to the state of war. Most early-modern peace treaties open with a general article which states that a perpetual peace is made between the signatories and that all (acts of) hostilities will cease between them.⁶³ Article 2 of the Antwerp Truce was clearly inspired by these traditional peace clauses, but was adapted to the occasion. It stated that there would be a truce for twelve years, during which all acts of hostility between the signatories would cease, either on land or sea, in all their territories and for all their subjects and inhabitants. The 1646 draft reiterated the same text. For the Munster Peace Treaty, the text was hardly rewritten. The word 'truce' was replaced by 'peace' and the twelve years term was barred from the text. For the rest, the wording was not amended. The peace was called 'goet, vast, ghetrouw en onverbreeckelijck' as the Antwerp text had it. The negotiators to the Munster Peace did not take the trouble of adding the word 'perpetual' or referring to 'friendship' between the sovereign parties to the treaty as was normally done in peace treaties. The fact that the Munster Peace was

60 See Chapter 2.

61 *Copie van de Agreatie ghesonden by de Mayesteyt des Conincx van Spaghniën (...)* (Johannes Moretus, Antwerp, 1609).

62 Israel, *Dutch Republic*, 360.

63 For all references to early-modern peace treaty practice, see Fisch, *Krieg und Frieden*; Lesaffer, 'Peace treaties from Lodi to Westphalia'; 9–44; Idem, 'Gentili's *ius post bellum*', 210–240; Idem, 'Peace Treaties and the Formation of International Law', in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford, 2012), 71–94.

based on a draft for a truce also spoke in another way. Contrary to what was the case for the vast majority of early-modern peace treaties, the Munster Peace lacked an amnesty clause. Such a clause normally stipulated that the signatories would not seek retribution or compensation, either through forcible or amiable means, for all acts and damages pursuant to the war. But the three texts did contain two stipulations, which at least covered part of what an amnesty normally would extend to. Article 4 of the Antwerp Truce dealt in general terms with the rights of the subjects of the belligerents to travel and trade in one another's territories. The article opened with a general undertaking that the subjects and inhabitants would forthwith and for the duration of the truce live in friendship, 'without calling to mind, or remembring any of the offences, hurts, and damages, that they or any of them have received; had and endured in the forepassed Warres, and troublesome times'. The same phrases returned in the other two texts (Art. 4/4). Article 28 of the Antwerp Truce (Art. 55/57) stated that those people who had left for neutral countries had a right to return and could not be disturbed in their possessions.⁶⁴

Generally, peace treaties dealt in quite some detail with concrete consequences of the cessation of hostilities and the end of the state of war. As was often the case in 17th-century peace treaties, the three texts of 1609 to 1648 contained a clause on the release of prisoners of war. Article 34 of the Antwerp Truce provided for the general release of all prisoners of war, without ransom. The text of the Truce was literally taken over in the 1646 draft and the 1648 Peace Treaty (Arts. 61/63), but in the Munster Peace Treaty it was expressly added that this clause also applied to prisoners who had served outside the Netherlands or had served in other armies than that of the States General. This was a telling extension as the measure would now benefit Dutch subjects who fought the Spanish in foreign lands and in foreign armies.

Peace treaties sometimes included provisions regarding the levying of contributions on enemy territory. The term 'contributions' is used to refer to two distinct practices from early-modern warfare. The term can refer to taxes levied by the authorities of the enemy in occupied territories, but also to the extortion of money payments by armed forces from local communities and land owners to spare them from attack or plunder. The latter interpretation is meant here. The Antwerp Truce did not contain a separate article on contributions, but it was clear from the negotiations that the cessation of hostilities of Article 2 and the express reference to 'subject and inhabitants' was meant to imply a stop to all contributions. After the Truce went into force, disputes arose

64 The 1646 draft contained an amnesty for all acts committed against the emperor and Empire vice versa (Art. 51).

between The Hague and Brussels over the arrears that some Flemish and Brabant villages owed to the Republic. With the second additional Treaty of 24 June 1610, a compromise was reached in the matter.⁶⁵ The draft of 1646 contained an article dealing with the arrears of contributions that were due at the inception of the truce (Art. 62). In a somewhat amended form, the article found its way into the Munster Treaty (Art. 64).

