

The three peace treaties of 1492-1493

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Published in:
Kalkül-Transfer-Symbol

Publication date:
2006

[Link to publication](#)

Citation for published version (APA):
Lesaffer, R. C. H. (2006). The three peace treaties of 1492-1493. In H. Duchhardt, & M. Peters (Eds.), *Kalkül-Transfer-Symbol: Europäische Friedensverträge der Vormoderne* Institut für Europäische Geschichte Mainz.

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Schriftenreihen und**Online-Ressourcen**

☛ Bände

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☛ gedruckt

☛ **online**

☛ Online-Ressourcen

**Jahrbuch für Europäische
Geschichte****Berichte**

Kontakt

Adresse + Anfahrt**Formular****Internationales Netzwerk**

Alte Universitätsstraße 19

55116 Mainz – Germany

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Sie sind hier: [Beihefte](#) | [online](#)**Randall Lesaffer** *[Inhaltsverzeichnis](#)**The Three Peace Treaties of 1492–1493****Gliederung:**

INTRODUCTION

THE PARTIES TO THE TREATIES

RATIFICATION AND ECCLESIASTICAL SANCTION

SUBSTANTIVE CLAUSES: DYNASTIC AND PERSONAL MATTERS

SUBSTANTIVE CLAUSES: WAR AND PEACE

CONCLUSION

Anmerkungen

Zitierempfehlung

Text:

INTRODUCTION

In 1492 and 1493, the young King of France Charles VIII (1483–1498) made three peace agreements with his main foreign opponents. On 3 November 1492, the Treaty of Etaple was agreed upon in the name of Charles VIII and Henry VII, King of England (1485–1509). On 19 January 1493, the Catholic Kings of Spain, Ferdinand of Aragon (1479–1516) and Isabel of Castile (1474–1504), ratified the Treaty of Barcelona. On 23 May 1493, the Treaty of Senlis between Charles VIII on one side and Maximilian of Austria, then King of the Romans and future Emperor (1493–1519), and his son Philip, Lord of the Netherlands (1482–1506) on the other side, ended the last war in Western Europe. France was involved in at the time [1] This was the war between France and the Burgundian Netherlands, which had been raging on and off since the accession of Maximilian's defunct wife Mary of Burgundy (1477–1482). Maximilian ruled over the Netherlands as regent and tutor to his underage son Philip (born 1478), who as titular lord over the Netherlands – Count of Flanders, Duke of Brabant, Count of Holland, Zeeland and Hainaut etc. – was formally party to the Treaty of Senlis. A year later, in 1494, Charles VIII invaded Italy to push his claim to the southern Kingdom of Naples and to launch his crusade to the east.

Historians have commonly considered the three treaties of 1492/93 preparatory steps to the Italian adventure of the young warrior-king Charles VIII. The desire to make peace at home in order to start a »crusade« most certainly fitted the rhetoric of the decades after the fall of the Eastern Roman Empire (1453), and of King Charles' court. This led them to judge hard on Charles VIII. In the three treaties, he made major financial, territorial and political concessions to his three main enemies, in order to start an adventure that would prove disastrous for France's European ambitions in the long run.[2] The invasion of Italy triggered a drawn-out conflict with the rising power of the day, Spain, that would end in 1530 with the domination of Italy by Habsburg Spain and Spanish hegemony over Western Europe.

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Other historians have judged the treaties in a more nuanced way. Yvonne Labande Mailfert has argued convincingly that the three treaties of 1492–1493 were not dictated by Charles VIII's desire to free his hands for an invasion of Italy, but that they constituted the outcome of a successful policy to end a triple war against the Anglo-Spanish-Habsburg alliance that Charles VIII and France had not wanted and thus to liberate Charles VIII from the burdens of his father's, Louis XI (1461–1483), expansionist policies.[3]

This is not the time or place to go deeper into that discussion. For our purposes, it suffices to underscore that in this newer interpretation too, the three treaties of 1492–1493 were interconnected and formed part of one comprehensive peace process. The three agreements ended the wars between France and a coalition of its main enemies that had been formed at Medina del Campo in 1489, Working in 1490 and Westminster in 1491.[4] The »evil spirit« behind the coalition war was undoubtedly Ferdinand of Aragon. His immediate goal was the recuperation of the counties of Roussillon and Cerdagne on the French side of the Pyrenees, which his father John II (1458–1479) had pawned to Louis XI. Ferdinand had pushed Henry VII to invade France. Maximilian, who ruled the Burgundian Netherlands for his son Philip, had been at war with France on and off for more than a decade.

In brief, Ferdinand's diplomatic game worked. At Etaples, Charles VIII bought off the half-hearted English invaders by settling the debts of the French crown to its English counterpart. At the same time, Charles VIII announced to the inhabitants of Perpignan that the disputed counties at the Pyrenees would be restored, as Louis XI had promised on his deathbed.[5] The restitution was agreed upon at Barcelona, but only executed in the fall of 1493. Charles VIII reserved his legal claims for the future and the parties agreed to have them settled by arbitration. After Maximilian's campaign in the east of France had been stopped, Charles VIII made his peace with Maximilian, Philip and the Netherlands. Philip's sister Margaret of Austria (1480–1530), who had been betrothed to Charles VIII before he wed Anne of Brittany (1477–1514) in 1491 and who was raised in France, was to be returned, together with her dowry, more in particular the counties of Artois, Franche-Comté and Charolles.[6]

Peace treaties are a microcosmic reflection of the law of nations as it exists and understood and applied at a given time. In this paper, some major aspects of the law of nations as it appears from the three peace treaties between France and its opponents at the end of the 15th century are indicated. The three treaties of 1492–1493 have much to commend themselves for such an endeavour.