The Antwerp and Munster treaties were extraordinarily elaborate on the issue of private property and rights which had been affected by the war. This does not come as a surprise. The confiscation of enemy property, mainly property belonging to the subjects of the enemy found within one's territory, had by the early 17th century become a common aspect of war. Because the war between the Northern Netherlands and the Spanish Monarchy was in fact a rebellion and a civil war, confiscations had been a weapon of choice during the conflict and the amount of seized enemy property was far greater than in regular wars.

In the three texts of 1609–1648, the main provisions regarding enemy property came down to a general restitution of all seized and confiscated property, with the exception of personal or movables. This general solution was common to most peace treaties. The theoretical rationale behind this general restitution was to be found in the just war doctrine. Under this doctrine, war was an instrument for the just belligerent to enforce his rights upon the unjust belligerent. Moreover, the doctrine was discriminatory in that it held that only the just side had a right to be in the war and could thus benefit from the laws of war. By consequence, the unjust belligerent was liable for all the damages and costs inflicted upon the just belligerent. Therefore, the seizure of the enemy's goods and property was justified as a surety for his concession of the rights over which the war was fought to the just belligerent and his payment of compensation for war costs and damages to the just belligerent. As in reality, both sides claimed to fight a just war, they both claimed a right of seizure and confiscation. But as in peace treaties, no judgment was rendered on the justice or injustice of the belligerents' cause, these claims were released and the legal grounds upon which the right of confiscation was vested fell through. Therefore, a general restitution was called for.⁶⁶

Article 13 of the Truce granted the original owners, their heirs and successors in law, the right to repossess all property that had been seized or confiscated because of the war, without the need for recourse to justice. All official acts of seizure and all subsequent transactions to third partners were thereby voided. However, the Antwerp Truce was not a definite peace treaty leading to

65 See Chapter 7 by Tim Piceu in this volume.

66 Lesaffer and Broers, 'Private Property', 182–195.

a full and final restoration of the state of peace, but a temporary suspension of the state of war. Consequently, Article 13 stipulated that the restored owners could not sell or mortgage their goods without consent of the enemy sovereign. This restriction indicated that the original owners only regained possession of their seized property for the duration of the truce, and that the title to the property remained in the balance. It was an implicit recognition that upon the resumption of the war, the goods could and probably would be seized again. It rested on the clear understanding that the truce suspended, but did not end the (state of) war. However, the Agreement of 7 January 1610 amended this. Article 6 of that Treaty lifted the prohibition to sell returned property, restoring thus for all practical purposes full ownership of the goods to the original holders. This relaxation of the prohibition to sell returned property during the truce was contrary to the essence of the temporary character of truce, but it was also a pragmatic concession to it. It allowed the repossessed owners to sell off their property before the war resumed and thus escape new confiscations.⁶⁷ Article 15 of the Truce provided for the occurrence in which the confiscated property had been sold by the enemy authorities. In that case, the original owners had to satisfy themselves with an annuity for the duration of the truce. Article 6 of the January 1610 Treaty sustained the prohibition to sell that annuity. The draft truce of 1646 reiterated the general restitution of seized and confiscated property in the same wording as the 1609 Truce. But it was expressly stipulated that the repossessed owners ('proprietarissen') could sell their goods without the need for permission. The prohibition to sell substitute annuities was repeated (Art. 23). This article found its way into the Munster Peace Treaty, but the exception of annuities was lifted (Art. 24). The exception of personal or movables was to be found in Article 25 of the Truce. It not only applied to movables, but also to all income gained from realty. The text was taken over, word for word, in Article 52 of the draft truce of 1646 and Article 54 of the Peace Treaty.

The Antwerp and Munster texts contained numerous more articles on private property and rights, including ecclesiastical goods. In the Munster Peace Treaty, 20 articles dealt with aspects of the restitution of private property. These were all literally or almost literally taken from the Antwerp Truce or the two additional treaties and had made their way into the Munster Peace Treaty by way of the draft truce of 1646.⁶⁸ The same went for the article dealing with

67 H.K.F. van Nierop, *Van ridder tot regenten: De Hollandse adel in de zestiende en de eerste helft van de zeventiende eeuw* (Amsterdam, 1990), 109 and 169–170.

68 Lesaffer and Broers, 'Private Property', 177–179. It concerns Articles 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27 and 32 of the Truce and Articles 7, 8, 9, 11, 12, 14 and 15 of the Treaty of 7 January 1610.

wartime trials. Article 10 provided that the sentences rendered in criminal or civil trials, which had involved subjects from both parties and where the defendant had not been able to defend his case, would not be executed during the term of the truce. The text was taken over in the draft and the Munster Peace Treaty. In these latter instruments, the text of Article 11 of the Truce which prohibited letters of marque or reprisal to be given out was inserted. A clause on wartime trials was quite common in early-modern peace treaties, but normally the sentences were declared null and void. The fact that the Antwerp and Munster treaties did not void the sentences, but only provided that they would not be executed, was consequential to the temporary character of the truce. Remarkably, the text of the final Peace Treaty had not been suitably adapted.

Except for the articles relating to private property and rights in general, the treaties also contained some articles on property rights and claims of the House of Orange. The incorporation of stipulations in peace treaties regarding important nobles had been a common occurrence during the Late Middle Ages and the 16th century, but it became far less customary during the first half of the 17th century. The House of Orange was, however, a case on its own. At Antwerp, and later at Munster, the matter turned around the extensive landholdings and other possessions of William the Silent (1533–1584) who had fled the Netherlands in 1567 and whose possessions had been confiscated by the Spanish. At the time of the Truce, his inheritance had not yet been divided amongst his heirs, chiefly his sons, Philip William (1554–1618), who lived in Spanish captivity, the Stadholder Maurice and his future successor Frederick Henry (1584–1647). At Antwerp, the issue was thus the undivided inheritance of William the Silent, giving it more cloud. During the negotiations leading up to the Antwerp Truce, the French mediators in particular were very keen on reaching satisfaction for Maurice of Nassau as a means of urging him to overcome his resistance against the truce.⁶⁹ In the end, Maurice's concerns about his financial position during the truce were for the most part allayed by the Republic itself. The 1609 Truce held two articles expressly dealing with the Orange inheritance. Article 14 extended the general restitution from Article 13 explicitly to the heirs and inheritance of William the Silent, including the possessions in the Counties of Burgundy (Franche-Comté) and Charolles.⁷⁰

69 Instruction particulière audit sieur de Preaux, fait par ledit Jeannin, in Buchon, *Négociations diplomatiques et politiques du Président Jeannin*, 17–18 and Letter of Jeannin to King Henry IV, 1 May 1609, 669.

70 Article 19 of the Treaty of 7 January 1610 extended the restitution in general to these counties, thus not only for the property of the Oranges.