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First, they immediately precede the transition from the old medieval legal order of Europe to what would eventually become the Westphalian system in the late 17th and 18th centuries. The disruption and transition of the European legal order, which marked most of the 16th century and the early decades of the 17th century, was triggered by the Reformation, the discovery of a new world and the rise of great dynastic power complexes such as France, Spain, the Habsburg empire and England. This last factor had already begun to play by the 1490s. The transition was one of the old hierarchical legal order of the *respublica christiana* of the Late Middle Ages to the sovereign states system of the Modern Age. Therefore, we will particularly address these issues which relate to sovereignty, both external and internal. External sovereignty means the absence of a higher authority. In a system of externally sovereign »states«, it is these states who make and enforce the law of nations. Internal sovereignty in an absolute sense means the monopolisation of state power by the sovereign. In relation to our subject, this concerns the monopolisation of the political and legal representation of the »state« on the international level with the exclusion of all other, internal powers. Whereas external sovereignty would be achieved by the second half of the 16th century by the major European powers, internal sovereignty would only more or less be accomplished during the 18th and 19th centuries, if ever. The treaties of 1492–1493 offer a view on how the law of nations functioned just before the disruption of the old *respublica christiana*. The main purpose of this article is, therefore, to assess the law of nations as it was, and whether the rise of the great dynastic power complexes out of which the future sovereign states were to be born, made already felt itself in questions relating to sovereignty.[7] The discussion below is therefore limited to the most relevant points as to that.

Second, the three treaties are connected but each stands in a different tradition of treaty making. In his seminal work on peace treaties of 1979, Jörg Fisch suggested that modern peace practice grew out of the French-English peace treaty practice of the Late Middle Ages. He thereby, rightly, implied that different powers had different customs and ways of making peace, both to their style and content. After the collapse of the old legal order around 1530–1550, these differences – certainly between powers of a different religious denomination – would deepen for a certain time.[8] The analysis of these three treaties between France and three different powers may thus yield more information about these traditions of peace- and treaty making.

THE PARTIES TO THE TREATIES

At the end of the 15th century, the law of nations was far from an autonomous body of law. As the sovereign state was not yet in existence, there was as yet no strict dualism between the municipal and international legal orders, neither were public and private law strictly distinguished. The law of nations – *ius gentium* – was part and parcel of the law at large. It drew on concepts and notions taken from the learned Roman – mainly private – law, canon law and feudal law as well as from old feudal and local customs and practices. This was as much true for the rules on treaties as it was for more substantive matters of international relations. Though medieval doctrine was familiar with the distinction between a private compact and a public treaty – *foedus* – treaty law took a lot from the law of contract at large.^[9]

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During the Late Middle Ages, the signatory parties of peace treaties were not the realm and body politics involved, but the princes themselves.^[10] They did not act as the representatives of an abstract body politics but entered the treaties in their own name. Their realms and subjects were not directly bound to the treaty, but only indirectly through the promise of their king to lay it upon them and enforce it. The princes entered the treaties in their own names, but they did not only promise to observe it themselves. They pledged their word that they would impose it on their heirs and successors, their subjects and territories. A treaty constituted two different sets of obligations. First, the reciprocal promise of the actual treaty parties – the princes – personally to respect the treaty clauses. Second, their promise to enforce it upon their subjects and lands and hold them bound to it. It was this indirect binding of subjects that made a treaty from a personal contract into a public *foedus*.

At Etaples, Barcelona and Senlis, it was the princes who issued the full powers that allowed their plenipotentiaries to negotiate and sign the treaties; afterwards, they ratified the treaties themselves. In the references to the full powers in the Preambles and in the ratifications, there were two traditional formulas to indicate the double, direct and indirect, obligations of the treaty. Barcelona held the one, Senlis the other, Etaples both. According to the first style, the princes entered the treaties for (pro) themselves, their heirs, successors, subjects and lands. According to the second style, they made the treaty between (inter) themselves, their heirs, successors, subjects and lands. The full power emitted by Charles VIII for the Treaty of Etaples mentioned he mandated his diplomats to negotiate on peace »entre nous [Henry VII and himself] & nos Roiaumes, Pais, Seigneurie & Sujets«. At Calais, on 11 November, Henry VII ratified »pro nobis, Haeredibus & Successores nostris«. ^[11] Charles adopted the pro formula too in his ratification of 6 March 1493: »pro se suisque regnis dominiis et subditis«. ^[12] The Preamble to the Barcelona Peace held that Ferdinand and Isabella made peace with the Most Christian King and the Dauphin »pro eis & Successoribus, Regnis & universis Dominiis & Subditis eorumdem«. They ratified

the treaty and promised to observe it »pro nobis, Regnis, Terris, Dominiis & Ditionibus. The Senlis treaty used the inter formula. According to the Preamble of Charles' ratification instrument of the Peace of Senlis, he had issued full powers to his diplomats to negotiate peace with Maximilian and his son Philip »entre nous [Charles VIII], nôtre tres-cher & tres-ami Fils le Daufin, nos Roiaumes, Païs & Seigneuries, Serviteurs & Sujets« and »nosdits Frere & Cousins le Roi des Romains, & l'Archiduc Philippe, son fils, tant en leur nom, que pour & au nom de nôtre tres-cher & tres-amée Cousine Marguerite d'Autriche, Fille de nôtre Frere, & Soeur de nôtre Cousin l'Archiduc, leurs Païs, Seigneuries, Serviteurs & Sujets«. Charles ratified the peace treaty »entre nous, nôtre tres-cher & tres-ami Fils le Daufin, nos Roiaumes, Païs, Seigneuries, Serviteurs & Sujets, & de nosdits Frere & Cousins tant pour eux que pour nôtre Cousine Marguerite d'Autriche, leurs Païs, Terres & Seigneuries, Serviteurs & Sujets«.

The express references to heirs, successors, subjects and lands in both formulas indicated that it was not automatically implied that princes bound these groups of persons. Over the 16th century, these references would disappear and become obsolete, as the fact that princes acted for their lands and subjects became more self-evident. This shift was in function to the emergence of the sovereign state and the monopolisation of state representation by the sovereign prince. This process had hardly begun by the 1490s.[13]

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Also the main articles of the treaty, in which peace was established, held references to heirs, successors, subjects and lands. Here both the pro and the inter formulas were applied, at Barcelona and Senlis even in combination. Article 1 of the Etaples Treaty established peace »inter Potentissimos Franciae & Angliae Reges antedictos, eorumque Patrias & Dominia sua quaecumque, Haeredes, Successores, Vasallos atque Subditos suos praesentes & futuros«. The first Article of the Barcelona compact stipulated that the king continued the old alliances that had existed between »inter Praedecessores nostros Reges Hispaniae & Franciae, nostraque Regna & Dominia, Patrias & Dominationes« and that the new relations would apply »pro nobis, Haeredibus & Successoribus nostris, & cujuslibet nostrorum«. Article 1 of the Treaty of Senlis stipulated that peace was made and sworn »entre le tres-Chrestien Roi de France, Monsieur le Daufin, leurs Roiaumes, Païs & Seigneuries, Serviteurs & Sujets, d'une part; & le Roi des Romains, ... & Monsieur l'Archiduc Philippe, son Fils, tant en leurs noms, que au nom de Madame Marguerite d'Autriche ... pour eux, leurs Païs & Seigneuries, Serviteurs & Sujets, d'autre part«. While the inter formula would survive during most of the 16th century, the pro formula would not.[14]

The three peace treaties were not strictly *intuitu personae* contracts as they were meant to outlast the lifetime of the princes who made them. But still, the binding of the treaties upon their successors was not self-evident and needed to be stipulated, another proof that it was the princes, and not abstract body politics who were treaty partners. As mentioned above, the preambles, main articles and ratifications expressed that the princes had

entered the treaties for their heirs and successors or that they would apply to them.

Regarding the duration of the treaty beyond the lifetime of the signatories, the Treaty of Etaples was not representative for peace treaties. The previous treaties between France and England since the end of the Hundred Years War (1337–1453) had actually been truces, not perpetual peace treaties.^[15] The Treaty of Etaples was different in that it did not stipulate a specific number of years, but it was still no perpetual peace. It would remain in force until one year after the death of the king who died the last. The successor of the king who died first had one year to ratify the treaty for himself.^[16]

The Barcelona and Senlis Treaties were, however, perpetual peace treaties. The main Article of the Barcelona Treaty called the peace »perpetuo & cunctis futuris temporibus duraturam«. The peace would thus endure after the death of the signatories. The same article made express reference to the heirs and successors of the signatory parties as beneficiaries of the treaty.^[17] Further, it was agreed that the two presumptive successors of the signatory princes would ratify and swear to the treaty themselves.^[18] Article 1 of the Senlis Treaty stipulated that the peace would remain in force »à toujours«. Here, the direct successors of the signatory parties were mentioned by name. Maximilian's son, the Archduke Philip was a full treaty partner as titular lord of the Netherlands.^[19] King Charles's son, the infant dauphin, though not being a full, primary treaty partner, was referred to in a similar way. This struck a nice balance, but did not make the dauphin a full treaty partner. References to further heirs and successors were not made. Though not a full treaty partner, the dauphin would also ratify the treaty, as would he and the Spanish heir to the throne for the Barcelona Treaty. This was rather exceptional, but can each time be explained by particular clauses relating to marriage promises^[20] or the cession of territories,^[21] that made this relevant.

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The express references in the Treaties of 1492–1493 to heirs and successors in the preambles, articles and ratifications of treaties was normal practice in the late 15th century and survived into the 16th and even 17th centuries.^[22] From this can be learned that it was accepted that princes could bind their successors, but that it was not self-evident that they did so. The more direct binding of the heirs presumptive to the Treaty of Barcelona and Senlis was more exceptional, but was dictated by concerns particular to the contents of treaties.

In many treaties of the late 15th century, kings and their future successors were not the only ones to ratify the treaties. Other persons were invited to co-ratify them. It was current practice to invite major nobles, prelates and towns to co-ratify the treaty. These co-ratifications could have two purposes and effects. On the one hand, they could serve as a guarantee for the upholding of the treaty by the main signatories. The subjects of the other treaty partner then promised to side with the other treaty partner if their suzerain broke

his pledge. On the other hand, through their ratification, they bound themselves to the treaty, at least in as far as the clauses were relevant to them.[23]

The Barcelona and Senlis Treaties made use of co-ratification. In the Treaty of Barcelona it was agreed that the towns of Barcelona and Saragossa would swear to observe the treaty. This served as a guarantee for the Catholic Kings' promise that they would return the counties of Roussillon and Cerdagne to France if the arbiters decided that the French King held the better claims. Charles VIII would have the towns of Toulouse and Narbonne swear upon the treaty as a guarantee for the French King's abidance.