The same article also stipulated that the trial about Châteaubelin in Luxemburg before the Grand Council of Malines – the Supreme Court of the Southern Netherlands – would be pursued and that a verdict should be reached within a year. The general restitutions and the inclusion of the Oranges' property in Burgundy and Charolles found its way into the draft treaty of 1646 (Arts. 24–5) and the Peace of Munster (Arts. 25–6). Both the draft as well as the Munster Treaty provided for the immediate restitution of Châteaubelin to the House of Orange and the cession of all Spanish claims to the fief (Art. 27/28). The text pointed out that no verdict had been rendered by the Grand Council within a year as Article 14 of the Antwerp Truce had stipulated. Article 30 explicitly stipulated that the members of the House of Nassau could not be held accountable for neither the debts incurred by William the Silent after the beginning of the war in 1567, nor for any arrears related to these. This article was inserted in the 1646 and 1648 texts (Art. 57/59). The settlement on the Orange goods was supplemented at Munster by two separate agreements from 27 December 1647 and 8 January 1648. Article 45 of the Munster Peace stated that these treaties were to be executed as if they had been inserted word for word. In general, the differences between the three texts on the subject of the Orange inheritance are not relevant for the distinction between truce and peace.

As was common in early-modern peace treaties, the three texts held an article (Art. 27/54/56) which suspended all prescription between persons from the two sides for the whole duration of the war, which was said to have run since 1567. The 1646 and 1648 texts added that this suspension did not run during the truce period.

A third category of articles dealt with future relations between the signatories and their subjects. Most early-modern peace treaties held a clause 'de non offendendo', sometimes in the form of a separate article, sometimes as part of the general peace clause or sometimes combined with the amnesty clause. This clause entailed the promise not to do harm or cause damages, neither to suffer anybody to do harm or cause damage to the former belligerent, his lands, subjects and adherents. There was no traditional general clause 'de non offendendo' in the Antwerp and Munster texts, just as there was no general amnesty clause. The closest the texts come to a clause 'de non offendendo' was a promise by the parties that they would not neither act nor suffer anybody to act against the treaty (Art. 36/67/76) as well as the promise that subjects would henceforth live in good correspondence and friendship (Art. 4/4/4). As most early-modern peace treaties, the three texts held a provision for the case of an infringement against the treaty by a subject not acting under authority of his sovereign. As was customary, it held that the perpetrator would be liable for compensation. The injured party had no right to use force and the infringement did not cause

the truce or peace to end. In case the lessee was denied justice by the former enemy, it was allowed to grant him a right of particular reprisal (Art. 30/58/60). Article 36 of the Truce, which returned in both the Munster texts (Art. 67/76) imposed the duty on the parties of immediate reparation in case they committed or suffered somebody to commit an injury against the treaty.

The Antwerp Truce and the Munster texts elaborated on the right of travel, navigation and trade of the subjects of the treaty parties. Article 4 of the three texts restored their peacetime rights to dwell and trade in the lands of the other party. The Antwerp and Munster texts differed in relation to trading outside Europe, but this did not pertain to the legal difference between truce and peace. This rather reflected the fact that in 1609 a definite settlement on Indian trade was yet unattainable, itself the main reason why the outcome was a truce and not a definite peace. The settlement of the Indian trade should not concern us here any further.⁷¹ Article 6 was a 'most favoured nation clause' as it forbade the parties to levy any higher taxes or impositions upon the subjects of the treaty partner than upon the subjects of their allies and friends which were burdened the least. In Article 7 of the Munster draft, which returned as Article 8 in the final Peace Treaty, the clause had been changed to a prohibition to tax the subjects of the treaty partner more than one's own subjects. The new article also expressly excluded the 20% tax Spain had levied on Dutch subjects during the Twelve Years Truce. Article 7 of the Antwerp Truce, which was copied into the Munster texts (Art. 15/17) accorded the same trade rights in the Southern Netherlands and all lands of the Spanish Monarchy as the ones granted by Philip III and the Archdukes to the subjects of King James I (1603–1625) of England, Scotland and Ireland in the Treaty of London of 1604. Article 8 of the Truce protected the subjects of both parties against arrest and their property against confiscation – except of course in the context of a regular legal procedure. Of course, this protection was limited for the duration of the truce. The same article returned into the two Munster texts (Art. 19/20). As opposed to many other peace treaties, Article 20 of the Munster Peace did not provide for an extension of the immunity against arrest or confiscation for a certain period of time after an eventual rupture of the peace. This lapse seemed to be consequential to the fact that the Munster Peace Treaty was based on a draft for a truce. In case of truce, foreign subjects could of course calculate the date on which hostilities might be resumed. In Article 9, it was stated that disputes about some trade impositions would be referred to commissaries from