Article 39 of the Senlis Treaty provided that Charles VIII, Maximilian and the Archduke Philip would have some important nobles and towns, mentioned by name, ratify the treaty with signed and sealed letters. Through these letters, the nobles and towns would promise to abide by the treaty and to turn themselves against the perpetrator of the clause pertaining the restitution of territories by the signatory parties. For this purpose, the princes freed them from their oaths of allegiance. This co-ratification was both a guarantee and a way of directly binding these subjects to the treaty. Before the negotiations began earnestly at Senlis, Charles VIII had tried to make a separate treaty with Philip and the Netherlands, which Maximilian had refused. Some of the nobles and towns that were to co-ratify, had rebelled against Maximilian and been allies to Charles VIII as late as 1492.[24] The co-ratification by the towns and nobles, together with the presence of Philip as a full partner, constituted a political compromise.[25]

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Not only did these co-ratifications confirm that princes did not directly bind the subjects by entering a treaty, they also indicate that vassals and subjects could still play a direct role in international relations under the law of treaties. The sovereign princes held no monopoly there.

The Treaty of Etaples provided another form of binding subjects to the treaties, which was more modern and would become more general during the 16th and 17th centuries. Article 19, Charles VIII and Henry VII promised to have the Treaty ratified by the three estates – the English Parliament and the French Estates.[26] This co-ratification was institutional rather than personal. A personal co-ratification only engaged the noble, prelate or town who signed the treaty. An institutional co-ratification pertained to a person represented by the institution. While one can, of course, consider this institutional co-ratification a forerunner of our modern ratification by the legislature, one should heed the danger of anachronism. Whether this ratification was necessary to fulfil international constitutional obligations is irrelevant here. What is significant is that the sovereign promised in an »international« compact to have their subjects ratify the treaty. This is another indication of the personal character of treaties made by princes, and what was considered expedient to overcome that. The institutional co-ratification was certainly

step towards treaties as compacts between states rather than princes, but at the same time it was proof of the fact that this shift was only at its beginning. Article 40 of the Peace of Senlis also contained a kind of institutional confirmation. It provided for the registration of the instrument of peace by the Parliament of Paris, the Great Councils of Maximilian and Philip, as well as the Chambres des Comptes of France and the one at Lille. Here again, the significant thing is that this was stipulated in the treaty itself.

RATIFICATION AND ECCLESIASTICAL SANCTION

By the late 15th century, most treaties were made through the so-called »zusammengesetzte Vertragsschliessungsverfahren« – the phase-wise method of making treaties. It had replaced the old »unmittelbare Vertragsschliessungsverfahren« as the standard method of negotiating and making treaties. Under the old form, the actual signatories exchanged identical documents they had signed, thus constituting an agreement. This form was more suitable for when princes actually met. The »zusammengesetzte« method held three stages and three different sorts of documents: the full-powers issued by the princes for the actual negotiators, the treaty text negotiated and confirmed by those, and the ratification by the signatory powers, the princes.[27] The three treaties were made in this modern way. At Senlis, however, where Charles VIII was present, he directly ratified the treaty whereas it was countersigned by Maximilian's and Philip's ambassadors, who promised to have it ratified by their masters.[28] Earlier, on 8 May, the treaty text had already been fixed between the ambassadors, so that one can still consider this treaty made through the »zusammengesetzte Vertragsschliessungsverfahren«.[29]

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In all three treaties of 1492–93, the final acceptance and ratification of the texts by the signatory princes was done in two different ways: by signed and sealed documents, and through the swearing of an oath. At Etaples, it was agreed that the princes would confirm the treaty text »per Litteras suas Patentis suo Magno Sigillo sigillatas, manuque propria subscriptas, & juramento vallatas«.[30] The Catholic Kings confirmed the Barcelona Treaty with »Litterae in meliori forma« and they »juramus super Sancta Dei quatuor Evangelia corporaliter & manualiter per nos tacta, bona fide & in verbo regiō tenere«. Article 48 of the Peace of Senlis mentioned that the princes »bailleuront leurs Lettres & scelles, & picelles promettront & feront serment solennel sur les Saint Evangelies de Dieu, Canon de Messe, & fust de la vraie Croix«.

What was the purpose and significance of this double »ratification«? What was the legal basis of the binding character of the treaties? As it was said above, the law of nations and the law of treaties were no autonomous bodies of law yet. In this light, one cannot sufficiently say that a treaty or any other obligation was binding under the law of nations. In fact

the law of nations, the rules that governed relations between princes and body politic who were *superiorem non recognoscentes*, was an inextricable amalgam of different bodies of law: Roman law, canon law, feudal law and all kinds of customs, either specifically designed for »international relations« or adopted from local customary law. The ratification process of the treaties reflected this in that it tapped from several bodies of law to make the treaty binding and guarantee its enforcement. It was binding under the law of nations because it was binding under all different kinds of law that together made up the customs and laws of »nations«.

The signed and sealed documents made the treaties binding under canon law, Roman law and was part of the customs of treaty making. Charles VIII's in the Treaties of Etaples and Senlis stated that he pledged his »good faith«, a direct reference to the learned Roman law. In the same breath he also pledged his »parole de roi«, like Ferdinand and Isabella did in the Barcelona Treaty.[31] This ran with reminiscences to feudal law.

The confirmation of the treaties by oath strengthened the binding character of the treaties under canon law. The breaking of an oath constituted the mortal sin of perjury and guaranteed their enforcement by the ecclesiastical courts. The final Article of the Treaty of Etaples invited the Holy See to ratify the treaty and to promulgate an automatic excommunication »nunc pro tunc, & tunc pro nunc« in case of perjury, this in addition to normal interdicts against the lands of the perpetrator. Charles VIII and Henry VII renounced all exemptions and privileges they might be able to invoke.[32] In their ratification to the Treaty of Barcelona, the Catholic Kings submitted themselves, their successors and lands to the censures of the Holy See in case of perjury.[33] The Senlis Treaty held no express reference to ecclesiastical jurisdiction, but this was not necessary. As all promises are contracts, certainly those confirmed by oath, were actionable before the ecclesiastical courts, the only real significance of the express submissions from the Etaples and Barcelona Peace agreements was to designate the papal court as the holder of jurisdiction and to exclude normal, episcopal jurisdiction.[34]

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SUBSTANTIVE CLAUSES: DYNASTIC AND PERSONAL MATTERS

We will not go into a detailed survey of all the substantive clauses of the three peace agreements Charles VIII entered in 1492 and 1493, but will limit ourselves to some aspects which are most relevant to the matter of sovereignty. The three treaties all focus on matters which were of a highly personal and dynastic nature. To these, general rules and customs of private contract law, marriage law and feudal law, common to all parties, were applied.

The political compromise behind the Treaty of Etaples was not included in the ma

peace instrument itself, but in the additional agreement made the same day.[35] concerned the financial obligations of Charles VIII to Henry VII. In 1475, Louis XI had promised the English Edward IV (1461–1483) and his successors an annual pension of 50,000 écus to buy off his invasion. The payments were in arrear since 1492. Charles VIII had also taken over the debts of his wife Anne of Brittany to the English King Henry VII for his help in the past wars of Brittany against France.[36]

The main issue at Barcelona concerned the restitution of the counties of Roussillon and Cerdagne to the Kings of Aragon, who had pawned them earlier in lieu of financial support during the time of the civil war in Aragon in the 1460s. The Catholic Kings also promised not to marry their children with those of Charles' enemies Henry VII and Maximilian. The counties were returned into the possession of the King of Aragon, but all rights were reserved pending arbitration.[37]

The Peace of Senlis focused on disentangling the mess caused by the complex marriage policies of Charles VIII and Maximilian. In 1491, Charles VIII had taken his old enemy Anne of Brittany, married by procurator to Maximilian (1490), in wedlock. This meant that he would not marry his long-since betrothed Margaret, daughter of Maximilian. The Articles 2 and 3 of the Peace of Senlis stipulated the return of Margaret to her father and brother, which came down to an implicit recognition of Charles VIII's marriage. In consequence of all this France also had to return to Maximilian and Philip most of the territories and possessions which formed part of Margaret's dowry, including the Franche-Comté, Artois, Charolles and Noyers.[38] Charles VIII did not cede any of his sovereign rights on these lands, but only returned them as French fiefs into the possession of the Archduke Philip, who as Count of Flanders was his vassal anyway. In this respect, the Peace of Senlis was, as opposed to the other two agreements, not solely a treaty between sovereigns, but also between sovereign and his vassal. Articles 5 and 11 stipulated that Philip would do homage to his suzerain when he reached the age of 20, in 1498. In the meantime, France would keep possession of some of Philip's fiefs that were part of his sister's dowry – Auxerre, Mâcon and Bar-sur-Seine – or that France had occupied during the wars of the past decades – Hesdin, Aire and Bethune –, while the Habsburgs could keep Arras, which they had conquered. After Philip had done homage, these places would be restored.[39] Margaret of York, stepmother to Maximilian's defunct wife Mary of Burgundy, was comprised in the peace in person. She could peacefully enjoy her possessions in France.[40]

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SUBSTANTIVE CLAUSES: WAR AND PEACE

The Treaties of Etaples and Senlis were genuine peace agreements in that they put an end to ongoing hostilities. The Treaty of Barcelona did not. This was presented as an renewal of

the traditional alliance that had existed between France and Castile. In the main Article of the Senlis Treaty, the terminology was, however, loosely used. At Etaples, it was said that »Pax, Amicitiae, & Foedera« were made; the Senlis instrument mentioned »Paix, Union Alliance, & Amitié«.[41] The Barcelona Treaty spoke of the renewal of a »Ligan Confoederationem, Concordiam, & inseparabilem Amicitiam«.[42] The use of terms indicating a form of alliance such as union or alliance in peace instruments was common. »Amicitia«, friendship, was almost always referred to both in peace and alliance treaties. Friendship did not amount up to an alliance; it was a qualification of peace beyond the cessation of hostilities. It implied that the treaty partners would not harm one another or one another's subjects, nor allow their own subjects to do so. It also meant that they would refrain from the use of force against one another or one another's subjects to settle the disputes, and prevent their own from doing so.[43] What »peace and friendship« entailed was quite well elaborated in the peace instrument of Etaples: the immediate cessation of hostilities (Article 2), free movements of persons and goods under the protection of the law in one another's territories, without having to pay any special taxes and tolls (Articles 3–4) and the promise not to harm one another (Article 5) and the exclusion of general reprisals (Article 9).