71 Art. 4 of the Antwerp Truce and the Separate Article to the Truce; Arts. 4–6 of the Munster draft and Peace Treaty; Israel, *Dutch Republic and the Hispanic World*, 367–370; Poelhekke, *Vrede van Munster*, 359–360; Van Ittersum, *Profit and Principle*, 343–346.

both sides who would arbitrate the matter. The article had disappeared from the Munster texts, but the matter returned in the article instituted the *Chambre mi-partie*, a chamber of arbitrators or commissaries from both sides with more extensive competence for disputes arising out of the interpretation or execution of the treaty (Art. 20/21). The Munster Peace Treaty contained several more articles on trade impositions, but these were already present in the 1646 draft, so again, did not reflect upon the distinction between truce and peace.⁷²

A clause common to peace treaties between maritime powers was the one from Article 12 from the Truce (Art. 22/23), which prevented warships to enter the harbours and lands of the treaty party without permission, except in case of necessity. Article 29 forbade the building of new fortresses during the truce. This was an article that was clearly more natural for a truce than a peace treaty. The question whether it was allowed to build fortresses in the Low Countries during a truce was one which was often discussed in doctrine.⁷³ The Article was rehearsed in the 1646 draft, extending the prohibition to trenches and canals for defensive purposes (Art. 56) and, as such, copied into the peace (Art. 58). The latter is remarkable as it made the prohibition permanent. In Article 35, the signatories to the Antwerp Truce undertook to keep land and maritime routes open and to keep them free from robbers and pirates. This article too was copied into the Munster texts (Arts. 66 and 75).

Finally, Article 33 of the Truce, which was taken over in the two Munster texts (Art. 60/62) expressly stated that subjects from both sides could inherit from one another. Hereby all measures and actions which had prevented this during the war were implicitly lifted.

Conclusion

The Antwerp Truce of 1609 clearly proves that indeed, as many doctrinal writers had it, there existed a type of treaty somewhere in between an armistice and a permanent peace treaty, and that this type was referred to as truce. The comparative study of the Antwerp Truce of 1609, the draft for a new truce of 1646 and the Peace Treaty of 1648 furthermore indicates that early-modern doctrine captured practice rather well. As doctrine had it, the essential difference between a truce and a peace was not much related to the question to what extent the truce restored the state of peace, but lay in the fact that a peace exhausted the right to return to war for the same issues, and a truce did not.

⁷² Arts. 9–12 and 14 from the draft, 10–13 and 15 from the Peace Treaty.

⁷³ Already Baldus, *Consilia* 2.295.

This difference appears clearly from the Antwerp/Munster case. The clearest indication lies in the choice itself for a long-term truce, which was made in 1608. Precisely because the parties could and would not reach a final settlement on some of the main and/or sensitive issues, they chose to make a truce knowing full well that this left open the possibility to resort to war sometime in the future. Moreover, one of the most striking differences in the legal-technical clauses of the Antwerp and Munster texts – even if it was lifted by the first additional Treaty of 1610 – clearly indicated the temporary character of the suspension of hostilities and of the right to use force to pursue the claims underlying the war. In the Antwerp Truce, the restitution of seized property was limited to repossession and not to a full restitution of ownership, thus indicating that the final decision on title and ownership was still in the open. It implied that the final verdict on the causes underlying the war had not been rendered and that new confiscations after the resumption of war were rightful and likely. The consequence of this essential difference was that whereas after a peace treaty, a new declaration of war was necessary before hostilities could be opened, this was not the case for a truce. In answer to the question whether or to what extent a truce restored the state of peace, the common answer given by the early-modern writers of the laws of war and peace was that a truce did not (temporarily) restore the state of peace by itself and thus did not go beyond a suspension of actual hostilities, but that treaty partners could and often would agree to suspend the laws of war and restore the state of peace in more general terms. The Antwerp Truce and the 1646 draft did just that, expanding the suspension of the laws of war and restoration of normal peaceful relations to such an extent that hardly any change or addition was deemed necessary to turn the draft truce into a final peace settlement. This left the Munster Peace Treaty to be somewhat peculiar in some of its wordings and clauses in relation to other peace treaties, but it did not detract in any way of its character as a permanent peace. Certainly after the Treaty of 7 January 1607 had lifted the most important restriction upon the restitution of seized property, the state of affairs under the Twelve Years Truce resembled the state of peace almost to the maximum. It was for all practical purposes, to turn the tables on Gentili's quote, nothing but a temporary peace.