The Barcelona Treaty entailed a general promise of help against all present and future enemies, including Spain's allies England and the Habsburgs.[44] It stipulated that the present alliance would supersede all existing alliances, except the alliance Spain had with the Pope.[45]

Whereas alliance treaties mostly justified future or ongoing wars in terms of defensive actions and implicitly referred to the just war tradition, peace treaties did not reflect upon the justice or the legitimacy of the war. In its classical interpretation, the just war doctrine discriminated between a just and an unjust belligerent; only the just belligerent had a right to wage war. The peace treaties of the Middle Ages and the Early-Modern Age, however, passed the subjects of the justice and the responsibility for the war over in silence. Thus the treaty partners implied that both belligerents had held an equal right to wage the war. This was not strictly limited to sovereign princes. The Treaty of Senlis was no different in relation to the war between Charles VIII and his vassal, the Archduke Philip, Count of Flanders.[46]

The Treaty of Senlis included an express clause of amnesty and oblivion. Under this clause, the parties waived the right to pursue, by whatever means including judicial ones, all claims to damages for all harm inflicted during the war.[47] This clause was a logical complement to the desire not to attribute responsibility for the war and not to discriminate between a just or rightful, and unjust or unrightful belligerent. From the 16th century onwards, this clause would become standard in almost all peace treaties.[48] Another clause that betrayed the wish not to render judgment on the past, was the general restitution to all subjects of their benefices, lands and fiefs, and rights thereon, which had been taken or confiscated during the war. This too was done without any reference to the

justice of the past war.[49]

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In the peace treaties of 1492–93, two other clauses which indicated that subjects and vassals still could play a role on the level of the international legal order are to be found. First, there was reprisal. Reprisal meant the authorisation by his sovereign of a private person to seize the property of the subjects of another sovereign. It was a kind of authorisation to wage a private war. One has to distinguish between general reprisal, that allowed for limitless »warfare« against the enemy's subjects, and particular reprisal, that only allowed to a particular person the seizure of property from another sovereign's subjects by way of compensation for an injury committed by a subject of that sovereign's case justice had been denied. Associated to general reprisals, if not an instance of it, were »lettres de marques« given to ship owners, who were thus authorised to capture all ships belonging to the enemy.[50] Article 9 of the Treaty of Etaples contained a promise not to issue any reprisals or »lettres de marque« or »contremarque« for the future, except in case of manifest denial of justice. Special reprisals for particular cases were thus excepted from this promise.[51] The clause might outlaw general reprisals and »lettres de marque« and limit the use of particular reprisals in time of peace, but implicitly sustained it as legitimate way of war. It would remain so until deep in the 18th century.

Second, the Treaty of Senlis extended the amnesty and restitution clauses also to those subjects who had sided with the enemy during the war. Though this did not go so far as the recognition of a right to rebel and take the side of the enemy during the war, it at least condoned this widespread behaviour post factum and thus entailed a limitation of sovereignty.[52] Actually, it was probably because many had fought their own prince during the war between France and the Burgundian Netherlands, that a clause of amnesty was included in the peace. To the Treaty of Etaples, an additional clause was added in which the parties promised not to support one another's rebellious subjects in the future, an indication that this was common practice and that it was not considered outright illegitimate.[53]

CONCLUSION

The three treaties Charles VIII made with his main opponents in 1492 and 1493 reflect the customs and laws regulating the relations between princes at the eve of the long period of transition from the medieval to the modern legal order of Europe. To a large extent, the old system of the *respublica christiana* as a hierarchical system of sovereign, semi-sovereign and subject princes and body politics under the supreme leadership of the Pope and the authority of the feudal, Roman and, more importantly, canon law still stood. The treaties betray little progress towards external or internal sovereignty.

Apart from the Archduke Philip, who was vassal to both the Roman Emperor and the French King, the full treaty parties were *superiorem non recognoscentes*. Nevertheless their external sovereignty was not absolute yet. The treaty partners to some extent recognised the higher authority of the Pope and of canon law. The treaties were confirmed by oath and were enforceable under canon law by the ecclesiastical courts. In two treaties papal jurisdiction and papal sanctions were expressly invoked by the treaty partners. The law as it was applied in the treaties was not the product of the free will of the treaty partners. They applied a mixture of customary, canon, Roman and feudal law; the rules were part and parcel of that authoritative law legal historians refer to as the *ius commune*. One was still far from the claims to state voluntarism modern international lawyers would make. In relation to the right to wage war, the princes had achieved external sovereignty. At no time did they question or judge one another's right to wage war. The Treaty of Senlis already included two general clauses that would become typical of the Early Modern Age in this respect: amnesty and restitution, and which were by then already common in Italian treaty practice.

If external sovereignty was not absolute, internal sovereignty was hardly an issue at the end of the 15th century. The sovereign princes were still far from being able to monopolise international relations and to exclude their subjects and vassals from playing a role on the international political and legal scene. The princes themselves could hardly claim to act as representatives for their lands and subjects, automatically binding them to the treaty. Important subjects and vassals were invited to co-ratify the treaty and even to act as guarantors against their own suzerains; in one treaty a vassal was treated on a level with sovereign kings. Reprisals, which constituted a kind of private warfare, was still considered a legitimate act of war. Even rebellion against one's own sovereign was condoned *pro factum*. Only the institutional co-ratification of the Etaples Treaty betrays the early beginnings of a shift towards the sovereign state.

Jörg Fisch suggested that much of modern treaty practice had its roots in late-medieval French-English peace treaties. Indeed, the Treaty of Etaples was a forerunner to what were to become more general practices in the 16th and 17th centuries on some points. Apart from institutional co-ratification these included the reference and definition of peace as friendship, reprisal and free movement of persons and goods. In relation to amnesty and restitution, the Franco-Habsburg Peace of Senlis was the forerunner.

ANMERKUNGEN

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[1] The treaties are published in: Jean DUMONT (Hg.), *Corps universel diplomatique du droit des gens contenant un Recueil des Traitez d'Alliance, de Paix, de trêve, de neutralité, de commerce, etc., qui ont été faits en Europe, depuis le règne de l'empereur Charlemagne jusques à présent*. Amsterdam 1726, III/S. 291, S. 297 and S. 303. An additional agreement to the Treaty of Etaples from the same date, with the compromise on the payments due by the French king to his English counterpart, is to be found in LONDON Public Records Office, E 30/609.

[2] E.g. Ivan CLOULAS, *Charles VIII et le mirage italien*. Paris 1986, S. 29–30; Eduard FUETER, *Geschichte des europäischen Staatensystems von 1492–1559*. Osnabrück 1919, S. 250–252.

[3] Yvonne LABANDE-MAILFERT, *Trois traités de paix, 1492–1493, Le Moyen Age*, 60 (1954), S. 379–40; idem, *Charles VIII et son milieu: la jeunesse au pouvoir*. Paris 1975, S. 117–138; idem, *Charles VIII: vouloir et la destinée*. Paris 1986, S. 154–193. An important element to substantiate Labande's claim that Charles VIII only asked for a declaration of neutrality from Ferdinand of Aragon in regards to Italy on 10 March 1493, months after the peace process had been started. See Henri F. DELABORDE, *L'expédition de Charles VIII en Italie, histoire diplomatique et militaire*. Paris 1888, S. 262.

[4] Treaty of Medina del Campo of 27 March 1489 between England and Spain, DUMONT, *Corps*, III/2, S. 219; Treaties of Woking of 11, 12 and 20 September 1490 between the three powers, DUMONT, *Corps*, III/S. 254, S. 256 and S. 260; Treaty of Westminster of 22 November 1491 between England and Spain, DUMONT, *Corps*, III/2, S. 270.

[5] Letter of 3 November 1492, in: P. PÉLICIER (ed.), *Lettres de Charles VIII, roi de France* (Publications de la Société de l'Histoire de France 310). Paris 1902, vol. 3, S. 307.

[6] On the diplomatic context and the contents of the three treaties, see apart from LABANDE-MAILFERT works *Trois traités* and *Charles VIII*; Joseph CALMETTE, *La question des Pyrénées et la Marche d'Espagne au Moyen Age*. Paris 1947, S. 216–269; José M. DOUSSINAGUE, *La política internacional de Fernando Católico*. Madrid 1944; Felipe FERNANDO-ARRESTO, *Ferdinand and Isabella*. London 1975, S. 127–13; Roger B. MERRIMAN, *The Rise of the Spanish Empire in the Old World and in the New*. New York 1962, vol. 2, S. 271–279; E.W. Seton WATSON, *Maximilian I: Holy Roman Emperor*. Westminster 1902, S. 25; Hermar WIESFLECKER, *Kaiser Maximilian I. Das Reich, Österreich und Europa an der Wende der Neuzeit*. München 1971, vol. 1, S. 339–344.

[7] On that transition, see Randall LESAFFER, *The Grotian Tradition Revisited: Change and Continuity in the History of International Law*, *British Yearbook of International Law*, 73 (2002), S. 103–139; idem, *Charles V, monarchia universalis, and the law of nations (1515–1530)*, *Legal History Review*, 71 (2003), S. 79–123

[8] Jörg FISCH, *Krieg und Frieden im Friedensvertrag. Eine universalgeschichtliche Studie über Grundlage und Formelemente des Friedensschlusses*. Stuttgart 1979, S. 537.

[9] Randall LESAFFER, *The Medieval Canon Law of Contract and Early Modern Treaty Law*, *Journal of the*

History of International Law, 2 (2000), S. 178–198.

[10] Allen HERTZ, Medieval Treaty Obligation, Connecticut Journal of International Law, 6 (1991), S. 425–443; LESAFFER, Medieval Canon Law.

[11] In DUMONT, Corps, III/2, S. 295.

[12] LONDON, P.R.O. 31/8/136.

[13] Randall LESAFFER, Europa: een zoektocht naar vrede? (1453–1763 / 1945–1997). Leuven 1999, 139–40; idem, Peace Treaties from Lodi to Westphalia, in: Randall LESAFFER (ed.), Peace Treaties and International Law in European History: From the Late Middle Ages to World War One. Cambridge 2004, 18.

[14] LESAFFER, Europa, S. 140–142.

[15] Such as the Treaty of Amiens of 21 July 1477, for seven years, in DUMONT, Corps, III/2, S. 2.

[16] Art. 1 Actually, the 1477 Truce of Amiens that had been meant to last seven years, was amended to include a similar formula at Westminster on 25 October 1477, DUMONT, Corps, III/2, S. 15.

[17] Art. 1

[18] Art. 3

[19] Preamble.

[20] So Art. 2 of the Treaty of Barcelona prohibited a marriage between the children of the Catholic King with the children of either Henry VII or Maximilian.