Finally, we will briefly glance at the main other long-term truces from the 16th- and 17th-century from intra-European practice.⁷⁴ The Treaty of Nice

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74 This excludes a comparison to the peace settlements between the Ottoman Turks and other Muslim powers on one side and Christian princes on the other hand, which until the 18th century were always temporary because of the dictates of traditional Muslim doctrine to that extent and pertained to a very different tradition of peace settlements.

signed between the Emperor Charles V (1519–1558) and Francis I of France (1515–1547) of 18 June 1538, while much less elaborate and shorter, also amounted to a temporary peace, in this case for ten years. It contained a general clause ‘de non offendendo’, suspended all letters of marque, restored rights of trade and stipulated a general and unrestricted restitution of seized property.⁷⁵ From the 17th century, three long-term truces are worth referring to. All of these were different from the Antwerp Truce to the extent that they provided for negotiations on a definite peace settlement and thus anticipated a future peace settlement. They did not, however, amount to preliminary peace treaties because no general outline for the future settlement was hammered out in these treaties. The Truce of Altmark of 25 September 1625 between Poland and Sweden was elaborate on the attribution of territories for the duration of the truce and the sequestration of disputed lands and rights. It contained an amnesty clause as well as several clauses on trade rights and restitution, stipulated the mutual release of prisoners and provided for the peaceful settlements of disputes arising out of breaches of the treaty by the signatories or their subjects.⁷⁶ The Thirteen Years Truce of Andrussov between Poland and Russia of 30 January 1667 was also most elaborate on the division of lands and territories during the truce. It contained clauses on trade rights, the release of prisoners and the peaceful settlement of disputes arising out of violations of the treaty.⁷⁷ The Truce of Regensburg of 15 August 1684, apart from offering a provisional settlement for disputed territories, contained a clause ‘de non offendendo’, a general restitution clause, the restoration of trade, a stipulation on the law applicable in trials between subjects from different treaty partners and a provision for the peaceful settlement of disputes arising out of the treaty or during the truce.⁷⁸

From this brief comparison, the conclusion can be drawn that the Truce of Antwerp stands out among its kind. Not only was it the most elaborate truce in terms of legal detail, but above all it became closer than any to being a full, if temporary, peace. It was, after all, a failed peace waiting to be transformed into a full peace. That transformation would be another three decades in the making, but once it was decided upon, it only demanded minimal legal and textual adjustments.

See Karl-Heinz Ziegler, ‘The peace treaties of the Ottoman Empire with European Christian powers’, in Lesaffer, *Peace Treaties and International Law*, 338–364.

75 Dumont, *Corps universel*, vol. 4.1, 169.

76 Dumont, *Corps universel*, vol. 5.2, 494–496.

77 Clive Parry (ed.), *The Consolidated Treaty Series* (Dobbs Ferry, 1969–1986), vol. 9, 399–428.

78 Parry, *Consolidated Treaty Series*, vol. 17, 127–149.