[21] Under French law, the dauphin had to give his agreement to any cession of territory by the Crown. Strictly speaking, this was neither the case in the Senlis Treaty in which Charles VIII did not yield all his sovereign rights over the territories he returned possession of to his vassal the Archduke Philip, nor the Treaty of Barcelona in which he reserved his rights on the counties of Roussillon and Cerdagne, he only ceded possession of. See on the French law, Heinhard STEIGER, Bemerkungen zum Friedensvertrag von Crépy en Valois vom 18. September 1544 zwischen Karl V. und Franz I., in: Ulrich BEYERLIN etc. (ed.), Recht und Politik zwischen Umbruch und Bewahrung. Völkerrecht, Europarecht, Staatsrecht. Festschrift für Rudolf Bernhardt. Berlin 1995, vol. 2, S. 261–262.

[22] LESAFFER, Peace Treaties from Lodi to Westphalia, S. 21.

[23] LESAFFER, Peace Treaties from Lodi to Westphalia, S. 19–20. Most modern scholars, like Klaus Neitmann, only accept the former use. Klaus NEITMANN, Die Staatsverträge des deutschen Ordens in Preußen 1230–1449: Studien zur Diplomatie eines spätmittelalterlichen deutschen Territorialstaates

Köln/Wien 1986, S. 276–281.

[24] Raymond van UYTVEN, *Crisis als cesuur 1482–1494*, in: *Algemene Geschiedenis der Nederlande* Haarlem 1980, vol. 5, S. 420–442.

[25] LABANDE-MAILFERT, *Charles VIII*, S. 177–178.

[26] In his ratification on 11 January 1493, Charles VIII extends the term foreseen in the Treaty – three years – to next convocation of the estates; DUMONT, *Corps*, III/2, S. 295; Henry VII on 26 January 1493 LONDON, P.R.O. 31/8/136. The English Parliament Ratified it on 23 April 1499; LONDON, P.R.O. 31/8/136

[27] Ludwig BITTNER, *Die Lehre von den völkerrechtlichen Vertragsurkunden*. Berlin/Leipzig 1944, S. 5–6; Walter HEINEMEYER, *Studien zur Diplomatie mittelalterlicher Verträge vornehmlich des 13. Jahrhundert* Archiv für Urkundenforschung, 14 (1936), S. 357–400; NEITMANN, *Staatsverträge*, 137–50; Heinrich MITTEIS, *Politische Verträge des Mittelalters*, in: *Die Rechtsidee in der Geschichte. Gesammelte Abhandlungen und Vorträge von Heinrich Mitteis*. Weimar 1957, S. 579.

[28] Art. 48, in fine.

[29] Letter of Philippe de Commines of 8 May 1493, written from Senlis, FIRENZE, Archivio di Stato Archivio dei Medici, av. Princ. 49, S. 373.

[30] Art. 19

[31] Treaty of Etaples, Preamble; Treaty of Barcelona, in fine; Treaty of Senlis, in fine.

[32] Art. 19

[33] In fine.

[34] On ratification by documents and oath, see the discussion between Heinhard STEIGER and myself in STEIGER, *Bemerkungen*, S. 251–259 and LESAFFER, *Peace Treaties from Lodi to Westphalia*, S. 22–29.

[35] LONDON, P.R.O. E30/609.

[36] Jean-Marie CAUCHIES, *Louis XI et Charles le Hardi: De Péronne à Nancy (1468–1477), le conflit de succession* Brussels 1996, S. 112–20; LABANDE-MAILFERT, *Trois traités*, S. 382–383.

[37] Arts. 5–6

[38] Art. 5

[39] Arts. 5–9 and 12.

[40] Art. 32

[41] Twice Art. 1 Reference to foedus in relation to pax was common in medieval doctrine: Karl-Heinrich ZIEGLER, *The Influence of Medieval Roman Law on Peace Treaties*, in: LESAFFER, *Peace Treaties and International Law*, S. 147.

[42] Art. 1

[43] Randall LESAFFER, *Amicitia in Renaissance Peace and Alliance Treaties (1450–1530)*, *Journal of the History of International Law*, 4 (2002), S. 77–99.

[44] Art. 1 Henry VII had already made his peace with France, knowing that Charles VIII would cede Roussillon and Cerdagne. Henry VII had thus more or less kept his faith to the Treaty of Westminster 1491 in which he had promised not to make a separate peace with France without permission of the Catholic Kings, Art. 1 Henry VII had made a similar promise to Maximilian on 12 September at Woking, Art. 1

[45] Art. 2

[46] FISCH, *Krieg und Frieden*, S. 98–103; LESAFFER, *Europa*, S. 226–231.

[47] Arts.1 and 19–20.

[48] FISCH, *Krieg und Frieden*, S. 93–97; LESAFFER, *Europa*, S. 250–255.

[49] Peace of Senlis, Arts.21–2.

[50] Stephen C. NEFF, *War and the Law of Nations: A General History*. Cambridge 2005, S. 108–110.

[51] See also Art. 3

[52] Arts.19–20 and 22.

[53] Of 13 December 1492, LONDON, P.R.O. E30/610.

ZITIEREMPFEHLUNG

Randall Lesaffer, *The Three Peace Treaties of 1492–1493*, in: Heinz Duchhardt / Martin Peters (Hg.), *Kalkül – Transfer – Symbol. Europäische Friedensverträge der Vormoderne Mainz 2006-11-02* (Veröffentlichungen des Instituts für Europäische Geschichte Mainz Beiheft online 1), Abschnitt 41–52.


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